



**MEMORANDUM**

**Date:** April 12, 2013  
**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 2012 Annual Report Review & Project and Condition Status Summary**

**Background:** The Board of County Commissioners granted approval of a 1041 Permit for the Nestle Waters North America (NwNA) 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 2012 annual report, compliance with County permit requirements, and identifies items which require on-going monitoring. NwNA 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 April 18, 2012, included detailed summaries of property acquisitions, easements, permits, ditch agreements, Permit Technical Revisions and Amendments, 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.** Ten Technical Revisions and one Permit Amendment have been submitted and approved since the initial permit was

approved, mostly related to construction, and have been summarized in prior reports. In 2012, one Technical Revision was requested and approved, summarized below:

- TR #10 was approved on April 19, 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. Construction was completed in accordance with approved TR-10.

The project was constructed and has been operating in accordance with the terms of the approved permit amendments and revisions, except as noted below:

- TR #9 was approved September 13, 2010 to modify the approved Load Station site plan related to on-site truck and tanker parking; and includes conditions. Construction related to TR #9 has not yet commenced.

4.3 **Dispute Resolution.** No disputes between County and NWNA 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 NWNA desires to transfer the permit to another entity; NWNA 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 - 2012 reports were each submitted as required. The 2013 report is due March 1, 2014.

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. The Annual Report and Grazing Management Plan indicate the portion of the property covered by the Hagen exception is being managed in the same manner as the remainder of the Bighorn Springs property.

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 release of the river crossing permit by the Corps of Engineers.

4.11 **Compliance with Other Permits.** All required local, state and federal permits related to the project have been obtained and work was done in accordance with those permits. Some permits require on-going monitoring.

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 NWNA, in accordance with the approved procedures. As of March 31, 2013, the fund balance was \$171,294.37.

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 lower than normal precipitation in 2011 and 2012, grasses seeded in 2011 have not grown, so vegetation has decreased since 2010.
- The annual report includes a grazing plan for 2013, which specifies short-term grazing with a goal of stimulating vegetation growth and range productivity. The report indicates the parcel may have been overgrazed in Fall 2012, and due to low precipitation, the parcel may be rested in 2013.

**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 2012 report was not submitted; however the annual report discusses hatchery restoration.

**4.15 Hatchery Restoration.** Conceptual Plan approved April 26, 2010, outlining objectives, stakeholders, schedule, and long-term site management. Construction commenced in April 2012, and was substantially completed in July 2012. NWNA anticipates closure of the USACE Nationwide 27 Stream and Wetlands Restoration Permit for the project in 2013. The annual report indicates that NWNA is exploring options for permanent conservation of the Bighorn and Ruby Mountain properties since restoration has been completed.

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

- During hatchery reconstruction, flows through the Ruby Mountain Weir were disrupted, so flows were estimated using a correlation with data from nearby monitoring wells. The correlation data and formulas were reviewed by County consultants and approved prior to construction notice to proceed. Weir flows were reported as both correlated and measured flows through September of 2012; since then only the measured flows have been reported. In general, the flows calculated using the correlation factor were lower than those measured at the weir. Since the hatchery reconstruction has changed the flow patterns, and is capturing some flows that may have previously not passed through the weir, the data will be monitored over the next several years to observe what impacts may have occurred to spring flows as a result of both the hatchery reconstruction and the project operations.
- 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. Although only a limited amount of data (four years) has been gathered and a number of variables are related to groundwater levels and spring discharge, it does not appear that there have been any impacts related to project operations. The data 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. Based on the available data, it does not appear that the project has had any impact on discharge of the Bighorn Springs.

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 2012 annual report provides a detailed breakdown of \$12,972 disbursed to BVCEAF and \$13,272 disbursed to SOSS from the Foundation funds. The report also details an additional \$10,308 in cash contributions and 475 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 condition is fully satisfied. The right-of-way deeds include restrictions requiring coordination of weed management and dust control activities, and for major road construction. The County continues to coordinate with NWNA for dust control, and 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 2012 annual report itemizes continued project spending. Local materials and services are used when available; however NWNA'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 2012 annual report indicates 10 of the 18 drivers are Chaffee County residents, and 60% 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 2012 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 2012 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 March 2010 - March 2011; reapproved in April 2011 for March 2011 - March 2012 and in May 2012 for March 2012- March 2013; and on February 7, 2013, an application for renewal was submitted to the state for the period of March 2013 – March 2014. In 2011, NWNA 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 2012 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 indicate 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 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 2012, 164.45 acre-feet were pumped, with 80.51 acre-feet transported to Denver for bottling and the remainder returned to the Arkansas River. The average pumping rates of 13.71 acre-feet per month, 0.46 acre-feet per day and 103.4 gallons per minute are less than the maximums established by the permit. The report discusses a single instance in July in which a damaged sensor increased the pumping rate to greater than the rate of augmentation release to the river (but less than the permit maximums); however because approximately 40 percent of the water pumped was returned to the river, the net depletion from pumping was less than the volume returned by the combination of augmentation releases and release of pumped water.

**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 and reported 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 15<sup>th</sup> of the following month, and have been submitted as required. As part of the Hatchery restoration planning, there was 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 wetland reconstruction has been completed; 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 submitted to Chaffee County in 2011 included a request for conditional water rights for restoring the riparian habitat and wetlands at the hatchery. The 2012 annual report indicates that the restoration of the hatchery reduced water surface area and consumptive use, and therefore does not anticipate the need for augmentation for the restored habitat.

**4.38 Cessation of Diversions Upon Termination of Aurora Lease.** 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 NWNA has not pursued any water rights in Chaffee County.

**4.40 Water Rights Filing and Administration Costs.** This condition requires NWNA to submit proposed SWSP and Plan for Augmentation to the County at least 30 days prior to their respective filings. The 2010 - 2013 SWSP's, and the draft plan for augmentation were each submitted to the 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 NWNA 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 3532 truck trips in 2012 (average of 9.7 per day), with a maximum of 19 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 in compliance with this condition.

**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 in compliance with this condition.

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. DOW submitted a letter dated August 30, 2010, indicating satisfaction with the work done. The condition is fully satisfied.

**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.** USACE permit approved March 2, 2010. USACE submitted a letter dated September 25, 2012 stating that the terms and conditions of the permit have been fulfilled. The condition is fully satisfied.

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

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

**Report Submittal Requirements:** NWNA 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 and Bighorn properties, NWNA is responsible for weed control for those sections of road and for dust control along the Ruby Mountain section of road; and shall inform the County of plans for weed control and dust suppression by March 1 of each year.
- Under the right-of-way deed restrictions, Chaffee County is to notify and give NWNA opportunity to comment on any construction plans on CR 300 near the NWNA property.

*note:  
approved  
water year.  
Report is  
Jan-Dec*

**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).
- Ruby Mountain property. Some remaining site work including grading, fencing, and revegetation, will be on-going and coordinated with on-going 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.

- Weed mitigation and revegetation for the pipeline route, Ruby Mountain, and Bighorn Springs parcels.
- Hatchery Restoration: USACE permit, NWNA anticipates release in 2013; ongoing monitoring of revegetation.

**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 or other restoration if necessary.

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

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