

Amanda Frye
12714 Hilltop Drive
Redlands, CA 92373
Telephone: (909) 496-8015
Email: amandafrye6@gmail.com
California Resident
Citizen of the United States of America

**STATE WATER RESOURCE CONTROL BOARD
STATE OF CALIFORNIA
Administrative Hearing Office**

State Water Resources Control Board,
Division of Water Rights Enforcement Branch

Prosecution
v.

BlueTriton Brands, Inc.

Respondent

V V: INV 8217

AMANDA FRYE CLOSING BRIEF

TABLE OF CONTENTS

Introduction..... 1

Background..... 2

 A. Federal Reservation..... 2

 B. Locations of Present Day Diversions..... 5

 C. The Strawberry Creek and Headwater Springs Flowed Freely to the Surface

 Prior to Diversion..... 6

 D. Location of Historical Diversions..... 8

 E. The Respondent and predecessors have offered different stories about their water rights..... 16

 F. BlueTriton Infographic reveals a secondary unauthorized water diversion..... 18

 G. The Respondent now incurs the liability of the unauthorized diversions..... 19

 H. Governors Brown and Newsom issued drought emergencies in recent years (2014 and 2021).... 20

 I. The Arrowhead bottling operation sold from owner to owner without due diligence..... 20

Discussion..... 21

 1. The Respondent is Violating Water Code 1052..... 21

 2. Strawberry Creek headwaters springs are surface water..... 21

 3. Prior Orders and Decisions..... 22

 4. Prior Court Decisions..... 23

 5. Respondent’s artificial pipe a liability..... 26

 6. Historical Water Diversions..... 27

 7. Diversions Not Authorized by Riparian Rights..... 28

 8. Pre-1914 appropriated rights..... 29

 9. Developed Water..... 29

Request for CDO Actions..... 29

Conclusion..... 30

TABLE OF AUTHORITIES

Cases

Arrowhead Water Company v Arrowhead Hot Springs, San Bernardino Superior Court Case 11339 (1910)..... 5, 11

Arrowhead Hot Springs v. Arrowhead Cold Springs, San Bernardino Superior Court Case 12532 (1913)..... 6

Arizona v. California, 373 U.S. 546 (1963) 4, 24

Cal. Farm Bur Federation v. State Water Resources Control Board , 51 Cal 4th. 421 (2011) 25

Cappaert v. United States, 426 U.S. 128 (1976).....4, 5, 16, 24

Charnock v. Higuerra, 111 Cal. 473, 481 (1896).....27

Chowchilla Farms Inc. v. Martin, 219 Cal. 1 (1933)26, 27

Cohen v. La Canada Land & Water Co., 142 Cal. 437(1904).....24, 25

Del Rosa Mutual Water Co. v D.J. Carpenter et al, No. 31798 San Bernardino SuperiorCourt(1931).
..... 16, 21

Gutierrez v. Wege, 145 Cal. 730 (1905)..... 23, 24

Irwin v. Phillips, 5 Cal. 140 (1855)5, 12, 25

Matthews v. Ferrea, 45 Cal. 51 (1872)..... 13

Meridian, Ltd. v. City and County of San Francisco, 13 Cal. 2d 424 (1939).....25

Millview County Water District v. State Water Resources Control Board, 229 Cal. App. 4th 879 (2014).....22,25

Mount Shasta Bioregional Ecology Center v. County of Siskiyou, Cal.App.4th 184 (2012).....23, 24

People v. Shirokow, 26 Cal 3d. 301 (1980).....25, 28

Rancho Santa Margarita v Vail ,II Cal. 2d 501, 528-529 (1938)..... 28

Shury v. Piggott, 3 Bulst. 339; Poph.169,81 (1625)..... 4

Siskiyou County Farm Bureau v. Department of Fish & Wildlife, 237 Cal. App. 4th 411 (2015)..... 8

United States v. New Mexico, 438 U.S. 696 (1978).....5, 24

Winters v. United States, 207 U.S.564 (1908).....12, 15, 16,
20, 24

Winters v. United States, 148 F. 9th Cir. 684 (1906)..... 4

Young v. State Water Resources Control Board , 219 Cal. App. 4th 397, 406 (2013).....22, 25

Regulations

Code of Federal Regulations Title 21 §165.110. 2 vi. (1995)..... 2

Statutes

Public Law Ch 561 § 24 (1891)..... 3

California Constitution Article X § 2.....30

Business and Professions Code § 17900 b.3, c..... 17

Civil Code § 1007..... 17, 21, 26

Civil Code § 1227..... 12

Civil Code § 1414..... 22, 25

Civil Code § 1415..... 13, 22, 29

Civil Code § 1416.....22

Civil Code § 1417..... 22

Civil Code § 1421..... 29

Civil Code § 1422..... 13

Corporations Code § 191..... 17

Corporations Code § 2105-2107..... 17

Corporations Code § 15909.02..... 17

Corporations Code § 16959..... 17

Corporations Code § 2100-2117.1..... 17

Corporations Code § 17708.02..... 17

Corporations Code § 17708.03 17

Fish and Game Code § 1602..... 8

Water Code § 1003..... 22

Water Code § 1050..... 30

Water Code § 1051..... 1

Water Code § 1052 21,26, 30

Water Code § 1055..... 30

Water Code § 1055.3..... 30

Water Code § 1058.5..... 30

Water Code §1205..... 27

Water Code § 1206.....	27
Water Code § 1825.....	25
Water Code § 1831	21,23, 25,26
Water Code § 1845.....	30
Water Code § 1846.....	30
Water Code § 1847.....	30
Water Code § 1848.....	30
Water Code § 7000.....	26
Water Code § 4001.....	26
Stat 1913 Ch 586 “Water Commission Act”(1913).....	22

SWRCB Decision and Orders

Water Order 98-08.....	7, 17, 25, 27
WR 2016-0015.....	22, 23
Order WR 2019-0149.....	23
Order WR 2004-004.....	23
Order WR 2015-0025.....	23
Water Board Decision 1618.....	26
Order WR 2021 -0094.....	26

Books

<i>Black’s Law Dictionary</i> , (11th ed.,2019).....	3,4,5,6,1,13, 17,18,24, 26,28,29
Wells A. Hutchins, <i>The California Law of Water Rights</i> (1956).....	23
Scott Slater, <i>California Water Law and Policy</i> (2021).....	23, 24, 29
Samuel C. Wiel, <i>Water Rights in the Western States</i> . (3rd ed.,1911).....	2, 4,13, 16, 17,27

Periodicals

31 GA. ST. U. L. REV. 523 (2015).....	13
---------------------------------------	----

Website Links

CFR Title 21, www. eCFR.gov.....	2
<i>Artificial channel</i> , https://www.lawinsider.com/dictionary	26

Website Links (continued)

Winters v. United States, <https://supreme.justia.com/cases/federal/us/207/564/> 24

Historic California Statutes, <https://clerk.assembly.ca.gov/archive>..... 22

California Law, www.leginfo.ca.gov.....See Statutes Citations Pages

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- Scholar.google.com
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ABBREVIATIONS

AFA	Acre Feet Annum	§	Section
AHSC	Arrowhead Hot Springs Complex	SUP	Special Use Permit
Appl.	Application	SWRCB	State Water Resources Control Board
App.	Appellate	T	Township
ASC	Arrowhead Springs Corporation	U.S.	United States
BTB	BlueTriton Brands, Inc	USFS	United States Forest Service
CA	California	USGS	United States Geological Survey
Cal.	California	v.	versus
CCWC	California Consolidated Water Co.	W	West
CDO	Cease and Desist Order		
Co.	Company		
Corp.	Corporation		
Ed./ed.	Edition		
FGC	Fish and Game Code		
gpm	gallons per minute		
Inc.	Incorporated		
NWNA	Nestle Waters of North America, Inc.		
No.	Number		
N	North		
n.	footnote		
¶	Paragraph		
Pdf	Portable Document Format		
PLSS	Public Land Survey System		
R	Range		
SBC	San Bernardino County		
SBNF	San Bernardino National Forest		
Sec	Section		

Introduction

I, Amanda Frye, submit this closing brief supporting an immediate Cease and Desist Order (**CDO**) **stopping all water withdrawal** by the Respondent, (BlueTriton Brands, Inc., BTB, BlueTriton) whose unauthorized spring water diversions occur in the **Strawberry Creek Headwaters** located in the San Bernardino National Forest (SBNF, Forest, Forest Reserve, Forest Reservation, T2N R3W). The **Forest** was **reserved in 1893** for the primary purpose of conserving the water supply and timber for the adjoining communities. There is **no surplus water** beyond the primary federal reserved water of the arid Forest, founded to protect the watershed and supply for the surrounding communities for the public good.¹² Nearly half-a-million³ people of the surrounding communities are injured^{4 5} by the Respondent's diversions from the Strawberry Creek Headwater Springs.

The Respondent's unauthorized spring water diversions violate Water Code §1052 and are a trespass. A multi-year investigation⁶ by the State Water Resources Control Board (SWRCB or, Board) Division of Enforcement, resulted in a draft CDO issuance against the Respondent. BTB requested a public administrative hearing, which after a series of motions and delays, continued 5 months (January to May 2022) via Zoom. The evidence presented during the public hearing confirms that the Respondent has no valid water right and no valid basis for their unauthorized spring water diversions in the SBNF Strawberry Creek Headwaters (Headwater Springs). The Respondent's unauthorized diversions have negatively impacted Strawberry Creek and deprived water meant for the public water supply⁷ and a healthy Forest. These diverted springs no longer feed Strawberry Creek⁸ at the spring

¹ See FR 13 (Map of the current and past withdrawal sites with 1930-present Arrowhead Water sites in the San Bernardino National Forest T2N R3W Sec 30 and 31.)

² See FR 63 ¶ 2 (p. 49/ pdf p.51). See also PT 24 ¶ 4 p. 49/pdf p.55) "The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, **Strawberry**, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area." [emphasis added]

³ Based on the 2020 U.S. Census (Population of 400,776 people in the adjoining valley basins and 29,319 neighboring mountain communities)

⁴Anthony Serrano testimony from 1/14/22 transcript pdf p. 52 "509-514" 1:22:47.220-1:23:42.450 states from ["**a local resident standpoint in the city of Highland...** .simply outrageous to the local residents, **we have 55,000 residents in the city of Highland....we have the bunker hill basin, which was our groundwater and all of these items were affected....**"] [emphasis added]

⁵ See Bialecki 13 p. 1 ¶ ¶ 2 and 3 (A letter from Save Our Forest Association to the USFS concerning Strawberry Creek).

⁶ Water Code § 1051

⁷ See FR 140 p. 2 (Daily Discharge November 2021 below the 25th percentile)

⁸ See CBD 1 p. 4 ¶ ¶ 10 through 14. (Testimony of hydrologist Andrew Zdon)

sites as the water is put into a pipe and diverted down the mountainside. The Strawberry Creek Headwater Springs site is only one of multiple locations where the Respondent obtains spring water⁹ for “Arrowhead” bottled water.¹⁰

Even two recent Governor issued state drought emergency proclamations¹¹ did not stop or limit the Respondent’s water take from the Strawberry Creek headwaters.¹² The unauthorized spring water diversions during recent emergency drought orders and critically dry years should force increased penalties to be levied upon the Respondent (Water Code §§1052 (a-f), 1055, 1845-1848). The Board should issue an immediate CDO to the Respondent stopping all water withdrawal from the Strawberry Creek headwaters and impose maximum penalties for the unauthorized water diversions during recent droughts and multiple consecutive dry years. The Respondent should be ordered to pay for remediation measures to restore the springs to their natural state and remove all collection facilities and pipelines restoring Strawberry Creek in the SBNF for the purpose for which it was founded — protecting the water supply for the adjoining communities and the Forest timber supply.

BACKGROUND

A. Federal Reservation

The SBNF was created on February 25, 1893¹³ with the primary purpose to conserve and to protect the watershed,¹⁴ provide water for adjoining communities and, irrigation plus to ensure water for a timber supply.^{15 16}

⁹ U.S. 21 C.F.R. B §165.110. 2a vi (1995). (U.S, Food and Drug Code of Federal Regulations Title 21 for Bottled Spring Water eCFR.gov)

¹⁰ See FR 146 p. 1 ¶ 8 and p. 3 fifth ¶ from the end (Newspaper articles referring to other locations that Arrowhead takes water.)

¹¹ See PT 1 (Draft Cease and Desist Order p. 2 No. 4. Governor Brown January 17, 2014 declared drought emergency) and See also FR 151 p.. 18 ¶ 71. (“Testimony of Amanda Frye supporting the Cease and Desist Order Against BlueTriton Brands, Inc. for Unauthorized Water Diversion and Water Use describing 2021 Drought Emergency Declaration.)

¹² See FR 151 p. 19 ¶ 78. (Declaration of Amanda Frye. Describes site visit December 2021.)

¹³ See FR 31 (President Benjamin Harrison Proclamation 354 February 25, 1893 Proclamation 354—Setting Apart as a Public Reservation Certain Lands in the State of California thus creating the San Bernardino Forest Reserve.)

¹⁴ See **FR 33** (Los Angeles Herald Aug. 29, 1894 p. 8 Public notice that was posted and published to announce San Bernardino Forest Reservation. ¶ 3 reservation is made for the “benefit of surrounding communities to maintain a permanent supply of water.” ¶ 4 gives warning not settle, occupy or use the lands for business purposes and nor use or remove natural products. ¶ 7 states that violators would be considered trespassing.)

See also **Testimony** 4/25/2022 afternoon 02:10:28.920 -->02:12:59.010 (Amanda Frye Cross exam by Rita Mcquire [“natural products which I do believe water would fall under that category.”])

See also **FR 32** ¶ 2,3, 9 (Discusses the law passed in 1891 allowing the President to set aside Forest land for reservation to preserve an even water flow.)

See also **FR 34 and FR 35** (Public Notices for settlers to stake claim in the San Bernardino Forest 90 days from April 2, 1894. The respondents predecessors only had claims in T1N and not T2N. The Respondents predecessors did not own land in T2N so could not deed any riparian right to the Respondent.)

