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**CHAFFEE COUNTY, COLORADO
RESOLUTION NO. 2009-42**

**A RESOLUTION GRANTING A PERMIT TO CONDUCT AN ACTIVITY OF
STATE INTEREST IN AN AREA OF STATE INTEREST ("1041 PERMIT"),
WITH CONDITIONS, FOR NESTLE WATERS NORTH AMERICA, INC.**

WHEREAS, the Board of County Commissioners of Chaffee County, Colorado, pursuant to C.R.S. § 24-65.1-101 *et seq.*, has designated municipal and industrial water projects to be matters of state interest; and

WHEREAS, the Board of County Commissioners 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; and

WHEREAS, the Board of County Commissioners 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"); and

WHEREAS, Nestle Waters North America, Inc. ("Permittee") has applied for a 1041 Permit 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; and

WHEREAS, the application for the Project ("Application") was deemed complete on December 16, 2008, and amended with additional submittals throughout the course of the permit review; and

WHEREAS, the Permittee amended the Application on May 21, 2009 to indicate it is voluntarily placing a permanent conservation easement on the Project parcels concurrent with construction of the Project; and

WHEREAS, the Permit Authority held a public hearing on March 18, 2009 in Salida, Colorado to consider the application, at which time the Permit Authority considered testimony and received evidence; and

WHEREAS, the Permit Authority continued the public hearing with the consent of the Permittee to April 21, 2009, April 29, 2009, May 5, 2009, May 21, 2009, June 16, 2009, July 1, 2009 and August 5, 2009, and August 19, 2009; and

WHEREAS the Permit Authority closed public testimony on May 21, 2009 and began deliberations; and



WHEREAS the Permit Authority concluded deliberations on August 19, 2009, voted unanimously to approve the 1041 Permit subject to conditions, and directed staff to prepare a resolution outlining the Permit Authority's findings and conditions; and

WHEREAS, all applicable notice and public hearing requirements have been satisfied.

NOW, THEREFORE, BE IT RESOLVED BY THE PERMIT AUTHORITY:

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

- 1.1 "Application" means the application for the Project
- 1.2 "County Staff" means the Planning Director and the Director's designee(s).
- 1.3 "Effective Date" means thirty (30) days from the date of adoption of this Resolution by the Permit Authority or after any appeal of the Permit Authority's decision has been finally resolved in the appropriate court of law, whichever is later.
- 1.4 "Local" means within a 25-mile radius of Chaffee County.
- 1.5 "Operation of the Project" means diversion of spring water to be bottled for saleable product.
- 1.6 "Permittee" means Nestle Waters North America, Inc.
- 1.7 "Project" means the Nestle Waters North America Chaffee County Spring Water Project.
- 1.8 "Resolution" means Chaffee County, Colorado Resolution No. 2009-42, A Resolution Granting a Permit to Conduct an Activity of State Interest in an Area of State Interest ("1041 Permit"), with Conditions, for Nestle Waters North America, Inc.

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 Application, 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 Application does not comply with the following criteria:

- a. Section 3-301 (1)(b), *Consistency with Planning Documents*;
- b. Section 3-303 (1)(d), *Water Rights*;



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

2.3 The conditions set forth in Section 4 of this Resolution should 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. 1041 Permit. This Resolution shall constitute the 1041 Permit ("Permit") for the Project.

Section 4. Permit Approval and Conditions. The Permit Authority hereby approves the Permit, with the following conditions:

4.1 **Scope of Permit.**

- a. This Permit is limited to the Project as described in the permit application by Permittee, as amended during the public hearing process orally or in writing, and as approved hereunder. The Permit conditions shall include all agreements and representations of Permittee made during the public hearing process. Permittee shall notify the County of any proposed change to the Project construction, 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 Permit, the pumping shall cease immediately unless and until a Permit Amendment has been granted by the Permit Authority.
- c. If the County determines that any material representation made by Permittee in the permit application or during the public hearing process is false or deliberately misleading, the County may pursue an enforcement action for violation of this Permit.

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.

4.3 **Dispute Resolution.** If a dispute arises pertaining to matters covered by this 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 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.

4.5 **Commencement of Project.** If the County determines that Permittee fails to take substantial steps to commence the Project within three years from the Effective Date, the



Permit may be revoked or suspended by the Permit Authority following notice and public hearing. The Permit Authority may, in its discretion, extend the time period to begin development upon written request by Permittee, following a public hearing.

4.6 Transfer of Permit. Permittee may transfer this Permit to any 51% Nestle S.A. owned subsidiary with written notice to the County. In the case of any other transfers, this Permit may be transferred to another party only with the written consent of the Permit Authority. A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and condition contained in the Permit.

4.7 Permit Violation. Failure to comply with any portion of this 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 these conditions.

4.8 Annual Reporting. Permittee shall submit an annual report to the County on March 1 of each year covering the preceding calendar year that describes progress on the Project and compliance with Permit conditions, including but not limited to water pumping operations; wetland and groundwater monitoring; wetlands and hatchery restoration; land management plans; 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; a description of community involvement efforts; and endowment funding and disbursements.

4.9 Hagen Exception. Any metes and bounds or other description of the Hagen exception from the Bighorn Springs parcel does not create a separate legal lot or parcel unless or until a parcel is created through the County subdivision regulations. Material changes to the description of the Hagen exception description shall require a technical revision or permit amendment pursuant to sub-section 4.2 of this permit.

4.10 Financial Security. Prior to any construction, 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 Chaffee 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 Permit conditions, except for the hatchery restoration project.

4.11 Compliance with Other Permits. This Permit is contingent upon Permittee's compliance with all other County, State and Federal permits and approvals required for this Project, including but not limited to the Special Land Use Permit for this Project. This Permit shall not constitute an exemption from Chaffee County zoning, building, health or other applicable regulations and codes.

4.12 Cost Reimbursement Fund and Application Review Costs. Within 7 days of the Permit Authority's approval of this Resolution, Permittee shall fund a Chaffee County Cost Reimbursement Fund that will be used to reimburse Chaffee County and other



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government service providers for costs associated with the Project, pursuant to the Cost Reimbursement Fund Procedures 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.

4.13 Bighorn Springs Land Management Plan. Within 30 days of the Effective Date, Permittee shall meet with County Staff to discuss what elements will be required in an acceptable final Bighorn Springs Land Management Plan. Prior to Operation of the Project, Permittee shall obtain approval from the County of a final land management plan for the Bighorn Springs parcel. Plan components shall 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.

4.14 Ruby Mountain Land Management Plan. Within 30 days of the Effective Date, Permittee shall meet with County Staff to discuss what elements will be required in an acceptable Ruby Mountain Land Management Plan. Prior to operation of the Project, Permittee shall obtain approval from the County of a final land management plan for the Ruby Mountain parcel. Plan components shall 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.

