

October 20, 2020

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**VIA E-MAIL
VIA HAND DELIVERY**

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RE: FOR INCLUSION IN RECORD – Nestle Waters Extension of 1041 Permit

Dear Chaffee County Commissioners, Planning Manager, and Attorneys,

This letter is on behalf of Nestle Waters North America Inc. (NWNA). On October 13, 2020, two documents, among others, were posted to the County website. On October 15, 2020, additional documents were posted to the website. This letter relates to the County Planning Manager's Staff Report dated October 13, 2020, "Exhibit Summary of 1041 Criteria," and Housing Director Staff Report dated October 15, 2020. While the Staff Report was anticipated, and is typical ahead of a public hearing, the "Exhibit Summary of 1041 Criteria" was not, nor was a report from the County Housing Director.

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NWNA has worked to understand these unexpected documents as quickly as possible ahead of the October 20 hearing, and this letter is intended to outline our responses to the items identified in the “Exhibit” as a “standard not satisfied”.

I. 1041 Permit Extension Request

Initially, we emphasize that this is a request for an extension of NWNA’s existing 1041 Permit. The “Exhibit” repeatedly references a “Permit Application” and “Applicant Submittal” – these do not exist as they were not required. We are puzzled by how this Exhibit is framed and do not understand what is being referred to.

Section 4.4 of the current 1041 Permit states: “The Permit Authority may, in its discretion, extend the term of the Permit upon written request of Permittee.” This simple “written request” provision is what prompted NWNA’s September 3, 2019 written request for extension without a full application and the types of supporting data normally required for a new 1041 application.

The County’s Guidelines and Regulations for Areas and Activities of State Interest (“1041 Regulations”), are silent as to permit extensions. There are no submittal requirements for extension requests, no process outlined for an extension request hearing, and there are not any review criteria particular to an extension request.

When the County granted the Permit 10 years ago, the County found that the conditions identified in the Permit were appropriate mitigation measures. Therefore, it is NWNA’s position that, if it can demonstrate it has complied with the Permit and its conditions, it continues to meet the 1041 Regulations and an extension is appropriate.

We do not believe, and reserve NWNA’s position, that a full 1041 public hearing process is required based on this language, but we have also repeatedly stated verbally and in writing to County staff that we want to give the County all information needed to consider the extension request.

II. “Exhibit” Statements

To address the specifics of the “Exhibit” statements, we note the following discrepancies:

3-303(1)(a)

- The “Exhibit” erroneously omits the introductory clause to this Criterion which states “**To the extent** applicant’s service area is located within or partially within the boundaries of the County...” (emphasis added by NWNA). This section of the 1041 Regulations does not apply to NWNA, as it intended to apply in the context of a water utility provider where the utility would provide water to a user in a defined service area. The NWNA Project does not have a service area, and the Project does not provide any service to any third party user.
- In 2009, based on this introductory clause and analysis, the Board of County Commissioners found, that this Criterion was Not Applicable.
- Therefore, instead of stating “Standard is not satisfied” and giving the Board and the public the improper impression that there is a lack of compliance, the “Exhibit” should state “**Standard is Not Applicable.**”

3-303(1)(b)

- The “Exhibit” identifies aspects of the Comprehensive Plan identified by County Staff in 2009. However, in 2009, the County found that, with the inclusion of various Permit conditions to address the items raised, it does comply with this Criterion.
- NWNA has implemented those Permit conditions (and as restated as 2020 Staff proposed Conditions). As examples, NWNA provides wade-fishing easements along its land, dedicated 60-foot rights-of-way through its property on CR 300 (and recently agreed to support the expansion of CR 300 to provide safer access to the Ruby Mountain Springs campground), used local firms in construction and operation of the project, limits truck traffic as required, and has funded a mitigation fund to cover County expenses, such as County third-party independent consultants in the review of this extension request.
- NWNA notes that two of the stated conditions conflict and believe there was an improper inclusion: “Route loaded trucks through Leadville to I-70” is listed, as is encouraging improvements “on US 24 / 285 between Johnson Village and the top of Trout Creek Pass”. NWNA’s route is US 24 / 285 and it is NWNA’s understanding that is the County’s preferred route as well.
- NWNA is confused as the Staff proposed Conditions have been completed. It appears this is acknowledged by the “Exhibit” statement: “The following conditions in the original permit **address this standard.**” (emphasis added). So, it appears this is a summary of the Permit conditions implemented by NWNA. If so, the “Exhibit” should state “**Standard is satisfied**”.