¹⁵ See **SOS 281** Slide 8 (summary slide). See also **FR 33** (1894 Public Notice of the Forest Reserve stating purpose of creation.)

¹⁶ Samuel C. Wiel, *Water Rights in the Western States*. § 207 (3rd ed. 1911). [“The supreme court of the United States says in *Winters v. United States* that the right of the reservation to water flowing through it, even in the absence of actual use thereon (if necessary for use in the future), cannot be destroyed by private appropriators who first put it to use under local law so permitting.”]

The Forest was surveyed using the Public Land Survey System (PLSS)¹⁷ to identify the property boundaries using township (T), section (Sec), and range (R).^{18 19}

In May 1894, public notices were published in the newspaper giving 90 days for settlers to stake pre-1893 claims within the surveyed Forest boundaries.^{20 21}The Respondent's predecessors made **no legal claims to any water or land** in the Strawberry Creek headwaters (**T2N R3W Sec 30 and 31**).²² In August 1894, a public notice was posted on the San Bernardino Forest Reserve lands and published in the newspaper stating that the Forest was reserved by the U.S. President²³under the authority of Congress.²⁴ The 1893 Presidential Proclamation 354²⁵and the 1894 public notice²⁶ for the San Bernardino Forest Reserve expressed the intention and purpose to reserve the Forest water supply for the “**public good**” and for the “**benefit**” of the **surrounding communities**. Historical newspaper articles²⁷ published letters from high ranking officials confirming the purpose of the San Bernardino Forest Reserve was to protect the watershed and to conserve water for benefit of the arid valleys below.²⁸ The reservation was

¹⁷ *Public Land Survey System (1899) Property*, Black's Law Dictionary (11th ed. (2019)).["Public Land Survey System (1899) Property. The system of surveys made using similar principles that the U.S. government... used to survey and subdivide the continental U.S."]

¹⁸ See FR 9 (Explanation of PLSS used in this case to identify locations in the United States. A Township (T) is a north or south distance measurement from a referenced baseline. Each Township is a six miles square divided into 36 one square mile Sections (Sec). Ranges (R) are units of six miles distance east or west from a referenced principal meridian, in units of six miles. The San Bernardino Base Meridian (SBBM) is the reference meridian point for the the locations in this case. The PLSS identifies boundaries of Forest lands, private property, pre-1914 appropriations, the riparian land, the AHSC, diversion locations and other items.)

¹⁹ See FR 13 (Map denoting location of Arrowhead bottle water withdrawals from 1909- current.)

²⁰ See FR 34, FR 35, FR 40 (Public notices telling settlers they had 90 days to file pre-1893 claims within the Forest Reserve.)

²¹ See FR 34 (Public Notice for settlers to make claims within 90 days within the new proclaimed Forest Reserve Boundaries including T2N R3W.)

²² See testimony on 4/25/22 afternoon 959 02:07:50.010 --> 02:09:47.580. (Amanda Frye explains how she reviewed the water books at the San Bernardino County Historical Archives and BTB's predecessor had no claims in T2NR3W Sec 30 and 31.)

²³ FR 31 (proclamation and for promoting the public good.)

²⁴ See FR 19 ¶ 3 [Forest Reserve Act 1891 (March 3, 1891) Public Law Ch 561 § 24 “Forest Reservation”“The President of the United States may from time to time set apart and reserve, in any State or Territory having public land-bearing forests, or in any part of the public lands wholly or in part covered with timber or undergrowth, wether of commercial value or not, as public reservations; and the President shall, by public proclamation, declare the establishments of such reservations and the limits thereof.”]

²⁵See FR 31 (U.S. President Benjamin Harrison Proclamation 354 of creating the San Bernardino Forest Reserve).

²⁶ See FR 33 Public notice [(“This reservation is made for the benefit of the adjoining communities, being created to maintain a permanent supply of water....”)]

²⁷ FR 19. [(Article - “Save the Forest” Subtitle “How it is proposed to prevent the destruction of water courses of California”)]

²⁸ See FR 36 ¶ 8 [“Forest Reserves.....conservation..of the water supply in the stream for the benefit of the arid valleys below”] and See also FR 32. ¶ 9 [“Reservations made.... to secure forest conditions as are necessary to secure an even water flow.”] And see ¶ 12[...California San Bernardino Forest....]

“made for the benefit of the adjoining communities, being created to maintain a permanent supply of water.”²⁹ The 1894 notice warned against any waste and taking of natural resources³⁰ such as water.^{31 32 33}

Subsequently, the U.S. Supreme Court ruled for the right of the Reservation to have **flowing water** even in the absence of actual use (*Winters v. United States*, 207 U.S. 564 (1908).) When the **U.S. government makes a reservation, it impliedly reserves sufficient water to fulfill the purposes of the reservation, with the priority date established as of the date of the reservation.** The United States **implied reservation**³⁴ of **Forest waters** flowing³⁵ through a Forest reservation is exempt from appropriation under the laws of the state.³⁶ Later, in *Arizona v. California*, 373 U.S. 546 (1963), the Court held that the **implied reserved rights doctrine** is not limited to Indian reservations, but also applies to all federally reserved public lands, such as National Forests, affirming the scope of the water rights for the Forest. The waters on the SBNF were reserved February 25, 1893 to protect water supply for the adjoining communities, which includes a half-a-million people. *Cappaert v. United States*, 426 U.S. 128 (1976) reaffirmed the reservation water rights for public lands for the reservation purposes stating, when “the Federal Government reserves land from the public domain, by implication, it reserves water rights sufficient to accomplish

²⁹ See FR 36 (U.S. Land Office Register Capt. W.H. Seamans Annual Report -Resources, Irrigation, Forest Reserves and Railroad lines. Los Angeles Evening Express, July 15, 1893 p. 9.) ¶ 8 [“**San Bernardino** “.. **forest reserve(s)** ...**created for the purpose of preserving and promoting timber growth** upon the mountains, with a view to the conservation of the snows and the consequent prolongation of the **water supply in the streams for the benefit to the arid valley below.** “[emphasis added]

³⁰ Testimony 4/25/2022 afternoon 02:10:28.920 -->02:12:59.010 (“natural products which I do believe water would fall under that category.”)

³¹ See FR 33 pdf p. 1 ¶ 1-5 [(Public Notice of San Bernardino Forest Reserve published in the newspaper and posted in the Forest stating the purpose of the Forest Reserve to be created to “maintain a permanent water supply.. and wood” . Warns against taking “ natural resources” which water is considered a natural resource.)]

³² Samuel C. Wiel, *Water Rights in the Western States*. § 52, 46 (3rd ed. 1911). [§ 53 “The Law of Natural Watercourses Does not Apply to Water in an Artificial Watercourse.- In the **natural resource (the flow and use of a natural stream)** a real property right, ...Nature has created a resource in the flow and supply of the natural stream.”] and See (*Id.* § 52, 47) [“§ 52. Natural and Artificial Watercourses Distinguished. The law of natural watercourses or of natural bodies of **water as natural resources** does not apply to water in an artificial water course, or other occurrence or situation not of natural creation. An artificial flow, depending for its continuance upon the act of man, differs in its essentials from a flow created by nature; the one is voluntary, and the other is an element of geological structure, a natural part of the earth;” (n.1 “ **A watercourse is a thing natural.**”(Shury v. Piggott, 3 Bulst.339; Poph.169,81 Eng.Reprint,280 (1625).)"] [emphasis added]

³³ *Natural Resource* (1870), Black’s Law Dictionary (11th ed. (2019) [“Any material from nature....such aswater....”]

³⁴ *Implied Reservation* (1867) , Black’s Law Dictionary (11th ed. (2019)[“**implied reservation** (1867) -7. An express notice that certain **rights are not abandoned or waived** 8. The setting apart of a designated [part of a territory or tract of land for public uses or special appropriation. “] [emphasis added]

³⁵ See FR 19 ¶ 9 last sentence “to preserve as even waterflow”) and See ¶ 15 (mentions San Bernardino forest reserve.)

³⁶ See *Winters v. United States*, 207 U.S.564 (1908). See also *Winters v. United States*, 148 (9th Cir.) 684, 684 (1906).

the purposes of the reservation.”³⁷ Since the “**Implied Reservation of Water**”³⁸ doctrine is based on the water necessity for the federal reservation purpose, the Forest water can be protected from subsequent diversion, whether the diversion is surface water or groundwater.³⁹ In *United States v. New Mexico*, 438 U.S. 696 (1978), the courts reconfirmed the reserved water rights are dependent upon reservation’s authorizing legislation and the specific purposes for which the land was reserved. In *Irwin v. Phillips* 5 Cal. 140, 147 (1855), the “first in time, first in right” would make the SBNF the first in 1893 to reserve Strawberry Creek and its Headwater Springs (T2N R3W Sec. 30 and 31). Strawberry Creek is a water supply source for the San Bernardino Valley⁴⁰ basins,⁴¹ including **Bunker Hill Basins**, and also numerous adjoining **disadvantaged communities**.⁴²

B. Location of Present Day Diversions

The **Arrowhead Hot Springs Complex** (AHSC, Arrowhead Springs) is surrounded by the SBNF on the North, South and East sides sitting at the base of the mountain range in (1TN R4W).⁴³ The **natural geological monument “The Arrowhead,”**⁴⁴ historic landmark #977,⁴⁵ points downward to the Arrowhead Springs complex at the mountain base.⁴⁶ The “Arrowhead” was also referenced as the “Ace of Spade” by pioneers⁴⁷ and David Noble Smith.⁴⁸ The historic AHSC is located below “The Arrowhead” on private property in T1N R4W at the mountain

³⁷ *Cappaert v. United States*, 426 U.S. 128, 138-141 (1976).

³⁸ *Implied Reservation*, Black’s Law Dictionary (11th ed. (2019) [“implied reservation (1867) -7. An express notice that certain rights are not abandoned or waived 8. The setting apart of a designated [part of a territory or tract of land for public uses or special appropriation.”]

³⁹ *Cappaert v. United States*, 426 U.S. 128, 142-143 (1976).

³⁸ See FR 14 Santa Ana River Watershed Map and See FR 22 Map (shows valley water basins)

⁴¹ See FR 63 ¶ 2 (p. 49/ pdf p.51). See also PT 24 ¶ 4 p. 49/pdf p.55) [“The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, Strawberry, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area.”]

⁴² See FR 21 (map of disadvantaged communities such as Highland and San Bernardino which rely on the Bunker Hill Basin for water).

⁴³ See FR 43 p. 5 (pdf) or document page 4. “Topography” (describes the location of Arrowhead Hot Springs)

⁴⁴ See FR 28 and FR 29 (p. 1). (Photographs of the landmark Arrowhead)

⁴⁵ See FR 151 p. 3 ¶ 7 of Amanda Frye’s Testimony/Declaration (describes the Arrowhead geological landmark)

⁴⁶ See FR 43 pdf p. 5 ¶ 3 “The Landmark” (describes the geological landmark Arrowhead)

⁴⁷ See FR 27 pdf p. 45 lines 7-19 Testimony of John Brown (*Arrowhead Water Company v Arrowhead Hot Springs*, San Bernardino Superior Court, 11339 (1910).)

⁴⁸ See FR 91 See pdf p. 10 (David Noble Smith Possessory Claim)

base approximately 2000 ft elevation above sea level.⁴⁹ The location of the Arrowhead Springs complex based on the “Arrowhead” geologic landmark alone has been known by Native American Indians, settlers, pioneers, area residents, mountain tourists, and those that exploited the hot and cold springs for “curative” properties,⁵⁰ hotel leisure,⁵¹ and recreation endeavors⁵².

The Strawberry Creek Headwater Springs are not the “Arrowhead Springs.” The Strawberry Creek Headwater Springs are located in T2N R3W Sec 30 and 31⁵³ which is in the SBNF. The Respondent’s spring water diversion sites are located in the Strawberry Creek Headwaters in the SBNF which are not the same as the historic “Arrowhead Springs” (T1N R4W).⁵⁴ The Strawberry Creek Headwater Springs are approximately 3 miles away from the historic Arrowhead Springs. The Respondent’s current Strawberry Creek Headwater Springs diversions are in a different watershed than historical Arrowhead Springs Complex site.⁵⁵ The Respondent’s spring water withdrawal sites are beneath Strawberry Peak around 5600-4200 feet elevation below Highway 18/Rim of the World Drive.⁵⁶ **Strawberry Creek** gets its “**source from a group of springs**” below **Strawberry Peak**.⁵⁷ Prior to diversion, Strawberry Creek was a **perennial stream**⁵⁸ whose Headwater Springs fed the defined Creek channel.⁵⁹ ⁶⁰

⁴⁹ See SOS 281 slides 2,3, 4, 6, 7 (Summary Slides–Slides 3 includes citations from *Arrowhead Hot Springs v. Arrowhead Cold Springs*, San Bernardino Superior Court, 12532 (1913).)

⁵⁰ See FR 90 (Advertisement of Arrowhead Springs “curative properties”)

⁵¹ See FR 29 (Arrowhead Hot Springs “The Hottest Curative Springs in the World” brochure)

⁵² See FR 24–FR 25 (Photographs of hot spring and Arrowhead Springs complex with “Arrowhead” landmark on mountain in background.) FR 28 (Historic photograph of the Arrowhead) See also FR 99 pdf p. 2 ¶ 6 (USGS description.) See FR 91 pdf p.p. 1–8 (History of Arrowhead Springs)

⁵³ See FR 10 (map T2N R3W SBBM)

⁵⁴ See SOS 281 Slides 2–7 (summary slides) and See also FR 11 (map) and See also FR 13 (map of diversion locations over time)

⁵⁵ See FR 6 map of watersheds. See Also SOS 281 slide 6.

⁵⁶ See FR 10 (USFS Quadrangle map showing SBNF and Rim of World Drive/ Highway 18) and See also FR 13 (map the Respondent diversion sites.)

