



MEMORANDUM

Date: May 10, 2017
To: Board of County Commissioners
From: Planning Staff, Jon Roorda & Christie Barton
Subject: Nestle Waters North America (Nwana)
2014, 2015 & 2016 Annual Report Review & Project Status

Purpose: This memorandum summarizes the status of the permit since the April 4, 2014 memorandum. This review includes compliance with County permits and identifies items that require on-going monitoring.

Background: The Board of County Commissioners granted approval of a 1041 Permit and Special Land Use Permit for the Nestle Waters North America (Nwana) project for spring water development, a loading station and a pipeline across the Arkansas River. Two (2) permit amendments have been approved since the original approval.

- Resolutions 2009-42 and 2009-43, respectively, included 44 conditions
- Resolutions 2010-20 and 2010-21, respectively, First Amendment, to allow an alternative means to construct a pipeline across the Arkansas River, and to allow a second pipeline for the Town of Buena Vista
- Resolution 2013-35, Second Amendment, allows the use of Upper Arkansas Water Conservancy District water augmentation instead of the City of Aurora water lease.

1041 Permit Conditions:

4.1 – Scope of Permit. No submittals required.

4.2 - Technical Revisions or Permit Amendments. Twelve (12) Technical Revisions have been submitted since the original approval in 2009. Eleven (11) Technical Revisions have been approved and one Technical Revision (Technical Revision #12) is on hold.

Technical Revision #11 was approved on January 26, 2016, which allows the two wells (RMBH-2 and RMBH-3) to be operated simultaneously as long as the maximum pumping rate or daily, monthly or annual volume restrictions are not exceeded. Internal sampling and testing protocols require 30 days of well operation before the produced water can be bottled. Don Reimer and W. W. Wheeler were consultants on the review. Suggested change to Section 4.33 upon the next Permit Amendment:

“4.33 Pumping Well Operational Restrictions. The Permittee may operate a maximum of two production wells at the Ruby Mountain site, known as RMBH-3 and RMBH-2. The well designated as RBMH-1 is an existing test borehole and shall not be used for production. Permittee ~~shall not~~ may operate RMBH-3 and RMBH-2 simultaneously. ~~RBMH-3 will be the principal production well and RMBH-2 will be a back-up well in case RBMH-3 fails or is temporarily unavailable (i.e., due to maintenance);~~ however total diversions for the project from either RMBH-3 or RMBH-2 will shall not exceed 200 gallons per minute, nor more than one (1) acre foot per day, or 16.6 acre feet in any one month. (Updated to reflect

Technical Revision #8, approved August 18, 2010, and Technical Revision #11, approved January 26, 2016).”

Technical Revision #12 was submitted for review on December 3, 2014. This request is to:

1. Reduce the frequency of it surface water and groundwater monitoring data (this change would not change the frequency of the Nwana measurements)
2. Eliminate reporting from one of the ten monitoring wells due to overlap of information from nearby monitoring wells, and
3. Replacement of the surface flow measurements from surface structures (flumes and a weir) be replaced by measurements taken from nearby monitoring wells.

This request for a technical revision is to eliminate reliance on erratic data from surface structures subject to frequent clogging by beaver activity and erosion. Chaffee County’s consultant W. W. Wheeler disagreed with the majority of the proposed changes. Consultant Don Reimer talked with Mike Allen, and they agreed that W. W. Wheeler and Nestlé’s hydrological consultant Papadopolous determine if there is a middle ground. This Technical Review is on hold until Nwana provides direction on how to proceed.

In 2016, two beavers were trapped and relocated from the reconstructed channel/pond system in the Ruby Mountain Management Area to reduce the water levels that caused erosion on the berm adjacent to the river. This relates to Permit Conditions 4.2, 4.41 and 4.35, maintaining existing natural conditions and keeping the fish hatchery in production in the Ruby Mountain Management Area.

4.3 – Dispute Resolution. No disputes between Chaffee County and Nwana have occurred, no submittals are required.

4.4 - Term of Permit. The permit expires October 22, 2019, unless extended by the Permit Authority.

4.5 – Commencement of Project. A Notice to Proceed was issued on July 27, 2010 and water transport operations started August 19, 2010. This condition is satisfied.

4.6 – Transfer of Permit. Nwana has not transferred the permit.

4.7 – Permit Violation. No violations have been reported for the project.

