

Thank you for all the work you and the staff have done on this investigation and report. I hope after reviewing all of the information provided by the public and groups concerned about Strawberry Creek you will be able to provide even more protection to the stream and our National Forest resources.

There are some important Forest Service history and political pressures that you need to consider in your final report and Board action as it relates to water rights, Impacts to Public Trust, and Waste and Unreasonable Use of Water. I will try to be brief but give you some information I gained as a federal employee involved with the Nestle permit.

## **Background**

I worked for the Forest Service and the US public for 40 years. I believe that everything I learned on the job is not mine to keep. I owe it to the US Public and to you, the State of California, and others to make sure the facts are known as you and others are making important decisions.

In my 30+ years working on the San Bernardino National Forest and having Strawberry Creek in my work area, the Nestle permit and Strawberry Creek came up multiple times. My most recent experience with Strawberry Creek was as the lead biologist on the Arrowhead Tunnel Project. Strawberry Creek was part of our analysis area and in the end, I had to certify that there were no ongoing impacts to Strawberry Creek from the Tunnel.

## **Increasing Knowledge and Understanding**

Over my 30 years on the Forest, the San Bernardino National Forest made huge strides in the scientific management of the National Forest. The Forest Service and other land managers have begun to understand water law and groundwater/surface water/biological relationships and now have the expertise on board to begin to apply that understanding to projects and decisions.

When the last permit (1978) was issued, the National Forest did not have a hydrologist or a geologist on the staff. Biological staffing was almost non-existent. In the 1980's, the Forest had staffed up with biologists and hydrologists. Geologists really didn't become available until the 1990's and 2000's. During this time the Forest began to understand more and more, but the Inland Feeder (Arrowhead Tunnel) really forced the Forest Service to become experts very quickly because the tunnel was coming underneath the Forest and San Manuel Reservation. This was the largest tunnel ever constructed on National Forest anywhere in the Country. The San Bernardino NF staffed up with a team of Scientists and Special Use Administrators using LA Metropolitan Water District funds to make sure that the National Forest and the San Manuel Band of Mission Indians Reservation was protected. The SBNF formed a team that include myself as lead biologist, a special use administrator, a botanist, a geologist, a hydrologist, a hydro-geologist and an engineer. Over a 10 year period we learned more about the geology, biology, and groundwater/surface water relationships in the San Bernardino Front Country than had been learned in the last 100 years.

## **NF Handling of the LAMWD Tunnel vs Nestle Water Removal Permit**

The Arrowhead Tunnel Project had potential to adversely affect the San Bernardino National Forest because of leakage of groundwater out of the tunnel and the effects on public and tribal groundwater and surface water resources. During and after construction, impacts were noted and the FS, MWD, and the San Manuel Tribe did everything in their power to avoid and mitigate the impacts.

One of the last things we did as a Team was to evaluate Strawberry Creek and make sure that any Tunnel effects were over and not ongoing. We needed to release MWD from some of the monitoring we were requiring.

Metropolitan Water District questioned the strict protection measures being required by the tribe and the Forest Service, but legally they were agreed to be a requirement and enforceable. The Department of Fish and Game and the US Fish and Wildlife Service were brought in to the process and agreed with the Forest Service to have an annual meeting to report on impacts and mitigation. They were OK with the Forest Service agreement to fully mitigate any impacts through irrigation if need be.

Standards applied to LAMWD Arrowhead Tunnel based on laws, regulations, and the San Bernardino Forest Plan:

- No net loss of riparian habitat.
- No adverse effect on Threatened, Endangered, or Sensitive species or their habitat that cannot be mitigated.
- No long-term continuing adverse effect on public and Reservation groundwater or surface water resource.

In order to accomplish this, the FS and Tribe required;

- 5+ years of analysis and monitoring pre-tunnel and continuous through construction and 3 years after.
- Identification of every water dependent resource within a mile of the tunnel, including Strawberry Creek.
- Stream monitoring of flows in all potentially affected perennial streams up to bi-weekly if critical low summer flows. Strawberry was much less frequent due initial monitoring results and being upslope and a great distance away.
- Irrigation using city water to mitigate for any significant decline in streamflow, riparian dieoff, or effects on sensitive species habitat.

These measures were some of the strongest ever applied in NF history, but were what were deemed necessary to protect public and tribal lands and waters.

In contrast, the Nestle permit expired some 30 years ago and has no environmental constraints on removal of hundreds of millions of gallons of water even during the driest months or during a drought. The permit had not been evaluated for effects or needed mitigation measures even though multiple species potentially affected had been state or federally listed. There are not even any wildlife drinkers along the pipeline to provide water for wildlife.