4.15 Hatchery Restoration.

- a. Within 60 days of the Effective Date, Permittee shall submit to the County Staff a final Conceptual Riparian and Wetlands Restoration Plan for the Hatchery ("Conceptual Hatchery Restoration Plan") to remove the existing hatchery structures and restore conditions to a more natural state.
- b. Prior to Operation of the Project, Permittee shall obtain approval from the County Staff of the Conceptual Hatchery Restoration Plan. The Conceptual Hatchery Restoration Plan shall include a component allowing and encouraging local educational institution access and participation in the restoration planning and work. In addition to a description of the work to be performed pursuant to the to be developed final Hatchery Restoration Plan, the Conceptual Hatchery Restoration Plan shall include a list of required state and federal permits that will be necessary for the work and a proposed timetable and phasing plan for permitting, construction and completion of the work. Permittee shall initiate and diligently pursue the approved Conceptual Hatchery Restoration Plan within six (6) months of the County approval of the Conceptual Hatchery Restoration Plan.



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- c. Permittee shall provide the County Staff with a copy of all documents that it submits to the U.S. Army Corps of Engineers ("USACE") or other state or federal agencies to obtain permits for the final Hatchery Restoration Plan at the same time those are submitted. Permittee shall also provide the County with copies of responses and / or correspondence from those permitting agencies, and copies of such permits once they are issued. Prior to construction of the final Hatchery Restoration Plan, Permittee shall post a letter of credit deemed adequate by the County and for the benefit of Chaffee County calculated and administered in accordance with the requirements of Section 2-402 of the County 1041 Regulations. The work to accomplish the final Hatchery Restoration Plan shall be fully-implemented no later than three (3) years from the date the USACE issues required permits, unless a longer time period is approved in writing by the Permit Authority. In the event no permits are required from the USACE, the final Hatchery Restoration Plan shall be completed in accordance with the timetable in the approved Conceptual Hatchery Restoration Plan unless a longer time period is approved in writing by the Permit Authority.

4.16 Wetlands and Groundwater Monitoring and Mitigation Plan. Within 60 days of the Effective Date, Permittee shall meet with County Staff to discuss what elements will be required in an acceptable Wetlands and Groundwater Monitoring and Mitigation Plan. Prior to Operation of the Project, Permittee shall obtain approval from the County Staff for a final Wetlands and Groundwater Monitoring and Mitigation Plan. At a minimum, the plan shall include 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. The plan shall also include the recommendations proposed by the Colorado Natural Heritage Program in its April 2009 Final Report, as modified to reflect that there will no longer be pumping from Bighorn Springs.

4.17 Endowment and Annual Programmatic Contributions. Prior to Operation of the Project, Permittee shall fund public foundations or 501(c)(3) non-profit corporations with initial endowment(s) totaling no less than \$500,000.00 and make future annual contributions. 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. Permittee has also committed to annual programmatic contributions to local organizations. In its Annual Review, Permittee shall provide information that documents the nature and amount of its annual contributions and local programmatic funding.

4.18 Right-of-Way. Within 60 days of the Effective Date, Permittee shall dedicate to the County a right-of-way for CR 300 as identified on the Bighorn Springs Site Plan submitted on May 4, 2009. The Bighorn Springs right-of-way shall contain construction limitations to protect the spring sources, including, but not limited to protection of water quality, spring orifices, and wetlands. Prior to Operation of the Project, Permittee shall dedicate to the County a 60-foot right-of-way for CR 300, as identified on the Ruby



Mountain Site Plan submitted on May 4, 2009. The Ruby Mountain right-of-way shall contain construction limitations to protect the spring sources, including but not limited to protection of water quality, spring orifices and wetlands.

4.19 Wildlife Friendly Fencing. Prior to Operation of the Project, Permittee shall remove existing fencing along the west side of the right-of-way for CR 300 with wildlife-friendly fencing installed along the newly dedicated right-of-way boundary.

4.20 River Wade Fishing. Prior to Operation of the Project, Permittee shall dedicate a permanent wade fishing easement to the Colorado Division of Wildlife ("CDOW") on the Bighorn Springs and Ruby Mountain parcels.

4.21 Fishing Access. Within 30 days of the Effective Date, Permittee shall work with CDOW to determine any appropriate locations to establish permanent fishing easement and access on the Bighorn Springs parcel. If a location is identified by the CDOW, Permittee shall dedicate such easement to CDOW, prior to Operation of the Project.

4.22 Pipeline Requirements. Prior to any construction, Permittee shall submit to the County Attorney executed road access permits, permits to construct within the County rights-of-way, easement and right-of-way dedications and licenses pertinent to the pipeline. In addition, Permittee shall submit executed ditch crossing agreements and comply with archaeological construction requirements.

4.23 Buildings and Structures. Prior to any construction of the load station or wellhouses, Permittee shall obtain demolition, building and other permits required for each structure.

4.24 Construction Conditions Imposed as Part of the Special Land Use Permit. Prior to beginning any earthwork or construction of any kind, Permittee shall coordinate with County Staff to develop a construction management plan that satisfies all of the construction conditions imposed as part of the Special Land Use Permit.

4.25 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 as represented in the THK report dated May 4, 2009, with the exception of work related to tank fabrication and directional drilling. Permittee shall demonstrate to the satisfaction of the Permit Authority 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.

4.26 Local Drivers. Permittee shall ensure that at least 50% of the drivers for all Project-related trucking operations have a primary residence in Chaffee County, as represented by the letter from Westco Express, Inc, dated April 14, 2009 and will endeavor to hire up to 100% local drivers if available. Permittee shall document efforts to hire local drivers in the annual report.



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4.27 Project Impacts Related to Well Pumping. The impacts to the wetlands, surface water and groundwater resources from proposed Project well pumping are based upon certain assumptions by Permittee regarding pumping rates, replacement water, timing, etc. Because the Project impacts are assessed on the basis of these assumptions, the hydrologic and operational assumptions set forth in the Application and included within the Permittee's evaluation and quantification of Project-related impacts shall be 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 Permit. To the extent that an express condition in this Permit incorporates or includes such an assumption, then the express term and condition shall control.

4.28 Augmentation Water Source Restrictions. The augmentation water for depletions caused by Permittee's well(s) shall be from water leased to Permittee by the City of Aurora and shall be subject to all of the terms and conditions of this Permit. No other augmentation water source is authorized under the Permit. Permittee shall ensure that all augmentation water supplied to offset Project depletions by Aurora shall be derived from transbasin water from Aurora's Colorado River sources or from consumptive use credits to the Arkansas River for in-priority changed water rights from Aurora's existing Lake County municipal water rights portfolio. No augmentation water shall be directly or indirectly supplied by Aurora from native Arkansas River water originating downstream of the Project depletions.