4.8 - Annual Reporting. A CD of the 2014 Annual Report, and paper copies of the 2015 and 2016 Annual Reports have been received.

4.9 – Hagen Exception. The property has not been transferred, and the property is grazed according to the Bighorn Springs Grazing Management Plan.

4.10 – Financial Security. Nwana continues to maintain the Reimbursement Fund to cover County costs associated with the administration of the 1041 Permit.

4.11 – Compliance with Other Permits. Colorado Division of Water Resources re-issued well permits #78196-F for RMBH-2 and 78192-F for well RMBH-3 in June 2014 to allow simultaneous pumping of both production wells as allowed in Technical Revision #11.

4.12 – Cost Reimbursement Fund and Application Review Costs. Nwana established the fund in 2009. County expenses related to the permit are invoiced as needed, in accordance with the approved procedures. As of December 31, 2016, the fund balance was \$156,216.76.

4.13 – Bighorn Springs Land Management Plan.

- Nwana is discussing a permanent conservation easement for the Bighorn and Ruby Mountain properties with The Nature Conservancy and the Wild Sheep Foundation.
- The Colorado Mt. College Natural Resources Management department (CMC NRM) prepared the grazing management plan for review by Colorado Parks & Wildlife (CPW) and Natural Resources Conservation Service (NRCS). It was approved in March 2016 with no written comment.
- No grazing occurred in 2016 due to lower than normal precipitation in July.
- Vegetative growth is increasing in coverage and diversity of species.

4.14 - Ruby Mountain Land Management Plan.

- NWNA is discussing a permanent conservation easement for the Bighorn and Ruby Mountain properties with The Nature Conservancy, the Wild Sheep Foundation and others.
- Removal and relocation of two beavers from the reconstructed channel/pond system at Ruby Mountain due to erosion and possible loss of the berm adjacent to the river. This also relates to TR #12, which is a request to amend the monitoring data so it is taken from monitoring wells instead of surface locations.
- Chaffee County conducted dust suppression on County Road 300 in May, 2016 after coordination with NWNA.
- No noxious weeds were found or reported in 2016
- No grazing is allowed on this property.

4.15 – Habitat Reclamation of Old Hatchery Site.

- US Army Corps of Engineers (USACE) released Nationwide 27 Stream & Wetlands Restoration Permit in a letter dated February 7, 2014
- Site inventory of reclaimed habitat with documentation of diversity of species, both vegetative and animal. Received the Annual Monitoring Report with the annual report.

4.16 – Surface & Groundwater Monitoring and Wetlands Monitoring.

- Received 2016 Surface & Groundwater Monitoring (SWGWM) report
 - Flow data collected from the weir and flumes on Ruby Mt. & Bighorn Springs parcels
 - Water level data for the wells in the monitoring well network
 - Water quality data from the approved monitoring locations
 - Local & regional precipitation data
 - Arkansas River flows
 - Irrigation diversions for ditches that flow onto the local aquifer
- The annual report “demonstrates that NWNA’s production pumping is detectable by very slightly reduced flows through the lower weir, and slightly lower water levels in immediately adjacent monitoring wells. Further, the monitoring data reveal no influence of NWNA’s withdrawals on water levels in up-gradient monitoring wells on either the Cogan parcel or the Bighorn Springs parcel, thus demonstrating that NWNA’s spring water production has only the predicted localized effect on aquifer water levels.”
- Water quality reports show that the spring water quality remains high.
 - 2016 Bighorn Springs Wetlands Monitoring (BHSWM) report
 - From year to year, the percentage of land cover within the same transect is quite variable. In several plots, the vegetative cover appears to coincide with moisture in any given year. A decrease of 8.9% in vegetative cover was observed in 2016 from the 2010-2015 average cover.
 - No long term trends have been established. Additional sampling events per year will be necessary to reliably establish any trends in vegetation distribution and density throughout the site. Sampling will continue to be done.
 - Maps showing surface and monitoring locations are in the binder.

4.17 – Education Endowment and Annual Programmatic Contributions. NWNA is an active corporate citizen and supports education, recycling, conservation, emergency response, community health and other community-specific events and needs. Specific funds disbursed are listed on pages 16-20 of 27 in the binder. This includes grants and scholarships to Buena and Salida School, non-profits and sporting events totaling \$44,547.65 and donations of 491 cases of water.

