




**MEMORANDUM**

**Date:** April 4, 2014  
**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 2013 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. Resolution 2013-35 approved a permit amendment that modified nine of the original permit conditions.

**Purpose:** This memorandum summarizes the 2013 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.

Several Permit conditions include timelines requiring an action within either 30 or 60 days of the permit effective date, and other conditions required completion either prior to construction or prior to operation of the project. Those conditions 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 12, 2013, 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 summarizes the requirements and status of each condition. Note that for several conditions, specifically those related to water, information is reported in monthly, quarterly, and/or annual reports. Review the permit resolutions for the complete condition provisions.

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

4.2 **Technical Revisions or Permit Amendments.** Ten Technical Revisions and two Permit Amendments have been submitted and approved since the initial permit was approved, and have been summarized in prior reports. In 2013, one Permit Amendment was requested and approved:

- PA #2 was approved on October 8, 2013 to change the augmentation water source

from a lease with the City of Aurora to inclusion in the Upper Arkansas Water Conservancy District (UAWCD) augmentation plan. This resolution amended several conditions; however since UAWCD augmentation was not used in 2013, Conditions 4.28-4.40 in this report refer to the original permit.

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 with conditions in September 2010 to modify the Load Station site plan related to on-site truck and tanker parking. Construction has not occurred.

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.** 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, and the 2009 - 2013 reports were each submitted as required. The 2014 report is due March 1, 2015.

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 for \$118,000 secured the majority of the pipeline work and was released in December 2010 following completion of the majority of construction. A letter of credit for \$45,000 secured the River Crossing work and remains in effect; the river crossing has been completed and the USACE permit has been released, so the letter of credit could also be released. *May 29 2014*

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 permit terms. 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 December 31, 2013, the fund balance was \$163,324.06.

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- 2013, grasses seeded in 2011 have not grown, so vegetation has decreased since 2010.

- The annual report includes a grazing plan for 2014, which specifies short-term grazing with a goal of stimulating vegetation growth and range productivity. Grazing will be in August, subject to adequate moisture and vegetative cover.
- NWNA is discussing a permanent conservation easement for the Bighorn and Ruby Mountain properties with the Wild Sheep Foundation.

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 2013 report was not submitted; however the annual report discusses hatchery restoration.

4.15 **Hatchery Restoration.** Construction was substantially completed in July 2012. The USACE Nationwide 27 Stream and Wetlands Restoration Permit for the project was released by USACE by letter dated February 7, 2014. Since restoration has been completed, NWNA is discussing a permanent conservation easement for the Bighorn and Ruby Mountain properties with the Wild Sheep Foundation.

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.

- The hatchery reconstruction changed flow patterns in the area of the Ruby Mountain Spring site, 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 (five 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 measureable impacts specifically tied to project operations. The data will continue to be monitored to determine if any trends or impacts attributable to pumping can be detected.
- Figure 5.5 of the monitoring report is a hydrograph showing the groundwater elevation of several monitoring wells. Groundwater levels have decreased by up to two feet since project operations have commenced in 2010; however that has coincided with seasons of generally lower snowpack and reduced irrigation. This will continue to be monitored.
- 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 2013 annual report provides a detailed breakdown of \$12,979 disbursed to BVCEAF and \$15,932 disbursed to SOSS from the Foundation funds. The report also details an additional \$14,125 in cash contributions and 916 cases of bottled water to various local organizations and events.

4.18 **Right-of-Way.** CR 300 right-of-way was dedicated to Chaffee County 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 consider ideas for road improvements in the area.

4.19 **Wildlife Friendly Fencing.** Fencing has been constructed as required; the condition is fully satisfied.

4.20 **River Wade Fishing.** The easement documents have been executed and recorded; the condition is fully satisfied.

4.21 **Fishing Access.** The easement documents have been executed and recorded; the condition is fully satisfied.

4.22 **Pipeline Requirements.** All permits, easements and licenses were obtained as required before construction was completed; the condition is fully satisfied.

4.23 **Buildings and Structures.** All construction has been completed in accordance with permit conditions; the condition is fully satisfied.

4.24 **Construction Conditions.** All construction has been completed in accordance with permit conditions; the condition is fully satisfied.

4.25 **Local Construction Jobs.** Project construction is complete; the condition is fully satisfied. The 2013 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.