4.29 Limitation on Project Depletions. Project depletions from the withdrawal of water from Project wells shall be limited to the net amount of replacement water available to the Arkansas River in time, place and amount. Releases of augmentation water from Aurora's existing Lake County storage facilities or consumptive use credits to the Arkansas River for in priority changed water rights from Aurora's existing Lake County municipal water rights portfolio shall match the depletion schedule in time and amount.

4.30 Approved SWSP or Augmentation Plan Required. Permittee shall at all times operate in conformity with the terms and conditions of a State Engineer approved substitute water supply plan ("SWSP") or a water court approved plan for augmentation. No water shall be withdrawn from Project wells until an adequate SWSP or plan for augmentation is approved. The County shall have the right to fully participate as an objector in the SWSP and water court proceedings.

4.31 Augmentation Water Delivery Restrictions. All augmentation water to offset Project depletions must be physically delivered to the Arkansas River above the Project depletions. The Aurora release points in Lake County meet these requirements. Augmentation water cannot be delivered by exchange from downstream water rights to the point of depletion, or by exchange by Aurora into storage of downstream native water rights. Any change in the augmentation water source or augmentation water release point shall require a permit amendment in accordance with sub-section 4.2 of this Permit.



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4.32 Mitigation of Effects of Increased Demand on Augmentation Water Source.

To ensure that the increased demand created by Permittee's lease with Aurora does not cause Aurora to make increased diversions and exchanges of native water within the Arkansas River Basin for Aurora to make-up or replace the amount of augmentation water leased to Permittee, and to ensure that Aurora does not indirectly provide the augmentation water for Project depletions from increased exchanges of downstream native Arkansas River water rights, the following conditions shall be imposed upon the Permittee and the Project augmentation water source:

- a. During any period of time that Aurora is exercising its rights to exchange any Category 2 leased water under the October 3, 2003 Intergovernmental Agreement between the Southeastern Colorado Water Conservancy District and the City of Aurora (the "Aurora-Southeastern IGA") through Chaffee County, Permittee shall suspend pumping its Project wells. Permittee shall be required to promptly notify the County at all times that Aurora is exchanging Category 2 leased water and it shall suspend pumping the Project well(s) during all such times. Permittee shall ensure that Aurora provides Permittee with advance notice of its intent to conduct any Category 2 exchanges so that Permittee can ensure that it suspends its pumping operations while Aurora's Category 2 exchanges are occurring.
- b. Permittee shall provide to the Permit Authority monthly accounting reports utilizing daily data from Aurora detailing all of Aurora's water supply and demand operations, within and without the Arkansas River Basin, including storage capacities. Within 60 days of the end of each permit year, Permittee shall also provide an annual report summarizing the Aurora accounting reports provided to the Permit Authority during the previous year.
- c. Within 60 days of Effective Date, Permittee shall provide to the Permit Authority a report that summarizes Aurora's Colorado River and Arkansas River diversions for the years 2001-2008. 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.
- d. If the Permit Authority determines that the Project augmentation water is being indirectly provided by Aurora from native Arkansas River water sources:
 - (1) The Permit Authority may suspend operation of this Permit and impose additional terms and conditions upon Permittee's Project operations to ensure that all augmentation water is derived from transbasin water from Aurora's Colorado River sources or from consumptive use



credits to the Arkansas River for in-priority changed water rights from Aurora's existing Lake County municipal water rights portfolio.

(2) For the purposes of this section, Aurora shall be deemed to have indirectly provided augmentation water from native Arkansas sources if it increases exchanges of native Arkansas River water as a result of the lease between Aurora and Permittee.

4.33 Pumping Well Operational Restrictions. The Permittee shall install and 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 will not be used for production. RMBH 2 is an existing well and RMBH 3 is a well to be completed. Permittee shall not operate RMBH 3 and RMBH 2 simultaneously. RMBH 2 will be the principal production well and RMBH 3 will be a back-up well in case RMBH 2 fails or is temporarily unavailable (i.e., due to maintenance). Diversions from either RMBH 3 or RMBH 2 will not exceed 200 gallons per minute, nor more than one (1) acre foot per day, or 16.6 acre feet in any one month.

4.34 Construction of Pumping Wells. RMBH 3 will be completed within 200' of RMBH 2. Both RMBH 3 and RMBH 2 shall be 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.

4.35 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 hatchery building (the "upper flume"). Permittee shall maintain at all times during the Project the existing measuring flume located at the far downstream outfall of the hatchery (the "lower weir"). The upper flume or lower weir may be relocated if required during implementation of the hatchery restoration plan. 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 shall commence within 30 days of the date of the Effective Date and continue for so long as the project is operating.

4.36 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.

4.37 Inclusion of Reconstructed Wetlands in SWSP or Augmentation Plan. Permittee shall ensure that any increases in consumptive use from evapotranspiration or evaporation at the reconstructed wetlands at Ruby Mountain versus the existing uses 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 shall be a part of the Permittee's SWSP and permanent plan for augmentation. The Permit Authority shall have the right to review and approve any other augmentation water source that may be proposed to ensure that such water complies with this Permit and the Permit Authority's regulations.

4.38 Cessation of Diversions Upon Termination of Aurora Lease. The Permittee shall cease diversions from Project wells within sufficient time near the end of the lease term with Aurora so that any lagged depletions are fully replaced by the end of the lease term. 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 Aurora lease term.

4.39 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.

4.40 Water Rights Filing and Administration Costs. Permittee shall submit its proposed Substitute Water Supply Plan and Plan for Augmentation to the County at least 30 days prior to their respective filings in accordance with conditions identified in Sections 4.27 through 4.40 of this Permit. Permittee shall pay the County's costs and fees incurred during this pre-filing review of Permittee's application(s), the County's court filing fees associated with participating in the adjudication of Permittee's Plan for Augmentation as an Opposer, as well as its attorney fees associated with participating as an Opposer in the Water Court and/or State Engineer Substitute Water Supply Plan proceedings to ensure consistency with the Permits. These costs to the County shall be paid out of the Cost Reimbursement Fund established pursuant to this Permit.

4.41 Trout Creek Pass Improvements Lobbying. Permittee shall cooperate with County in lobbying Colorado Department of Transportation to construct improvements to Trout Creek Pass.

4.42 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. Such peak hour restriction shall be in place until at least one climbing lane is established on eastbound Trout Creek Pass. At such time a climbing lane is established, Permittee may petition the Permit Authority for removal of the peak hour restriction.



4.43 **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.

4.44 **No Idling During Loading.** Trucks shall not idle while loading.

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.



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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.

5.7 Effective Date. The revised 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. Implementation of Resolution. This Resolution shall be in full force and effect immediately upon its approval.