4.18 – Right of Way. NWNA granted Chaffee County a right of way for County Road 300 on December 18, 2009, which included a deed restriction requiring cooperation for dust

suppression, weed control and construction activities. Dust suppression was applied in 2016 at half the normal rate adjacent to the Bighorn Springs parcel, but not along the Ruby Mountain Springs parcel. No noxious weeds were found. Minor road construction was completed to repair erosion damage due to heavy rains near the lower pond on the Ruby Mountain Springs parcel. NRNA and Chaffee County Road & Bridge have discussed a culvert on CR300, but a date for installation has not been determined.

Browns Canyon National Monument was created in 2016, and it is expected that additional traffic will impact CR 300 as it is the main road into the new monument. Chaffee County has been working with BLM and AHRA to install temporary traffic signals to reduce the potential for accidents.

In 2017, Chaffee County applied for a Federal Lands Access Program (FLAP) grant for road improvements at the narrows portion of CR 300, which did not receive funding. Staff is currently working on submittal of a High Risk Rural Road CDOT grant for road improvements.

4.19 – Wildlife Friendly Fencing. The fencing has been constructed as required; this condition is fully satisfied.

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

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

4.22 – Pipeline Requirements. All permits, easements and licenses were obtained as required before construction began; this condition is fully satisfied.

4.23 – Buildings and Structures. No buildings or structures were constructed in 2016.

4.24 – Construction Conditions Imposed by Special Land Use Permit. No construction or grading occurred in 2016.

4.25 – Local Construction Jobs and Local Purchasing. A summary of the expenditures for local and non-local contractors and suppliers is listed on page 22 of 27. Total contractors and supply expenditures:

Local: \$785,512

Non-local: \$428,889

Taxes paid: \$33,550

4.26 – Local Drivers. Nine of the thirteen drivers hired to transport water to the Denver Bottling Plant were local drivers (Exhibit 5).

4.27 – Project Impacts Related to Well Pumping. Project impacts are based on assumptions at the time of the original approval, and evaluation and quantifications shall be deemed additional permit conditions.

4.28 – Augmentation Water Source Restrictions. NRNA operated wells RMBH-2 and RMBH-3 according to the terms of the augmentation certificates issued by Upper Arkansas Water Conservancy District (UAWCD), Water Decree Case Nos. 92CW84, 94CW5, 94CW41, 94CW42, 96CW17, 03CW55 & 06CW32, and Chaffee County Resolution 2013-35 (that changed the water augmentation supply from the City of Aurora to UAWCD). (Exhibits 6 & 7).

4.29 – Limitation of Project Depletions. Water depletions to the Arkansas River be limited to the net amount (196.0 acre-feet which accounts for transit losses) or replacement water. Augmentation is supplied by UAWCD in monthly reports and in the 2016 Annual Accounting Report Regarding Well Pumping Operations and Augmentation Releases (Exhibit 6).

Total pumped from Ruby Mt. Springs Well: 78.362 acre-feet from RMBH-3

(None from RMBH-2)

Lagged depletions from RMBH-3 & RMBH-2: 78.400 acre-feet

Replacement water released by UAWCD from Twin Lakes: 111.290 acre-feet

Transit Losses to well: 2.181 acre-feet

Water balance for 2016: Credit 30.708 acre-feet

4.30 – Approved Augmentation Plan Required. The change of the source of augmentation water from City of Aurora to the Upper Arkansas Water Conservancy District was completed in 2015. NWNA operated wells RMBH-2 and RMBH-3 according to the terms of the augmentation certificates issued by Upper Arkansas Water Conservancy District (UAWCD), and Water Decree Case Nos. 92CW84, 94CW5, 94CW41, 94CW42, 96CW17, 03CW55 & 06CW32.

4.31 – Augmentation Water Delivery Restrictions. The NWNA depletions must be replaced by augmented water released upstream from Ruby Mountain Springs (see 4.28, 4.29 and 4.30 and Exhibit 6).

4.32 – Accounting and Reporting for Augmentation Water Source. The monthly reports for UAWCD augmenting the depletions have been received by the County, and the summary is included in Exhibit 8.

4.33 – Pumping Well Operational Restrictions. Technical Revision #11, approved 2016, allowed wells RMBH-2 and RMBH-3 to operate simultaneously. Pumping amount is limited to 200 gallons per minute, 1 acre-foot per day and 16.6 acre-feet per month.

