

**CHAFFEE COUNTY, COLORADO
RESOLUTION NO. 2021-XX**

**A RESOLUTION GRANTING AN EXTENDED PERMIT TO CONDUCT
AN ACTIVITY OF STATE INTEREST IN AN AREA OF STATE INTEREST,
WITH CONDITIONS, TO BLUE TRITON BRANDS, INC.
(FORMERLY KNOWN AS NESTLE WATERS NORTH AMERICA, INC.)
("1041 PERMIT")**

Background:

- A. The Board of County Commissioners of Chaffee County, Colorado ("BoCC"), pursuant to C.R.S. § 24-65.1-101 *et seq.*, has designated municipal and industrial water projects to be matters of state interest.
- B. The BoCC pursuant to C.R.S. § 24-65.1-101 *et seq.*, has designated development in areas containing or having a significant impact upon natural resources to be a matter of state interest.
- C. The BoCC has adopted guidelines for the administration and regulation of these designated matters of state interest, known as Guidelines and Regulations for Areas and Activities of State Interest ("County 1041 Regulations").
- D. On September 23, 2009, Nestle Waters North America, Inc. ("NWNA") was granted a 1041 Permit pursuant to Resolution 2009-42 for the Nestle Waters North America Chaffee County Spring Water Project (the "Project") which is an industrial water project and is located within an area containing natural resources of statewide importance. That original permit was amended on February 22, 2010 by Resolution 2010-20 and again on October 8, 2013 by Resolution 2013-35.
- E. Section 4.4 of the original permit provides that the Permit Authority (defined by the County 1041 Regulations as the BoCC) "may, in its discretion, extend the term of the Permit upon written request of Permittee."
- F. By letter dated September 3, 2019, NWNA requested a 10-year extension of the permit.
- G. The Permit Authority determined that in order to grant an extension, the Permittee must satisfactorily demonstrate that the request, including all mitigation measures proposed by the Permittee and conditions imposed by the Permit Authority, enable the Permittee to comply with all the applicable criteria set forth in the County 1041 Regulations. Thus, the Permit Authority has evaluated the Permittee's request for a 10-year extension in a manner similar to evaluating a new application, but with the benefit of the ten years of reporting and information borne out by the Project.

- H. From at least the time of the time of the Original Permit to March 2021, Nwana was owned 100% by Nestle Waters North America Holdings, Inc. (“Nwana Holdings”). In March 2021, ownership of Nwana Holdings changed when its stock was acquired by One Rock Capital Partners, LLC, in partnership with Metropoulos & Co. The purchasing entity in this transaction was Triton Water Holdings, Inc., which is a 100% owner of Blue Triton Brands, Holdings, Inc., which in turn is a 100% owner of Blue Triton Brands, Inc. (formerly Nwana). The original permit holder, Nwana, changed its legal name to Blue Triton Brands, Inc. (“BtB”). The existing management team of Nwana for Chaffee County operations has continued following the transaction.
- I. By letter dated June 10, 2021 Nwana (now known as BtB) requested that any extended permit be issued in the BtB name.
- J. With the applicant’s consent to reschedule the original public hearing date, the Permit Authority held a public hearing on October 20, 2020 and October 22, 2020 to consider the extension request, at which time the Permit Authority considered testimony and received evidence. Because of COVID-19, the hearing was primarily conducted virtually or in a mixed live/virtual setting. Permittee consented to such hearing structure.
- K. With the applicant’s consent, the Permit Authority continued the public hearing to November 5, 2020, November 10, 2020, November 17, 2020, December 8, 2020, December 15, 2020, January 19, 2021, February 16, 2021, March 16, 2021, April 20, 2021, May 4, 2021, May 18, 2021, June 1, 2021, June 15, 2021, June 24, 2021, July 6, 2021 and July 20, 2021.
- L. The Permit Authority closed public testimony on June 15, 2021 and began deliberations.
- M. The Permit Authority concluded deliberations on July 6, 2021, voted to approve the 1041 Permit subject to conditions, and directed staff to prepare a resolution outlining the Permit Authority’s findings and conditions for consideration on July 20, 2021.

Findings, Conclusions and Resolution:

The Board resolves as follows:

Section 1. Definitions. The following words and terms shall be defined as follows:

- 1.1 “Application” means the original application for the Project, as amended during the public hearing processes (for both the Original Permit and the Extended Permit) orally or in writing, and includes all prior-approved Technical Revisions and amendments to the Original Permit.
- 1.2 “County Staff” means the Planning Director and the Director’s designee(s).