Gene Zimmerman, the same Forest Supervisor that had taken such a firm stand for protecting NF and San Manuel Reservation from Tunnel Impacts, was hired by Nestle 4-5 years ago when some of us in the public began to ask about the permit and protection of the stream during the severe drought. One of the first things

they had him do was to put out a short movie to the press of him standing in Strawberry Creek in the Spring when water is highest. He talked about how he was the Forest Supervisor for years and that this stream was very healthy and there were no effects of the permit. This statement was made with virtually no study, during the start of a major drought ..... This is the same guy that had made MWD spend millions of dollars monitoring and mitigating impacts on much smaller streams and watersheds than Strawberry Creek. A lot of Forest Service employees and retirees were devastated that he would do this.

Gene was also the Forest Supervisor that allowed Nestle to continue to operate for many years with an expired permit with no water removal constraints.

Since the 1980's, the San Bernardino NF and the State Fish and Wildlife Department have consistently opposed headwater spring development and export for bottled water. No way would a proposal to do this ever be approved by the National Forest. There are threatened and endangered species that need surface or near surface water. The National Forests now understand water rights and groundwater/surface water relationships.

### **Nestle Permit History and Undue Influence on FS**

I had very little contact with Arrowhead Puritas or Nestle during my 30 years on the Forest. I had met some of their staff a time or two. I had met Larry Lawrence the current Natural Resource Manager as he was a Board Member for the San Bernardino National Forest Association, the volunteer arm of the SBNF.

In 2014 it became obvious that we were in a severe drought situation in all of southern California. Based on what we had learned about Strawberry Creek during the Tunnel project, we (myself and Gary Earney (retired FS) tried to get FS and Nestle to recognize the threat to Strawberry and modify the take of water. I first went to Gabe Garcia, the Front Country District Ranger to see if he would meet with the Public and Nestle to talk about how much water they were taking and the drought. He told me he wouldn't touch it with a 10 foot pole. He said if he brought up the permit and controlling the take of water, they would transfer him out and bring someone on that wouldn't bring up the permit. He said we needed to go to the Forest Supervisor.

We requested Larry Lawrence and the Forest Supervisor to meet in September of 2014. The Forest never responded to the request and Larry Lawrence agreed to meet with just myself. Larry said that he understood our concern, but he didn't want to talk about the permit and that they weren't going to modify their take of water. He said they had pre-National Forest and pre-1914 water rights. He said they monitor the stream every time they fly their helicopter into the spring sites and that the stream was fine. He said it was in their best interest to keep the springs healthy. He refused to meet with a larger group or with Gary Earney who had been the Special Use Administrator that had denied expansion or improvement to the system.

We later found out through a Freedom of Information Act Request that Larry Lawrence had been talking with the FS about how to get me to back off and go away. Over the next months, letters from many conservation groups were sent and hundreds of thousands of petitions were signed asking the Forest to do something to protect the stream and National Forest. The FBI even began investigating why nothing had been done on a 30 year old expired permit with so much public concern.

Finally, the Forest after all of that pressure agreed to put the permit renewal on the Program of Work. In order to not shut down the operation, the FS proposed a 5 year study of Strawberry and Coldwater comparing them

to get an idea of what the diversions in Strawberry were doing. Based on the studies, if any modifications to the water removal were needed to protect the National Forest they would be made at that time. Nestle commented and went to the press with their comments that if the Forest tried to take their water it would be a taking of their water, and they would take legal action. They got the bottled water association and other spring water bottlers in California to support their claim.

It is approaching 2 years since the FS conducted the project scoping and we still have not heard what the FS is doing or thinking. Nestle is still taking all the water they can and in 2016 even accelerated their take during this terrible drought because of a near-normal winter. We have recently noticed what appears to be an increase in take. We think it may be a result of the 4 inch storm recently.

Through another FOIA request, we learned that the local Forest is being told by the Washington Office to handle this project as a Categorical Exclusion, which means a much less thorough analysis and public involvement process. It is reserved for projects that are generally non-controversial, administrative with no potential for significant impacts. The Forest responded back that they did not know how to do that because it was such a departure from the normal.

We have now been 4 years with an increasingly severe drought. The Forest Service is afraid to tell Nestle to stop taking significant amounts of water even with the preliminary results from the State Board. We have asked the Forest to meet with us to discuss the future of the watershed and permit and they are saying that they will not meet until the Board makes the decision on water rights. The Forest Service has the legal authority to require water left for the stream, but they do not have the political ability to enforce their legal and policy requirements. They are being told what to do from Washington. Nestle has some very powerful friends including the past Secretary of Agriculture who sits on their Board. They were also one of the 12 World Corporations to sit down at a Trump invitee dinner.

They have totally punted back to the Board and will do so till the very end due to the political pressure from Nestle and their friends inside and outside the government. sign-off Board and the Dept. of Fish and Wildlife. We need you to stand up with the public against corporate influence. Nestle is a foreign corporation taking public water for free with no constraints to protect our public water or public lands.

I am asking you to step in and jointly enforce and demand protection of the Public Trust, a stop to the Waste and Unreasonable Use immediately and in any future issuance of a permit to take public water. The State must stand up for our water.

Thank You,

Steve Loe, Retired Forest Service Biologist