⁵⁷ See FR 68 pdf p. 2 (letter to Mr. Lippincott and Mr. Hill from W.P. Rowe p. 1) ¶ 3 and pdf p. 3 (letter p. 2) ¶ 2 and 3. See also PT 314 Spring 7 East fork channel and See also FR 69 Strawberry Creek Channel and spring locations.

⁵⁸ See SOS 290 and 291 (USGS historic Top maps) See Also FR 62 (1905 Thematic Water Supply) FR 5 p.p. 33–37 (describes the Springs in relationship to Strawberry Creek “channel”) See also FR 149 and FR 159(photographs of Strawberry Creek/springs)

⁵⁹ *Channel*, Black’s Law Dictionary 11th ed. (2019). [“*channel- The bed of a running stream of water; the groove through which a watercourse flows.*”]

⁶⁰ See FR 149 and 159 (photographs). See also FR 160 Sur-rebuttal Testimony ¶ 6 p. 5 and FR 151 ¶ 12 p. 4 (Describes channels of springs 2, 3 that fed into spring 4 that drained to Strawberry Creek.) See also FR 3 p. 1–09 and 1–10 (Springs 10,11,12 map and photographs). See also FR 69 Roe’s Blueprint map. See Also See SOS 290 and 291. See also SOS 091, SOS 081 and SOS 049

Strawberry Creek ultimately **recharges** the valley's **Bunker Hill Basin and the Santa Ana River Watershed**.⁶¹

Strawberry Creek is part of the Santa Ana River Watershed⁶² which is **fully appropriated** (see Water Order 98-08).

C. The Strawberry Creek and Headwater Springs Flowed Freely to the Surface Prior to Diversion

Early USGS (United States Geological Survey) **topographic maps** were based on **physical observations**.⁶³ The Headwaters Springs dendritic intermittent branches⁶⁴ fed the **perennial Strawberry Creek**⁶⁵ as noted on the **1898** USGS Redlands Topographic maps⁶⁶ and the **1905** Water Supply map.⁶⁷ Prior to diversions, **Strawberry Creek flowed** even during dry months,⁶⁸ with Headwater Springs naturally surfacing to feed a vibrant flowing Creek lined with scrub oak, chamise, alder, dogwood, cedar, sycamore, willow, ferns, bay laurel and thimbleberry.⁶⁹ Rowe's field notes and reports further document that Strawberry Creek is a spring fed channel with Springs 2, 3, and 7⁷⁰ producing tributary channels⁷¹ with other springs including springs 1, 8, 10, 11, and 12⁷² documented to feed or channel into Strawberry Creek.

⁶¹ See FR 63 ¶ 2 (p. 49/ pdf p.51). See also PT 24 ¶ 4 p. 49/pdf p.55) [“The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, Strawberry, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area.”

⁶² See FR 14 (Map of Santa Ana Watershed including Strawberry Creek as headwater tributary)

⁶³ See SOS 288 p. 3 ¶ 5 lines 6-9 and ¶ 7 lines 19-20 (Greg Allord's Declaration Sur-Sur-Rebuttal).

⁶⁴ See FR 160 p. 3 number 5 (Amanda Frye Testimony)

⁶⁵ See FR 156 p. 73 ¶ 6. (Topographic map symbology). See also **SOS 288** p. 4. Line 7 reference for perennial stream symbology listed p. 3 ¶ 5-7 and ¶ 7 lines 19-20 (Greg Allord's testimony).

⁶⁶ See SOS 291 (USGS 1901 Redlands Quadrangle Topographic map with Strawberry Creek) See also **SOS 292** (USGS 1901 San Bernardino Quadrangle Topographic Map.)

⁶⁷ See FR 62 (the 1905 thematic map.)

⁶⁸ See **SOS 294** at 132,145 and 146. On p. 4 lines 9-25 (Concurs that the **USGS 1901-1905 maps accurately portray Strawberry Creek as a perennial stream** which were observed in relatively dry years.) See also SOS 1 p. 19 See also FR 60 (The resident hydrographer J.B. Lippincott reviewed the area watershed which would have included the Forest Strawberry Creek watershed in 1899 with then U.S. Forest Service representative J.W. Toumey during the dry period and would have confirmed the perennial Strawberry Creek.)

⁶⁹ See FR 151 p. 4 ¶ 10, p. 19 ¶ 77 (Amanda Frye's Testimony.) See also FR 68 (Rowe's letter page 2 ¶ 2 -3 details vegetation).

⁷⁰ See PT 314 (Shows the channel of Spring 7).

⁷¹ See FR 57 (starting p. 3) (Rowe's field notes document the springs, channels and water flow in the Strawberry Creek.) See also FR 69. (map)

⁷² See FR 3 (Document Pages 1-1 through 1-11 show photos and map of springs including Springs 10,11, 12)

Prior to diversion, Strawberry **Creek** was stocked with **fish** for recreational trout fishing.^{73 74} The Respondent's diversions have led to a Strawberry Creek with diminished flow and a dry creek bed⁷⁵ with impoverished fauna and flora that no longer can support fish⁷⁶ since fish, like the native Speckled Dace,⁷⁷ need water to survive.⁷⁸ There was no stream bed alteration permit⁷⁹ or diversion noticed issued for Strawberry Creek as required. (*Siskiyou County Farm Bureau v. Department of Fish & Wildlife*, 237 Cal. App. 4th 411 (2015).)

D. Location of Historical Diversions

Historic Water for Arrowhead Water Bottling was taken from the **privately** owned Arrowhead Springs complex in **T1N R4W** at the mountain base below the landmark Arrowhead.⁸⁰ Early water for bottling⁸¹ was taken about 3 miles away⁸² from the Respondent's **current** withdrawal sites, which are near the mountaintop in the **Strawberry Creek Headwaters (T2N)** in the **public** lands of the **SBNF**.⁸³ In **1909**, the first water for bottling was from **Cold Water Creek (T1N)**⁸⁴ Cold Water Canyon, which is in a completely different watershed than the Respondent's diversion in the Strawberry Creek headwaters.⁸⁵ **The Cold Creek water** in Cold Water Canyon was obtained North of the Arrowhead Hot Springs Hotel⁸⁶ which is at a higher elevation than the confluence of Cold

⁷³ See FR 75 (1915 Southern California Automobile Club map featuring Strawberry Creek as a fishing stream.) See also FR 76 -78 (Newspaper articles (1921-1926) about stocking of trout and Trout fishing in Strawberry Creek.)

⁷⁴ See FR 151 p. 18 number 74 (Amanda Frye Testimony)

⁷⁵ See SOS 283 slide 2-7 (diminished flow) . See FR 149 and 159 (photographs of spring sites and Strawberry Creek Channel).

⁷⁶ FISH AND GAME CODE - FGC1602. [(a) An entity shall not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake,..."]

⁷⁷ See SOS 18 p. 3 (Report listing Santa Ana Speckled Dace species of concern for SBNF)

⁷⁸ The Respondent's diversion appear to violate FGC 1602.

⁷⁹ FR 151 p. 18 number 74 (Amanda Frye Testimony)

⁸⁰ See FR 10 and FR 11(USFS Atlas base maps of Upper Strawberry Creek (T2N) and Arrowhead Hot Springs (T1N))

⁸¹ See FR 13 (Map for locations of water withdrawal and supporting.) See also FR 9 (Public Land Survey System information)

⁸² See SOS 281 slide 2 (USFS Watershed map showing)

⁸³ See FR 6 (SBNF "Hydrology & Geologic Fault Line" map for Nestlé Waters North America, Inc. Special Use Permit).

⁸⁴ See SOS 280 ¶ 12-24 (Describes water withdrawal sites) and See also SOS 281 slides 9-23

⁸⁵ See SOS 281 slide 6 (Summary Slide Watersheds)

⁸⁶ See SOS 281 slide 9,10 and See also SOS 283 Slide 27 (Shows Historic Water location and relationship to hotel).

Water Creek and Southern portion of Strawberry Creek.⁸⁷ The Cold Water Canyon water came from crevices on the East Side of Arrowhead mountain which makes up the West side of Cold Water Canyon in T1N R4W.⁸⁸ Other **pre-1930 bottling water sources were all in T1N** referred to as *Aqua Frio, Fuente Fria(o)*⁸⁹, and “Indian Springs.”⁹⁰ From **1917-1929**, the water for bottling was from **Waterman Canyon “Indian Springs”**⁹¹ which was West of the historic geological landmark Arrowhead^{92 93} (T1 N). In March **1929**, the Arrowhead **water bottling** operation was **severed** from the famed **Arrowhead Hot Springs hotel** when Arrowhead Springs Corporation (ASC) **sold**⁹⁴the bottling operation to the Respondent’s predecessor California Consolidated Water Co. (CCWC).⁹⁵ Any existing **pre-1914 rights were at the mountain base on private property (T1N)**⁹⁶ only to be **used upon the lands in T1N**. There was no mention of the Strawberry Creek Headwater Springs (T2N). Ultimately, the ASC⁹⁷ **retained the land and water rights** associated with the historic Arrowhead Springs complex in (T1N R4W) **not the Respondent’s predecessor CCWC and other rights were lost with non-use.**⁹⁸ CCWC had the opportunity to cancel the purchase contract within 30 days⁹⁹ in 1929 after reviewing sale documents, but CCWC proceeded with purchase of the Arrowhead water bottling business. Interests transferred from Arrowhead Springs Corporation

⁸⁷ See FR 43 document p.p.27-28 [Aqua Fria is Cold Water Canyon at the head of the pipeline...north of the hotel..750 feet higher.]

⁸⁸ See SOS 281 slide 2 (summary slide of bottling locations). See also FR 13 and FR 11 (maps with T1N).

⁸⁹ See SOS 281 see slides 12-15 .n See also **FR 43** p.p. 27-28. See FR **154** p.p. 5-7. (Describe early water for bottling sites (T1N)

⁹⁰ See SOS 281 14 and 15 (Summary Slides of Indian Springs). See also SOS 111 (USFS memo and Indian Springs report).

⁹¹ See Testimony 01/12/2022 GMT 20220112-170310 at 1113 02:25:49.080- 02:26:09.150 (Cross examination of Larry Lawrence by Mr. Petruzelli confirming Indian Springs was in Waterman Canyon and not in Coldwater Canyon)

⁹² See SOS 281 Slides 15-17 and SOS 280 ¶ 25-26. See also FR 154 pdf p.p. 5 and 9. P. 5 first ¶ [“(Indian Springs (*Aqua Frio*) comes from a tunnel driven into the mountain side at an elevation of 2750 feet, and just west of the Arrowhead. The water is conducted to the Hotel and Bottling Works in a closed pipe...”. P. 9 “Indian Spring water ... flowing from granite rock out of the side of Arrowhead Mountain...”]]

⁹³ See SOS 281 Slides 16 and 17 (Summary Slide)

⁹⁴ See FR 106 Notice of Intended Sale[(“ p.p. 1 and 2 with p. 2 ¶ 4 “ All the water business...” ¶ 5 “ Certain easements and water rights over and on real property of said intended vendor located in San Bernardino County, California...”. ¶ 1 p. 2 “intended vendor is Arrowhead Springs Corporation...”]]

⁹⁵ FR 104 (Agreements to sale bottling operation to California Consumer Co. (parent of) California Consolidated Water Co.) See also FR 109 (Title Insurance Policy (March 17, 1929))and See also FR 110 (Warranty Deed recorded March 12, 1929)

⁹⁶ BTB 2 p.p.131-156 (Pioneer title water rightsT1N). See also FR **102** starting p.3 (ASC real property description). See **FR 44** (map)

⁹⁷ See FR 110 and FR 109 (Warranty Deed and Title Insurance policy 1929)

⁹⁸ See SOS 281 slides 16 and 17 (Summary Slide on Indian Springs). See also SOS 111 (USFS memo on Indian Springs)

⁹⁹ See FR 104 p.p. 7-9 starting with ¶ 4 “I” on p. 7 “tenth” through the end. See also FR 109 Title Guaranty policy

(grantor) to California Consolidated Water Co. (grantee)¹⁰⁰ required an in-depth understanding of the PLSS boundaries and the watershed. **Exclusions** included U.S. Reservations¹⁰¹ under “Exceptions and Encumbrances.”

Water rights granted were associated with real property **owned by grantor** (ASC) in **T1N**¹⁰² at the mountain base as described in the 1925 bond indenture¹⁰³ and 1929 survey maps.¹⁰⁴ The survey maps described water lots; easements; and proposed and existing pipelines along with Indian and Penygual Springs in T1N R4W. On the 1929 survey map, there were **no existing pipelines to Cold Water Canyon/Creek or Strawberry Canyon/Creek**¹⁰⁵. **No rights or property were described or transferred in T2N R3W.** Rights transferred in 1929 from ASC to CCWC involved only lands ASC owned in T1N. The **sale excluded all surface streams and hot springs** as well as the **SBNF**. Included were the **rights to go on the premises (T1N)** of grantor (ASC) and erect tunnels and collection basins for subterranean **water development belonging to grantor in (T1N)**, plus easements and pipes to convey water to reservoirs (T1N), but there was **no land transferred**. There was **no land** in San Bernardino County deeded to CCWC.¹⁰⁶ **No riparian rights** were transferred as no land was transferred.¹⁰⁷ Also, “whatever rights and interests” ASC owns and possess in water and tunnels from “Indian Springs,”¹⁰⁸ which was shown on the Survey Maps.¹⁰⁹ This was the same location as Byron Waters’ letter¹¹⁰ described as a “certain water right” 104.7 feet N. of Sec. 11 T1N R4W, ¹¹¹which is actually located in T1N R4W Sec 2¹¹² in the SBNF, so thus Indian Springs would be excluded from the warranty deed and transfer. Indian Springs appropriation was not perfected and the unauthorized

¹⁰⁰ See FR 109 (Title Insurance Policy (March 17, 1929))and See also FR 110 (Warranty Deed February 27, 1929)

¹⁰¹ See FR 109 p. 2 Number 4. [“Reservations in the United States and State Patents, mining claims, governmental restrictions or control of the use and occupancy of said land or any building thereon....”] (Excluded the SBNF since it is a Forest Reservation).

