



CHAFFEE COUNTY

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MEMORANDUM

Date: April 18, 2012
To: Board of County Commissioners
Cc: Bob Christiansen, County Director of General Administration
Jenny Davis, County Attorney
From: Don Reimer, County Development Director
Subject: **Nestle 2011 Annual Report Review & Project and Condition Status Summary**

Background: The Board of County Commissioners granted approval of a 1041 Permit for the Nestle project via Resolution 2009-42, which included 44 conditions. Resolution 2010-20 approved a permit amendment with five additional conditions.

Several Permit conditions include timelines requiring an action within either 30 or 60 days of the permit effective date, and other conditions require completion either prior to construction or prior to operation of the project. Some conditions include no timelines, and are reviewed on an on-going basis or as part of the annual report.

Purpose: This memorandum summarizes the 2011 annual report, compliance with County permit requirements, and identifies items which require on-going monitoring. Nestle submitted a written copy and a digital copy of the annual report, which are available in my office for review.

In the summary of conditions presented below, several items are identified as being "fully satisfied" based on the approved project plans. While further construction is not anticipated, additional construction would require either a Technical Revision or a Permit Amendment, and would therefore be subject to the original permit conditions.

Prior update reports prepared by County staff, the most recent dated October 12, 2011, included detailed summaries of property acquisitions, easements, permits, ditch agreements, and other construction related information. Since construction has been completed and there has not been additional property or other acquisitions reported, the last section of this report identifies only the items that the County is continuing to monitor.

1041 Permit Conditions. The following list is a summary of the condition, requirements, and status if applicable. Note that for several of the conditions, specifically those related to water, may not have required submittals; however information related to certain conditions will be reported in monthly, quarterly, and/or annual reports. For the complete condition language, please review the permit resolutions.

4.1 **Scope of Permit.** No submittals required.

4.2 **Technical Revisions or Permit Amendments.** Several Technical Revisions and one Permit Amendment have been submitted and approved; see Attachment 1 for summary.

- 4.3 **Dispute Resolution.** No disputes between County and Nestle have occurred; no submittals required.
- 4.4 **Term of Permit.** Permit expires **October 22, 2019**, unless extended by Permit Authority.
- 4.5 **Commencement of Project.** Must commence by October 22, 2012; a Notice to Proceed was issued on July 27, 2010 and project operations commenced on August 19, 2010. The condition is fully satisfied.
- 4.6 **Transfer of Permit.** No submittals required unless Nestle desires to transfer the permit to another entity. The Annual Report indicates Nestle continues to be the Permittee.
- 4.7 **Permit Violation.** No submittals required; no violations have been reported.
- 4.8 **Annual Reporting.** Annual reports are due March 1 of each year for the prior year. The 2009 - 2011 reports were each submitted as required. The 2012 report is due March 1, 2013.
- 4.9 **Hagen Exception.** No submittals required unless transfer of a portion of the Bighorn property to the Hagen family is desired, at which point a County subdivision process is required.
- 4.10 **Financial Security.** A Letter of Credit in the amount of \$118,000 was submitted for the majority of the pipeline work, and a second letter of credit in the amount of \$45,000 was submitted for the River Crossing work. The Board of County Commissioners released the \$118,000 letter of credit on December 21, 2010 following completion of the majority of construction. The \$45,000 letter of credit will remain in effect until completion of the five-year monitoring period required by the Corps of Engineers.
- 4.11 **Compliance with Other Permits.** All required permits related to the project have been obtained and work was done in accordance with those permits. Some permits require on-going monitoring until full acceptance of the permit terms.
- 4.12 **Cost Reimbursement Fund and Application Review Costs.** The \$200,000 fund was established in September 2009, and pre-approval review costs were paid in November 2009. County expenses related to the permit are invoiced monthly to Nestle, in accordance with the approved procedures. As of March 31, 2012, the fund balance was \$172,479.69.
- 4.13 **Bighorn Springs Land Management Plan.** Plan approved May 5, 2010, and includes sections on habitat protection, conservation easement, grazing, wetlands protection and weed management, with activity on the parcel documented in each year's annual report.
- Due to scheduling challenges with the potential grazers, no grazing occurred on Bighorn Springs in 2011. A livestock watering alleyway was constructed in 2011 to control livestock movements for water access, and seeding of the upland area with cool season grasses.
 - The annual report includes a grazing plan for 2012, which specifies short-term grazing with a goal of stimulating vegetation growth and range productivity.
- 4.14 **Ruby Mountain Land Management Plan.** Plan approved May 5, 2010, and includes sections on habitat protection, conservation easement, wetlands protection, and weed management. Grazing is not permitted on this property. A formal 2011

report was not submitted; however the annual report discusses cleanup activities on site, on-going revegetation, and the hatchery restoration planning process.