**CHAFFEE COUNTY
RESOLUTION NO. 2009-43**

**RESOLUTION APPROVING APPLICATION OF
NESTLE WATERS NORTH AMERICA, INC
FOR A SPECIAL LAND USE PERMIT
(COMMERCIAL SPRING DEVELOPMENT; PIPELINES AND TRUCK LOADING STATION)**

FINDINGS AND CONCLUSIONS:

WHEREAS, Nestle Waters North America, Inc. (“the applicant” or “Permittee”) has applied to the Board of County Commissioners of Chaffee County (the “Board”) for a Special Land Use Permit (“SLUP”) in connection with the development of spring water source, associated transmission pipeline and a loading station. This project proposes spring development and well houses on one parcel, a loading station on one parcel, and approximately 4.92 miles of pipeline (25,974 feet), located on approximately 17 parcels, including project parcels, easement parcels, and rights of way. The requested SLUP would apply to all such parcels.

WHEREAS, on March 10, 2009, the Chaffee County Planning Commission recommended by a 6-0 vote, approval of the SLUP subject to several conditions and with a series of findings.

WHEREAS, the Board, also sitting as the Permit Authority in connection with the applicant’s 1041 application, consolidated the public hearing on the 1041 application and the SLUP, which was held on March 18, 2009 in Salida, Colorado. During the hearing, the Board considered testimony and received evidence.

WHEREAS, the Board continued the public hearing with the consent of the applicant to April 21, 2009, April 29, 2009, May 5, 2009, May 21, 2009, June 16, 2009, July 1, 2009 and August 5, 2009, and August 19, 2009.

WHEREAS, the Board closed public testimony on May 21, 2009 and began deliberations.

WHEREAS, the Board concluded deliberations on August 19, 2009, voted unanimously to approve the SLUP subject to conditions, and directed staff to prepare a resolution outlining the Board’s findings and conditions.

WHEREAS, all applicable notice and public hearing requirements have been satisfied.

WHEREAS, the Board has reviewed the application and the recommendations of the Planning Commission and the County’s land planning staff in light of the Chaffee County Land Use Code and finds that unless certain conditions are imposed and complied with, the construction and/or operation of the project and proposed uses on the subject parcels may cause the following impacts beyond the boundaries of the subject parcels:

- Danger to safety;
- Water pollution;
- Offensive noise;
- Offensive vibration;
- Offensive smoke;
- Offensive dust;
- Offensive odor;



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- Offensive heat; and
- Offensive glare;

The construction and/or operation of the project and proposed uses on the subject parcels may result in other substantial objectionable influences, but such are addressed by conditions imposed in conjunction with the applicant's 1041 Permit.

WHEREAS, provided the applicant and the project complies certain conditions, the proposed use will not unreasonably affect surrounding property values or present a substantial violation of the goals set forth in the County's comprehensive plan or its commercial land use policy.

WHEREAS, provided the applicant and the project complies with certain conditions, the proposed use would not present a danger to safety, would not cause water pollution or generate offensive noise, vibration, smoke, dust, odor, heat, or glare, or have an adverse effect on nearby property owners.

RESOLUTION:

NOW THEREFORE be it unanimously resolved by the Board of County Commissioners of Chaffee County as follows:

1. Approval of Special Land Use Permit. Based upon the findings set forth above, the foregoing application is approved for a Special Land Use Permit regarding spring development, a loading station and pipeline on the subject parcels.
2. Conditions of Approval. Such SLUP shall be subject to compliance with all of the following conditions:
 - a. Prior to issuance of any building permit, Permittee shall obtain approval from the County of all landscape, lighting and drainage and fencing plans and shall submit to the County all executed easements, right-of-way dedications, consents and deeds necessary to construct each structure.
 - b. Prior to any pipeline construction, Permittee shall submit all properly executed ditch crossing agreements, easements, and rights-of-way dedication needed for the pipeline.
 - c. Prior to issuance of any road permit, Permittee shall obtain approval from the County of a traffic management plan for pipeline construction. As part of the traffic management plan and road permits, Permittee shall identify staging areas which may be required for pipeline construction. There will be no full closures of County Roads 300, 301 and 310 during construction.
 - d. Permittee shall comply with all state and local noise regulations at all times and all light shall be downcast and not infringe on any neighbors.
 - e. Truck engines and lights shall be shut off during loading.
 - f. This SLUP is contingent upon Permittee's compliance with all other County, State and Federal permits and approvals required for this Project, including but not limited to the 1041 Permit for this Project. This SLUP shall not constitute an exemption from Chaffee County zoning, building, health or other applicable regulations and codes.
 - g. Permittee may transfer this SLUP to any 51% Nestle S.A. owned subsidiary with written notice to the County. In the case of any other transfers, this SLUP may be transferred to another party only with the written consent of the Board, following consideration by the Planning Commission. A



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- h. This SLUP is limited to the project as described in the permit application, as amended during the public hearing process orally or in writing, and as approved hereunder. The SLUP conditions shall include all agreements and representations of Permittee made during the public hearing process. Permittee shall notify the County of any proposed change to the Project construction, 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's Land Use Code or conditions of this Permit.
 - i. Any proposed change in the construction or operation of the project from that approved in the SLUP shall require a technical revision or a permit amendment, pursuant to Section 3 of this Resolution.
 - j. If a dispute arises pertaining to matters covered by this SLUP, other than an alleged violation of this SLUP, 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.
 - k. This SLUP shall be in effect for 10 years from the Effective Date as defined in the 1041 Permit, so long as Permittee is in compliance with this Permit. The SLUP shall be reviewed by staff after 10 years for compliance and the SLUP shall be renewed unless staff determines any danger to safety, water pollution, offensive noise, vibration, smoke, dust, odor, heat or glare has had an adverse effect on nearby property owners, in which case the SLUP may only be renewed following public hearing by the Planning Commission and the Board.
 - l. If the County determines that Permittee fails to take substantial steps to commence the Project within three years from the Effective Date as defined in the 1041 SLUP, the SLUP may be revoked or suspended by the Board following notice and public hearing. The Board may, in its discretion, extend the time period to begin development upon written request by Permittee, following a public hearing.
 - m. Failure to comply with any portion of this SLUP is a violation of the County Land Use Code and is subject to the enforcement provisions therein and/or any other relief that may be provided in these conditions.
3. Technical Revision or SLUP Amendment.
- a. A technical revision to the SLUP will be allowed if the County Staff determines that:
 - i. Permittee and the Project are in compliance with all terms and conditions of the original SLUP at the time the County Staff receives notice of the proposed technical revision; and
 - ii. There will be no increase in the size of the area affected by the Project; and
 - iii. There will be no increase in the nature or intensity of impacts caused by the Project from those contemplated by this Permit; and
 - iv. Only minor changes to the terms or conditions of this SLUP 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.