¹⁰² See FR 102 p. 3 (last ¶) through p. 6 See also **FR 44** (Referenced Survey Maps See previous deeds from 1929) FR 103 (starting p. 2.)

¹⁰³ See FR 102 as described starting on the bottom of p. 3-6 (Book of Official Records 14 p. 1 (August 25, 1925)

¹⁰⁴ See FR 44 Map Book 2 P. 18 and 19 (1929 Survey Maps of T1N R4W San Bernardino County)

¹⁰⁵ See SOS 281 slide 20 (Summary of demonstrating no pipeline in Strawberry Canyon)

¹⁰⁶ See FR 110 (Warranty Deed pdf p. 2 document p. 176 ¶ 4 “2.”)

¹⁰⁷ See FR 109 p. 7 ¶ 2 (excluded surface streams and hot springs) and See also FR 110 (Warranty Deed p. 2 ¶ 4 “2.”)

¹⁰⁸ See FR 109 p. 7 ¶ 3 and See also FR 110 p. 2 (document p. 176) ¶ 5 [“3. Also whatever rights....”]

¹⁰⁹ See FR 44 (1929 Survey Maps T1N R4W)

¹¹⁰ See FR 108 p. 2 ¶ 2 [“(3. Also, whatever rights...Indian Springs” and p. 3 ¶ 4 “1047.4 feet North of Section 11 T1N R4W”)].

¹¹¹ See SOS 111 and SOS 281 slides 16 and 17 (Indian Springs)

¹¹² See PT 197 (GIS map locating Indian Springs based on Byron Waters description).

water withdrawal by Arrowhead Springs appeared to have started in 1917 on federally reserved Forest lands. After a few years, Indian Springs was quitclaimed back to ASC.¹¹³ Even if there was a pre-1914 water right associated with Indian Springs, it was given back to ASC or lost with non-use.¹¹⁴ CCWC had agreed to give ASC the right to supply guest rooms and employees free water bottled from “Indian Springs” for use on the ASC premises.¹¹⁵ In case of emergency supply, ASC gave a right to take “hot” water from the springs owned by grantor which would be in T1N.¹¹⁶ However, the hot springs were excluded in the warranty deed.¹¹⁷ The hot springs were said to be high in sulfur,¹¹⁸ thus had the taste and smell of rotten eggs so was unpalatable. The hot springs were also said to be high in arsenic¹¹⁹ and radiation.¹²⁰ Later, ASC grants “without warranty” to CCWC the right to one miner’s inches from Penygual Spring or other springs in the vicinity but not the hot springs.¹²¹ Penygual Spring was listed as a hot spring.¹²² Penygual Spring was noted to have radioactive substances.¹²³ It appears that CCWC may have sold radioactive water in 1931 based on advertisements.¹²⁴ **Waterman Canyon** was the main **water source** from **1917** until **1930** when the water became contaminated due to nearby construction up the canyon.¹²⁵ ¹²⁶ ¹²⁷ The

¹¹³ See FR 111 p. 4 ¶ “ninth” (The 1930 agreement between ASC and CCW to settle disputes).

¹¹⁴ See SOS 111 and See also SOS 281 p.p. 16 and 17. (Note broken and rusted pipes that show the Indian Springs water has not been used for many years.)

¹¹⁵ See FR 104 “8” p. 14 -15 (pdf) (Document agreement February 28, 1929).

¹¹⁶ See FR 110 pdf p. 2 (document p. 176) ¶ 6 (“4. Also, in the event of an emergency...hot water from any of the springs”) and see FR 109 p. 9 first ¶ [“...excluding....all water of grantor from surface streams and hot springs.”] (only includes waters T1N).

¹¹⁷ See FR 110 p.2 fourth ¶ [“2.”....last sentence excluding....surface stream and hot springs”]

¹¹⁸ See FR 27 p. 51[(document p. 38) line 27 and 28. “has sulfur and other things” and See also FR 27 p. 53 (document p. 40) line 27 [“I have tasted of the water of the Arrowhead Hot Springs, it is **not palatable water**. It tastes as neat as I can describe it like **rotten eggs**. It would not be a salable water for our purposes. I have never represented to any customers that we were selling the water of the Arrowhead Hot Springs, it would be injurious to our business.”][emphasis added] *Arrowhead Water Company v Arrowhead Hot Springs*, San Bernardino Superior Court Case 11339 (1910).

¹¹⁹ See FR 29 p. 2 second ¶ “ and p. 5 (Bottom chart analysis lists arsenic for the hot springs.)

¹²⁰ See FR 29 p. 6 last two ¶ ¶ (“Radium discovered”)

¹²¹ See FR 112 p. 3 (p. 305) “seventh” and See also FR 118 pdf p. 3 ¶ 1

¹²² See FR 99 pdf p. 4 (document p. 33) the first ¶ “The hottest water is in the spring known as El Penygual..” See p. 5 (pdf) (Table listing Penygual spring columns 1, 2 and 3.)

¹²³ See FR 43 (document p.p. 10-11 (pdf p. 12) toward bottom of page.) (Discussion of Penygual Spring (hot) and Fuento Frio)

¹²⁴ See FR 135 (Arrowhead Radioactive water)

¹²⁵ See SOS 281 slide 18 (Waterman Canyon contamination). See also FR 59 p.18 (Aug. 1925 at Hotel property (T1N) contamination too high for bottling and water flow to tank cars per “Tony” Martins groundskeeper for hotel).

¹²⁶ See FR 153 p. 5 second ¶ [(“In 1930, the source of Arrowhead Springs water was changed....”)]

¹²⁷ See SOS 281 slides 18 and 19 (Summary slides on Waterman Canyon water source until contaminated.)

contamination and the lack of usable water rights likely explains why in 1930 the Respondent's predecessor CCWC encroached into the (SBNF) Strawberry Creek Headwaters to start unauthorized spring water diversions.¹²⁸

Strawberry Canyon was untapped prior to 1929.¹²⁹ The **San Bernardino National Forest** is the **only holder** of a **diversion permit** and license in **T2N R3W Sec. 30 and 31** which was referred to as Highway Spring **Application 6108.**¹³⁰ On August 6, 1930, an "agreement"¹³¹ was filed after examination of "Arrowhead" premises and "contiguous property" (SBNF) over "character," "amount of water," water "flow" of both "surface and subsurface" water, and water "retained" by ASC stated in previous warranty deed, and agreements. This controversy led the **Arrowhead Springs Corporation to grant "unwarranted" water rights "without real property"** in the **SBNF Strawberry Canyon** to the Respondent's predecessor **CCWC.**¹³² For ASC granting water rights they did not possess on property they did not own, **ASC was to get half of the water CCWC "developed" and CCWC was to build a pipeline to the Strawberry Creek Headwaters Springs and give ASC half the water.**¹³³

ASC had no right to authorize a water diversion in the SBNF. ASC had no authority to grant what they did not own in the Strawberry Canyon headwaters (T2N R3W) so the Respondent's predecessor CCWC never could have received or claimed a title or right to any water on the federal reserved lands of the San Bernardino National Forest whose water was reserved in 1893.¹³⁴ In *Irwin v. Phillips*, 5 Cal. (1855) the "first in time, first in right" would make the SBNF the first to reserve water rights for (T2N R3W Sec. 30 and 31 Strawberry Creek) in 1893. The SBNF owns the land abutting Strawberry Creek in T2N R3W. The *Nemo Dat*¹³⁵ legal maxim confirms that a seller cannot sell or deed what they do not own and the receiver cannot claim title (Civil Code §1227). Federal lands are not

¹²⁸ SOS 281 Slides 18 and 19 (summary slide of Waterman Canyon contamination and Strawberry Creek encroachment 1930).

¹²⁹ See SOS 281 slides 20 and 21 (Summary "Strawberry Canyon Untapped prior to 1929")

¹³⁰ See FR 48 (USFS permit and history for application 6108 permit 3344 license 1649.)

¹³¹ See FR 111 p. 2 ¶ 3 and 4 (Agreement to settle controversies)

¹³² See FR 111 P. 3 ¶ 2 (ASC had no authority to grant any right to CCWC to take water in Strawberry Creek Headwaters).

¹³³ See FR 111 P. 2 ¶ 5 and 6 "First: Consolidated agrees..to build a pipeline to the present pip line of Arrowhead in Strawberry Canyon constructed in 1929" "Second...Of water conveyed through the pipeline Consolidated shall be entitled to one-half and Arrowhead shall be entitled to one-half"

¹³⁴*Winters v. United States*, 207 U.S. 564 (1908). (Implied Reservation of waters upon the Forest reserved land upon founding.)

¹³⁵ *Nemo dat, Nemo dat qui non habet, Nemo dat quod habet, Black's Law Dictionary (11th ed. (2019). " Nemo dat qui non habet, No one gives who does not possess" and 1685. "Nemo dat quod habet -No one gives what he does not have; no one transfer (a right) that he does not possess. According to this maxim, no one gives a better title to property than he himself possesses. A variation of this maxim is Nemo dat qui non habet (no one gives who does not have.)*

subject to adverse possession nor prescriptive rights¹³⁶ (*Matthews v. Ferrea*, 45 Cal. 51 (1872).) The fraudulent act¹³⁷ of ASC granting the “unwarranted” water rights “without real properties” in “Strawberry Canyon”¹³⁸ to CCWC would void the Respondent’s water right claims in Strawberry Canyon T2N R3W Sec. 30 and 31 as the seller (ASC) could not legally sell, transfer or deed what they do not own; therefore, the purchaser (CCWC) of such a fraudulent transaction can claim no ownership title.^{139 140} It was the purchaser (CCWC), like the Respondent and their predecessors, who had the burden of due diligence to understand what they were buying.

The Respondent’s predecessors could never claim a valid right in Strawberry Creek headwaters in the SBNF T2N R3W and so the Respondent cannot not claim one either. The Respondent failed to enter any evidence as to what they purchased from NWNNA as there was no asset purchase agreement, bill of sale or other asset transfer agreements or contracts presented during the hearing for their recent purchase of the Arrowhead water bottling business.¹⁴¹ BlueTriton’s predecessors had no valid water rights nor valid basis for diversions in the Strawberry Creek Headwater Springs; their predecessor CCWC gave away any possible pre-1914 water rights in T1N in the 1930s¹⁴² and ASC retained property and rights in T1N. There was no State Board diversion application made by the Respondent’s predecessors. Furthermore, there was no appropriation or conveyance notice filed or posted stating the water withdrawals were in the SBNF as required by Civil Code §§1422, 1415. Thus, Respondent purchased only a water bottling operation¹⁴³and no valid water rights in SBNF Strawberry Canyon T2N R3W.

¹³⁶ Samuel C. Wiel, *Water Rights in the Western States*. §591 (3rd ed. 1911). [“§591. Against the United States or the State.— There can be no adverse use against the United States, and hence if the title to the water or land involved was in the government any part of the five years, no prescriptive right can arise.]

¹³⁷ *Fraudulent Act*, Black’s Law Dictionary (11th ed. 2019) [*fraudulent act*-1. Conduct involving bad faith, dishonesty, a lack of integrity or moral turpitude.]

¹³⁸ See FR 111 p. 3 first ¶ [“Arrowhead nearby grants to consolidated (without warranty.....right to develop water from Canyon.....”]

¹³⁹ *Chain of Title*, Black’s Law Dictionary (11th ed. (2019))[(“chain of title....If a necessary endorsement is missing or forged, the chain of title is broken and no later transferee can become the holder.”)]
Stephen T. Black, *Pssst! Wanna Buy a Bridge? IP Transfers of Non-Existent Property*, 31 GA. ST. U. L. REV. 523, 529-30 (2015).

¹⁴⁰ *Nemo Dat, Nemo dat qui non habet, Nemo dat quod habet*, Black’s Law Dictionary (11th ed. 2019). [“ *Nemo dat qui non habet*, No one gives who does not possess” and 1685. “*Nemo dat quod habet* -No one gives what he does not have; no one transfer (a right) that he does not possess. According to this maxim, no one gives a better title to property than he himself possesses. A variation of this maxim is *Nemo dat qui non habet* (no one gives who does not have.)”]

¹⁴¹ See Serrano 1 and See also Serrano 2 (Requests for the contract, asset purchase agreement and terms of sale for the Respondent and predecessor. No evidence of what BlueTriton purchased when they bought the business from NWNNA and no asset purchase agreements or contract were presented for NWNNA either.)

¹⁴² See FR 108-113 (Byron Waters’ letter, Title Insurance Policy, Warranty Deed , Agreements, 1929-2931)

¹⁴³ See FR 143 (News articles about BTB purchase of Arrowhead Water Bottling included in sale from NWNNA).