- 1.3 “Effective Date” means the date of adoption of this Resolution by the Permit Authority.
- 1.4 “Extended Permit” means the Permit approved by this Resolution.
- 1.5 “Extension Request” means the September 3, 2019 letter requesting an extension, as amended during the public hearing process orally or in writing.
- 1.6 “Local” means within a 25-mile radius of Chaffee County.
- 1.7 “Operation of the Project” means diversion of spring water to be bottled for saleable product.
- 1.8 “Original Permit” means the permit approved by Chaffee County Resolution No. 2009-42, as amended by Resolution No. 2010-21 dated February 22, 2010 and Resolution No. 2013-35 dated October 8, 2013 and Technical Revisions to such permit that have been previously been approved.
- 1.9 “Permittee” means Blue Triton Brands, Inc.
- 1.10 “Project” means the Blue Triton Brands, Inc. Chaffee County Spring Water Project (previously referred to as the Nestle Waters North American Chaffee County Spring Water Project) and shall be broadly defined to include any and all structures and facilities necessary to carry out and fulfill the purpose of the Application and Operation of the Project.
- 1.11 “Resolution” means Chaffee County, Colorado Resolution No. 2021-XX, A Resolution Granting an Extended Permit to Conduct an Activity of State Interest in an Area of State Interest, with Conditions, To Blue Triton Brands, Inc. (“1041 Permit”)
- 1.12 “River” means the Arkansas River.
- 1.13 “River Crossing Segment” means the segment of pipeline alignment as identified on Sheet 4 of Exhibit C submitted by Permittee on January 22, 2010.

Section 2. Findings. The Permit Authority finds as follows:

2.1 With the exception of the criteria set forth in sub-section 2.2, the Permittee has satisfactorily demonstrated that the Extension Request, including all mitigation measures proposed by the Permittee, complies with all of the applicable criteria set forth in the County 1041 Regulations.

2.2 The Amendment does not comply with the following criteria:

- a. Section 3-303 (1)(b), *Consistency with Planning Documents*;

- b. Section 3-303 (1)(d), *Water Rights*;
- c. Section 3-303 (1)(e)(i), *Surface Water Quality*;
- d. Section 3-303 (1)(f)(i), *Groundwater Quality* – aquifer recharge rates, groundwater levels, aquifer capacity;
- e. Section 3-303 (1)(f)(ii), *Groundwater Quality* – capacity and function of wells;
- f. Section 3-303 (1)(f)(iii), *Groundwater Quality* – changes in quality of well water;
- g. Section 3-303 (1)(g), *Construction impact on adjacent properties*;
- h. Section 3-303 (1)(h)(i), *Air Quality*;
- i. Section 3-303 (1)(h)(ii), *Wetlands and Floodplain Areas*;
- j. Section 3-303 (1)(h)(iii), *Terrestrial or Aquatic Animal Life*;
- k. Section 3-303 (1)(h)(iv), *Terrestrial Plant Life or Habitat*;
- l. Section 3-303 (1)(h)(v), *Soils and geologic conditions*;
- m. Section 3-303 (1)(h)(vi), *Visual Quality*;
- n. Section 3-303 (1)(i), *Noise, Vibrations or Odors*;
- o. Section 3-303 (1)(k)(iv), *Changes in Value of Lands, Loss of Tax Revenue*;
- p. Section 3-303 (1)(k)(v), *Opportunities for Economic Diversification*;
- q. Section 3-303 (1)(k)(vi), *Benefits Accruing County and Citizens Outweigh Loss of Resources or Losses of Opportunity to Develop Resources*;
- r. Section 9-303 (1)(a), *Adverse Affect on Wildlife Species*;
- s. Section 9-303 (1)(b), *Wildlife Habitat or Protection areas, Migratory Routes, Calving Grounds, Migratory Habitats, Nesting Areas, Rare and Endangered Species Habitat*;
- t. Section 9-303 (1)(c), *Adverse Affect on Wildlife Movement, Displacement and Adaptation*;

u. Section 9-303 (1)(d), *Project Administered to Function in Harmony with Habitat*; and

v. Section 9-303 (1)(e), *Project Reviewed and Received Favorable Comment from the Area Wildlife Manager*.

2.3 The conditions set forth in Section 4 of this Resolution will enable the Permittee to comply with the criteria that have not been satisfied and are set forth in sub-section 2.2.

2.4 All applicable notice and hearing requirements have been satisfied.

Section 3. Extended Permit. This Resolution shall constitute the Extended 1041 Permit for the Project.

