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September 03, 2019

Mr. Dan Swallow  
Director of Development Services  
Mr. John Roorda  
Planning Manager  
Chaffee County  
104 Crestone Avenue, Room 125  
P.O. Box 699  
Salida, CO 81201

ARROWHEAD

DEER PARK

CALISTOGA

ICE MOUNTAIN

Re: Term Extension for Resolution 2009-42, Nestlé Waters North America, Inc. 1041 Permit

Dear Gentlemen:

Ozarka

Poland Spring

Zephyrhills

With the assistance of my consultant, Michael S. Allen of Apex Development Services, Nestlé Waters North America, Inc. ("NWNA") requests a 10 year extension of Resolution 2009-42 that granted its Chaffee County 1041 Permit that regulates NWNA's Ruby Mountain Spring Water operations ("Permit"). The Permit initially was approved for a term of 10 years after the effective date, and the expiration of that Permit is September 23, 2019.



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ACQUA PANNA

S.PELLEGRINO

At the time that the Permit was issued, the Permit Authority (Chaffee County Board of County Commissioners) provided language within the Permit for modifications to the conditions of the Permit. Specifically, three different mechanisms or processes were identified whereby changes to the Permit could be made. Those were: (1) written request for Permit extension, Resolution 2009-42 § 4.4; (2) Technical Revision, Resolution 2009-42 § 5.1 and (3) Permit Amendment, Resolution 2009-42 § 5.2. Attachment A provides the excerpted language from the Permit for each section for reference.

Each of these change mechanisms has different levels of requirements of the Permittee, as well as County review and consideration procedures. The simplest of these processes is the Permit extension, and the most rigorous of these is the Permit Amendment (of which the County has granted two to NWNA since the initial Permit was issued).

The Permit Authority set the initial term at 10 years for two reasons. First, Nwana needed a Special Land Use Permit in addition to its Permit as required by the code in effect at that time. The County required that Special Use Permits had a specified term, and the County chose a 10 year term for Nwana project construction and operations. That term was chosen to be long enough for Nwana to justify its significant investment of funds in Chaffee County while at the same time allowing for the County to re-assess the Permit conditions based on Nwana's long term compliance with the Permit conditions. At the time of Permit application, the County was unfamiliar with Nwana's operations and was concerned about the reliability of the company to adhere to Permit conditions. Notwithstanding the 10-year look back, the County, as specified in the Permit, required Nwana to file Annual Reports which demonstrate continuing Permit compliance as well as remedies, including termination, in the case of noncompliance. Nwana has not received any notification of noncompliance since the Permit was issued.

The plain language of § 4.4 shows that neither an amendment nor technical revision is needed to extend the term of the Permit instead the extension change mechanism is short and simple. It is clear that the County did not consider extension of the term of the Permit to rise to the level of review rigor of the Technical Revision or Permit Amendment. If the County had wanted that intensity of review, the extension would have been listed under Section 5 of the Permit. Furthermore to seek a Permit extension, Nwana needed an active permit and had to demonstrate it was in compliance with the permit terms. Therefore, a simple request for a Permit extension would be easily considered by the Permit Authority since all conditions would remain in full force and effect because no operational changes were requested. If operational changes were requested with a Permit extension, then a Technical Revision or Permit Amendment would be required. Finally if at the time of a request for Permit extension Nwana had been or was out of compliance, the County would have already imposed remedies upon Nwana and a Permit extension would be in jeopardy or out of the question.

I understand that the County and Nwana have been in discussion over that last couple of years about simplifying the Permit by removing conditions that have been fully complied with and are no longer necessary such as conditions related to completed construction, as well as lessening the frequency of redundant data receipt by the County. I agree that these and other possible changes to the Permit should be the subject of the process for either a Technical Revision or Permit Amendment requirements, **but Nestlé is not seeking those changes at this time.**

Since time is of the essence with the existing Permit expiring shortly, Nestlé prefers to extend the terms of the Permit now and then fully engage in either a Technical Revision or Permit Amendment in the future when there will be more time to fully consider other changes to the Permit.

In support of this extension request, Nestlé states that:

1. Nestlé seeks a 10 year extension of the Permit to and including September 21, 2029
2. Nestlé currently seeks no changes to the Permit conditions.
3. Nestlé has complied with all of the conditions of its existing 1041 Permit over the last 10 years.

4. Nestlé will continue to provide Annual Reports showing on-going compliance during the 10 year extension term and be subject to remedies the Permit Authority may impose upon Nwana from any non-compliance as specified in the Permit.

Please feel free to contact me to discuss any issue about the Permit or Nestlé's requested extension.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry A. Lawrence". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Larry A. Lawrence  
Nestlé Waters North America  
Natural Resource Manager

## Appendix A

### Excerpts from Chaffee County 1041 Permit for NWNA Ruby Mountain Springs Operation Section 4.

4.4 **Term of Permit.** This Permit shall be in effect for 10 years from the Effective Date so long as Permittee is in compliance with this Permit. The Permit Authority may, in its discretion, extend the term of the Permit upon written request of Permittee.

4.2 **Technical Revision or Permit Amendment.** Any proposed change in the construction or Operation of the Project from that approved in the Permit shall require a technical revision or a permit amendment, pursuant to Section 5 of this Resolution.

### Section 5. Technical Revision or Permit Amendment.

5.1 **Technical Revision.** A technical revision to the Permit will be allowed if the County Staff determines that:

- a. Permittee and the Project are in compliance with all terms and conditions of the original Permit at the time the County Staff receives notice of the proposed technical revision; and
- b. There will be no increase in the quantity of water or size of the area affected by the Project; and
- c. There will be no increase in the nature or intensity of impacts caused by the Project from those contemplated by this Permit; and
- d. Only minor changes to the terms or conditions of this Permit would be required to ensure that the Project will continue to comply with all applicable Chaffee County regulations and intergovernmental agreements as they exist at the time the County receives notice of the proposed technical revision.

5.2 **Permit Amendment.** If the County Staff determines that a technical revision is not appropriate under sub-section 5.1 above, then the Permittee shall submit an application for a new or amended permit in accordance with County 1041 Regulations that are in effect at the time the County receives notice of the proposed technical revision or permit amendment.

5.3 **Application for Technical Revision or Permit Amendment.** The Permittee shall submit the following information to the County Staff and any additional information that the County Staff deems necessary to determine whether a technical revision or permit amendment is required:

- a. Documentation of the current Permit approval.
- b. Drawings and plans of proposed changes to the project.
- c. Description of changed circumstances.
- d. Description of additional or changed mitigation plans.
- e. Any additional information that the County Staff requires.

- 5.4 **Staff Approval of Technical Revision.** If the County Staff determines that a technical revision to this Permit is appropriate, the County Staff may approve the technical revision together with any revised or new conditions that may be necessary to ensure that the Project complies with applicable County regulations then in effect.
- 5.5 **Notice of Approval of Technical Revision.** Within five (5) working days of the County Staff approval of a technical revision, the County Staff shall send a copy of the revised Permit to the Permittee, the Permit Authority, and the County Attorney.
- 5.6 **Reconsideration of Approval of Technical Revision.** The Permit Authority may, at its discretion, hold a public hearing to consider the revised Permit following a technical revision. The hearing will be held, following proper notice, no later than 45 days after notice from the County Staff of the revised Permit. Following the hearing, the Permit Authority may approve or amend approval of the revised Permit as it deems necessary to ensure that the Project will continue to comply with applicable County 1041 regulations then in effect.