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- b. If the County Staff determines that a technical revision is not appropriate under sub-section 3.a above, then the Permittee shall submit an application for a new or amended SLUP in accordance with the County Land Use Code in effect at the time the County receives notice of the proposed technical revision or permit amendment.
 - c. Application for Technical Revision or SLUP 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:
 - i. Documentation of the current SLUP approval.
 - ii. Drawings and plans of proposed changes to the project.
 - iii. Description of changed circumstances.
 - iv. Description of additional or changed mitigation plans.
 - v. Any additional information that the County Staff requires.
 - d. If the County Staff determines that a technical revision to this SLUP 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.
 - e. Within five (5) working days of the County Staff approval of a technical revision, the County Staff shall send a copy of the revised SLUP to the Permittee, the Board, and the County Attorney.
 - f. The Board may, at its discretion, hold a public hearing to consider the revised SLUP 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 Board may approve or amend approval of the revised SLUP as it deems necessary to ensure that the Project will continue to comply with the applicable County Land Use Code then in effect.
 - g. The revised SLUP shall take effect 15 days from the date of County Staff approval of a technical revision unless the Board decides to hold a public hearing to consider the revised SLUP. If the Board holds such a hearing, the effective date of the revised SLUP will be established by the Board at the time of its decision to approve or amend the revised Permit.
4. No Assurances. Future development outside of the subject parcels may impact the quality or quantity of spring water related to the Project. Approval by the Board shall not constitute implied protection by the County of the quality or quantity of the source of Project-related spring water. Approval of the Special Land Use Permit does not create a separate legal lot or parcel unless or until a parcel is created through the County subdivision regulations.
5. Application. This Resolution shall be in full force and effect immediately upon its approval.

ADOPTED AND UNANIMOUSLY APPROVED this 23d day of September, 2009.

BOARD OF COUNTY COMMISSIONERS


Chairman

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ATTEST:

The above is a true and correct record of Resolution 2009-43 duly unanimously adopted by the Board of County Commissioners of Chaffee County at a regular meeting, properly noticed and held on September 23, 2009.

Denise Kaelin, Chief Deputy
Chaffee County Clerk





**CHAFFEE COUNTY, COLORADO
RESOLUTION NO. 2010-20**

**A RESOLUTION GRANTING AN AMENDMENT TO
NESTLE WATERS NORTH AMERICA, INC.'S PERMIT TO CONDUCT
AN ACTIVITY OF STATE INTEREST IN AN AREA OF STATE INTEREST
("1041 PERMIT")**

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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"); and

WHEREAS, on September 23, 2009, Nestle Waters North America, Inc. ("Permittee") 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; and

WHEREAS, on January 19, 2010, the Permittee informed the BoCC that it wished to request an amendment to its 1041 Permit to allow it to utilize an alternate means for construction of the pipeline across the Arkansas River and allow for a second pipeline to be installed in the river crossing for the future use by the Town of Buena Vista; the Permittee submitted an application package to Chaffee County on January 22, 2010, which was supplemented with various additional submittals; and

WHEREAS, the change in construction method is the result of a request by the Town of Buena Vista to install a 16-inch pipeline for the Town's future potential water supply use; as part of the project reclamation, Nestle proposes construction of an emergency river access point on the east bank of the river, on the Moltz property; and

WHEREAS, the Permit Authority held a public hearing on February 22, 2010 in Buena Vista, Colorado to consider the application for amendment, at which time the Permit Authority considered testimony and received evidence; and

WHEREAS, all applicable notice and public hearing requirements have been satisfied.



NOW, THEREFORE, BE IT RESOLVED BY THE PERMIT AUTHORITY:

Section 1. Definitions. Except as set out below, the words and terms defined in Resolution 2009-42 shall have the same meaning in this Resolution:

- 1.1 "Amendment" means the application for the amendment to the 1041 Permit and Special Land Use Permit to allow the Permittee to utilize an alternate means for construction of the pipeline across the Arkansas River and allow for a second pipeline to be installed in the river crossing.
- 1.2 "Effective Date" means the date of adoption of this Resolution by the Permit Authority.
- 1.3 "River" means the Arkansas River.
- 1.4 "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 Amendment, 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)(e)(i), *Surface Water Quality*;
- b. Section 3-303 (1)(h)(ii), *Wetlands and Floodplain Areas*;
- c. Section 3-303 (1)(h)(iii), *Terrestrial or Aquatic Animal Life*;
- d. Section 3-303 (1)(h)(iv), *Terrestrial Plant Life or Habitat*;
- e. Section 3-303 (1)(h)(v), *Soils and geologic conditions*;
- f. Section 3-303 (1)(i), *Noise, Vibrations or Odors*;
- g. Section 3-303 (1)(k)(iii), *Quality or Quantity of Recreation Experience*;
- h. Section 3-303 (1)(k)(vi), *Benefits Accruing County and Citizens Outweigh Loss of Resources or Losses of Opportunity to Develop Resources*;
- i. Section 9-303 (1)(a), *Adverse Affect on Wildlife Species*;



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- j. Section 9-303 (1)(b), *Wildlife Habitat or Protection areas, Migratory Routes, Calving Grounds, Migratory Habitats, Nesting Areas, Rare and Endangered Species Habitat;*
- k. Section 9-303 (1)(c), *Adverse Affect on Wildlife Movement, Displacement and Adaptation;*
- l. Section 9-303 (1)(d), *Project Administered to Function in Harmony with Habitat;*
- m. 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 should enable the Permittee to comply with the criteria that have not been satisfied and are set forth in subsection 2.2.

2.4 All applicable notice and hearing requirements have been satisfied.

Section 3. First Amendment. This Resolution shall constitute the First Amendment to the 1041 Permit for the Project.

Section 4. Permit Approval and Conditions. The Permit Authority hereby approves the Amendment, subject to compliance with all of the terms and conditions of Resolution 2009-42 (including any updates necessary as a result of this Amendment), except as modified or supplemented below (additions or modification are in *italics* and underlined):

4.22 **Pipeline Requirements.** Prior to any construction, Permittee shall submit to the County Attorney executed road access permits, permits to construct within the County rights-of-way, easement and right-of-way dedications and licenses pertinent to the pipeline. In addition, Permittee shall submit executed ditch crossing agreements and comply with archaeological construction requirements. *Notwithstanding the foregoing, only within the River Crossing Segment, Permittee may initiate pipeline construction of its pipeline and the Town of Buena Vista's Pipeline when it has submitted to the County all required executed easements across property within the River Crossing Segment. No crossing of any ditch can be initiated until the required crossing agreement has been executed and submitted.*

4.45. **Emergency Access.** *Permittee shall construct an emergency river access point on the east bank of the Arkansas River, in compliance with criteria set by the Colorado Division of Wildlife and the Construction Plan, and shall obtain all necessary agreements and permits to enable such construction and access.*



4.46. **Revegetation.** Permittee shall work with County staff and the Colorado Division of Wildlife to finalize and shall carryout a plan to revegetate and stabilize the disturbed areas resulting from the Amendment.

4.47. **Construction Plans.** Permittee shall work with County staff and the Colorado Division of Wildlife to finalize and carryout a Construction Management Plan to include any terms and conditions related to work in the River which may be required as part of the United States Army Corps of Engineers permit. Permittee may only install the pipelines in the River Crossing Segment pursuant to such Plan and the specifications submitted to the County on January 22, 2010 and revisions thereto prior to February 22, 2010.