Section 4. Permit Extension Approval and Conditions. The Permit Authority hereby approves the Extended Permit, subject to the following conditions:

4.1 Scope of Extended Permit.

- a. This Extended Permit is limited to the Project as described in the Application, as amended by the Extension Request, and as approved hereunder. The Extended Permit conditions shall include all written and oral agreements and representations of Permittee made during the public hearing process. Permittee shall notify the County of any proposed change to the Project features or Project operations and, as further described below, the County shall determine whether a technical revision or a permit amendment would be required to ensure that the changes will not violate any standards in the County 1041 Regulations or conditions of this Permit.
- b. If any court of law sets aside or invalidates any condition in this Extended Permit, the Operation of the Project must cease immediately unless and until an amendment to the Extended Permit has been granted by the Permit Authority.
- c. If the County determines that any material representation made by Permittee in the Application or Extension Request is false or deliberately misleading, the County may pursue an enforcement action for violation of this Extended Permit and may invalidate this Extended Permit.

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

4.3 Dispute Resolution. If a dispute arises pertaining to matters covered by this Extended Permit, other than an alleged violation of this Permit, Permittee and the County Attorney shall first meet to attempt to resolve the dispute. If the dispute

cannot be satisfactorily resolved, Permittee and the County will submit the dispute to non-binding mediation before filing a complaint in any court of law.

4.4 Term of Extended Permit. This Extended Permit shall be in effect from the Effective Date and through the ten-year period following the Effective Date, so long as Permittee is in compliance with the Extended Permit. If the Permittee requests a further extension of the Extended Permit, such a request will be submitted in writing at least 90 days prior to the Permit's expiration and will require a public hearing during which the Permittee must satisfactorily demonstrate through a written report that the request, including all mitigation measures proposed by the Permittee and conditions imposed by the Permit Authority, enable the Permittee to comply with all the applicable criteria set forth in the County 1041 Regulations. The granting of this Extended Permit in no way binds the Permitting Authority at the time the request for an extension is made to approve further extensions.

4.5 Transfer of Permit. This Permit may be transferred to another party only with the written consent of the Permit Authority following a public hearing with at least 30 days' written notice. The Permit Authority may deny a transfer request if it determines that this Extended Permit is not in good standing (determined annually as contemplated below). A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and conditions contained in this Extended Permit. As a condition to any such consent, the Permit Authority may impose additional conditions to ensure a transferee complies with this Extended Permit. For purposes of this condition, a transfer of this Extended Permit refers to: (1) any form of alienation of the Extended Permit, voluntary or involuntary, including without limitation disposition by sale, gift, assignment; any encumbrance, pledge or grant of security interest, hypothecation, attachment, execution, garnishment; or (2) any change in ownership of the Permittee or a 50% or more change in the Permittee's parent company, including by reason of merger, consolidation, gift or sale of stock, gift or sale of assets, or pursuant to court order. Notwithstanding the foregoing, the following shall not be a transfer if the party acquiring ownership agrees to comply with this Extended Permit, including with respect to any subsequent changes in ownership: (i) a pledge or granting of security interest, and acquisition of the ownership by the secured party pursuant to a pledge; and (ii) a bequest or devise, and acquisition of the ownership pursuant to a bequest, devise or the laws of descent and distribution. Any purported transfer of this Permit in violation of this Section will result in the immediate suspension of this Permit.

4.6 Extended Permit Violation. Failure to comply with any portion of this Extended Permit is a violation of the County 1041 Regulations and is subject to the enforcement provisions therein and/or any other relief that may be provided in this Extended Permit.

4.7 Annual Reporting. Permittee shall submit an annual report to the County Staff and the Permit Authority no later than March 1 of each year, covering the preceding calendar year that describes progress on the Project, Operation of the Project and

compliance with Permit conditions, including but not limited to water pumping operations and replacement of depletions (augmentation); wetland and groundwater monitoring; wetlands and hatchery restoration; land management plans; weed mitigation efforts, utilization of local work force for construction, trucking and service, local materials and description of any non-local labor use or material purchase; trucking volumes and trucks utilized; monitoring of hydrology; a description of community involvement efforts; and endowment funding and disbursements. The County Staff may engage consultants to assist with the County's review of the report. Permittee shall reimburse the County for all such review and reporting, including such related to public hearings, through the Cost Reimbursement Fund described below. The County Staff and Permittee will schedule an annual presentation of such report at a public hearing before the Permitting Authority to be held no later than June 1 of each year. At such annual hearing, the Permit Authority will endeavor to make a determination of good standing (meaning material compliance with the Permit requirements, determined in the sole discretion of the Permit Authority). If the Permit Authority does not find the Permittee to be in sufficient compliance with the permit requirements to justify a determination of good standing, the Permit may be placed in probationary status. Under such a finding, the Permittee will be required to bring the project into permit compliance in a timely manner. A Permit that is in probationary status is not transferable. Multiple annual determinations that the Permit is not in good standing are grounds for suspension or revocation of the Permit.