4.26 **Local Drivers.** A minimum of 50% of local drivers, and efforts to maximize use of local drivers is required. The 2013 annual report indicates 9 of the 19 drivers are Chaffee County residents; however 60% of the round trip water deliveries were made by local drivers. This condition will continue to be monitored each year as part of the annual report.

4.27 **Project Impacts Related to Well Pumping.** No submittals required.

4.28 **Augmentation Water Source Restrictions<sup>1</sup>.** The project was augmented only through the Aurora lease in 2013, in compliance with this condition.

4.29 **Limitation on Project Depletions.** Augmentation releases from Aurora's Lake County reservoirs match the project depletions in time and place, in compliance with this condition.

4.30 **Approved SWSP or Augmentation Plan Required<sup>1</sup>.** The project is operating under a temporary SWSP until a plan for augmentation has been approved. The temporary SWSP was initially approved in 2010 for March 2010 - March 2011; and reapproved each subsequent spring. An application for renewal was submitted to the state for the period of March 2014 - March 2015. In 2011, NWNA prepared an application for a plan for augmentation; the application was not filed with the water court. In January 2014 UAWCD filed an augmentation application to include NWNA in its augmentation plan; NWNA has not specified when UAWCD augmentation will begin.

4.31 **Augmentation Water Delivery Restrictions<sup>1</sup>.** All augmentation water was

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<sup>1</sup> Conditions 4.28, 4.29, 4.30, 4.31, 4.32, 4.38, and 4.40 were amended with Permit Amendment #2 to allow for augmentation by UAWCD. Since UAWCD augmentation was not used in 2013, these conditions reflect the original permit terms, using the lease with Aurora as the augmentation source.

released to the Arkansas River upstream of the project, in compliance with this condition.

**4.32 Mitigation of Effects of Increased Demand on Augmentation Water Source<sup>1</sup>.** The monthly and annual reports have been submitted as required and indicate compliance with the permit conditions.

**4.33 Pumping Well Operational Restrictions<sup>2</sup>.** RMBH-3 has been the primary well since April 30, 2011. Diversions from RMBH-3 and RMBH-2 are monitored on an ongoing basis as part of the monthly flow reporting and annual report. In 2013, 155.99 acre-feet were pumped, with 82.76 acre-feet transported to Denver for bottling and the remainder returned to the Arkansas River. The average pumping rates of 13.00 acre-feet per month, 0.43 acre-feet per day and maximum pumping rate of 100 gallons per minute are less than the maximums established by the permit.

**4.34 Construction of Pumping Wells<sup>2</sup>.** RMBH-3 was completed in a similar manner as RMBH-2; 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.

**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 2013 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<sup>1</sup>.** 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<sup>1</sup>.** NWNA is required to submit proposed SWSP and Plan for Augmentation to the County at least 30 days prior to their filings. The 2010 - 2014 SWSP's, and the UAWCD application to include the NWNA wells were each submitted to the County for review, 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 2015.

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<sup>2</sup> Technical Revision #8 approved minor revisions to Conditions 4.33 and 4.34 regarding RMBH-3 construction, and allowing RMBH-3 to be the primary well. These changes were formalized as part of Permit Amendment #2 with Resolution 2013-35. The amended conditions are reflected here.

**4.42 Limits on Truck Traffic.** The annual report shows a total of 3,476 truck trips in 2013 (average of 9.5 per day), with a maximum of 20 round trip deliveries in any given day and a maximum of one 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 during engine start up in cold weather conditions, in compliance with this condition.

Additional Conditions imposed by Resolution 2010-20 (Permit Amendment #1): These five conditions were all related to construction of the pipeline under the Arkansas River and have all been fully satisfied.

**4.45 Emergency Access.**

**4.46 Revegetation.**

**4.47 Construction Plans.**

**4.48 Army Corps of Engineers.**

**4.49 Town Water Pipeline.**

**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, annual report, due March 1. The annual report will include all project related activities for the calendar year, with the exception that some water reports follow the water year.
- 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 prior month, i.e. March data is reported by May 15.
- 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 data is reported by April 15.
- 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.

**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 / Hatchery Restoration. Some remaining site work including grading, fencing, and revegetation, will be on-going. Remaining site work is secured by the cost reimbursement fund.
  - Narrative indicates USACE permit was released by letter dated February 7, 2014, a copy of the letter has not been provided. \* rec'd 5/15/14
- 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.

**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. The work has been completed, so the LOC could be released if requested. ✓ released 5/20/14
- 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.