4.48. **Army Corps of Engineers.** Prior to beginning any construction, other than construction staging, Permittee shall obtain all required permits from the U.S. Army Corps of Engineers.

4.49. **Town Water Pipeline.** Prior to commencement of construction in the River Crossing Segment, Permittee shall provide to the County an executed agreement between the Town of Buena Vista and Permittee addressing installation of the Town Water Pipeline and conveyance of such pipeline to the Town. Prior to commencement of construction in the River Crossing Segment, Permittee shall provide to the County agreements, in such form satisfactory to the County Attorney, to grant easements to the Town of Buena Vista with all property owners owning property necessary to connect the Town Water Pipeline to public rights-of-way.

Section 5. **Resolution 2009-42.** Except as set out in this Resolution, the terms and conditions of Resolution 2009-42 remain in full force and effect. Where terms of this Resolution and Resolution 2009-42 conflict, this Resolution will control. If Permittee is unable to satisfy any of the conditions of approval resulting from this Amendment to enable completion of construction in the River Crossing Segment by March 15, 2010, it may, at its option, continue the Project as previously approved pursuant to Resolution 2009-42. In such case, the alternative construction contemplated by this Amendment shall be void, but all terms and conditions imposed under this Resolution, except for conditions 4.48 and 4.49, shall remain in full force and effect.

Section 6. **Implementation of Resolution.** This Resolution shall be in full force and effect immediately upon its approval.





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JOYCE M. RENO
Chaffee County Clerk

**CHAFFEE COUNTY
RESOLUTION NO. 2010-21**

**RESOLUTION APPROVING APPLICATION OF
NESTLE WATERS NORTH AMERICA, INC.
FOR AN AMENDMENT TO A SPECIAL LAND USE PERMIT
(COMMERCIAL SPRING DEVELOPMENT; PIPELINES AND TRUCK LOADING STATION)**

FINDINGS AND CONCLUSIONS:

WHEREAS, on September 23, 2009, Nestle Waters North America, Inc. (the "applicant" or "Permittee") was granted a Special Land Use Permit ("SLUP Permit") pursuant to Resolution 2009-43 for the Nestle Waters North America **Chaffee County Spring Water Project** (the "Project"). This Project includes spring development and well houses on one parcel, a loading station on one parcel, and approximately 4.92 miles of pipeline (25,974 feet), located on approximately 17 parcels, including Project parcels, easement parcels, and rights of way.

WHEREAS, on January 19, 2010, Permittee informed the Chaffee County Board of County Commissioners ("BoCC") that it wished to request an amendment to its SLUP Permit to allow it to utilize an alternate means for construction of the pipeline across the Arkansas River ("River") and allow for a second pipeline to be installed in the river crossing for the future use by the Town of Buena Vista. Permittee submitted an application package to Chaffee County on January 22, 2010 which was supplemented with various additional submittals.

WHEREAS, the change in construction method is the result of a request by the Town of Buena Vista to install a 16-inch pipeline for the Town's future potential water supply use. This change involves the segment of pipeline alignment as identified on Sheet 4 of Exhibit C submitted by Permittee on January 22, 2010 ("River Crossing Segment").

WHEREAS, as part of the Project reclamation, Nestle proposes construction of an emergency river access point on the east bank of the River, on the Moltz property.

WHEREAS, on February 19, 2010, the Chaffee County Planning Commission recommended by a 6 to 0 vote, approval of the amendment to the SLUP Permit, subject to certain conditions.

WHEREAS, the BoCC, also sitting as the Permit Authority in connection with the applicant's requested amendment to its 1041 Permit, consolidated the public hearing on the 1041 Permit amendment application and the SLUP Permit amendment application, which was held on February 22, 2010 in Buena Vista, Colorado. During the hearing, the BoCC considered testimony and received evidence.

WHEREAS, all applicable notice and public hearing requirements have been satisfied.

WHEREAS, the BoCC has reviewed the application and the recommendations of the Planning Commission and the County's land planning staff in light of the Chaffee County Land Use Code and finds that unless certain conditions are imposed and complied with, the SLUP Permit amendment may cause an impact beyond the boundaries of the subject parcels.

WHEREAS, provided the applicant and the Project comply with certain conditions, the proposed SLUP Permit amendment will not unreasonably affect surrounding property values or present a substantial violation of the goals set forth in the County's comprehensive plan or its commercial land use policy.



WHEREAS, provided the applicant and the Project comply with certain conditions, the proposed SLUP Permit amendment would not present a danger to safety, would not cause water pollution or generate offensive noise, vibration, smoke, dust, odor, heat, or glare, or have an adverse effect on nearby property owners.

RESOLUTION:

NOW THEREFORE be it unanimously resolved by the Board of County Commissioners of Chaffee County as follows:

1. Approval of Amendment to Special Land Use Permit. Based upon the findings set forth above, the foregoing application is approved for an amendment to the applicant's SLUP Permit.
2. Conditions of Approval. Such approval and amendment shall be subject to compliance with all of the terms and conditions of Resolution 2009-43, except as modified or supplemented below (additions or modification are in *italics* and underlined):
 - b. Prior to any pipeline construction, Permittee shall submit all properly executed ditch crossing agreements, easements, and rights-of-way dedication needed for the pipeline, with the exception of pipeline construction within the River Crossing Segment. Only within the River Crossing Segment, Permittee may initiate pipeline construction of its pipeline and the Town of Buena Vista's Pipeline when it has submitted to the County all required executed easements across property within the River Crossing Segment. No crossing of any ditch can be initiated until the required crossing agreement has been executed and submitted.
 - n. Prior to any construction, Permittee shall submit and obtain approval from the County of an updated construction management plan to include any terms and conditions related to work in the river which may be required as part of the United States Army Corps of Engineers permit and reclamation, and to include safety fencing on the river crossing slopes and a requirement that all work within the River Crossing Segment be completed by March 15, 2010.
3. Resolution 2009-43. Except as set out in this Resolution, the terms and conditions of Resolution 2009-43 remain in full force and effect. Where terms of this Resolution and Resolution 2009-43 conflict, this Resolution will control. If Permittee is unable to satisfy any of the conditions of approval resulting from this Amendment to enable completion of construction in the River Crossing Segment by March 15, 2010, it may, at its option, continue the Project as previously approved pursuant to Resolution 2009-43. In such case, the alternative construction contemplated by this Amendment shall be void, but the terms and conditions imposed under this Resolution, particularly with respect to reclamation, would remain in full force and effect.
4. Application. This Resolution shall be in full force and effect immediately upon its approval.

ADOPTED AND UNANIMOUSLY APPROVED this 22nd day of February, 2010.