In the summer 1930, the Respondent's predecessors encroached into the Forest Strawberry Creek headwaters (T2N R3W) with no water right or authorized license to divert spring water from "Spring 2".¹⁴⁴ The unauthorized diversion at Spring 2¹⁴⁵ occurred after Waterman Canyon water was contaminated.¹⁴⁶ Spring 2 was diverted starting August 1930.¹⁴⁸ What started as one spring diversion morphed into a dewatering of the Strawberry Creek Headwaters tapping 3 springs with adits/tunnels (springs 2,3,7) and now 10 spring boreholes (spring 1, 1A, 8, 7, 7A, 7B, 7C, 10, 11, 12). The Respondent's predecessors historic recordation¹⁴⁹ filings confirm spring water collection with the word "Spring" typed in and an explanation of spring water collection at diversion sites since 1947 with land listed as belonging to the "United States of America."¹⁵⁰ The Respondent's collection facilities and pipe network divert the springs away from natural spring discharge points along Strawberry Creek resulting in a diminished Creek flow that injures the Forest fauna and flora, as well as, the surrounding communities.¹⁵¹ CCWC's 1930 encroachment and unauthorized spring water diversion in the Strawberry Creek Headwaters¹⁵² (T2N R3W)¹⁵³

¹⁴⁴ See FR 58 p.2 [{"August 4, 1930 Spring #2...."}] See also **SOS 281** slides 19,20 (Summary Slides) See also **FR 152** and **FR 153**

¹⁴⁵ See SOS 281 slide 19 and 21 (Summary Slide)

¹⁴⁶ See SOS 281 slides 18 and 19 (Summary Slides)

¹⁴⁷ See FR 59 p.p. 17 and 18 [Rowe's Field notes on Waterman Canyon p. 17 "August 15, 1925 Arrowhead Hotel" p. 18 diagram with notes "2" pipe from small spring too much bacteria for use in bottling" and note "VII" Stream from old 2" pipe not used for bottling." Note at bottom "Tony says little less than 10 being taken to reservoir at tank cars."] See also **FR 152** p. 3 ¶ 3 [{"Until 1930, the source of supply was the creek in Waterman Canyon, but new homes constructed up canyon led to a deterioration in quality of water. A new source of water was sought. Mr. A.J. (Tony) Martins , ground superintendent fro the hotels for 30 years beginning in 1914, located a source in Strawberry Canyon at the 5300 foot level...."}] See also **FR 153** p. 5 second ¶ [{" In 1930, the source of Arrowhead Spring water changed. The source of supply for bottling purposes at the bottling plants had been too [sic] water lots in Waterman Canyon. The construction of a number of homes in the Canyon resulted in a deterioration of the quality of the water in this development and it was decided a new source of supply should be sought. Mr. H.B. Rock and Mr. A.J. Martins reviewed the possibility of locations that were available for new development. Mr. Martins found the there were natural springs in the head waters of Strawberry Canyon...."}] See also **SOS 281** slide 18.

¹⁴⁸ See **FR 58** (Rowe field notes p. 2 for diversion at Spring 2 diagram.) See **SOS 281** p. 19 (Strawberry Creek headwaters identified as the next water source in 1930.)

¹⁴⁹ See PT 93 (Historic recordation of Spring 7, 7A and Springs 1,2,3,8)

¹⁵⁰ See PT 93 p. 2 [(Name of owner which spring is located -"United States of America" address "Washington D.C.")]

¹⁵¹ See FR 16 p. 1-3. [(p. 2"....headwaters of Santa Ana River, the San Bernardino and Cleveland National Forests encompass approximately 30% of the watershed's land mass....these forest areas also receive approximately 90% of the annual precipitation due to greater amounts following in higher elevations. Runoff on that land directly effects the amount and quality of water downstream."]

¹⁵² See **SOS 280** ¶¶ 28-34 and See also **SOS 281** Slides 18-21 (Summary Slides)

¹⁵³ See **FR 153** p. 5 ¶ 2 [{" In 1930, the source of Arrowhead Spring water changed. The source of supply for bottling purposes at the bottling plants had been too[sic] water lots in Waterman Canyon. The construction of a number of homes in the Canyon resulted in a deterioration of quality of the water in this development and it was decided that a new source of supply should be sought. Mr. H.B. Rock and Mr. A.J. Martins review the possibility of locations available for new development. Mr. Martins found that there were natural springs in the head waters of Strawberry Canyon....after sufficient reconnaissance work had been done and studies of the water made, it was decided that the springs should be developed as the new source....Spring No. 2 was place in service in ..1930 and it had sufficient volume so that it supplied all the Company needs until several years later. In Spring 1933, Spring No. 3.... In Spring 1934 Spring 7.... added to the supply."}]

occurred with no valid water right; no land ownership; no State Water Board diversion permit, application nor license; no pre-1914 right; and no riparian right as this is Forest land whose water was reserved in 1893 for the adjoining communities' timber and water supply.^{154 155 156}

The SBNF is the **only holder** of a **valid diversion permit** and license in **T2N R3W Sec. 30 and 31** known as “Highway Spring Application 6108.”¹⁵⁷ In fact, historic State Water Board records reflect that the USFS application 6108¹⁵⁸ is the **only application** for a water diversion in the locations discussed in this case in **T1N or T2N**.¹⁵⁹ Today the SBNF Highway Spring Appl. 6108 diversion only trickles back into Strawberry Creek near the diversion site¹⁶⁰ producing far less than the 9,000 gallons per day (6.25 gpm)¹⁶² diversion stated on the 1928 application.¹⁶³ In April 2017, the flow of Highway Spring Appl.6108 was 0.25 gpm measured about 25 feet downstream at the diversion pipe.¹⁶⁴ The fact that the authorized diversion 6108 is far below the 6.25 gpm, supports there is no surplus water in the Strawberry Creek headwaters. The USFS pipeline conveyance permits do not grant water rights.¹⁶⁵ The federal reserved rights should protect the Strawberry Creek Headwaters for the primary purpose of protecting the water supply for adjoining communities.¹⁶⁶ The Respondent does not have a valid USFS pipeline conveyance permit

¹⁵⁴ See FR 33 and FR 34 for public notices of the San Bernardino Forest Reserve. *Winters v. United States*, 207 U.S. 564 (1908).

¹⁵⁵ *Winters v. United States*, 207 U.S. 564 (1908).(Reserved the waters upon the reserved land upon founding.)

¹⁵⁶ See testimony Amanda Frye (4/25/22 959 02:07:50.010 — 02:09:47.580.) (No water rights were filed at the San Bernardino Historical Archives in the Water Books for the Respondent's predecessors in T2N R3W See testimony.)

¹⁵⁷ See FR 48 (USFS permit and history for application 6108 permit 3344 license 1649.)

¹⁵⁸ See **FR 38** (p. 10 1966 State Water Board Memorandum Applications to Appropriate within the boundary of the San Bernardino National Forest. Note that the only appropriation in T2N R3W Sec 30 or 31 is the US Forest Highway Spring -Calif. Div. of Highways Application 6108.) See also **FR 47** (Change order Application 6108 to the U.S. San Bernardino National Forest). See also **FR 48** p. 8-59. On p. 16-17 the letter from the State Deputy Conklin in charge of water rights to U.S. San Bernardino National Forest inquiring of appropriated rights in T2N R3W January 1940 describes that the San Bernardino National Forest rights and Dr. Baylis for Pinecrest Mountain resort on private lands outside the Forest boundary in the NW quarter of T2N R3W Sec 30. Dr. Baylis is not a predecessor of the Respondent.)

¹⁵⁹ See FR 30 p. 10 (Application 6108)

¹⁶⁰ See Bialecki photos and video Exhibits 2,4,5, 7,8 (photos and videos of Highway Spring Application 6108)

¹⁶¹ See Biakecki 2, 4, 7 and 8 (Highway Spring application 6108 diversion pipe)

¹⁶² See FR 7 (pdf p. 18 ¶ 2) (USFS Report)

¹⁶³ See FR 46 (Original application, license and permit for Highway Spring)

¹⁶⁴ See FR 7 pdf p. 18 ¶ 2 (USFS Report)

¹⁶⁵ See FR 39 pdf (First 1930) pipeline permit issued in1 p .1 No. 3 “Subject to all valid claims” and (Last USFS pipeline permit issued to the Respondent's predecessors p. 42 B. And D. Subject (A) to all existing valid claims and (D) **D. SERVICES NOT PROVIDED.** This permit does not provide for the furnishing of ...water,

¹⁶⁶ *Winters v. United States*, 207 U.S.564 (1908)

as the previous permit issued to Nestle Waters of North American Inc. is not transferable.¹⁶⁷ The State of California¹⁶⁸ has the authority to stop illegal diversions and ensure the public's trust.

E. The Respondent and predecessors have offered different stories about their water rights¹⁶⁹ in T2N R3W Strawberry Creek Headwaters. The Respondent offered the *Del Rosa Mutual Water Co. v. D.J. Carpenter et al, No. 31798*, San Bernardino Superior Court (1931), (*Del Rosa*)¹⁷⁰ judgement¹⁷¹ as their basis for water rights. *Del Rosa*¹⁷² never mentions that the described Strawberry Creek/Canyon in T2N R3W is SBNF whose water was federally reserved on February 25, 1893.¹⁷³ ¹⁷⁴ CCWC started taking Strawberry Creek spring water (T2N R3W Sec 30 at spring # 2) around August 1930¹⁷⁵ and the *Del Rosa* Judgement was issued October 19, 1931.¹⁷⁶ The Respondent has also previously claimed pre-1914 rights,¹⁷⁷ but claims were for land in a different watershed in T1N on land BTB does not own with water rights for use upon the land. During the hearing, the Respondent even claimed they were taking “percolating groundwater,”¹⁷⁸ but the Respondent does not own land in T1N nor T2N plus, the documented springs fed a known watercourse called Strawberry Creek. BlueTriton's present-day spring diversion¹⁷⁹ sites are located in the Strawberry Creek headwaters T2N R3W yet the Respondent possesses no water right so their

¹⁶⁷ See FR 39 pdf p. 40 [“H. **ASSIGNABILITY.** This permit is not assignable or transferable. “ and p. 41 2. Effect of Change in Control. Any change in control of the business entity..shall result in termination of this permit.”]

¹⁶⁸Samuel C. Wiel, *Water Rights in the Western States.* § 210 (3rd ed. 1911). [“ § 210. Waters upon Forest Reserves.-The Right of Way Acts usually provide that waters ,as distinguished from rights of way, shall remain governed by State law.”]

¹⁶⁹ See PT 13 p. 22. See also PT 14 p. 1. See also PT 30. BTB 6 p. 2 ¶ 5 lines 20-22

¹⁷⁰ See FR 45 *Del Rosa Mutual Water Co. v D.J. Carpenter et al, No. 31798* San Bernardino Superior Court (1931).

¹⁷¹See PT 30, See BTB 2 p. 18 [A. “Best evidence” through B. “Prescriptive Right”]

¹⁷² See FR 45 “No. 31798 Judgement” See pdf p. 22 ¶ of “Judgement” never mentions that T2N R3W is Forest Reservation land (SBNF) with water reserved February 25, 1893 with the purpose of maintaining a permanent water supply for surrounding communities and timber supply.”

¹⁷³Samuel C. Wiel, *Water Rights in the Western States.* 239 § 207 (3rd ed. 1911). “The supreme court of the United States says in *Winters v .UnitedStates* that the right of the reservation to water flowing through it, even in the absence of actual use thereon (if necessary for use in the future),cannot be destroyed by private appropriators,”

¹⁷⁴ *Winters v. United States*, 207 U.S. 564 (1908)
Cappaert v. United States, 426 U.S. 128 (1976)

¹⁷⁵ See **FR 58** p. 2 [“(Spring 2 —diverted into new pipeline .. pipeline from spring #2 is connected to line down canyon.”)] See also **FR 68** (pdf p. 2) or letter p. 1 ¶ 3 [“(“...old 4” pipe from Strawberry Creek to the Arrowhead Hotel which was laid in 1929.”)]

¹⁷⁶ See FR 45 pdf p. 29 line 10

¹⁷⁷ See SOS 265 p.p. 131 (NANA pre-1914 claim from David N. Smith 160 acres in T1N in a different watershed and T).[highlights added by SOS]

¹⁷⁸ See BTB 6 p. 6 ¶ ¶ 17-19 (Testimony of Mark Nicholls taking “percolating groundwater.” *Contra.* See 265 p.p. 1-3 (Surface water claims p.1 last ¶ “surface water”)[highlights added by SOS]

¹⁷⁹ See SOS 286 p. 6 Number 13

diversions are unauthorized.¹⁸⁰The diversion sites are documented as natural spring sites¹⁸¹and the Respondent does not own the land as it is SBNF lands. There is no surplus water in the Strawberry Creek and its headwaters which is necessary to fulfill the Forest’s purpose. Strawberry Creek and headwaters are already fully appropriated watershed via Water Order 98-08. Adverse possession and prescriptive rights do not apply to Federal land¹⁸²(Civil Code § 1007) (Matthews v. Ferrea, 45 Cal. 51 (1872)). The Strawberry Creek Headwater Springs unauthorized diversion sites are one of many locations where the Respondent obtains water for the “Arrowhead” bottling operations.¹⁸³

Furthermore, the name “**Arrowhead Mountain Spring Water Company**,”¹⁸⁴used between 1992-1994, is **not in the Respondent’s chain of title** so the chain of title appears broken.¹⁸⁵ ¹⁸⁶The former USFS Special Use Permit,¹⁸⁷ invoices and communications had the name “Arrowhead Mountain Spring Water Co.” No proof was offered that “Arrowhead Mountain Spring Water Company” was a predecessor of the Respondent or even a legal business entity in California as the name was not listed in the online California Secretary of State business entity filings, corporate deeds¹⁸⁸ nor SBC fictitious business name filings.¹⁸⁹ In 2015, a surrendered corporation name of “Arrowhead

¹⁸⁰ See SOS 281 slides 22 and 23

¹⁸¹ See SOS 121 p.p. 54, 61-65 (Letters documenting natural springs)

¹⁸² Samuel C. Wiel, *Water Rights in the Western States*. §591 (3rd ed. 1911). “ §591 Against the United States or the State. There can be no adverse use against the United States, and hence if the title to the water or land involved was in the government any part of the five years no prescriptive right can arise.” See also Civil Code § 1007.

¹⁸³ See FR 146 p. 1 ¶ 8 and p. 3 fifth ¶ from the end

¹⁸⁴ **See FR 137** [(p.p. 1-2 and 6-24 The name used in the 1992-1999 on official letter head and with the U.S. Forrest Service communications, permit, billing, invoices was “Arrowhead Mountain Spring Water Co.” This name “Arrowhead Mountain Spring Water Company” does not appear in the Respondent’s chain of title **BTB 13**.)] **FR 137** p.. 3-5 [(The name “Arrowhead Mountain Spring Water Co.” was not listed with the California Secretary of State or the San Bernardino County Recorders office as a Fictitious Business name as required by BPC § § 17900 (b) 3, (c) and Corp Code § § (California Corporations Code § § 191, 2105-2107, 15909.02, 16959, 17708.02, 2100-2117.1 and 17708.03.))] **BTB 13** p. 4-5 [(The owners of Arrowhead listed in1992 “Arrowhead Water Corp.” and 1993-1997 “Great Spring Waters ofAmerica, Inc.” The name operating at the current diversion sites was “Arrowhead Mountain Spring Water Co.” which is not in the Respondent’s chain of title so thus, the chain was broken. It appears that “Arrowhead Mountain Spring Water Co.” may not have been a legally operating California Company/Corporation either. FR 146 is a series of newspaper clippings which list “Arrowhead Mountain Spring Water Co.” as operating the spring water bottling business 1991 and 1994.)] **SOS 121** p.p. 77-79 (Letters from Arrowhead Mountain Spring Water Co. to the USFS).