4.34 – Construction of Pumping Wells. Wells RMBH-2 and RMBH-3 were constructed in accordance with County approved provisions in Technical Revision #8.

4.35 - Surface Water Flow Measurements. The 2016 Surface Water & Groundwater Monitoring Report (Exhibit 3) has the required surface flow data. The report concludes that:

- Surface water flow on the Ruby Mountain Springs Parcel is predominately controlled by seasonal groundwater. Production pumping from RMBH-3 has a minor, measureable effect on flows at Ruby Mountain Spring.
- Surface water flows at Bighorn Springs are controlled by seasonal groundwater level fluctuations. No detectable well pumping impacts are found on surface water or groundwater levels.
- Request for Technical Review #12 is on hold.

4.36 – Suspension of Pumping – Adverse Effects on Reconstructed Wetlands. The US Army Corps of Engineers (USACE) considered the reconstructed wetlands permit completed and closed out their Nationwide 27 Stream & Wetlands Permit in a letter dated February 7, 2014. Review of well RMBH-3 has a minor, measureable effect on flows at Ruby Mountain Spring and NWNA does not anticipate suspension of activities. NWNA will continue monitoring to evaluate and mitigate any negative effect on the Ruby Mountain Springs and associated wetlands.

4.37 – Inclusion of Reconstructed Wetlands in SWSP or Augmentation Plan. NWNA has not included the reconstructed wetlands augmentation in any Substitute Water Supply Plan (SWSP) as the water surface area and consumptive use has been reduced by 1,150 cubic feet per year. A Substitute Water Supply Plan is not required for reconstructed wetlands.

4.38 - Cessation of Diversions upon Termination of Aurora Lease. – Water augmentation is currently from UAWCD. The Aurora lease diversions have ceased. A period of water augmentation duplication occurred between March 22, 2015 and April 29, 2015.

4.39 – Restrictions on Acquisition of Additional Water Rights in County. NWNA is using UAWCD augmentation water for their depletions. No changes to the lease have occurred and NWNA is not pursuing additional water rights.

4.40 - Water Rights Filing and Administration Costs. NWNA is using UAWCD augmentation and has a 35 year lease. No water court filings are anticipated. NWNA continues to maintain the Chaffee County Reimbursement Account for any changes to the water augmentation plan.

4.41 – Trout Creek Pass Improvements Lobbying. The Colorado Department of Transportation (CDOT) completed construction of the east-bound passing lanes on Trout Creek Pass in 2016. This provides an opportunity for faster moving traffic to safely pass slower moving vehicles, including loaded NWNA transport vehicles. This condition is fully satisfied.

4.42 – Limits on Truck Traffic. The number of trucks is limited to 25 loaded trucks per day and two trucks per hour, with limits for summer (Memorial Day to Labor Day) limited to two loaded

trucks per hour, with an average of one truck per hour during the peak-hours period of each day. NWNA reports they meet these requirements, with a summary in Exhibit 5.

4.43 – Emission Standards. All tanker trucks used for water shipments meet the specifications approved as part of the 1041 application (see Exhibit 5).

4.44 – No Idling During Loading. NWNA states that no idling is allowed during loading. The only idling allowed is during cold weather start-ups.

4.45 – Emergency River Access. NWNA completed construction and revegetation of the emergency river access in 2010. This condition is fully satisfied.

4.46 – River Crossing Revegetation and CDOW Approval. CDOW conducted a final review of the river crossing and provided a letter of approval to the County dated August 30, 2010. The USACE closed General Permit 12 on September 25, 2012. On September 13, 2010, the Chaffee County Weed Department recommended a 50% reduction in the bond. The Letter of Credit (LOC) expired in 2012. This condition is fully satisfied.

4.47 – River Crossing Construction Plans. Pipeline crossing completed and revegetated in 2010 before the March 15, 2010 deadline. This condition is fully satisfied.

4.48 – Army Corps of Engineers. Pipeline crossing completed and revegetated in 2010. CDOW (now CPW) approved construction August 30, 2010 and the USACE closed General Permit 12 on September 25, 2012. This condition is fully satisfied.