BOARD OF COUNTY COMMISSIONERS

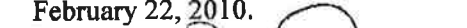

Chairman

STATE OF COLORADO)
) ss.
CHAFFEE COUNTY)

ATTEST:

The above is a true and correct record of Resolution 2010-21 duly unanimously adopted by the Board of County Commissioners of Chaffee County at a special meeting, properly noticed and held on February 22, 2010.

February 22, 2010.


Chaffee County Clerk



**CHAFFEE COUNTY, COLORADO
RESOLUTION NO. 2013-35**

**A RESOLUTION GRANTING A SECOND AMENDMENT TO
NESTLE WATERS NORTH AMERICA, INC.'S PERMIT TO CONDUCT
AN ACTIVITY OF STATE INTEREST IN AN AREA OF STATE INTEREST
("1041 PERMIT")**

WHEREAS, 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.

WHEREAS, 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.

WHEREAS, 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").

WHEREAS, on September 23, 2009, Nestle Waters North America, Inc. ("Permittee") 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.

WHEREAS, on February 22, 2010, the BoCC adopted the First Amendment to the 1041 Permit for the Project pursuant to Resolution No. 2010-20.

WHEREAS, the Permittee informed the BoCC that it wished to change the augmentation water source so that it would use augmentation water obtained from the Upper Arkansas Water Conservancy District, a District servicing Chaffee County among others. Such a change would constitute a Permit Amendment.

WHEREAS, the Permit Authority held a public hearing on October 1, 2013 to consider the application for amendment, at which time the Permit Authority considered testimony and received evidence and directed the County Attorney to prepare a resolution approving the Permit Amendment for consideration on October 8, 2013.

WHEREAS, all applicable notice and public hearing requirements have been satisfied.

NOW, THEREFORE, BE IT RESOLVED BY THE PERMIT AUTHORITY:

Section 1. Definitions. The words and terms defined in Resolution 2009-42 shall have the same meaning in this Resolution. The following new definitions shall apply to this Resolution:

- 1.1 “Effective Date of Amended Permit” means the date that Permittee informs the County in writing of the termination of the Aurora lease and commencement of use of augmentation water obtained from the Upper Arkansas Water Conservancy District (“UAWCD”), and any period prior to such date when Permittee is not entitled to use water delivered under the Aurora Lease pursuant to Section 4.32 of the original Permit. Until the Effective Date of the Amended Permit, all terms and conditions of the Permit shall remain in full force and effect.
- 1.2 “Amended 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. Except as modified by the terms of Resolution No. 2010-21 or Resolution No. 2013-35 and prior approved Technical Revisions to the Permit, all other terms of the Permit as stated in Resolution No. 2009-42 shall remain in effect.

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 Amendment, 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 3-301 (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)(ii), *Groundwater Quality* – aquifer recharge rates, groundwater levels, aquifer capacity;
- e. Section 3-303 (1)(h)(ii), *Wetlands and Floodplain Areas*;
- f. Section 3-303 (1)(h)(iii), *Terrestrial or Aquatic Animal Life*;
- g. Section 3-303 (1)(k)(iii), *Quality or Quantity of Recreation Experience*;

- h. Section 3-303 (1)(k)(iv), *Changes in Value of Lands, Loss of Tax Revenue;* and
- i. Section 3-303 (1)(k)(vi), *Benefits Accruing County and Citizens Outweigh Loss of Resources or Losses of Opportunity to Develop Resources.*

2.3 The conditions set forth in Section 4 of this Resolution should 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. Second Amendment. This Resolution shall constitute the Second Amendment to the 1041 Permit for the Project.

Section 4. Permit Approval and Conditions. The Permit Authority hereby approves the Permit Amendment, subject to compliance with all of the terms and conditions of Resolution 2009-42 and Resolution 2010-20 and all technical revisions (including any updates necessary as a result of this Amendment), except that the following original conditions shall be modified to read as follows:

4.4 Term of Amended Permit. This Permit shall be in effect through October 22, 2019, the original expiration date of the Permit, so long as Permittee is in compliance with the Permit and Amended Permit. The Permit Authority may, in its discretion, extend the term of the Permit upon written request of Permittee.

4.27 Project Impacts Related to Well Pumping. The impacts to the wetlands, surface water and groundwater resources from proposed Project well pumping are based upon certain assumptions by Permittee regarding pumping rates, replacement water, timing, etc. Because the Project impacts are assessed on the basis of these assumptions, the hydrologic and operational assumptions set forth in the Application and included within the Permittee's evaluation and quantification of Project-related impacts shall be 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 Permit. To the extent that an express condition in this Permit incorporates or includes such an assumption, then the express term and condition shall control.

4.28 Augmentation Water Source Restrictions. Following the Effective Date of the Amended Permit, only the augmentation water sources described in the Permit and this Amended Permit are authorized to be used to augment Project 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 Amended Permit. Following the Effective Date of the Amended Permit and the substitution of the water leased by Permittee from the UAWCD as provided in Section 4.31 of this Amended Permit, the augmentation water for depletions caused by Permittee's well(s) shall be from water provided to Permittee by the UAWCD pursuant to

the terms of the "Augmentation Application" dated July 23, 2013 between UAWCD and Nestle Waters or North America, Inc., which is incorporated by this reference. UAWCD may provide augmentation water to Permittee under the Augmentation Application from: (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 Application shall derive from the UAWCD-PBWW Lease. The UAWCD-PBWW lease provides that PBWW 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). In addition, the UAWCD-PBWW lease provides that PBWW 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 this 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). Pursuant to Section 4.31 of this Amended permit, there are restrictions on how and where augmentation water can be delivered to the Arkansas River to augment Project depletions. 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 Amended 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 Amended Permit and are not controlled by the terms of the 06CW32 Decree, the Augmentation Certificate or the UAWCD-PBWW Lease.

4.29 Limitation on Project Depletions. Project depletions caused by the withdrawal of water from Project wells shall be limited to the net amount of replacement water available to the Arkansas River in time, place and amount. Releases of augmentation water by UAWCD shall be delivered to the main stem of the Arkansas 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.