4.8 Financial Security. Prior to any construction or repair or modification of the Project and facilities in connection with the Operation of the Project in excess of \$250,000.00, or, unless otherwise waived by the County, Permittee shall post a letter of credit for the amount or other financial security deemed adequate by the County and payable for the benefit of the County calculated and administered in accordance with the requirements of Section 2-402 of the County 1041 Regulations. As part of that process, Permittee shall prepare and submit to County Staff cost estimates for construction of Project features in compliance with Extended Permit conditions.

4.9 Compliance with Other Permits. This Extended Permit is contingent upon Permittee's compliance with all other County, State and Federal permits and approvals required for the Project. This Extended Permit shall not constitute an exemption from Chaffee County zoning, building, health or other applicable regulations and codes.

4.10 Cost Reimbursement Fund and Application Review Costs. Within 7 days of the Permit Authority's approval of this Resolution, Permittee shall restore the balance in the Chaffee County Cost Reimbursement Fund to \$200,000.00, which shall be used to reimburse Chaffee County and other government service providers for costs associated with the Project, pursuant to the Cost Reimbursement Fund Procedures previously adopted by the Permit Authority, which may be amended from time to time. With respect to the costs and expenses incurred by Chaffee County in connection with the pre-approval review of the Application, Permittee shall pay all

such amounts within ten working days following receipt of a notice documenting amounts due. The status of the Cost Reimbursement Fund shall be a component of the annual report, and the Permittee will promptly restore any deficits in the Fund as required by the Permit Authority.

- 4.11 **Bighorn Springs Land Management Plan.** Permittee shall comply with the previously approved Bighorn Springs Land Management Plan and all County weed mitigation requirements. Plan components include but are not limited to sustainable grazing practices, wildlife-friendly fencing, long-term bighorn sheep habitat protection, riparian and wetland restoration practices and other long-term habitat management conservation techniques. Any changes to the management of the Bighorn Springs Land resulting from the conservation easement (referred to below) will require County consent and approval. Permittee shall document its compliance with the Bighorn Springs Land Management Plan and shall report on such compliance at least as part of the annual report.
- 4.12 **Ruby Mountain Land Management Plan.** Permittee shall comply with the previously approved Ruby Mountain Land Management Plan and County weed mitigation requirements. Plan components include but are not limited to prohibition of grazing, wildlife-friendly fencing, long-term bighorn sheep habitat protection, riparian and wetland restoration practices and other long-term habitat management conservation techniques. Any changes to the management of the Ruby Mountain Land resulting from the conservation easement (referred to below) will require County consent and approval. Permittee shall document its compliance with the Ruby Mountain Land Management Plan and shall report on such compliance at least as part of the annual report.
- 4.13 **Hatchery Restoration.** Permittee shall continue to maintain the hatchery restoration project in no less condition than its current state. Any changes to the restoration project shall require County approval. Permittee shall continue to allow tours of the restoration project for educational purposes. Permittee will document its restoration project and report on such compliance at least as part of the annual report.
- 4.14 **Wetlands and Groundwater Monitoring and Mitigation Plan.** Permittee shall comply with the previously approved Wetlands and Groundwater Monitoring and Mitigation Plan. At a minimum, the plan should include the current upgradient aquifer monitoring, definition of the indicators that will be used to determine whether the Project is causing any negative impact to wetlands and water resources, and identify the mitigation steps that will be implemented to avoid degradation of wetlands and water resources. Permittee shall document its compliance with the Wetlands and Groundwater Monitoring and Mitigation Plan and shall report on such compliance at least as part of the annual report.
- 4.15 **Endowment and Annual Programmatic Contributions.** Permittee previously funded endowment totaling \$500,000.00 for Chaffee County schools to be used for projects and activities focused on science and/or environmental issues and, at the

beginning of each Permit year, will continue to contribute to the endowment at least \$5,000 each year the Extended Permit remains active. The endowment funds must be dedicated to projects and activities that are focused on Chaffee County science and/or environmental issues and Chaffee County schools. In addition to the Chaffee County Economic Development Corporation contribution described below, in 2021, within 30 days of the Effective Date, Permittee shall fund at least: (1) \$100,000 to XXX (Chaffee County? CC Community Foundation?) to be used for [???development and implementation of a comprehensive, full-spectrum County-wide sustainability plan (which will include as an element an integrated waste-management system)]; (2) \$100,000 to the National Forest Foundation (“NFF”) for the NFF’s proposal to the Natural Resources Conservation Service’s Regional Conservation Partnership Program - Alternative Funding Arrangement, titled “Upper Arkansas Forest Fund” as defined by Envision Chaffee), and (3) \$100,000 to a fund to be overseen by Chaffee County Common Ground (“CCCG”) to be used for grants towards water sustainability efforts for the benefit of Chaffee County. At the beginning of each Permit year, Permittee will continue to make annual minimum contributions of \$10,000 each to XXX, the NFF and CCCG for each year the Extended Permit remains active. Permittee will continue to make at least \$50,000 in annual programmatic contributions for allocation to appropriate local nonprofits. In its annual report, Permittee shall provide information that documents the nature and amount of its annual contributions and local programmatic funding.