¹⁸⁵ See BTB 13 p.p. 4-5.

¹⁸⁶ *Chain of Title*, Black’s Law Dictionary (11th ed. (2019)).[“ chain of title....If a necessary endorsement is missing or forged, the chain of title is broken and no later transferee can become the holder.”]

¹⁸⁷ See SOS 162. (USFS SUP permit with Arrowhead Mountain Spring Water Co.) **See also** 1/13/2022 afternoon transcript 13 00:02:08.730 to 00:06:08.700 (Amanda Frye Cross examination of Larry Lawrence confirming the USFS SUP permit exhibit SOS 162 with the name Arrowhead Mountain Spring Co.)

¹⁸⁸ See BTB 13 (Chain of title information and associated corporate deeds p.p. 4-5 numbers 3 and 4)

¹⁸⁹ See FR 137 pdf p.p. 3-5 (Secretary of State search and San Bernardino County Fictitious Business Name filings search)

Drinking Water Company”¹⁹⁰ was used in the eWrims database for the spring withdrawal sites in T2N R3W Sec 30 and 31.¹⁹¹

F. A Blue Triton Infographic¹⁹²revealed a secondary unauthorized water diversion to the alleged Arrowhead Springs Property owners¹⁹³[the San Manuel Band of Mission Indians, (Tribe)].¹⁹⁴During the hearing, no agreement or contract was submitted into evidence regarding the details or arrangement between BTB and the Tribe giving the appearance of impropriety.¹⁹⁵ Historic agreements¹⁹⁶appear to placate controversies or involved short-term contracts for the Strawberry Creek spring water bottling distribution or payment but no warranted rights involved. The Respondent’s unauthorized secondary water diversion to another private party is no different than a thief stealing public property and giving the stolen property to another person. The infographic also describes the wasteful dumping of excess spring water extracted from the Headwater Spring sites described as “overflow” water even though the Creek is dry at the sites. During the hearing it was revealed that the water is dumped far from the upper spring sites¹⁹⁷ ¹⁹⁸ or even in a different watershed¹⁹⁹at the Waterman Canyon pick-up silos²⁰⁰ which is more than 3 miles from the headwater springs leaving spring extraction sites, channel and Creek in a diminished state.²⁰¹

¹⁹⁰ See FR 123 and also see FR 128 p.p. 21-23 ¶ 4 on p. 23 (name changed from Arrowhead Drinking Water Co. to Arrowhead Water Corp - 1987)

¹⁹¹ See FR 124

¹⁹²See FR 23 (Infographic “Arrowhead Spring Water the Journey From Strawberry Canyon”)

¹⁹³ See Site Visit San Manuel Photos 2 and 3 (meter and diversion point.)

¹⁹⁴ See 1/12/2022 GMT 170310 Cross examination Larry Lawrence by Mr. Petruzzelli 15097 03:13:32.730- 3:14:00.480

¹⁹⁵ *Impropriety*, Black’s Law Dictionary (11th ed. (2019). “*Impropriety* 1. Behavior that is inappropriate or unacceptable under the circumstances; an inappropriate or unacceptable act or remark.”

¹⁹⁶ See FR 111 p. 2 ¶ 6 “First” (Agreement between CCWC and ASC). See also FR 129 and FR 130 (Historic agreements)

¹⁹⁷ See Site Visit San Manuel Photo 1 (Water Silos in Waterman as discussed in Larry Lawrence *infra*.)

¹⁹⁸ Testimony 01/12/2022 00:04:25.200-00:05:05.400 (Mr. Petruzzelli cross examination of Larry Lawrence)

¹⁹⁹ See FR 6 (Strawberry Creek watershed Spring sites in orange and Waterman Canyon in green)

²⁰⁰ See transcript 01/12/2022 GMT20220112-2141843 Mr. Petruzzelli cross examination of Larry Lawrence 00:04:25.200-00:05:05.400

²⁰¹ California Fish and Game Code§ 1602 [(“An entity may not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur [(listing notification and other requirements)....”)]

G. The Respondent now incurs the liability of the unauthorized diversions by putting the Headwater Springs' water in a pipe and blocking the natural spring flow into Strawberry Creek. A pipeline diverts this water to pick-up area in Waterman Canyon,²⁰² or to the AHSC owners via a secondary unauthorized,²⁰³ or is wastefully²⁰⁴ dumped far away from the spring sites. The Headwater Springs historically provided the water source for Strawberry Creek;²⁰⁵ the Forest ecosystems, fish and trees; the adjoining communities; and, recharge for the Bunker Hill basins.^{206 207 208} Now the Creek and water supply are left impoverished by the Respondent's diversions which prevents the Creek's perennial flow and water supply to San Bernardino Valley²⁰⁹ disadvantaged and adjoining communities and the Santa Ana River watershed.²¹⁰ The unauthorized diversion is injuring the nearly half-a-million people in the surrounding communities, the people who should be benefiting from the Strawberry Creek water. The lack of natural spring discharge into the Strawberry Creek channel at the Respondent's diversion sites is visually evident as the spring orifices are blocked with pipes or adits. The negative impact on Strawberry Creek is evident by a dry barren channel at the Respondent's diversion sites and the lack of perennial stream flow that cannot support fish.²¹¹ Yet, the Respondents bottles, sells and profits from this unauthorized water taken from Strawberry Creek often selling the water back in bottles to members in the disadvantaged communities²¹² that should have benefited from that water in

²⁰² See FR 149 p. 9 (Photo of pick-up area in Waterman Canyon)

²⁰³ See FR 23 (Arrowhead Water Infographic)

²⁰⁴ See transcript 1/12/2022 GMT20220112-170310 1590 3:12:57.600- 1601 3L14:00.480 (Cross examination of Larry Lawrence by Ken Petruzzelli) See also San Manuel Tribe - Photo 01 (Silo Tanks in Waterman Canyon)

²⁰⁵ FR 68 pdf p. 2 ¶ 3 ["Strawberry Creek....source at a group of springs..."]

²⁰⁶ See FR 63 pdf p. 55 document p. 49 ¶ 7 ["The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, **Strawberry**, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area."][emphasis added]

²⁰⁷ See FR 22 (map shows the valley Bunker Hill Basins)

²⁰⁸ Anthony Serrano testimony 1/14/22 509-514 1:22:47.220-1:23:42.450 states ["a local resident standpoint in the city of Highland... simply outrageous to the local residents, we have 55,000 residents in the city of Highland....located next door to the San Manuel Indian Reservation we have the bunker hill basin, which was our groundwater and all of these items were affected...."]

²⁰⁹ See FR 21 (Map of Disadvantaged Communities downstream including city of Highland)

²¹⁰ See FR 74 (Map of the Santa Ana River Watershed Water Resources)

²¹¹ See FR 149, FR 159 and Tribe Photo 5 (photographs of spring diversion sites, channels and Strawberry Creek dry channels)

²¹² See FR 21 (Map of Disadvantaged communities in the Santa Ana Water shed.)

their municipal water basins.²¹³ Ultimately, the Respondent is depriving water to the Santa Ana River watershed²¹⁴ and the drought stricken²¹⁵wildfire prone Forest²¹⁶.

H. Governors Brown and Newsom issued drought emergencies in recent years (2014 and 2021).²¹⁷ Drought conditions²¹⁸ have impacted 100% of people in San Bernardino County. Our water basins²¹⁹²²⁰ have been diminished, yet the Respondent's withdrawals have not ceased or been curtailed.²²¹

I. The Arrowhead bottling operation appears to have been sold from owner to owner without due diligence of the purchaser until it was too late.²²² In 2021, Arrowhead bottled water was sold again by NRNA to private equity firms forming BlueTriton Brands, Inc. in a high risk leveraged buyout using dual tranche bonds and corporate loans with undisclosed investor cash.²²³ No evidence of assets transferred including land or water rights were presented during the hearing. Still today BlueTriton and its private equity owners are profiting from the unauthorized diversion of California's water.²²⁴ The SBNF Strawberry Creek Headwaters was reserved upon founding in 1893 for the water supply of adjoining communities and to support a timber supply; there is no surplus water in the arid Forest.²²⁵

²¹³ See FR 151 p. 5 ¶ 15.

²¹⁴ See FR 14 Map of the Santa Ana River Watershed

²¹⁵ See FR 138 and FR 139. See also FR 151 p. 18 ¶ 71

²¹⁶ See BTB 10 ¶ 11

²¹⁷ See FR 151 "Declaration of Amanda Frye.." p. 19 ¶ 78. See also PT-1 Draft Cease and Desist Order p. 2 Number 4

²¹⁸ See FR 139 Standardized precipitation index to characterize meteorological drought

²¹⁹ See FR 63 ¶ 2 (p. 49/ pdf p.51). See also PT 24 ¶ 4 p. 49/pdf p.55) ["The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, **Strawberry**, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area."] [emphasis added]

²²⁰ (The Strawberry Creek watershed is not functioning properly as defined by USFS standards, as the terrestrial, riparian and aquatic ecosystems have been negatively impacted by major human disturbance of the Respondent and predecessors since 1930.)

²²¹ See FR 55 and 56 (Reported spring water recordations since 1933 - 2020)

²²² See FR 126 (Correspondence from 1958 regarding disputes over lack of water rights documentation).

²²³ See FR 143. (See p. 1 ¶ dual tranche bonds 1 p. 2 ¶ 1 regarding corporate loan p. 6 ¶ 2 higher risk and p. 13 ¶ 3 investors) (Articles regarding the acquisition of Arrowhead Water from Nestle Waters of North America (NRNA).

²²⁴ See FR 143

²²⁵ *Winters v. United States*, 207 U.S.564 (1908) .

DISCUSSION

1. The Respondent is violating Water Code 1052 with unauthorized diversions from Strawberry Creek which is a trespass (Water Code § §1052, 1831). As discussed extensively in the Background section, the Respondent holds no valid water right for the spring water diversion in the SBNF Strawberry Creek headwaters (T2N R3W Sec 30 and 31). The Respondent holds no pre-1914 claims nor land in T2N R3W the SBNF lands nor in private lands of T1N R4W/R3W. Any possible pre-1914 water claims were retained by the owners of the AHSC in T1N, deeded back to the Arrowhead Springs Corp or lost with non-use. The *Del Rosa Mutual Water Co. v D.J. Carpenter et al, No. 31798* San Bernardino Superior Court (1931) was an attempt to adversely possess water rights in the SBNF Strawberry Canyon, but Federal lands are not subject to adverse possession or prescriptive rights (Civil Code § 1007). Furthermore, the case never mentioned that Strawberry Canyon in T2N R3W was US Forest land where the water was reserved upon founding in 1893. The Respondent's predecessor CCWC encroached into the Forest headwaters due contaminated water in T1N and were granted unwarranted rights by ASC. However, the *Nemo dat* legal maxim says the a grantor cannot grant what they do not possess and the grantee can claim no title or right, so thus the Respondent can claim no rights in T2N R3W. The 1966 State Water Board Spread sheet of water right applications within the SBNF do not list any of the Respondent's predecessors as filing an application in T1N or T2N. The only State diversion application in T2N R3W is for the "Highway Spring" Application 6108 which is maintained by the SBNF.

2. The Strawberry Creek headwaters springs are surface water. Prior to diversion, the springs naturally flowed to the surface and fed the natural Strawberry Creek channel in the SBNF. The Strawberry Creek headwater springs (including Springs 10, 11, and 12) that naturally flowed to the surface prior to the Respondent's pipes, adits and diversion.²²⁶ The Respondent's "existing collection facilities" are located at known and documented surface water spring sites tributary to Strawberry Creek in the headwaters (T2N R3W Sec 30 and 31).^{227 228} The spring sites were

²²⁶ See FR 57 Rowe Field Notes for spring 1,2,3, diversion sites p.p. 3-7. See also FR 3 p.p. 1-10 for naturally flowing Springs 10,11, 12 and p. 1-09 for a map locating springs 10, 11, 12 along Strawberry Creek Channel. See also FR 52 for information on spring 1 and complete discharge for springs 2,3, 7 1933-34 listed (report p. 3 description) and color photos of discharge can be found at FR 55. See also See FR 3 Dames and Morore Spring 10,11, 12 (P.p. 1-1-10 for springs 10,11, 12) and p. 1-7 for information about spring 7. See FR 142 p. 3 for more information about natural spring 7 how boreholes drew down water so didn't express at tunnel 7 as lower the aquifer Also see PT 319 p. 4 second ¶ and p.p. 28-34 and spring 8 p.p. 35-37.

²²⁷ See FR 57 Rowe field notes July 3, 1930 prior to diversion p. 3-11 (Springs 1, 2, 3, 8) , See SOS 277 (7, 7A, 7B, 7C, 7D) Springs 1,2,3,7, 8

²²⁸ See PT 314 Spring sites plotted with overlay GIS layer on the 1905 USGS map (FR 62) which shows that spring 7 is the headwater spring of the East Fork of the Western branch of Strawberry Creek headwaters.

historically documented by W.P. Rowe²²⁹, Mann,²³⁰ Dames and Moore,²³¹ and the USFS.²³² Strawberry Creek and its spring tributaries are visible, known and documented channels.²³³ Strawberry Creek was noted as a perennial stream with headwaters marked as intermittent stream on the 1898 USGS Redlands Topographic maps²³⁴ and 1905 Water Supply map. Rowe states that Strawberry Creek gets its “source from a group of springs” below Strawberry Peak.²³⁵ The Respondent’s hydrologist, Mr. Nicholls, did not use previous maps or photos in attempts to locate natural springs 10, 11, 12.²³⁶ Respondent’s sanitary pipes are used to avoid contamination as water is captured as it travels from the spring aquifer to the surface and down the mountain.