4.15 Hatchery Restoration. Conceptual Plan approved April 26, 2010, outlining objectives, stakeholders, schedule, and long-term site management.

- An initial draft of the reclamation plan was prepared in June 2011, and finalized for submittal to the US Army Corps of Engineers 404 Permit application in January 2012. A 5-year Nationwide Permit was issued by USACE on February 1, and is valid until March 18, 2017.
- In advance of starting of construction, Nestle noted that surface flow measurements required under other permit conditions would be disrupted during hatchery reclamation. To prepare for this and ensure continued compliance with permit conditions, Nestle performed correlations between surface flow and groundwater level data, and developed a formula to estimate surface flow data using groundwater levels during the period of construction, and as the reclaimed wetlands were developed. The correlation data and formulas were reviewed by County consultants and approved prior to construction notice to proceed.
- A contractor was selected, and construction commenced in April 2012, and is expected to be completed in June 2012. 1041 Permit condition 4.15.c requires posting of a letter of credit adequate for the costs of the reclamation project. Due to the estimated cost of the reconstruction, Nestle proposed and the County agreed that the NWNA Reimbursement fund would be adequate as the financial surety for the project.

4.16 Wetlands and Groundwater Monitoring Plan. Plan approved May 5, 2010, and includes requirements for daily measuring of surface and groundwater characteristics, monthly reporting of water flow measurements, a quarterly report of all required parameters, and a compilation into the annual report.

- Exhibit 2 of the annual report is the Surface and Groundwater Monitoring Report, which presents surface flow data, ground water level and quality data, Arkansas River flows, weather data, and irrigation information. Because only a limited amount of data (three years) has been gathered and a number of variables related to groundwater levels and spring discharge, it is difficult to discern if there are any impacts related to project operations. For example, looking at Figure 5.5, the minimum level in BVMW-10 is lower than in the years preceding pumping; however the highest groundwater level was in Fall 2011, while pumping operations were occurring. The SWGWMMP reports will continue to be monitored to determine if any trends or impacts attributable to pumping can be detected.
- Exhibit 3 of the annual report is the Bighorn Springs Wetlands Monitoring Report, which presents measurements of wetland vegetation. Since only two years of vegetation data has been developed, it is not possible to determine from the vegetation information whether project pumping operations are having any impacts on Bighorn property wetlands.

4.17 Endowment and Annual Programmatic Contributions. The endowment was established in the spring of 2010, and the project annual report includes a summary of programmatic contributions each year. The 2011 annual report provides a detailed breakdown of \$12,317 disbursed to BVCEAF and \$12,653 disbursed to SOSS from the Foundation funds. The report also details an additional \$33,101 in cash contributions and 338 cases of bottled water to various local organizations.

