



The Forest Service recently determined Nestlé's activities left California's Strawberry Creek 'impaired' while 'the current water extraction is drying up surface water resources.' (photo: Nick Todd/Alamy)

The Fight to Stop Nestlé From Taking America's Water to Sell in Plastic Bottles

By Tom Perkins, Guardian UK 29 October 19

Creek beds are bone dry and once-gushing springs are reduced to trickles as fights play out around the nation over control of nation's freshwater supply

The network of clear streams comprising California's Strawberry Creek run down the side of a steep, rocky mountain in a national forest two hours east of Los Angeles. Last year Nestlé siphoned 45m gallons of pristine spring water from the creek and bottled it under the Arrowhead Water label.

Though it's on federal land, the Swiss bottled water giant paid the US Forest Service and state practically nothing, and it profited handsomely: Nestlé Waters' 2018 worldwide [sales](#) exceeded \$7.8bn.

Conservationists say some creek beds in the area are now bone dry and once-gushing springs have been reduced to mere trickles. The Forest Service

recently determined Nestlé's activities left Strawberry Creek "impaired" while "the current water extraction is drying up surface water resources".

Meanwhile, the state is investigating whether Nestlé is illegally drawing from Strawberry Creek and in 2017 advised it to "immediately cease any unauthorized diversions". Still, a year later, the Forest Service [approved a new five-year permit](#) that allows Nestlé to continue using federal land to extract water, a decision critics say defies common sense.

Strawberry Creek is emblematic of the intense, complex water fights playing out around the nation between Nestlé, grassroots opposition, and government officials. At stake is control of

the nation's freshwater supply and billions in profits as Nestlé bottles America's water then sells it back in plastic bottles. Those in opposition, such as Amanda Frye, an author and nutritionist, increasingly view Nestlé as a corporate villain motivated by "greed".

"These are people who just want to make money, but they've already dried up the upper Strawberry Creek and they've done a lot of damage," she said. "They're a foreign corporation taking our natural resources, which makes it even worse."

Critics characterize Nestlé as a "predatory" water company that targets struggling communities with [sometimes exaggerated](#) job promises while employing a variety of cheap strategies, like donating to local boy scouts, to win over small town officials who hold the keys to valuable springs.

Its spending on lobbying and campaign contributions at the [federal](#) and [state](#) levels totals in the millions annually, the revolving door between the company and government perpetually turns, and it maintains cozy relationships with federal officials from the Forest Service to Trump administration.

Such tactics are partly what's behind the Forest Service's Strawberry Creek decision to allow Nestlé to pull water from federal land, said Michael O'Heaney, director of the Los Angeles-based environmental group Story of Stuff, which has sued to stop Nestlé.

"You have Nestlé spouting this idea of shared benefits and 'We're in it for the communities', but when you see the way they operate on the ground – they're very skilled at cozying up with legislators, state officials ... and getting their way," he said.

Nestlé Waters, which owns 51 brands including Ice Mountain, Poland Spring, and Zephyrhills, sees a much different reality. It presents itself as a responsible steward of America's water and an

eco-friendly "healthy hydration" company aiming to save the world's freshwater supply.

It calls itself a job creator that invests heavily in local municipalities and says it bottles a minuscule amount of the nation's water. Nestlé resource manager Larry Lawrence insists the company obtained the right to Strawberry Creek's when it purchased Arrowhead, and says its science backs claims that it draws water "sustainably".

"The argument that there should be some flowing stream bed [in upper Strawberry Creek] – we don't necessarily believe that and that's what we're testing for," Lawrence said.

Ultimately, the debate's particulars lead back to a question at the heart of issue: should water be commodified and sold by private industry, or is it a basic human right?

Former Nestlé chief executive and chairman Peter Brabeck [labeled the latter viewpoint "extreme"](#) and called water a "grocery product" that should "have a market value". He later amended that, arguing 25 liters of water daily is a "human right", but water used to fill a pool or wash a car shouldn't be free. At its current pace, the world will run out of freshwater before oil, Brabeck said, and he suggests privatization is the answer.

While conservationists agree that pool water could be subjected to fees, Nisha Swinton, senior organizer at the Food and Water Watch environmental group, says the public – not a company that "has to appease their stockholders and make money on privatizing water" – should be responsible for that.

"This is not an issue for a multinational corporation to have control over – this is an issue for the public to hang on to and protect as their own," she said.