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- 4.16 **Right-of-Way.** Permittee shall cooperate with the County and provide right-of-way for CR 300 as reasonably necessary to widen the right-of-way for public safety purposes. Any additional dedication will continue to contain construction limitations to protect the spring sources, including but not limited to protection of water quality, spring orifices and wetlands. Without limiting the foregoing, the Permittee shall assist and cooperate with the County in any and all plans including any agreement between the County, State or Federal agencies to conduct preliminary engineering, acquire all necessary right of way, easements of license agreements, for construction and construction engineering of 0.25 miles of widening, gravel resurfacing, geometry, drainage, and safety improvements to CR 300 at the Browns Canyon Entrance.
- 4.17 **Wildlife Friendly Fencing.** All fencing on Project property and fencing used in connection with the Operation of the Project must be wildlife-friendly.
- 4.18 **Fishing Access.** Permittee shall work with Colorado Parks and Wildlife (“CPW”) to allow for continual maintenance of all fishing accessing, maintain a foot path to the River and install and maintain adequate signage.
- 4.19 **Local Construction Jobs.** To the extent that local workers are available, Permittee shall contract with local firms and/or workers for all Project-related construction work. Permittee shall demonstrate to the satisfaction of the Permit Authority, at least as part of the annual report, that it is employing commercially best efforts to purchase Project materials and supplies locally. To the extent that local workers and local material suppliers are available, Permittee shall employ

commercially best efforts to enter into future service contracts with local firms and/or workers.

4.20 **Local Drivers.** Permittee will continue to use commercially reasonable efforts to hire local tanker drivers for 100% of the driver jobs and report on such efforts in the Annual Report. For purposes of this condition, commercially reasonable efforts mean at least \$5,000 per year in local media advertising, \$5,000 signing bonuses, \$1,000 referral bonuses, \$5,000 in relocation assistance, and guaranteeing a minimum of 40 hours per week. For all employment opportunities, local applicants that meet position requirements and qualifications will be given priority status and have the first opportunity for any job opening. In order to promote workforce development in the County, within 30 days of the Effective Date, Permittee will fund \$75,000 to the Chaffee County Economic Development Corporation to assist with workforce development. In addition, after the first year of the Extended Permit, Permittee shall make an annual minimum contribution of \$7,500 to Chaffee County Economic Development Corporation at the beginning of each year of the Extended Permit. In its annual report, Permittee shall provide information that documents the nature and amount of such efforts.

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4.21 **Project Impacts Related to Well Pumping.** The impacts to the wetlands, surface water and groundwater resources from Project well pumping and Operation of the Project are based upon certain assumptions made by Permittee as well as review of previous Operation of the Project regarding pumping rates, replacement water, timing, etc. Because the Project impacts are assessed on the basis of hydrologic and operational assumptions set forth in the Application and past Operation of the Project, such assumptions are deemed to be additional operational terms, conditions and limitations on the Project, whether such assumptions are expressly included within the terms and conditions of the Extended Permit. To the extent that an express condition in this Extended Permit incorporates or includes such an assumption, then the express term and condition shall control.

Commented [JD3]: Is this still needed since we have data? Is it handled by 4.27 and 4.28?

4.22 **Augmentation Water Source Restrictions.**

a. Only the augmentation water sources described in this Extended Permit are authorized to be used to augment Project well depletions under the Permit. Permittee shall ensure that all augmentation water supplied to offset Project depletions shall be derived from sources expressly described and approved in this Extended Permit. The augmentation water for depletions caused by Permittee's well(s) associated with Operation of the Project must be from water provided to Permittee by the Upper Arkansas Water Conservancy District ("UAWCD") pursuant to the terms of the "Augmentation Certificate" between UAWCD and Nestle Waters or North America, Inc., which is incorporated by this reference. UAWCD may only provide augmentation water to Permittee under the Augmentation Application from the following transmountain sources (non-native River sources): (a) water leased by UAWCD from the Pueblo Board of Water

Works (the “Pueblo Board”) pursuant to the “Water Lease Agreement” dated May 20th, 2009 (the “UAWCD-PBWW Lease”); (b) project water available to UAWCD from the Fryingpan-Arkansas Project; and (c) any water derived from shares owned by UAWCD in the Twin Lakes Reservoir and Canal Company or any water acquired by UAWCD that is derived from Twin Lakes shares owned or controlled by others”. The anticipated primary source of augmentation water provided to Permittee by UAWCD pursuant to the Augmentation Certificate shall derive from the UAWCD-PBWW Lease. The UAWCD-PBWW Lease provides that the Pueblo Board will deliver to UAWCD up to 202-acre feet of water per year originating from “transmountain water or other water totally consumable under Colorado law, including but not limited to, reusable return flows from transmountain water rights or other fully consumable water” (UAWCD-PBWW Lease at ¶ 1).