- 4.18 **Right-of-Way.** CR 300 right-of-way was dedicated to Chaffee County through Bighorn Springs and Ruby Mountain parcels as required. The right-of-way deeds include restrictions requiring coordination of weed management and dust control activities, and for major road construction. The condition is fully satisfied. The County continues to coordinate with Nestle for dust control, and continue to discuss ideas for road improvements in the area.
- 4.19 **Wildlife Friendly Fencing.** Fencing has been constructed as required along the pipeline alignment, and on the Bighorn Springs and Ruby Mountain parcels. The condition is fully satisfied.
- 4.20 **River Wade Fishing.** On June 1, 2010, the Board of County Commissioners accepted the terms of this condition as fulfilled; the executed easement documents were recorded June 3, 2011. The condition is fully satisfied.
- 4.21 **Fishing Access.** On June 1, 2010, the Board of County Commissioners accepted the terms of this condition as fulfilled; the executed easement documents were recorded June 3, 2011. The condition is fully satisfied.
- 4.22 **Pipeline Requirements.** All required road permits, ditch agreements, easement and right-of-way dedications and licenses pertinent to the pipelines have been submitted. The condition is fully satisfied.
- 4.23 **Buildings and Structures.** All required permits related to the project have been obtained and construction has been completed in accordance with permit conditions. The condition is fully satisfied.
- 4.24 **Construction Conditions.** Permit conditions were included in construction management plans approved prior to construction, and construction was completed in conformance with those plans. The condition is fully satisfied.
- 4.25 **Local Construction Jobs.** Project construction was primarily completed by local contractors; documentation was provided as part of a July 23, 2010 memo and in the annual reports. The condition is fully satisfied. The 2011 annual report itemizes continued project spending. Local materials and services are used when available; however Nestlé's primary legal and water monitoring firms are located outside of Chaffee County, and accounts for a significant portion of the on-going project expense.
- 4.26 **Local Drivers.** A minimum of 50% of local drivers, and efforts to maximize use of local drivers is required. The 2011 annual report indicates 7 of the 12 drivers are Chaffee County residents, and 59% of the round trip water deliveries were made by Chaffee County drivers. This condition will continue to be monitored each year as part of the project annual report.
- 4.27 **Project Impacts Related to Well Pumping.** No submittals required.
- 4.28 **Augmentation Water Source Restrictions.** This condition is monitored as part of the project annual and other reports. The 2011 annual report indicates compliance with this condition.
- 4.29 **Limitation on Project Depletions.** This condition is monitored as part of the project annual and other reports. The 2011 annual report indicates compliance with this condition.
- 4.30 **Approved SWSP or Augmentation Plan Required.** The project is operating under a temporary SWSP until such time as a plan for augmentation has been approved. The temporary SWSP was initially approved in 2010 for the period of March

22, 2010 through March 21, 2011, reapproved April 15, 2011 for the period March 22, 2011 through March 21, 2012, and on January 15, 2012 an application for renewal was submitted to the state. Nestle prepared an application for a plan for augmentation and submitted it to County water counsel for review and comment; the application has not yet been filed with the water court.

4.31 Augmentation Water Delivery Restrictions. This condition is monitored as part of the project annual report. The 2011 annual report indicates compliance with this condition.

4.32 Mitigation of Effects of Increased Demand on Augmentation Water Source. The monthly and annual reports have been submitted as required and show compliance with the permit conditions.

4.33 Pumping Well Operational Restrictions. Technical Revision #8 allowed RMBH-3 to be the primary production well rather than RMBH-2. Starting on April 30, 2011, RMBH-3 began operations as the primary production well. Diversions from both wells are monitored on an ongoing basis as part of the monthly flow reporting and annual report. In 2011, 116.89 acre-feet were pumped, with 46.16 acre-feet transported to Denver for bottling and the remainder returned to the Arkansas River. The data included in the report shows compliance with the pumping restrictions with the exception of a few, isolated momentary spikes in which the 200 gpm maximum was exceeded for a short time, but resulted in a daily pumping volume below the allowed maximum.

4.34 Construction of Pumping Wells. This condition requires that RMBH-3 be completed in a similar manner as RMBH-2. Technical Revision #8 allowed minor adjustments to the well construction. The construction conditions are fully satisfied; the operational restriction related to water levels in the wells continue to be monitored on a monthly, quarterly and annual basis as part of the surface and groundwater monitoring and mitigation plan.

4.35 Surface Water Flow Measurements. This condition requires the applicant to record daily flow measurements of the upper flume and lower weir and report data to the County Staff. Monthly reports are due on the 15th of the following month, and have been submitted as required. As part of the Hatchery restoration planning, there has been discussion regarding removal of the upper flume and replacement of that measuring point through a series of other devices. Staff believes this could be accomplished with an amendment to the Surface and Groundwater Monitoring and Mitigation Plan, and by a Technical Revision to the permit.

4.36 Suspension of Pumping in the Event of Adverse Effects on Reconstructed Wetlands. No submittals required. The wetlands have not yet been reconstructed; following the hatchery restoration monitoring of the wetlands will occur on a monthly, quarterly and annual basis as part of the surface and groundwater monitoring and mitigation plan, and Ruby Mountain Land Management Plan.