4.49 – Town of Buena Vista Water Pipeline. Construction of the Town of Buena Vista pipeline was completed in 2010 and the USACE General Permit 12 was closed on September 25, 2012. Copies of the recorded easement agreements have been submitted to the County for the project. This condition is fully satisfied.

Compliance with Permit Conditions since 2014:

As detailed above, NWNA is in compliance with all permit terms and conditions. Other items of interest:

1. USACE closed Nationwide Stream & Wetlands Permit on February 7, 2014 for hatchery wetlands restoration.
2. The Aurora water lease was replaced with Upper Arkansas Water Conservancy District lease. A water court decree was issued for the water rights.
3. NWNA is discussing a conservation easement with The Nature Conservancy and with the Wild Sheep Foundation.
4. Bighorn Springs Wetlands Monitoring: Additional sampling events per year on the Ruby Mountain and Bighorn Springs parcels will be necessary to reliably establish any trends in vegetation distribution and density throughout the site. Changes to the sampling events would be determined by NWNA and their contractor, Colorado Mountain College Natural Resources Management Program.
5. From TR #11: Suggested change to Section 4.33 upon the next Permit Amendment: “4.33 Pumping Well Operational Restrictions. The Permittee may operate a maximum of two production wells at the Ruby Mountain site, known as RMBH-3 and RMBH-2. The well designated as RMBH-1 is an existing test borehole and shall not be used for production. Permittee ~~shall not~~ may operate RMBH-3 and RMBH-2 simultaneously. ~~RMBH 3 will be the principal production well and RMBH 2 will be a back up well in case RMBH 3 fails or is temporarily unavailable (i.e., due to maintenance);~~ however total diversions for the project from either RMBH 3 or RMBH 2 will shall not exceed 200 gallons per minute, nor more than one (1) acre foot per day, or 16.6 acre feet in any one month. (Updated to reflect Technical Revision #8, approved August 18, 2010, and Technical Revision #11, approved January 26, 2016).”

Report Submittal Requirements:

- 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 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 4.32, Accounting and Reporting for Augmentation Water Source. These reports shall be submitted by the 15th of the month preceding the prior month, i.e. March data is reported by May 15th.
- 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 date, i.e. March data is reported by April 15th.
- 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 for on-going compliance with conditions:

- Load station site work related to TR #9: construction part of the parking area is a future proposal and includes conditions. No submittal for construction as of December 31, 2016.
- USACE permit for the Ruby Mountain property/Hatchery Restoration has been released in a letter dated May 20, 2014.
- Bighorn property access location if Hagen parcel created. The approved site plan shows a relocation if 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 re-evaluated if and when the Hagen exclusion parcel progresses.
- Weed mitigation and revegetation for the pipeline route, Ruby Mountain and Bighorn Springs parcels is complete.

Project Letters of Credit and Security:

- Collegiate Peaks Bank, dated February 18, 2010, \$45,000; specifically for river crossing portion on Moltz, Chaffee County, and Gunsmoke properties. The work has been completed, and the letter of credit was released on May 20, 2014.
- The Cost Reimbursement Fund is available to cover remaining costs for revegetation or other restoration costs if necessary. The summary is included in Section 2.4.12 of the 2016 Annual Report (pages 11-12 of 27).

Attachments

2016 Annual Report, pages 1-27

Maps showing surface and groundwater monitoring locations

Resolution 2009-42 1041 Permit

Resolution 2009-43 Special Land Use Permit

Resolution 2010-20 First Amendment 1041 Permit

Resolution 2010-21 Special Land Use Permit

Resolution 2013-35 Second Amendment 1041 Permit

Chaffee County Cost Reimbursement Fund, Reception #383960

Right of Way Deed for County Road 300 and Deed Restrictions, Reception #385704

List of Permit Amendments and Technical Reviews

Technical Revision #11, signed copy

Technical Revision #12 Request, W.W. Wheeler comments and email

Water court decrees

Colorado Division of Water Resources well permits

Augmentation Certificates from Upper Arkansas Water Conservancy District

Release of US Army Corps of Engineers Permit for Ruby Mountain Property/Habitat
Restoration, dated February 7, 2014

Release of US Army Corps of Engineers Permit for pipeline crossing of the Arkansas River,
dated September 25, 2012

Release of CPW permit for revegetation for pipeline crossing, dated August 30, 2010

CDPHE Stormwater Discharge Permit for Loading Station, dated April 21, 2009. Permit closed
in 2012