- b. In addition, the UAWCD-PBWW Lease provides that the Pueblo Board will deliver to UAWCD “water derived from the Pueblo Board’s shares in the Twin Lakes Reservoir and Canal Co. to the extent that such water is available to the Pueblo Board. If the Pueblo Board does not have sufficient water from the Twin Lakes Reservoir and Canal Company to satisfy its delivery obligations under the UAWCD-PBWW Lease, then the Pueblo Board may deliver water from other sources of fully consumable water available to the Pueblo Board including, but not limited to, stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir, Pueblo Reservoir, from direct flow transmountain water or transmountain return flows by exchange” (UAWCD-PBWW Lease at ¶ 3).
- c. Pursuant to this condition, there are restrictions on how and where augmentation water can be delivered to the River to augment well depletions associated with the Project and Operation of the Project. Because the UAWCD-PBWW Lease provides for delivery of water to UAWCD from non-transmountain sources and authorizes water to be delivered to UAWCD from Pueblo Reservoir by upstream exchange, which is prohibited in this Extended Permit, the use by Permittee of the water delivered to UAWCD under the UAWCD-PBWW Lease as the augmentation water source shall be subject to the restrictions of this Extended Permit and are not controlled by the terms of the 06CW32 Decree, the Augmentation Certificate or the UAWCD-PBWW Lease.

4.23 **Limitation on Project Depletions.** Project depletions caused by the withdrawal of water from wells for the Operation of the Project shall be limited to the net amount of replacement water available to the River in time, place and amount. Releases of augmentation water by UAWCD shall be delivered to the main stem of the River upstream of the point of Project depletions and such releases shall be made on a daily basis and shall match the depletion schedule in time and amount.

4.24 **Augmentation Plan Required.** No water shall be withdrawn from wells for the Operation of the Project unless the wells required for Operation of the Project are included as an authorized diversion structure under the UAWCD decree in Case No.

06CW32. For existing wells already authorized under the UAWCD decree in Case No. 06CW32, Permittee shall ensure UAWCD is aware of the terms, conditions and restrictions of augmentation of Project depletions set forth in this Extended Permit. Permittee shall ensure that any future application submitted to UAWCD for the inclusion of any additional authorized wells under this Extended Permit for Operation of the Project shall contain a description of the terms, conditions and restrictions of this Extended Permit. To the extent of any conflict between augmentation requirements, storage releases, accounting, reporting or other requirements of the Extended Permit and UAWCD's decree in Case No. 06CW32 or the Augmentation Certificate issued by UAWCD for the Project pursuant to said decree, then the Extended Permit shall control. Permittee shall be responsible for ensuring that UAWCD's provision of augmentation water to offset well depletions associated with the Project and the Operation of the Project complies in all respects with the terms and conditions of the Extended Permit.

- 4.25 **Augmentation Water Delivery Restrictions.** The following provision shall control the delivery of augmentation water to offset Project depletions by UAWCD.
- a. Notwithstanding UAWCD's ability to make augmentation releases in other locations pursuant to: (a) the terms of UAWCD's Decree in Case No. 06CW32, District Court, Water Division No. 2; (b) any other UAWCD augmentation plan, whether approved now or subsequent to the date of this Extended Permit; (c) any State Engineer approved SWSP or State Engineer approved exchange; (d) any UAWCD contract exchange that transfers water from one source to any storage facility; or (e) any other formal or informal authorization obtained by UAWCD that now exists or may be obtained by UAWCD in the future, all augmentation water to offset Project depletions must be physically delivered daily as an in-stream credit from upstream transmountain sources or by actual release of transmountain augmentation water from storage to the main stem of the River above the Project depletions to the River, and such daily in-stream credits or daily storage release shall match the Project well(s) depletion schedule in time and amount, plus transit losses. For purposes of this Extended Permit, UAWCD may only release water to the River to replace Project depletions from the following: Twin Lakes Reservoir, Turquoise Reservoir, Clear Creek Reservoir, and such alluvial aquifer storage as may be developed and decreed for augmentation use by UAWCD and which delivers return flows to the river upstream of the point of depletion of Project depletions. No other storage facilities are approved augmentation water release points under this Extended Permit.
 - b. All augmentation water provided to Permittee by UAWCD must be physically delivered at or above the point of depletion from the Project well(s) and augmentation water cannot be delivered by exchange from downstream water rights upstream to the point of depletion. This Extended Permit recognizes that UAWCD may sometimes receive water from downstream sources, including from Pueblo Reservoir, and may exchange such water upstream to storage in Twin Lakes Reservoir or Turquoise Reservoir pursuant to its exchange decrees and approved administrative or contract exchanges. This Extended Permit does not