3. Prior Orders and Decisions demonstrate the State is authorized to prevent illegal diversions. The Respondent had no pre-1914 right, no riparian right, nor a pre-1893 Forest founding claim. No application for diversions were submitted to the State as required by²³⁷ Stats. 1913, ch 586 and Water Code §1003. The Board has the authority to stop and prevent illegal water diversions. In Order WR 2016-0015, the Board concluded that the Board’s authority extends to all water diversions from natural streams, not just diversions of unappropriated water based on *Young v. State Water Resources Control Board* 219 Cal. App. 4th 397, 406 (2013) and *Millview County Water District v. State*

²²⁹ FR 57 W.P. Rowe’s Field notes 1930 prior to diversion give spring location and flows p. 3-11. P. 11 sketches location of springs 1,2,3,4 and Highway spring. FR 69-Rowe’s blueprint map of springs and Strawberry Creek FR 68 Report provides spring statistics and descriptions. FR 65 Descriptions of springs. FR 58 and FR 59 Rowe Field notes more details on springs.

²³⁰ See SOS 277, SOS 012, SOS 013, SOS 014, SOS 015 Mann report discuss the each spring location and nature of the natural springs.

²³¹ See FR 3 1-1 through 1-11. Dames and Moore report maps the location of the springs and discusses each spring and complex. See also

²³² See FR 5,

²³³ See photographs FR 149 and 159 of Strawberry Creek channels and spring sites. See SOS 290 and 293 USGS base maps 1901 for Strawberry Creek Channel and Spring 7 channel. See Dames and Moore FR 3 1-9 and 1-10 for description of Springs 10,11, 12 and locations tributary to Strawberry Creek . FR 62 1905 Map

²³⁴ See SOS 291 (USGS 1901 Redlands Quadrangle Topographic map)-Strawberry Creek headwaters and SOS 292 USGS 1901 San Bernardino Quadrangle Topographic Map plus FR 62 the thematic map (See SOS 288 p. 4. Line 7 reference for perennial stream symbology listed FR 156 p. 73 ¶ 6. These USGS maps were based on physical observations See 288 p. 3 ¶ 5-7 and ¶ 7 lines 19-20 with reference to SOS 294 at 132, 145 and 146. SOS 288 Greg Allord’s testimony p. 4 lines 9-25 concurs that the USGS 1901-1905 maps accurately portray Strawberry Creek as a perennial stream which were observed in relatively dry years SOS 1 p. 19. The resident hydrographer J.B. Lippincott reviewed the area watershed (which would have included the Forest Strawberry Creek watershed) in 1899 with then U.S. Forest Service representative J.W. Toumey during the dry period and would have confirmed the perennial Strawberry Creek.

²³⁵ FR 68 P.2 pdf ¶ 3 (p. 1 of letter)

²³⁶ See 30 5/23/2022 morning 385 00:50:25- 390 00:50:56.310 (Mark Nichols clarifies that he did not use the Dames and Moore report map and spring photos in attempts to locate natural springs 10,11 and 12) . See also **FR 3** (Dames and Moore 1-9 through 1-11 Figures 1-11 through 1-16 describe and show springs including natural springs 10,11,12)

²³⁷ Stat 1913 Ch 586, “Water Commission Act” 40 California (1913). Civil Code§ §1415-1417

Water Resources Control Board, 229 Cal. App. 4th 879, 894 (2014). The decision from Order WR 2016-0015²³⁸ sets precedent that Water Code 1831 authorizes the Board to review the Respondent's Strawberry Creek Headwater Springs diversions and issue a CDO regarding the unauthorized water diversions. Order WR 2019-0149 and Order WR 2004-004 occurred during drought emergency declarations and increased penalties and fines for unauthorized diversions. The Respondent has continued unauthorized diversions during two recent Governor drought emergencies so maximum fines and penalties should be levied. Order WR 2015-0025 found that the 60 year unauthorized diversions had resulted in injury and harm to other water users and aquatic life causing the Board considerable costs which the case Respondent had to pay. This case is similar to BTB's 92 year unauthorized diversion and damage to aquatic life justifies a similar action. WR Order 98-08²³⁹ declared the Santa Ana River Watershed fully appropriated from tributary to the Pacific Ocean. Strawberry Creek is tributary to the Santa Ana River Watershed²⁴⁰ with headwaters in the SBNF (T2N R3W Sec 30 and 31) which is the same location as the Respondent's unauthorized diversions; new appropriations cannot be granted and there is no surplus water.

4. Prior Court Decisions and California water law has established spring water is classified as surface water requiring a water right to collect regardless of whether the water pools at the point of surface expression or the spring water flows in another watercourse such as Strawberry Creek.²⁴¹ (Hutchins, *The California Law of Water Rights* (1956), pp. 403-404; *Gutierrez v. Wege*, 145 Cal. 730, 734 (1905); *Mount Shasta Bioregional Ecology Center v. County of Siskiyou* ("Mount Shasta") 210 Cal.App.4th 184 (2012).²⁴² The California Court of Appeal rejected characterizing spring water as groundwater in *Mount Shasta* citing "The spring itself is the point where the water reaches the surface. Hence, spring water is surface water, not groundwater." Thus, the Board should reject the Respondent's claim they are taking "percolating groundwater."²⁴³

²³⁸ See p. 10 of Order WR 2016-0015

²³⁹ See WR Order 98-08 Santa Ana River Watershed 1/1-12/31 Season Critical Reach: from the mouth of the Santa Ana at the Pacific Ocean upstream including all tributaries where hydraulic continuity exists p. 43 (San Bernardino County)

²⁴⁰ See FR 74 (Map of the Santa Ana River Watershed with Strawberry Creek labeled.)

²⁴¹ Per Paul Kibel

²⁴² (Slater, *California Water Law and Policy* (2021) Chapter 8 – Spring Waters) and Paul Kibel statement

²⁴³ See BTB 6 p. 2 ¶ 5 lines 20-22 ("percolating groundwater") *Contra* See SOS 265 p. 1 last ¶ ("surface water") [highlights added by SOS]

The California Water Law and Policy 2021 update,²⁴⁴ cites the *Mount Shasta* decision stating: “Spring waters that are tributary to surface or subsurface flows of a stream are part and parcel of the stream.”²⁴⁵ “If the waters of a spring ultimately join a stream, whether by percolation or through a stream channel, they are considered part of the stream.”²⁴⁵ The evidence submitted during this hearing has repeatedly demonstrated the Strawberry Creek is a natural channel sourced from natural springs that flowed to the surface and fed the known, visually evident, and mapped watercourse called Strawberry Creek.

In *Winters v. United States*, 207 U.S.564 (1908), The U.S. Supreme Court ruled for the Reservation’s right to have flowing water even in the absence of actual use as the U.S. Government implied sufficient water reserves for founding purposes reserves based on the reservation founding. Furthermore, the implied reservation²⁴⁶ of Forest waters flowing²⁴⁷ through a Forest reservation.²⁴⁸ In *Arizona v. California*, 373 U.S. 546 (1963), the Court affirmed the scope of Forest Water rights with the decision that confirmed the Reserved Rights Doctrine applied to National Forests. *Cappaert v. United States*, 426 U.S. 128 (1976) reaffirmed the reservation water rights for public lands for the purposes of the reservation. The "Implied Reservation of Water" doctrine is based on the necessity of water for the purpose of the federal reservation so water can be protected from subsequent diversions, whether the diversion is of surface water or groundwater.²⁴⁹ In *United States v. New Mexico*, 438 U.S. 696 (1978) the courts reconfirmed the reserved water rights are dependent upon reservation’s authorizing legislation and the specific purposes for which the land was reserved. The waters on the SBNF were reserved Feb 25, 1893 was to protect the water supply and timber supply for the adjoining communities which includes a half-a-million people. There is no surplus water based on the arid valley and Forest reservation and the once perennial Strawberry Creek that is dried and diminished with intermittent flow. There is no different or better right to cut off water in or above a spring than to cut it off or divert it from a stream (*Gutierrez v. Wege* (1905) 145 Cal. 730, 734). The SBNF Highway Spring (App. 6108) diversion

²⁴⁴ P. 8-11

²⁴⁵ §8.01

²⁴⁶ *Implied Reservation (1867)*, Black’s Law Dictionary (11th ed. (2019). “implied reservation (1867) -7. An express notice that certain rights are not abandoned or waived 8. The setting apart pf a designated [art pf a territory or tract of land for public uses or special appropriation.

²⁴⁷ See FR 19 ¶ 9 last sentence to “to preserve as even waterflow” and ¶ 15 (mentions San Bernardino Forest reserve.)

²⁴⁸ *Winters v. United States*, 207 U.S.564 (1908)(148 F. 684 affirmed) <https://supreme.justia.com/cases/federal/us/207/564/>

²⁴⁹ *Cappaert v. United States*, 426 U.S. 128 , 142-143(1976) .

pipe barely trickles water²⁵⁰back into the Creek.²⁵¹ The fact that the USFS authorized diversion is far below the authorized 6.25 gpm lends evidence there is no surplus water in the Strawberry Creek headwaters.

The Respondent's predecessor had no claims or rights in T2N R3W Sec. 30 and 31. Thus, in *Irwin v. Phillips*, supra, 5 Cal. at p. 147 the "first in time, first in right" would make the SBNF the first to reserve water rights for (T2N R3W sections 30 and 31 Strawberry Creek) in 1893 (Civil Code §1414) and Strawberry Creek is fully appropriated (Water Order 98-08). Strawberry Creek is a water supply source for the San Bernardino Valley basins²⁵²including the Bunker Hill Basins and also numerous adjoining disadvantaged communities.²⁵³The Respondent has diminished the Strawberry Creek²⁵⁴ flow so fines for damages and a CDO is proper (Cohen v. La Canada Land & Water Co., 142 Cal. 437, 439-440 (1904).) *Millview County Water District v. State Water Resources Control Board* 229 Cal. App. 4th 879 (2014) confirmed under Water Code §1831 the State can and should prevent illegal diversions. The Board is vested with power of the water commission as a the regulatory agency charged with the administration of the water rights in California (*People v. Shirokow*, 26 Cal 3d (1980) p 308 fn. 8) and the Board is mandated by Water Code § 1825 to take vigorous action to prevent the unlawful diversion of water with the authority to prevent illegal diversion, regardless of the basis under which the right is held (*Cal. Farm Bur Federation v. State Water Resources Control Board* 51 Cal 4th. 421, 429 (2011).) *Meridian, Ltd. v. City and County of San Francisco*, 13 Cal 2d 424 (1939) cites the Board's investigative power under the Water Commission Act section 10 codified in Section 1051 as the State Water Board has the power to investigate all streams of the state for the purpose of ascertaining whether the use of water conforms with water appropriation of the state. The power extends to the use of water made under appropriation or attempted appropriations acquired or asserted prior to the passage of the Act. In *Millview*²⁵⁵, the court clarified the Board authority to determine the scope of water rights under a claimed and invalid right. In *Young v. State Water Resources Control Board* 219 Cal. App. 4th 397, 406 (2013) the court concluded that unauthorized water diversions with no valid right are "subject to enforcement under

²⁵⁰ See Biackeci 2, 4, 7 and 8 and See also FR 7 pdf p. 18 ¶ 2 describing on April 2017, the flow of this Strawberry Creek head water spring was 0.25 gpm measured about 25 feet downstream at the "Highway Spring App. 6108) diversion pipe.

²⁵¹ See FR 46 (State of CA Division of Water Resources Application 6108, License 1649, Permit 3344 October 31, 1928)

²⁵² See FR 63 ¶ 2 (p. 49/ pdf p.51). See also PT 24 ¶ 4 p. 49/pdf p.55) "The large streams entering the San Bernardino area are the Santa Ana River and Lytle, Cajon, and Mill Creeks; the small streams are Plunge, Strawberry, City, and San Timoteo Creeks and streams in Waterman and Devil Canyons. With the exception of Lytle and Cajon Creeks, which enter Lytle and Cajon basins, respectively, all enter Bunker Hill basin. All these streams supply recharge to the several ground-water basins in the area."

²⁵³ See FR 21 (Map of Disadvantaged Communities including the Bunker Hill Basin)

²⁵⁴ See 283 slides 2-24 (Summary Slides on diminished Strawberry Creek flow)

²⁵⁵ *Millview County Water District v. State Water Resources Control Board*, 229 Cal. App. 4th 879, 894 (2014.)

Water Code Sections 1052 and 1831.” These cases support that the Board has the authority to impose penalties and write a CDO pursuant to Water Code § 1052 when a water right does not exist, such as in this case. Since the Respondent has engaged in unauthorized diversions and holds no valid water right, the Board should issue an immediate cease and desist order to stop all water withdrawal in Strawberry Creek Headwaters. The Board should impose the harshest fines and penalties. The State is authorized to prevent illegal diversions and impose penalties for the unauthorized diversions.

5. Respondent’s artificial pipe channels is a liability as evidence of a diversion²⁵⁶ and trespass **not** a “Subterranean Chanel.”²⁵⁷ The subsurface pipe conduits²⁵⁸ are only sanitary collection pipe conduits between a spring aquifer and orifice used to avoid spring water contamination. The Respondent uses this sanitary conduit with sanitary seals and perforated screens ²⁵⁹to filter out debris and act as a sanitary conduit between the spring orifice and the spring aquifer capturing and diverting spring waters²⁶⁰ that would have naturally flow to the surface, thence, into Strawberry Creek. So thus, the Respondent’s subsurface pipes are merely sanitary conduits to prevent contamination of spring water that would have naturally flowed to the surface; since the Respondent has no valid right or permit the Respondent has incurred a liability.^{261 262 263} The respondents subsurface pipes basically follow natural spring flow to the surface or tap the aquifer that fed the spring²⁶⁴. *Chowchilla Farms Inc. v. Martin*, 219 Cal. 1,18 (1933), State Water Board Decision 1618, and WR 2021-0094 are not applicable to this case since then Respondent’s unauthorized diversion is on Federal Forest lands with Federal Reserve Rights and the SBNF is not

²⁵⁶ Water Code § 5100. [(c) [“Diversion” means taking water by gravity or pumping from a surface stream or subterranean stream flowing through a known and definite channel, or other body of surface water, into a canal, pipeline, or other conduit, and includes impoundment of water in a reservoir.”]