4.30 Approved SWSP or Augmentation Plan Required. Upon adoption of the Amended Permit, Permittee and UAWCD will apply to have the Project depletions be approved under the UAWCD augmentation plan decreed in Case No. 06CW32. After the Effective Date of the Amended Permit, unless augmentation water is still being provided

to Permittee pursuant to the Aurora Lease, no water shall be withdrawn from Project wells unless the Project is included as an authorized diversion under the UAWCD decree in Case No. 06CW32.

a. Permittee shall ensure that the application submitted by UAWCD for inclusion of the Project in Case No. 06CW32 shall contain a description of the terms, conditions and restrictions of augmentation of Project depletions set forth in this Amended Permit and that any approvals granted contain an express adoption of such terms, conditions and restrictions as set forth herein. To the extent of any conflict between augmentation requirements, storage releases, accounting, reporting or other requirements of the Amended Permit and UAWCD's decree in Case No. 06CW32 or any augmentation certificate issued by UAWCD for the Project pursuant to said decree, then the Amended Permit shall control. Permittee shall be responsible for ensuring that UAWCD's provision of augmentation water to offset Project depletions complies in all respects with the terms and conditions of the Amended Permit.

b. This Amended Permit recognizes that there are some uncertainties regarding the exact date of the termination of Permittee's lease with Aurora and the formal substitution of the UAWCD water as the approved augmentation water source for Project Depletions. In addition, there are circumstances under the Aurora Lease where prior to termination of the lease that augmentation water will not be available to Permittee to offset Project Depletions, including those situations set forth in Section 4.32 of the Permit. This Amended Permit authorizes the UAWCD water to be substituted as an approved temporary augmentation water source prior to the termination of the Aurora Lease during periods when augmentation water is not available to Permittee from Aurora, and as the approved augmentation water source after the termination of the Aurora Lease. During any period of time that augmentation water is supplied to Permittee by the Aurora Lease, then the terms and conditions of the Permit shall apply and control. During any period of time that augmentation water is supplied to Permittee by UAWCD, then the terms and conditions of this Amended Permit, including accounting and reporting requirements, shall apply and control. Permittee shall provide the County with at least 30 days advance written notice of any changes in the source of its augmentation water supply between Aurora and/or UAWCD.

4.31 Augmentation Water Delivery Restrictions. The following provision shall control the delivery of augmentation water to offset Project depletions by UAWCD. 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 Amended 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 by daily in-stream credit from upstream transmountain sources or by actual release of augmentation water from storage to the main stem of the Arkansas River above the Project depletions, 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 Amended Permit, the only approved points of augmentation water delivery for water stored and released by UAWCD to augment Project depletions are the following: Twin Lakes Reservoir, Turquoise Reservoir and Clear Creek Reservoir. No other storage facilities are approved augmentation water release points under this Amended Permit.

a. 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 Amended 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 Amended Permit does not regulate UAWCD's operation of such exchanges. This Amended 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 released from storage to augment Project depletions in time and amount as provided in Section 4.31.

4.32. Accounting and Reporting Requirements.

a. Permittee shall provide to the Permit Authority 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 Amended Permit. Within 60 days of the end of each calendar year, Permittee shall also provide an annual report summarizing the UAWCD accounting reports provided to the Permit Authority during the previous year.

b. 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 Amended 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 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 Amended Permit.

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 RMBH 1 is an existing test borehole and shall not be used for production. Permittee shall not 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). Diversions from either RMBH 3 or RMBH 2 will 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).

4.34 Construction of Pumping Wells. RMBH 3 will be completed within 200' of RMBH 2. Both RMBH 3 and RMBH 2 shall be 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. Per Technical Revision #8, approved August 18, 2010, RMBH 3 was constructed in a similar manner, with the following changes that were deemed minor: casing diameter was increased from 8 to 10 inches; the screened section was shortened by five feet from the top; and the pump depth was lowered 5 feet.

4.35 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 hatchery building (the "upper flume"). Permittee shall maintain at all times during the Project the existing measuring flume located at the far downstream outfall of the hatchery (the "lower weir"). The upper flume or lower weir may be relocated if required during implementation of the hatchery restoration plan. 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 shall commence within 30 days of the date of the Effective Date and continue for so long as the project is operating.

4.36 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.

4.37 Inclusion of Reconstructed Wetlands in SWSP or Augmentation Plan. Permittee shall ensure that any increases in consumptive use from evapotranspiration or evaporation at the reconstructed wetlands at Ruby Mountain versus the existing uses 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 shall be a part of the Permittee's SWSP and permanent plan for augmentation. The Permit Authority shall have the right to review and approve any other augmentation water source that may be proposed to ensure that such water complies with this Permit and the Permit Authority's regulations.

4.38 Cessation of Diversions Upon Termination. The Permittee shall cease diversions from Project wells within sufficient time prior to the expiration of this Amended Permit so that any lagged depletions are fully replaced by the end of the Amended Permit term. Permittee shall not be required to cease diversions at the expiration of this Amended Permit if, prior to the expiration date, it has another Chaffee 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 Amended 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.

4.39 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.

4.40 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 the Permit, this Amended Permit and any administrative or water court proceedings subsequent to this Amended Permit, including but not limited to costs and fees related to the Aurora Lease and any and all proceedings related to the substitution of the UAWCD water as the approved augmentation water source for the Project. The County's costs and fees shall be paid out of the Cost Reimbursement Fund established pursuant to this Permit. Permittee shall provide a draft of the UAWCD application for the County's review and approval at least 30 days prior to UAWCD's submittal of the application to include the Permittee's Project wells as Augmented Structures within the 06CW32 augmentation decree. Once Project wells are approved as Augmented Structures in the 06CW32 augmentation plan, Permittee must notify the County at least 30 days prior to withdrawing the NWA Project wells from the 06CW32 plan. Chaffee County shall have the right but not the obligation to provide comments as an "affected person" to the application for inclusion of the Project wells as Augmented Structures under Paragraph 22.t of the 06CW32 decree. However, if Chaffee County does not file comments or the Project application is approved for inclusion in Case No. 06CW32 over Chaffee County's objection, such approval shall not constitute a waiver of or diminish in any way Chaffee County's sole power and authority to determine whether such approval is consistent with and complies with the terms of the Amended Permit and whether the Project operations using UAWCD's augmentation water comply with the

terms of the Permit and Amended Permit.

Section 5. **Resolution 2009-42 and Resolution 2010-20.** Except as set out in this Resolution, the terms and conditions of Resolution 2009-42 and 2010-20 remain in full force and effect. Where terms of this Resolution and Resolution 2009-42 or Resolution 2010-20 conflict, this Resolution will control.

Section 6. **Implementation of Resolution.** This Resolution shall be in full force and effect immediately upon its approval.

ADOPTED AND APPROVED this 8th day of October, 2013.

BOARD OF COUNTY COMMISSIONERS


[Acting] Chairman

The vote on the above Resolution was as follows:

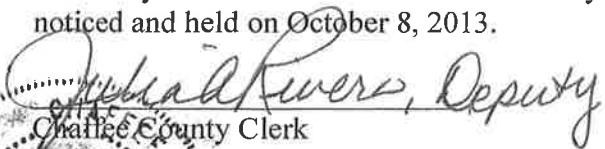
Commissioner Dennis Giese _____ yes

Commissioner Frank F. Holman _____ yes

Commissioner Dave Potts _____ yes

STATE OF COLORADO, CHAFFEE COUNTY
ATTEST:

The above is a true and correct record of Resolution 2013-35 duly adopted by the Board of County Commissioners of Chaffee County by a 3-0 vote at a regular meeting, properly noticed and held on October 8, 2013.


Judith A. Rivers, Deputy
Chaffee County Clerk



