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March 2, 2009

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## VIA E-MAIL

Chaffee County Planning Commissioners  
C/O Don Reimer, P.E.  
Chaffee County  
P.O. Box 699  
Salida, CO 81201

**RE: Nestlé Waters North America Inc. ("NWN") Application Review Memorandum**

Dear Honorable Planning Commissioners:

NWNA appreciates the opportunity to present our SLUP and 1041 Applications to you at the special meeting scheduled for March 3, 2009. On Friday evening, February 27, 2009, we received the Application Review Memorandum from County staff to you. Upon review, NWNA identified areas that deserve additional clarification. This letter only addresses the SLUP portion of the Memorandum.

On November 3, 2009, NWNA submitted its Application and request for approval of:

- A Permit to Conduct a Designated Activity of State Interest pursuant to Chaffee County's 1041 Regulations found in Chapter 3, Efficient Utilization of Municipal and Industrial Water Projects;
- A Permit to Engage in Development in a Designated Area of State Interest pursuant to Chaffee County's 1041 Regulations found in Chapter 9, Development in Areas Containing or Having a Significant Impact Upon Natural Resources of Statewide Concern;
- A Special Land Use Permit ("SLUP") for an Underground Water Pipeline in the Residential Zone, Rural Zone, Recreational Zone and Commercial Zone pursuant to Section 19-II of the Chaffee County Zoning Resolution;
- A Grant of Pipeline Easement from the County to NWNA through County-owned property that is located along the pipeline alignment where the pipeline crosses the Arkansas River.

NWNA proposes to develop a spring water source in Chaffee County, Colorado ("Project"). As components of the Project, NWNA plans to: (1) construct and operate up to two wells on each of the two Spring Sites with associated well houses; (2) convey up to 200 acre-feet of spring water per year through an underground pipeline from the Springs Sites to the Truck Loading Facility; and (3) load a maximum of 25 trucks per day with spring water at the Truck Loading Facility to transport the spring water to NWNA's bottling facility in Denver, Colorado.

Regarding the SLUP, the Planning Commission holds a public hearing and is the recommending body to the Board of County Commissioners ("BOCC"). The BOCC has the authority to approve an SLUP.

Regarding the 1041 Permits, the BOCC is designated the Permit Authority, and considers recommendations of the Planning Commission, if any. While these application types are distinct, because both applications require the same type of information, NWNA submitted the two applications with the same underlying information. NWNA requested concurrent review of the applications to avoid redundancy.

**Applicable County Plans and Codes for SLUP Review:**

County staff identifies the Chaffee County Comprehensive Plan ("Comp Plan"), Chaffee County Zoning Resolution ("Zoning Code"), and the Chaffee County Commercial Land Use Policy ("Commercial Land Use Policy") as applicable to the SLUP review.

Staff analyzed the Project in accordance with the Comp Plan, which was adopted in March 2000.

County staff identifies the Commercial Land Use Policy, a 1989 document, as controlling over the Project because it is mentioned in the Comp Plan and referenced in the Zoning Code. However, the Commercial Land Use Policy was adopted based upon the County's 1976 Comprehensive Plan, one that was succeeded the current Comp Plan. Therefore, its not clear that the Commercial Land Use Policy is an applicable document that can provide review criteria by which the County can evaluate a project. Regardless, NWNA believes its Project complies with the Comp Plan, Zoning Code, and Commercial Land Use Policy and will provide this information at the special meeting public hearing.

**Traffic:**

County staff identifies traffic on Trout Creek Pass, a pass that is located both in Chaffee and Park Counties, as an unstudied concern based upon the Comp Plan and the Commercial Land Use Policies.

NWNA responded to this concern in its February 19, 2009 Letter addressing staff's February 4 Memorandum. To clarify, NWNA has preliminarily studied traffic as identified in its Appendix L. CDOT considers a trip as one travel segment, so this means that the truck trip from Denver to Chaffee County is considered one trip. The truck trip from Chaffee County to Denver is considered a second trip. Therefore, the 50 trucks per day means 25 round trips for the 25 trucks anticipated by this Project, not 50 individual trucks. In Appendix L of the 1041 Application, NWNA's traffic consultant concludes that the access location shows a Level of Service A for US 285 traffic and for the access traffic in both the immediate future and the long-term time frame.

While Level of Service addresses standards for access to the property, it indicates that because it is rated A, that means that US 24/285 has a sufficient carrying capacity. According to NWNA's traffic engineer, a two-lane roadway typically has a daily capacity of about 20,000 vehicles. CDOT information indicates that Trout Creek Pass's annual average daily traffic is around 5,600 vehicles per day. This figure indicates that Trout Creek Pass operates at a little over 25% of its total carrying capacity.