4.37 Inclusion of Reconstructed Wetlands in SWSP or Augmentation Plan. The draft plan for augmentation has been submitted to Chaffee County for review, and includes a request for conditional water rights for restoring the riparian habitat and wetlands at the hatchery.

4.38 Cessation of Diversions Upon Termination of Aurora Lease. The annual report indicates the Aurora lease continues to be in effect and has not been amended.

4.39 **Restrictions on Acquisition of Additional Water Rights in County.** The annual report indicates Nestle has not pursued any water rights in Chaffee County.

4.40 **Water Rights Filing and Administration Costs.** This condition requires Nestle to submit proposed SWSP and Plan for Augmentation to the County at least 30 days prior to their respective filings. The 2010 - 2012 SWSP's, and the draft plan for augmentation were each submitted to Chaffee County prior to filing with the State, in accordance with this condition.

4.41 **Trout Creek Pass Improvements Lobbying.** No submittals required. The annual report indicates Nestle will assist with these efforts when requested by the County. CDOT has included in the STIP construction of passing lanes on Trout Creek Pass for construction in CDOT FY 2014 and 2015.

4.42 **Limits on Truck Traffic.** The annual report shows a total of 2092 truck trips in 2011 (average of 5.7 per day), with a maximum of 16 round trip deliveries in any given day and no exceedance of the maximum of two per hour in the summer season restricted period, all in accordance with the permit condition.

4.43 **Emission Standards.** Documentation of trucks used which meet emission requirements is included in the annual report.

4.44 **No Idling During Loading.** The annual report indicates idling only occurred on a limited basis during engine start up in cold weather conditions.

Additional Conditions imposed by Resolution 2010-20 (Permit Amendment #1):

4.45 **Emergency Access.** Requires construction of an emergency access on the east bank of the river. Access has been constructed in substantial conformance with approved plans. The condition is fully satisfied.

4.46 **Revegetation.** Revegetation plan shall meet the requirements of the County and DOW. Revegetation will be monitored as part of the Weed Management Plan as well as the USACE permit monitoring plan.

4.47 **Construction Plans.** Update construction management plan to include terms of the USACE permit. The plan was updated as required and construction was completed in conformance with those plans. The condition is fully satisfied.

4.48 **Army Corps of Engineers.** Prior to beginning any construction other than staging, receive Corps permit approval. USACE permit approved March 2, 2010. The condition is fully satisfied; however the USACE permit includes a 5-year monitoring requirement.

4.49 **Town Water Pipeline.** Required easements have been granted and recorded. The condition is fully satisfied.

Compliance with Permit Conditions. As detailed above, Nestle is in compliance with all permit terms and conditions.

Report Submittal Requirements: Nestle and staff have agreed to the following report submittal dates:

- Section 4.8, calendar year report, due March 1. The annual report will include all project related activities for the calendar year, with the exception that the annual water reports follow the water year. For example, the 2011 annual report was submitted on March 1, 2012 and included all activities (truck deliveries, local employment, monitoring and restoration activities, conservation and fishing

easements, endowment, etc), for January 1 through December 31, 2011, while water reporting (pumping, surface flow, Aurora operations) was for the water year of November 1, 2010 through October 31, 2011.

- Section 4.13, Bighorn Springs Land Management Plan. The plan requires submittal of an annual grazing plan by March 1 (as part of project annual report), and an annual grazing report by November 1 of each year.
- Section 4.16, Surface and Groundwater Monitoring and Mitigation Plan. The plan requires documentation of changing conditions of the wetlands and ditch diversion records as part of the annual report, quarterly reporting of groundwater and climate information (due within 45 days following the end of the calendar quarter), and monthly reporting of well pumping and surface flows (see 4.33 and 4.35 below).
- Section 4.32b, Aurora operations. These reports shall be submitted by the 15th of every month for the month preceding the previous month, i.e. March 2010 data is reported by May 15, 2010.
- Sections 4.33 and 4.35, monthly well pumping and surface flow reporting. These reports shall be submitted by the 15th of every month for the prior month data, i.e. March 2010 data is reported by April 15, 2010.
- Under the deed restrictions for the right-of-way for CR 300 adjacent to the Ruby Mountain property, Nestle is responsible for dust control application and weed control for that section of road, and shall inform the County of plans for weed control and dust suppression by March 1.
- Under the deed restrictions for the right-of-way for CR 300 adjacent to the Bighorn property, Nestle is responsible for weed control for that section of road, and shall inform the County of plans for weed control by March 1 each year.
- Under the right-of-way deed restrictions, Chaffee County is to notify and give Nestle opportunity to comment on any construction plans on CR 300 near the Nestle property.