regulate UAWCD's operation of such exchanges. This Extended Permit expressly prohibits the use of such water to augment Project depletions by exchange and expressly requires that any water exchanged by UAWCD into upstream storage facilities must be physically stored and subsequently released from storage to augment Project depletions in time, place and amount as provided in this Extended Permit.

4.26 Accounting and Reporting Requirements.

- a. Permittee shall provide to County Staff monthly accounting reports utilizing daily data from UAWCD detailing all of UAWCD's augmentation operations, including the augmentation of the Project depletions and including storage capacities in the UAWCD storage facilities approved in this Extended Permit. As part of the annual report referred to above, Permittee will also provide an annual summary of the monthly UAWCD accounting reports provided to the Permit Authority during the previous year.
- b. County Staff and the Permit Authority shall additionally have the right to request any additional accounting and reporting information as the Permit Authority deems reasonably necessary to monitor and evaluate the Operation of the Project and the terms and conditions of the Permit and the Extended Permit.
- c. If the Permit Authority determines that the Project augmentation water is being indirectly provided by UAWCD by exchange rather than through physical releases of augmentation water from approved upstream storage facilities and approved water sources, or that releases from storage are not being made in specific time and amount to match Project depletions, the Permit Authority may suspend operation of this Extended Permit and impose additional terms and conditions upon Permittee's Project operations to ensure that all augmentation water is supplied in conformity with the terms and conditions of the Permit and this Extended Permit.

4.27 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 RMBH 1 is an existing test borehole and shall not be used for production. Permittee may operate RMBH 3 and RMBH 2 simultaneously. However, total diversions for the Project must not exceed 200 gallons per minute, nor more than one (1) acre foot per day, nor more than 16.6-acre feet in any one month.

4.28 Construction of Pumping Wells. RMBH 3 has been completed within 200' of RMBH 2. Both RMBH 3 and RMBH 2 have been constructed similar in depth and completion, including the screened interval and depth of the pump setting, as existing RMBH 2. RMBH 3 and RMBH 2 shall not be operated in a manner that will cause the water levels in the well to drop below one foot (1') above the top of the screen.

4.29 **Surface Water Flow Measurements.** Permittee shall install a continuous recording device on the flume on the ditch that has been installed in the upper ditch up gradient from the upper pond. Permittee shall maintain at all times during the Project the existing measuring weir located at the outflow of the lower pond. Each measuring point shall be equipped with a continuous recording device that is properly maintained and calibrated by Permittee. Permittee shall record daily flow measurements of the upper flume and lower weir and provide the data to the County Staff monthly. Said data recording and reporting continue for so long as the Project is operating.

4.30 **Suspension of Pumping in the Event of Adverse Effects on Reconstructed Wetlands.** Permittee shall suspend pumping of RMBH 3 and/or RMBH 2 in the event operation of the Project wells causes an adverse effect on the reconstructed wetlands at the Ruby Mountain parcel. Pumping may not be resumed without approval from the Permit Authority.

4.31 **Inclusion of Reconstructed Wetlands in Augmentation Plan.** Permittee shall ensure that any increases in consumptive use from evapotranspiration or evaporation at the reconstructed wetlands at Ruby Mountain versus the pre-existing evapotranspiration at the Ruby Mountain site must be fully augmented with Permittee's authorized augmentation water source or other water supplies contributed by design stakeholders that desire to enhance wetland configurations with greater water consumption features. The reconstructed wetlands will continue to be a part of the Permittee's permanent plan for augmentation. The Permit Authority may review and approve any other augmentation water source that may be proposed to ensure that such water complies with this Extended Permit and the Permit Authority's regulations.

Commented [JD4]: State doesn't require augmentation for this. Can this now be deleted?