²⁵⁷ BTB 6 p. 2 number 4.(Testimony of Mark Nicholls” There are no subterranean channels.....”)

²⁵⁸ See Water Code § § 7000, 4001 (Conduits include pipes, pipelines)

²⁵⁹ See BTB 6 p.2 ¶ 4 p. 8 24-26 (Testimony of Mark Nicholls “...surface sanitary seals in the subsurface to preclude infiltration of surface contaminants.”)

²⁶⁰ ²⁶⁰ FR 68 (pdf p.p. 2-3) Starting on ¶ 2 (pdf p. 2 or document report p.p. 1-2)

²⁶¹ *Channel*, Black’s Law Dictionary (11th ed., 2019)“*channel*- The bed of a running stream of water; the groove through which a watercourse flows.”

²⁶²”<https://www.lawinsider.com/dictionary/artificial-channel> [*Artificial channel*“means a stream channel that is entirely constructed, but does not include relocated natural channels. Except where fish bearing, an artificial channel is not a critical area.”]

²⁶³ See FR 149, and FR 159 photographs; See FR 69 Rowe blueprint map of Strawberry Creek and spring locations; See FR 3 Dames and Moore map p. 1-2 and 1-9 (springs 10,11, 12)

²⁶⁴ See FR 142 p. 3 second ¶ - “old tunnel (#7) had ceased...#7A and # 7B were effectively draining the same water but at lower levels. P. 4 2 nd ¶ describes how 7C drained the same aquifer and p. 5 second ¶ ..when 7A, 7B, 7C shut tunnel 7 flowed again. See also Dames and Moore 1-9 -1-11 for Springs 10,11, 12 pipes tapping spring aquifers.

subject to adverse possession or prescriptive right (Civil Code § 1007). The Santa Ana River Watershed is fully appropriated per Water Order 98-08 so no water in Strawberry Creek is available for appropriation (Water Code §§1205,1206). Strawberry Creek water was Federally reserved in 1893 to fulfill the purpose of the Forest creation. The Board should treat the Respondent's artificial pipe channels as evidence of a liability and trespass. The Respondent's sanitary subsurface pipes tap spring water aquifers to collect spring water so it is not contaminated which are **not artificial pipe subterranean channels** as in *Chowchilla Farms Inc. v. Martin*, 219 Cal.1,18 (1933).

The laws regarding a natural watercourse or channel do not apply to an artificial channel such as a pipe²⁶⁵ especially on Forest lands with federal reserved rights protect the water involved. "Every diversion of water from a stream is artificial—a disturbance of the natural order of things." (*Charnock v. Higuerra*, 111 Cal. 473, 481 (1896).) Artificial channels are not the same nor should they be considered one-in-the -same as a natural channel, such as Strawberry Creek, as the laws and liabilities differ. Once the water from a natural watercourse is put into the pipe, such as the case as the Respondent, then the Respondent assumes the liability for the water and the unauthorized diversion that incurred.²⁶⁶ The Respondent has no right to stop Strawberry Creek or natural spring water flow reserved on the SBNF thus, committing a trespass by putting the spring water in the pipe and diverting.²⁶⁷ Respondent has no valid appropriation right, permit nor a current conveyance pipeline permit²⁶⁸ and the USFS does not enforce State water rights since that is the State of California's jurisdiction.

6. Historical diversions for bottled water started in Cold Water²⁶⁹ Creek in Cold Water Canyon at the base of Arrowhead Mountain below the geological landmark Arrowhead above the Strawberry Creek Confluence on private lands T1N R4W Sec 12, 11 and Waterman Canyon²⁷⁰. The Respondent's predecessor CCWC were not deeded any land or riparian rights;²⁷¹ any pre-1914 rights were lost by non-use or deeded back to the ASC²⁷². No deeds were

²⁶⁵Samuel C. Wiel, *Water Rights in the Western States*. §52 (3rd ed. 1911).["§52. Natural and Artificial Watercourses Distinguished. The law of natural watercourses or of natural bodies of water as natural resources does not apply to water in an artificial water course, or other occurrence or situation not of natural creation. "]

²⁶⁶Samuel C. Wiel, *Water Rights in the Western States*. §§ 51,52 (3rd ed. 1911).

²⁶⁷ See FR 159 and FR 149 (Photos of the Strawberry Creek Channel and Spring sites)

²⁶⁸ See FR 151 page 16 ¶ 63 (Amanda Frye Testimony regarding no current USFS SUP permit).

²⁶⁹ See SOS 281 slides 9, 10, 11, 12, 13, 14, 15 (Summary Slides of Early Arrowhead Water Withdrawal).

²⁷⁰ See FR 13, 11, 10 (USFS atlas maps)

²⁷¹ See **FR 110** p. 2¶ 2 [("excluding, however, all waters of the grantor from surface streams and hot springs.")] See also **SOS 281** slide 22

²⁷² See SOS 281 slide 23 (Summary Slide)

entered into evidence during the hearing reflecting current owner of the AHSC. It is impossible for the Respondent to have riparian rights at Spring diversion sites T2N as this is San Bernardino National Forest lands. No Respondent predecessor made legal claim to water or land in T2N R3W prior to Forest founding in 1893.²⁷³

The historical Arrowhead Springs Complex located in T1N (at the mountain base) contained land parcels which met the three elements for riparian rights as set forth in *Rancho Santa Margarita v Vail (1938) 11 Cal. 2d 501, 528-529* with 1) land abutting streams, 2) land under one title in chain of title, and 3) land within the watershed of the stream. The post-1914 “Indian Springs” water withdrawal in T1N R4W Sec 2 is on SBNF land²⁷⁴ appears to have no valid pre-1914 right even so any valid right would have been lost by non-use and this Indian Springs is on reserved Forest land founded in 1893²⁷⁵. It is well established under California law that riparian rights are not transferrable for use on non-riparian land (*People v. Shirokow*, 605 P.2d 26 Cal. 3rd 301, 307 162 Cal Rptr. 30 (1980)). Riparian water rights cannot be sold or transferred other than with the riparian land.

7. Diversions are not authorized by Riparian rights. During the hearing, a secondary diversion to the the AHSC was revealed from an Infographic²⁷⁶ introduced into evidence. This diversion is not separately reported to any public agency, but lumped into the San BernardinoValley Municipal Water District recordation.²⁷⁷ The San Manual Band of Mission Indians were not party to the case and there was no evidence presented in this case regarding the legal private holdings of the Tribe at the “Arrowhead Springs Complex” as this is not a Tribal reservation; thus, there is no evidence regarding any riparian rights. The Tribe (AHSC alleged owner) reads the meter²⁷⁸demonstrating complicity²⁷⁹ in the water diversion and thus, liability in the unauthorized water diversion of the Respondent. There was no evidence submitted regarding how the Tribe is using the water or if the Tribe is further diverting the Respondent’s gifted water. There is no evidence authorizing the Respondent’s secondary diversion of Strawberry Creek headwater springs on SBNF (T2N R3W sec 30 and 31) to the Tribe nor any evidence that this diversion is authorized by riparian rights. The Respondent does not own riparian land and the Tribes ownership of land is

²⁷³ See SOS 281 slide 8

²⁷⁴ See SOS 281 slides 16, 17, 18, 19

²⁷⁵ See SOS 281 slides 16, 17 and 8

²⁷⁶ See FR 23 (Arrowhead Infographic)

²⁷⁷ See 1/12/2022 afternoon session Nacee Murray cross examination of Larry Lawrence 224 00:24:04.230.- 286 00:30.10.380

²⁷⁸ See 1/12/2022 afternoon session *supra*. 236 00:30:06- 00:30.10.380

²⁷⁹ *Complicity* ,Black’s Law Dictionary, (11th ed., 2019)

hearsay since no evidence was submitted. It can be concluded that the **Respondent's diversions to the San Manuel Mission Indians are NOT authorized by riparian rights**. The Respondent giving away Forest water to the San Manuel Band of Mission Indians appears to be a back door deal to take the Forest water and injure the Forest and nearly a-half-a-million people in the surrounding communities.

8. Pre-1914 appropriated rights were retained by owner of AHSC in T1N. The **Respondent may not use any pre-1914 appropriated rights** that were held by AHSC property owners in T1N. Early AHSC land owners held pre-1914 appropriated rights for the private lands in T1N, but the Respondent does not own these rights nor land. Early AHSC land owners pre-1914 appropriated rights by posting a notice at the diversion site and filing an appropriation declaration at the San Bernardino County (SBC) Records office Water Books which are held at the SBC Historical Archives;²⁸⁰all of the pre-1914 appropriated rights were for only use upon the lands in T1N.²⁸¹Any water rights on AHSC T1N including any possible pre-1914 right were deeded to the ASC owners in 1930/1931²⁸² or lost with non-use. Any pre-1914 rights were ultimately retained by the ASC land owners, but no evidence to present day use or owners was presented. When the water business was severed from the hotel, the Respondent's predecessor was granted no land. Any pre-1914 rights in ColdWater Canyon were deeded back to the ASC²⁸³ and other possible rights were lost with non-use or not transferred to CCWC.

9. Developed water is defined²⁸⁴ as "Water brought to the surface and made available for use by the party claiming the water right." In this case, the water already naturally surfaced as springs that fed Strawberry Creek so the Respondent's water collection is **not "developed water."**²⁸⁵

Request for CDO Actions

The CDO should include: **1.** Effective immediately the Respondent should stop all water diversions from the Strawberry Creek headwaters from all springs, boreholes, tunnel collection facilities including springs 10,11,12 in

²⁸⁰ Civil Code §§ 1415,1421. See **BTB 2** p.p. 131-159 (Pioneer Title Report showing the SBC Water Book records of the ASC landowners pre-1914 appropriated water rights for T1N ASC. See *infra*. no Respondent water rights for T2N R3W)

²⁸¹ Starting testimony on 4/25/22 959 02:07:50.010 --> 02:07:54.960 974 02:09:32.130 --> 02:09:47.580. (Amanda Frye testimony during cross examination by Rita McQuire) (Amanda Frye explains how she reviewed the water books at the San Bernardino County historical archives and BTB's predecessor had no claims in T2NR3W Sec 30 and 31.)

²⁸² SOS 281 slides 22 and 23 (Summary Slides of no water rights held)

²⁸³ See SOS 281 slides 22 and 23 (Summary Slides)

²⁸⁴ *Developed Water*, Black's Law Dictionary (11th ed. (2019).

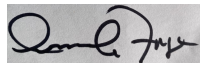
²⁸⁵ Scott Slater, *California Water Law and Policy* (2021) Ch. 8 §8.03. (spring water does not qualify as "developed water.") See also per n. 10 Cohen v. La Canada Land & Water Co., 142 Cal. 437, 439-440 (1904). (LEXIS 958.***5)

the SBNF (T2N R3W Sec 30 and 31). **2.** There is no basis for giving the Respondent 7.26 AFA as in the draft CDO so all water withdrawal should be stopped. **3.** The Respondent should remove all pipes, pipelines, collection facilities from the Strawberry Creek Headwater Springs area. **4.** All springs should be restored to natural pre-diversion flows and channels described by Rowe²⁸⁶ and other sources. **5.** The Respondent should pay for all Forest remediation of fauna and flora damage and also restock native aquatic species. The Respondent unauthorized diversions have occurred over 90 years resulting in injury and harm to the Forest including fish and timber and injury to downstream users whose water Strawberry Creek is supposed to supply. **6.** The Respondent should replenish all water that was diverted from the impacted watershed in the SBNF, mountain communities, Bunker Hill Basin and the Santa Ana River watershed. **7.** The Respondents unauthorized water diversion occurred during two recent Governor issued state drought emergency proclamations.²⁸⁷ The Board increase penalties levied. (Water Code §§1052,1055 1845-1848). **8.** Maximum Administrative and Civil Liabilities fines should be levied. **9.** The Respondent should reimburse expenses that incurred during the extensive investigative and hearing phases.

Conclusion

Evidence shows the Respondent has trespassed upon SBNF Strawberry Creek Headwater Springs in T2N R3W Sec. 30 and 31 and holds no valid water rights for the spring water diversions. The Respondent's unauthorized spring water diversions must be stopped by the State of California (Water Code § 1052, 1055). The Forest and adjoining communities are being injured by the Respondent's diversions. The Respondent's water diversions continue despite a drought and a diminished Strawberry Creek that can no longer support fish. An immediate CDO should be issued to stop all the Respondent's water diversions including Springs 10,11, and 12. Harsh penalties and fines should be levied upon the Respondent so Strawberry Creek can reestablish a perennial flow in the interest of the SBNF,²⁸⁸ for the people of California and the public welfare²⁸⁹(Water Code §§1052, 1055, 1055.3, 1058.5).

Respectfully Submitted by Amanda Frye



August 5, 2022

Resubmitted with corrections September 19, 2022

²⁸⁶ See **FR 57** p.p. 3-14 and **FR 52** p.p. 6 (1-5) and **FR 55**. See also **FR 3** p.p. 1-9 - 1-11. See also **FR 144** Spring 7

²⁸⁷ See **PT 1** (Draft Cease and Desist Order p. 2 No. 4. Governor Brown January 17, 2014 declared drought emergency) and See also **FR 151** p.. 18 ¶ 71. ("Testimony of Amanda Frye)

²⁸⁸ See **FR 19** (An 1893 Newspaper article discussing how Forest were reserved to conserve California watercourses.)

²⁸⁹ California Constitution Article X § 2 [{"It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources**interest of the people** and for the public welfare...."}] See also Water Code § 1050.