‘Quid pro quo arrangement’

The source of America’s corporate water crisis can be traced back to 1976 when Perrier, now owned by Nestlé, opened an office in New York. By 2016, bottled water sales had [surpassed soda](#) as the largest US beverage category, with Americans consuming 12.8bn gallons that year. Last year, Nestlé Waters’ North American sales were [worth \\$4.5bn](#). As sales have grown, so has opposition. From California to Maine, residents and environmentalists are increasingly worried about Nestlé’s impact.

In Fryeburg, Maine, resident Nickie Sekera says the small former timber town’s fire department once offered a spigot from which residents could draw free water if a well ran dry or another problem necessitated it.

The fire department, however, replaced the spigot with free bottles of Nestlé’s Poland Spring water. Though it’s a relatively minor change, Sekera said the symbolism is strong: “It speaks – there’s no doubt about that.”

Some Fryeburg residents have been attempting to dislodge Nestlé since the early 2000s. Several rounds of fights have played out at the ballot box and state court system – Nestlé won most. In a recent legal challenge that went to the Maine supreme court, justices [upheld a deal](#) allowing Nestlé to pull 75m gallons annually from a Fryeburg well for 45 years.

As part of its comprehensive Fryeburg public relations campaign, Nestlé presents itself as longtime Maine label Poland Springs, which it acquired in 1992, instead of a Swiss multinational, Sekera said. It donated to the local boy scouts, bought the high school ski team new skis, and sponsored a fair, among other small acts.

In April, before a Maine legislature committee vote on new protections for state water, Nestlé [launched](#) an approximately \$1m Facebook [ad blitz](#) targeting the region.

Meanwhile, Maine’s regulatory apparatus is stacked with former Nestlé employees or contractors. The Maine Public Utilities Commission was set to rule on the Fryeburg water deal in 2013 when it [was revealed](#) the three commissioners considering the case included a former Nestlé lobbyist, attorney, and consultant. Former governor Paul LePage last year [appointed](#) a Nestlé manager to the state’s environmental protection board, while former Nestlé [lobbyist](#) Patricia Aho previously ran the state’s department of environmental protection.

According to Food and Water Watch, Nestlé or its lobbyists donated \$634,000 to Maine politicians between 2001 and 2012.

“They’re in bed together,” Swinton said.

Such strategies are part of Nestlé’s playbook. In [Michigan](#), where the company is pumping 1,100 gallons per minute across several wells, it paid for new ambulances and fireworks for economically struggling communities. Evert public schools’ superintendent Howard Hyde said in 2005 that he was “tickled” by Nestlé funding new baseball diamonds for the district’s baseball team.

“It’s like Christmas. Our current fields are pretty nice, but these are going to be better,” he added.

Anger boiled over in 2017 as residents in nearby Flint [paid much higher rates for tainted water](#) than Nestlé did for clean water, and Detroit carried out [mass water shut offs](#) as its poorest residents got behind on bills. In response, Nestlé donated bottled water to Flint.

In Oregon and Pennsylvania, local officials [resigned](#) following revelations they and Nestlé worked in secret to attempt to push through unpopular water deals. Nestlé scrapped its Pennsylvania plans while residents in Hood River, Oregon, voted out the company. It funneled \$105,000 into a local political action committee ahead of the election.

At the national level, former agriculture secretary Ann Veneman serves on Nestlé's board, and documents Story of Stuff obtained through a Freedom of Information Act request show the Forest Service chief is closely monitoring Strawberry Creek. Meanwhile, the FDA in 2017 determined Nestlé was partly bottling groundwater – not spring water – in Strawberry Creek. The FDA abruptly reversed its position several months later after a former FDA regulator representing Nestlé [went to the company](#). Nestlé is now fighting [a lawsuit](#) that alleges it is selling what is technically groundwater, which is different than spring water, and generally less desirable.

The Forest Service's Strawberry Creek [permit decision](#) references a 2017 Trump executive order that seems to speak to the controversy. It requires federal agencies to “ensure that water users' private property rights are not encumbered when they attempt to secure permits to operate on public lands.”

Former Forest Service special uses leader Gary Earney administered Nestlé's water permit between 1984 and 2007 and is now one of its most vocal critics.