NWNA's proposed project does not require modification of the US Highway and thus has no impact on the highway's carrying capacity. Further, NWNA's truck traffic will have a negligible impact on the roadway function. NWNA's traffic report also concludes that NWNA's truck volume impact on area roadways (US 285) is less than 1%. In traffic engineering analysis, anything less than a 2% impact is considered nominal. NWNA has analyzed the potential impacts of its trucks on Trout Creek Pass, as illustrated in Appendix L, and the impacts are de minimus.

**Open Space:**

NWNA has spent significant time through community outreach and planning to explain its open space preservation and conservation goals. It represents to the community and through its Applications that NWNA is fully committed to maintaining its property as it exists today, in agriculture. NWNA is dedicated to land and water conservation and is exploring long-term options for conservation of the Ruby Mountain and Bighorn Springs Parcels, as it has explained to the community and detailed in its Applications. However, because an SLUP is temporary in nature, NWNA believes it would be inappropriate for the County as a matter of policy to require NWNA to place its property into permanent conservation.

Upon approval of these Applications, NWNA will purchase the Ruby Mountain Springs Parcel and start scoping the hatchery restoration project. Because the scope of restoration will be a collaborative effort with several agencies and interests, it is undefined right now. Ultimately, the U.S. Army Corps of Engineers must permit the hatchery restoration project through a Nationwide Restoration Permit process. Until NWNA finalizes scoping, it is difficult to specifically detail all of the important elements in carrying through such a significant project.

**SLUP Review Criteria:**

The Special Land Use Criteria identified in Section 19(II) of the Land Use Code requires the Planning Commission to consider if the Project "*may cause beyond the boundaries of property upon which the use is to be located*" any danger to safety in surrounding areas, water pollution, offensive noise, offensive vibration, offensive smoke, offensive dust, offensive odor, offensive heat, offensive glare, snow storage problems, wildfire problems, flood hazards, geologic hazards, unsightly outside storage, or any other substantial objectionable influence.

Staff underscores that the Project does not exhibit the Zoning Code-identified adverse impacts on Chaffee County. Staff identifies that traffic may be a concern under the criteria "any other substantial objectionable influence." As explained above, NWNA has illustrated that its truck traffic impacts are de minimus.

**Hagen Land:**

On page 16 of the Memorandum, County staff mentions potential subdivision of the Project property and potential residential use as an issue for the Planning Commission to consider while reviewing NWNA's SLUP Application. NWNA's Project does not include any residential component, nor does NWNA intend to residentially develop the Bighorn Springs Parcel. Therefore, it is NWNA's position that residential uses and subdivision should not be considered as part of NWNA's Application review.

The Zoning Code regulates uses on land within Chaffee County. The Bighorn Springs Parcel, approximately 114 acres, is zoned Rural. Single Family Dwellings are specifically identified as a use by right in the Rural zone district. Zoning Resolution, § 6(I) and (II). NWNA does not interpret the Zoning Code to require any use review for uses by right in Chaffee County, regardless of other uses on the same land.

Chaffee County has a subdivision resolution which outlines the subdivision process in Chaffee County. NWNA understands that subdivision is an entirely separate review process. Any future subdivision occurring on the Bighorn Springs Parcel to accommodate the Hagen land would not change the zoning of either of the parcels created nor modify uses permitted by right on the land. Therefore, NWNA does

not believe subdivision of the property into two parcels instead of one without any zone change has any bearing on the uses requested through NWNA's 1041 Application or SLUP Permit Application.

A potential residential use is not part of NWNA's Project, is a use by right in the Rural zone district, and does not impact any portions of open space and grazing dedicated to the Project. NWNA does not think that future, yet to be determined uses by right are relevant to the Project review.

**Conditions of Approval:**

NWNA attempted to consult with County staff prior to this special meeting regarding the suggested conditions of approval, yet it was unable to do so. Therefore, NWNA requests clarification on the following topics regarding staff's proposed conditions of approval:

1. It is not clear what "issuance of permit" means. Does this mean at the time BOCC grants approval with conditions, or at a later time? If it's the former, NWNA suggests that the phrase be revised to "prior to Building Permit Approval." This revision should be applied to Condition Numbers 1-5.
2. Many of the conditions require amendment of the SLUP upon a certain action. The Land Use Code is silent on process for amending an SLUP, so it is unclear what type of review would be required for an amendment to the SLUP. In suggested conditions of approval that indicated amendment, NWNA suggested to insert "review by Planning Commission and the BOCC" in place of "amendment."
3. Regarding Condition Number 1, NWNA has already submitted a traffic study in Appendix L. The Land Use Code does not require described traffic studies as submittal requirements and staff did not inform NWNA that it was required to submit such a traffic study as part of its submittal requirements. Because the impacts are de minimus, NWNA believes this condition is not appropriate.
4. Regarding Condition Number 6, it is not clear what "prior to construction" means. It would be helpful for staff to clarify its intent so that NWNA could plan accordingly. So long as this phrase is clarified, NWNA agrees that this is a reasonable condition with the exception of the word "decrees" and the phrase "water court decree and/or SWSP." As you are aware, construction projects take time and NWNA believes once all construction permits are in place, construction of the Project will take 6 months. The water pumping aspect of the Project will not occur until construction is complete. A Substitute Water Supply Plan ("SWSP") approval process typically takes up to 6 months and a water rights decree approval process would take longer than that. NWNA suggests that language regarding the SWSP and water court decree be deleted from this condition and a new condition be drafted as follows:

In order to operate the Project, NWNA shall have an SWSP or a water court decree in place.