4.32 **Cessation of Diversions Upon Termination.** The Permittee shall cease diversions from Project wells and Operation of the Project within sufficient time prior to the expiration of this Extended Permit so that any lagged depletions are fully replaced by the end of the Extended Permit term. Permittee shall not be required to cease diversions at the expiration of this Extended Permit if, prior to the expiration date, it has another County-approved augmentation water supply available to replace all existing and lagged depletions in time, place or amount and has obtained an extension of the Extended Permit. No more than 5% of lagged depletions or post-pumping depletions may be replaced by a one-time or bulk release at the end of the UAWCD augmentation agreement.

4.33 **Restrictions on Acquisition of Additional Water Rights in County.** Permittee shall not purchase, lease, or acquire directly or indirectly other water rights or dry-up irrigated lands in Chaffee County in order to provide water to the aquifer up-gradient of the Project wells, without the prior written consent of the Permit Authority and full compliance with all applicable County regulations. Permittee does not need consent of the Permit Authority to enter into agreements with up-gradient irrigators for the continuance and preservation of historical irrigation practices, the return flows from

which provide a source of water to the aquifer. Permittee shall inform the Permit Authority of any such agreements.

- 4.34 **Water Rights Filing and Administration Costs.** Permittee shall pay any and all costs and fees incurred by the County associated with the County's review of Permittee's water supply issues under this Extended Permit and any administrative or water court proceedings subsequent to this Extended Permit, including without limitation any changes in the 06CW32 augmentation decree. The County's costs and fees shall be paid out of the previously established Cost Reimbursement Fund.
- 4.35 **U.S. Highway 285 Improvements Lobbying.** Permittee shall cooperate with the County in lobbying Colorado Department of Transportation to construct improvements to Highway 285 between Denver and Chaffee County.
- 4.36 **Limits on Truck Traffic.** Permittee shall limit truck traffic to no more than 25 loaded trucks per day, with no more than two trucks per hour. In peak hours, truck traffic shall be limited to no more than two loaded trucks per hour, with an average of one truck per hour for the peak hours of each day. Peak hours are from 11:00 a.m. to 6:00 p.m. on all days from the Friday prior to Memorial Day through Labor Day. Trucks should have a clearly visible phone number to report safety violations. Trucks should be registered in Colorado.
- 4.37 **Emission Standards.** Permittee shall require that all trucks used for the Project meet all applicable emission standards adopted at the federal, state or local level. Permittee shall provide verification of compliance with such condition as part of the annual report.
- 4.38 **No Idling During Loading.** Trucks shall not idle while loading except during periods of sub-freezing temperatures.
- 4.39 **Emergency Access.** Permittee will maintain an emergency river access point on the east bank of the River, in compliance with criteria set by the CPW, and will continue all necessary agreements and permits to enable such access.
- 4.40 **Revegetation.** Permittee shall work with County staff and CPW to ensure all disturbed areas are adequately revegetated.
- 4.41 **Conservation Easement.** Unless such timeframe is extended by the Permit Authority, by December 31, 2022, Permittee shall complete the conservation easement process described during the Application and hearing processes.

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

5.1 **Technical Revision.** A technical revision to this 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 Extended 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 Extended Permit; and
- d. Only minor changes to the terms or conditions of this Extended 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 **Extended 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 (extended 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 Extended 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 Extended 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 Extended 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 Extended Permit. Following the hearing, the Permit Authority may approve or amend approval of the revised Extended Permit as it deems necessary to ensure that the Project will continue to comply with applicable County 1041 regulations then in effect.

5.7 **Effective Date.** The revised Extended Permit shall take effect 15 days from the date of County Staff approval of a technical revision unless the Permit Authority decides to hold a public hearing to consider the revised Permit. If the Permit Authority holds such a hearing, the effective date of the revised Permit will be established by the Permit Authority at the time of its decision to approve or amend the revised Permit.

Section 6. **No Precedent.** This Extended Permit does not establish any precedent, nor will this Extended Permit be used as a basis to seek or justify similar terms in any subsequent permitting application involving the Permitting Authority.

Section 7. **Resolution 2009-42, Resolution 2010-20, and Resolution 2013-35.** Resolutions 2009-42, 2010-20 and 2013-35 are hereby repealed in their entirety and replaced by this Resolution.

Section 8. **Implementation of Resolution.** This Resolution shall be in full force and effect immediately upon its approval.

ADOPTED AND APPROVED this X day of X, 2021.

BOARD OF COUNTY COMMISSIONERS

[Acting] Chairman

The vote on the above Resolution was as follows:

Commissioner Greg Felt ___

Commissioner Keith Baker ___

Commissioner Russell Granzella ___

STATE OF COLORADO, CHAFFEE COUNTY

ATTEST:

The above is a true and correct record of Resolution 2021-XX duly adopted by the Chaffee County Board of County Commissioners by a X-X vote at a regular meeting, properly noticed and held on X, 2021.

Chaffee County Clerk

DRAFT