



INTERNATIONAL
BOTTLED WATER
ASSOCIATION

Via Electronic (<http://go.usa.gov/cGyXH>) and Regular Mail

Front Country Ranger District Office
1209 Lytle Creek Road
Lytle Creek, CA 92358
Attn: Nestlé Waters

May 2, 2016

Re: Reissuance of Nestlé Waters North America Special Use Permit #7285

To Whom It May Concern:

The International Bottled Water Association (IBWA) is the authoritative source of information about all types of bottled water, including spring, mineral, purified, artesian, sparkling, and well. IBWA's members are primarily U.S. bottlers, distributors, and suppliers, most of which are small, locally owned companies. IBWA members are committed to providing safe, quality bottled water products to consumers and are strong supporters of the environment and our natural resources.

IBWA appreciates this opportunity to provide public comments on the proposed reissuance of a Special Use Permit (SUP) issued to Nestlé Waters North America (NWNA) by the San Bernardino National Forest (SBNF). While this specific matter only concerns one company, the issues being considered, and the decisions that will be made, could directly affect any bottled water company that is similarly situated. IBWA is, therefore, an interested stakeholder and submits these comments on behalf of the bottled water industry.

As part of a National Environmental Policy Act (NEPA) review, SBNF is seeking public comments on its proposal to issue a conditional five-year Special Use Permit for a five-foot right-of-way (ROW) across the SBNF (Proposed Action). Special Use Permits for the ROW have been issued to NWNA and its predecessors since 1929.

Unlike prior SUPs issued by the SBNF to NWNA, the Proposed Action seeks to regulate the use of this company's senior water rights rather than the ROW granting transmission rights for a four-inch stainless steel pipeline used to transport the company's spring water to the bottling facility. In addition to authorizing the existing pipeline and related infrastructure, the Proposed Action would require NWNA to "*modify operations* under an Adaptive Management Plan [(AMP)] if monitoring showed that water extraction was impacting surface water flow and riparian dependent resources on the National

Forest” (emphasis added) (SBNF Public Notice Letter published March 18, 2016). Any withdrawal from a water source will have an impact. As a result, this proposed standard provides no certainty regarding the company’s ability to utilize its senior state water rights even *during* the term of its federal permit.

The approach taken by the SBNF in the reissuance of the company’s long-standing SUP sets an extraordinary precedent that threatens to undermine the security and stability of state water rights systems nationwide—particularly in the West. The economic development of the Western U.S. is directly linked to the development of water and the law determining its allocation. California water law, for example, is the product of more than 150 years of conflict and compromises among competing users of this important natural resource. Under a carefully established state water law regime, the State’s municipal users, agricultural users, and industrial users can predict, and therefore invest in the development of, their water rights. This state-based allocation system ensures the most efficient use of water, particularly when drought conditions reduce the available supply.

NWNA’s existing pipeline transports spring water owned by the company pursuant to a pre-1914 surface water right established in accordance with California state law. This spring water source has been put to beneficial use by NWNA and its predecessors since the late 1800s, predating the creation of the SBNF. Today, the State Water Resources Control Board (SWRCB) is exclusively authorized to administer California’s surface water appropriation system (*see* CAL. WAT. CODE § 2501). The water rights structure overseen by the SWRCB governs the allocation of water among parties during times and circumstances when there is not enough water to meet all demands. The system to acquire and maintain surface water rights is well-known and understood, and as such, provides a basis for investing billions of dollars in infrastructure that assures a clean, reliable, and affordable supply of water for the public.

In addition to appropriative rights for the diversion and use of surface water, California (like many other states) also recognizes riparian rights, which allow owners of land physically bordering a natural water source to use a reasonable amount of water that flows past their property. Like any other water appropriator in California, the federal government may hold riparian rights under California law for lands it retains in public ownership. Thus, it may be possible for the SBNF to acquire a riparian right for riparian dependent resources in the forest. However, these rights must be acquired pursuant to a permit issued by the SWRCB. Any unilateral attempt by the Forest Service to secure a riparian right outside the State’s established framework undermines, rather than enhances, the State’s ability to ensure sufficient and reliable water supplies. If the SBNF proceeds as proposed, then it is likely to raise much broader concerns about the security of the water rights held by even the most senior water rights holders in California and other states throughout the country.

There are sound public policy reasons for respecting a state-based water rights system. Uncertainty impairs the State’s ability to allocate and manage its water supplies. It also affects the State’s ability to grant permits because the amount of water available for appropriation is in doubt.

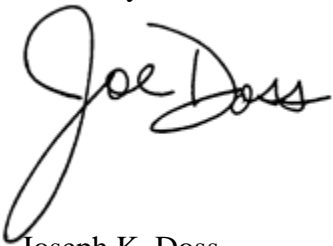
Specifically, the existence and extent of other beneficial uses of water make it difficult, if not impossible, to determine where and how much water will be available for municipal, agricultural, industrial, and riparian uses.

Finally, in addition to these overwhelming public policy reasons in favor of respecting the state-based water rights system, federal law itself requires deference. Both federal statutory law and U.S. Supreme Court precedent make clear that the SBNF has no authority to regulate state-based water rights. This is particularly true when the water rights pre-exist the creation of the national forest (as is the case here).

As drafted, the proposed SUP would upend established state and federal water law principles and the authority of the State of California to allocate and manage its water supplies. This upending of the established order would undoubtedly result in consequences that would reverberate throughout the Western U.S. and the rest of the country. The U.S. Forest Service's decision to ignore the state law of California—the largest state in the Union—would result in enormous uncertainty regarding the security of water rights (even senior water rights). This newfound and massive uncertainty would alarm many other state governments and water users, and would threaten continued investment in water infrastructure.

IBWA respectfully requests that the SBNF make important and necessary changes to its Proposed Action to reissue NRNA's existing SUP based on these comments and, to the extent it seeks to reserve water in Strawberry Canyon for riparian use, that it do so pursuant to a well-established state water law process.

Sincerely,

A handwritten signature in black ink that reads "Joe Doss". The signature is written in a cursive, flowing style with a large loop at the end of the "Doss" part.

Joseph K. Doss
President and CEO