3-303(1)(k(iv))

- This Criterion states that “The proposed Project will not have a significantly adverse net effect on any segment of the local economy (e.g., recreation, tourism, agriculture, and mining)” based on the “[c]hanges in the value of agricultural, grazing, recreational, and other lands, and the loss of tax revenues caused by such lands being removed from production or becoming unavailable for those uses.” The Exhibit states that this standard is not satisfied, and then recommends continued compliance with the Permit conditions along with “addressing housing”.
- NWNA is puzzled by this finding and recommendation. It has always been the County’s position that this property be preserved for wildlife and conservation, including certain recreational uses. The County deliberately included a number of conditions in the 1041 Permit to ensure this was achieved. Specifically, NWNA submitted and the County approved a Bighorn Springs Land Management Plan, a Ruby Mountain Land Management Plan, Hatchery Restoration Plan, and wetlands monitoring. These expressly require sustainable grazing practices, prohibit commercial grazing, provide long-term bighorn sheep habitat protection, institute riparian and wetland restoration practices, and include other long-term habitat management conservation techniques. In compliance with 1041 Permit conditions, NWNA also dedicated an easement for river wade fishing and permanent fishing access allowing for certain types of recreation (in support of the local economy). As will be discussed at the hearing, NWNA has also worked to convey this property into a conservation easement to be held by Colorado Parks and Wildlife and the Department of Natural Resources. These actions are all at the desire, and requirement, of the County.
- In 2009, the County adopted Permit conditions and pushed NWNA to use this land for this purpose. Based on the “Exhibit” statement, is the County saying it now prefers this property to be developed for housing? That would be a substantial departure from the County’s position over the last 10 years.

- In 2009, the County adopted numerous, specific Permit conditions which require the land be preserved for wildlife and conservation, including certain recreational uses. It would be contradictory to now assert that NWNA does not comply with this Criterion because it followed the County's requirements. The Exhibit should state "**Standard is satisfied.**"

3-303(1)(k)(v)

- This Criterion states that "The proposed Project will not have a significantly adverse net effect on any segment of the local economy (e.g., recreation, tourism, agriculture, and mining)" based on the "[c]hanges in opportunities for economic diversification." The Exhibit states that this standard is not satisfied, and then recommends continued compliance with the Permit conditions and "address housing issue."
- Economic diversification is the process of shifting an economy away from a single income source toward multiple sources from a growing range of sectors and markets.
- NWNA's Permit and operations do not cause reliance on a single income source. Is it County Staff's position that NWNA's tax and community contributions over the last 10 years have caused the County to become reliant on NWNA as a source of income?
- In fact, NWNA creates additional economic opportunities by engaging in local contracts for the well house, pipeline and load station, hiring local drivers, creating a \$500,000 educational endowment, and contributing to various community events.
- It is unclear to NWNA what "address housing issue" means as housing is not related to economic diversification. If the "housing issue" is the County Housing Director's request for a \$500,000 contribution to an affordable housing fund for County use, in order to legally impose such a condition, it must be directly related to the NWNA Project. What is the housing issue that NWNA has caused by operating wells in the County? What is the legal nexus? There must be a rational connection between the impact created by the Project and the proposed condition. Therefore, the Exhibit should state "**Standard is satisfied.**"

3-303(1)(k)(vi)

- This Criterion states that "The proposed Project will not have a significantly adverse net effect on any segment of the local economy (e.g., recreation, tourism, agriculture, and mining)" based on the "[t]he benefits accruing to the County and its citizens from the Project outweigh the loss [of] any natural, agricultural, or recreational resources within the County, or the losses of opportunities to develop such resources." The Exhibit states that this Project "reduces opportunities for agriculture and development" so the standard is not satisfied, and then recommends continued compliance with the Permit conditions and that NWNA "address housing issue" and "address recycling issues raised by public comment."
- As outlined above, it was the County's intent and desire that this land be preserved for wildlife and conservation, including certain recreational uses. The Ruby Mountain wetlands restoration project improved visual quality by removing all of the existing homes and hatchery structures, removing raceways, restoring riparian habitat, and creating wetlands.

- It would be contradictory for the County to now assert that NWNA does not comply with this Criterion because of “reduced opportunities for agriculture and development” based on the County’s own Permit requirements. NWNA believes that it enhanced the recreational opportunities at this site with more fishing options and access than previously existed. The Exhibit should state **“Standard is satisfied.”**
- In order to impose a new condition of a \$500,000 contribution to an affordable housing fund, the County must demonstrate that this is the amount of the impact caused by the Project on affordable housing. Further, contributing generally to the affordable housing fund would confer a general public benefit; however, Colorado law limits such conditions to those reasonably related to the burden created by the Project. As a proposed alternative, NWNA is open to additional incentives to recruit local drivers, and funding driver training and certification programs, as it has found that the real issue in recruitment is lack of qualified drivers in the County, not housing.
- The “Exhibit” refers to “address recycling issues raised by public comment” and the Staff Report recommends that NWNA 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. While we appreciate the public has general concerns about plastic water bottles, the 1041 Permit relates to the operation of two wells, a pipeline, and a load station where trucks then transport the water out of the County. The Project has no identifiable impact on local or County waste. The only impact NWNA can discern would be that water bottles it donated to the County, Chaffee Fire District, or local communities during emergencies, such as donations to Alamosa in 2011 when the City’s water source was contaminated by a salmonella outbreak to current day donations to communities affected by wildfire, were not recycled by residents and volunteers that used them. As noted above, Colorado law limits conditions to those reasonably related to the burden or harm caused by the Project.

We look forward to presenting before the Board of County Commissioners and demonstrating that NWNA has complied with the 1041 Permit and its conditions and, thus, continues to meet the 1041 Regulations and an extension is appropriate.

Sincerely,

Caitlin S. Quander

CC: Larry Lawrence [via email]