During that time, he witnessed “devastating” Forest Service budget cuts that made it impossible to monitor Nestlé's activities or properly manage the forest, but Nestlé was there to help – it set up a nonprofit to solicit money for projects. Former San Bernardino national forest supervisor Gene Zimmerman, who left the agency in 2006 to work as a contractor for Nestlé, admits the company funded government projects in a 2015 [video promoting Nestlé](#).

Earney said he was once questioned by the FBI over possible corruption after it received a complaint about Nestlé pulling water for only a \$500 permit fee. Nestlé capitalized on a financially weakened Forest Service, Earney said, but he doesn't believe it rose to the level of corruption: “There's no doubt that Nestlé had an

informal quid pro quo arrangement with the Forest Service – by that I mean most likely unspoken.”

Nestlé spokesperson Alix Dunn defended the activities. She said it's important for elected officials “to hear all perspectives when considering complex public policy issues” and added that the company's generosity was being misrepresented: “Our employees have been empowered to be, and will continue to be, active contributors in the improvement of their local communities.”

Draining aquifers

Partway up a brush-covered Strawberry Creek mountain is an area Lawrence calls “the meadow” that holds Nestlé wells. A seven-mile system of 4in pipes carries water from it to tanker trucks at the mountain's base.

Lawrence notes the meadow is a green, lush area that bears use as a water source, and the sound of the flowing stream is drowned out by buzzing from mosquitoes – a sign of a healthy ecosystem.

But further up the mountain, the brush is more brown. There are few mosquitoes, insects, amphibians or other wildlife. Earney sees an ecosystem that “should be much more lush”. Where Nestlé sees a healthy environment, conservationists see one struggling.

In Fryeburg, the company's activities dried out wells and depleted the aquifer. It's proposing [pulling 1.1m gallons daily](#) from injured springs feeding the central Florida's Santa Fe River – four times what previous bottling companies took. The aquifer is draining because municipalities, agri-business, and bottled water companies are pulling from it, said Robert Knight, director of the Florida Springs Institute.

“When those springs are dying a death from a thousand cuts, one more cut isn't going to kill them, but it's not advisable to take more when

they're showing all sorts of signs of stress," he said.

A Michigan court [ruled in 2003](#) that Nestlé was solely responsible for draining the Dead River watershed from which it pulled 400 gallons per minute, or 210m gallons annually. The nine-year legal battle ended in 2009 when Nestlé agreed to drastically reduce the amount of water it takes and monitor levels in real time.

In Strawberry Creek, the Forest Service is requiring a three-year study of Nestlé's impact on the watershed as part of the terms of the five-year permit it issued. "Accusations are simple. Science is tough. We're doing the science," Lawrence said.

However, Nestlé is conducting the study, which won't be made public. That worries conservationists, partly because it has a history of skewing results in its favor. An independent scientist Nestlé hired was caught fabricating data during the 2003 Michigan trial, prompting the judge to issue a scathing opinion labeling him a "company man".

'Backstop to protect public waters'

The Dead River case represented a major victory for conservationists. Jim Olson, an attorney who fought it for Evart residents, underscored the water laws' importance, which he characterized as "the lynchpin on whether or not there's privatization of public water".

"You have to be conscious of the legal framework and a subtle shifting toward privatization of water without you knowing it," he added.

The best and last line of defense is the public trust doctrine, Olson said, which he called the "backstop to protect public waters". It states that water is a public resource that the government is obligated to protect. In short, water [can't be privatized](#), as Nestlé is moving to do.

States' water laws are all similar gradations of the same principle. In Maine, absolute dominion is a type of law that allows landowners to draw unlimited water from the aquifer below a parcel. "Whoever has the biggest straw can suck out as much water as possible. Even if your neighbors' well goes dry, you're not accountable," Swinton said.

Most eastern states allow landowners to bottle water as long as there isn't "measurable diminishment" of water levels and flow, Olson said. He won the 2003 Dead River case by proving Nestlé violated that rule. However, the Michigan court of appeals slightly shifted its interpretation of the law to favor Nestlé. Now, Michigan is closer to [California](#) and other western states, which allows landowners to lower water levels as long as downstream neighbors aren't seriously harmed.

It's likely the Strawberry Creek fight will be settled on that law, though Earney noted that an administration change in 2020 could push the Forest Service in a different direction. Regardless, he said, "it will be a political decision or a technically correct decision".

"[The state] may fold because of political pressure from Nestlé, or they'll recognize that Nestlé doesn't have a right to water that they're taking and do the right thing," he said.