



STAFF REPORT

Date: October 13, 2020
To: Chaffee County Board of County Commissioners
From: Planning Staff, Jon Roorda & Christie Barton
Subject: Nestle Waters North America, Request to extend 1041 Permit
BOCC: 10/20/2020

Applicants: Nestle Waters North America, Inc. (NWNA), Larry Lawrence, Natural Resource Manager

Public Notice: Per Chaffee County Regulations for areas of State Interest (1041 Regulations) Section 1-303 (1) states a public hearing shall be held not less than 30 days nor more than 60 days after the giving of public notice of said hearing. The public notice for this hearing was two times in the Chaffee County Times on Thursday, September 17, 2020 and October 11, 2020; and two times in the Mountain Mail on Friday, September 18, 2020 and October 2, 2020.

This hearing was originally scheduled for October 15, 2019; it was continued to January 21, 2020; then continued to April 21, 2020 due to the pandemic; and continued to October 20, 2020 to allow for the ability for public comment at the Fairgrounds while social distancing.

Request: NWNA requests a 10 year extension to the to the 1041 Permit.

Project History: On September 23, 2009, the Board of County Commissioners granted approval of a 1041 Permit and Special Land Use Permit for the Nestle Waters North America (NWNA) project for spring water development, a loading station and a pipeline across the Arkansas River (Resolution 2009-42 and 2009-43). Two (2) permit amendments have been approved by the Board of County Commissioners since the original approval (Resolutions 2010-20, 2010-21 and 2013-35).

- Resolutions 2009-42 and 2009-43, respectively, approving the 1041 Permit and Special Land Use Permit, 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.
- The activity permitted by the Special Land Use Permit (SLUP), spring development, construction of pipelines and the Johnson Village Loading station, is complete and there is no need to renew or extend the SLUP.
- This 1041 Permit remains in effect through October 22, 2019. The request to extend the application was received on September 6, 2019.

Term of Permit/Extension of Permit:

Resolution 2009-42, Section 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 the Permittee. This did not change with the two permit amendments.

Summary of Remaining Issues

1. Jacobson Boundary Line Adjustment (BLA)
 - Nestle Waters and Steve and Laurie Jacobson (Jacobson SL, LLC) have completed a Boundary Line Adjustment that was approved in April, 2019 with Resolution 2019-40 recorded July 16, 2019 and filed at Reception No. 452038. This now allows the following item (#2) to be completed.
2. Conservation Easement with CPW
 - Nestle Waters has been working with Colorado Parks & Wildlife (CPW) to establish a Conservation Easement on their property for compliance with Conditions 4.13 Bighorn Springs, and 4.14 Ruby Mountain Land Management Plans.
3. Hiring of local people
 - Condition 2.4.26 is to maintain 50% quota for Chaffee County drivers was considered at risk in October of 2018 at the approval of TR 13 and the approval contained a condition that Nestle employ best business practices to maintain compliance. The Transportation Review from the 2018 Annual Report is included for review.
 - Becky Gray, Chaffee County Director of Housing, is writing a separate staff report concerning an alternative solution to local housing issues.
4. As indicated in Exhibit 2, significant public comment has raised concerns regarding the project's impacts to landfill and recycling efforts in Chaffee County and whether the losses of natural and agricultural resources which could be utilized within the County outweigh the benefit to the County (see 3-303(1)(k)(6) of the County's 1041 regulations). Staff recommends that Nestle contribute to Chaffee County's efforts to recycle by providing monetary funds to upgrade the recycling centers, and to increase community awareness, education, and outreach as an alternative to landfilling plastic.
5. Nestle has indicated that they will be selling Nestle Waters North America in 2021. Condition #4.6 allows the Transfer of Permittee but only with the written consent of the Permit Authority. Any proposed transferees must demonstrate that they can and will comply with all the requirements, terms and conditions contained in the Permit.

Review Agency Comments

Division of Water Resources, March 5, 2020

US Forest Service, September 10, 2020

Upper Arkansas Water Conservancy District, September 28, 2020

Correspondence

List is in hearing packets, and posted on the Chaffee County Website

Discussion

Throughout the term of the 1041 Permit, Applicant has submitted annual reports detailing all past activities conducted by the permittee pursuant to the permit as required by 1041 Regulations Section 2-403(1). A spreadsheet showing the status of each condition contained in the original permit is attached as Exhibit 1. The County's water consultants have submitted a separate report. Based on staff's review of the annual reports, and the conclusions of the County's water consultants, provided the permittee continues to comply with the original permit conditions as outlined in the attached Exhibit 2 and complies with conditions addressing housing and recycling, the permittee has made a satisfactory showing of compliance with all conditions of the permit and applicable regulations. Additionally, the pumping rate remains substantially below the permitted amount. Except for the

comment above, staff has not been contacted by the public with any other concerns or complaints regarding permittee's operation and/or compliance with the permit's conditions.

Recommendation

Any renewal of the permit should incorporate the applicable findings and conditions from the original permit, as well as conditions addressing housing and recycling, as discussed above.

BOARD OF COMMISSIONERS ACTION:

Commissioner _____ moved and Commissioner _____ seconded and the Board voted to APPROVE / DENY / CONTINUE the Nestle Waters North America request for a ten (10) year extension of their 1041 permit, based on the following findings of fact and conditions:

1.

Attached Exhibit: Summary of Compliance with 1041 Standards