5. Regarding Condition 8b, NWNA believes this condition protects against noise generated by construction. While the County does not have specific noise criteria, state statute spells out the requirements. NWNA suggests the condition be rewritten as follows:

The applicant shall comply with all state and local noise regulations at all times.

6. Regarding Condition 8c, NWNA and the County discussed this issue at a prior meeting and achieved an understanding that NWNA may have a need to transfer the Project to its subsidiaries. In its Letter Response on February 19, 2009, NWNA suggested a condition of approval to address

transferability. Suggested Condition 8c appears to be unnecessarily onerous. NWNA respectfully requests it to be revised to the following:

This SLUP is granted to Nestle Waters North America Inc. This SLUP is transferable to any Nestle company, including any subsidiary of Nestle S.A. In the event that Nestle Waters North America Inc. conveys the project subject to this SLUP to an entity outside of Nestle, it shall notify Chaffee County of such conveyance.

7. With regard to Condition Number 8d, NWNA suggests qualification of "any change of use or additional uses." The Land Use Code permits several uses by right in the zone districts that apply to the Project Property. In drafting the Land Use Code, the County reviewed and analyzed numerous uses and designated specific uses in these zone districts as uses by right, meaning the County would not review those uses by right. Here, the County appears to be requiring review of all uses, including those uses already determined to be uses by right. This Condition appears to be overreaching. NWNA suggests the following modified as follows:

This SLUP is issued only for the Project as set forth in the permit application. Any modification to the uses specified in this SLUP that are not designated Permitted Uses pursuant to the Chaffee County Zoning Resolution shall require an amendment to this SLUP.

8. With regard to Condition Number 8e, NWNA objects to any condition that requires modification of the SLUP based upon subdivision. So long as the requested SLUP operates as described, uses by right cannot be regulated by the County within the context of the SLUP. Though NWNA contemplates none, any other development of the parcels will require additional County permitting (e.g. building permit, subdivision, etc.). NWNA fully intends to comply with County regulations at all times.

9. Condition 8f implies that any modification, no matter how little, requires an amendment to the SLUP. In the situation where the pipeline alignment may need to shift by an inch, this condition implies that NWNA would be required to obtain an amendment to the SLUP. NWNA suggests that this condition be qualified to a magnitude. It suggests the following language:

The SLUP is issued based on the information provided in the application and additional submittals. Any major change in layout or operation of the Project from that set forth in the application shall require review by the Planning Commission and Board of County Commissioners.

10. Regarding 8g, this condition does not clearly identify process for renewal. As you are aware, NWNA intends to operate this Project for 99 years or more. Though NWNA believes a 10-year renewal period to be short, if the County intends to limit its approval to 10 years, then NWNA requires some renewal process other than a complete re-processing of a new SLUP. NWNA suggests the following language:

This SLUP shall be reviewed by county staff ten years after approval by the County. The permit shall be automatically renewed by county staff for the same time period unless there is a violation of the SLUP or state or local rules, regulations, ordinances or statutes. If there is a violation, then the county shall provide the permit holder an opportunity, with an appropriate time period, to cure any violation. Once the violation is cured, then the County shall automatically renew the SLUP. If the violation is not cured within the time period, then the SLUP shall be reviewed by the Planning Commission and Board of County Commissioners.

11. Regarding Condition 10, NWNA believes that the County meant to condition the approval of this SLUP on approval of the 1041 Permits. Therefore, NWNA suggests the following:

Approval of this SLUP is conditioned upon the Chaffee County Permit Authority granting approval of the applicant's 1041 Permit requests.

12. NWNA accepts proposed Conditions numbered 7, 8a, and 9 as written.

For your convenience, NWNA has attached, as Exhibit A, a redline of the staff suggested conditions on page 17 of the Memorandum and a clean version. Revisions in 7, 8a, and 9 are only done to make the language consistent with the other conditions. NWNA respectfully requests the Planning Commission's recommendation of approval. Feel free to let NWNA know if there is additional information you may need to better assist you in making your decision.

Sincerely,

A handwritten signature in blue ink that reads "Holly K. Strablizky". The signature is written in a cursive style with a large, stylized initial "H".

cc: Ms. Jenny Davis, Esq.