Construction Work / Documentation remaining for on-going compliance with conditions

- Load station site work related to TR#9 (TR #9 has been approved; construction of part of the parking area is future proposal and includes conditions)
- Load station site work related to TR #10 (TR #10 was submitted April 16, 2012, and is being evaluated by staff). If approved, TR#10 would replace the requirements included in TR #9.
- Ruby Mountain property. Some remaining site work including grading, fencing, and revegetation, will be on-going and coordinated with hatchery restoration work. Remaining site work is secured by the cost reimbursement fund.
- Bighorn property access location if Hagen parcel created. The approved site plan shows a relocation of the access road to the southeast property corner, to share with the potential Hagen parcel. The road has not been relocated; the existing road is preferable as it is shorter and reduces land disturbance. The access will be reevaluated if / when the Hagen exclusion parcel progresses.
- USACE Permit 5 years of review (river crossing)
- Release of State of Colorado Stormwater discharge permits.
- Weed mitigation and revegetation for the pipeline route, Ruby Mountain, and Bighorn Springs parcels.
- Hatchery Restoration, Hatchery restoration USACE permit

Project Letters of Credit and Security:

- Citibank, dated January 15, 2010; \$118,000; released December 21, 2010.
- Collegiate Peaks Bank, dated February 18, 2010, \$45,000; specifically for River Crossing portion of pipeline on Moltz, Chaffee County, and Gunsmoke property. The letter of credit continues to be in effect.
- Cost Reimbursement Fund is available to cover remaining costs for re-vegetation if necessary.

I hope this summary is of assistance in responding to inquiries by members of the public or other interested parties regarding the Nestle project.

Please feel free to contact me with any questions or comments.

Attachment 1 – Technical Revisions and Permit Amendments

Permit Amendments:

- Permit Amendment #1 was approved February 22, 2010 by Resolution 2010-20, to change the method of River Crossing.

Technical Revisions (TR):

- TR #1 was approved November 3, 2009, related to changes at the load station, to add an office space. Construction has been completed in accordance with approved TR #1.
- TR #2 was approved February 23, 2010 to adjust the alignment of portions of the pipeline. Construction has been completed in accordance with approved TR #2.
- TR #3 was approved March 10, 2010 to adjust the alignment of the pipeline within the Gunsmoke property. Construction has been completed in accordance with approved TR #3.
- TR #4 was approved April 5, 2010 to add a discharge line to dispose of excess spring water. TR #4 was superseded by TR #6.
- TR #5 was approved April 23, 2010 to modify the method of road crossing for a cut in CR 301. Construction has been completed in accordance with approved TR #5.
- TR #6 was approved June 9, 2010 to change the location of the excess spring water discharge line point of discharge. Revision to TR #6 approved June 14, 2010. Construction has been completed in accordance with approved TR #6.
- TR #7 was approved June 23, 2010 to change the operational truck – tanker combination from a 400 hp, 6500 gallon combination to a 500 hp, 8200 gallon combination. Operations have used both the original and the TR #7 approved truck – tanker combinations.
- TR #8 was approved August 18, 2010 to modify the dimensions of the RMBH-3 pump house, modifications of the well construction for RMBH-3, and to allow RMBH-3 to be the primary production well. Construction has been completed in accordance with approved TR #8, and RMBH-3 operated as the primary production well for most of 2011.
- TR #9 was approved September 13, 2010 to modify the approved Load Station site plan related to on-site truck and tanker parking. TR-9 includes conditions for construction of the future parking area. Construction related to TR #9 has not yet been completed.
- TR #10 was submitted on April 16, 2012 to modify the approved Load Station site plan related to on-site truck and tanker parking from what was initially approved as part of TR #9. Staff is currently evaluating the request.