

**PLANNING COMMISSION **DRAFT** RECOMMENDATIONS**  
**NESTLE WATERS SPECIAL LAND USE PERMIT**  
**NESTLE WATERS 1041 PERMIT**

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TO: Chaffee County Board of County Commissioners  
FROM: Planning Staff  
DATE: March 11, 2009

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**Note:** The following recommendation is an excerpt of the draft Planning Commission meeting minutes, and should be considered as a summary of their recommendation until the minutes are approved at their next regular meeting.

**SPECIAL LAND USE PERMIT**

The Planning Commission unanimously recommended **APPROVAL** of the Nestle Waters North America, Inc. – Special Land Use Permit Application, subject to the 10 conditions outlined above and in view of the findings. The applicant is requesting a special land use permit in connection with the development of spring water source, associated transmission pipeline and loading facility.

**Conditions:**

- 1.** As a condition of the Special Land Use Permit, the applicant shall provide an analysis of the current carrying capacity of US 24/285 Trout Creek Pass, and how this project is expected to affect both the current capacity and long-term capacity of the highway system. This shall be completed prior to December 31, 2009.
- 2.** Prior to BOCC hearing the applicant shall submit to staff a detailed site plan of each site and prior to issuance of any building permit the applicant shall submit all landscape, lighting and drainage and fencing plans.
- 3.** Prior to beginning any pipeline construction, the applicant shall submit all executed ditch crossing agreements, easements, and rights-of-way dedication needed for the pipeline; and prior to the issuance of any building permit the applicant shall submit to the County all executed easements, right-of-way dedications, consents and deeds necessary to construct each structure.
- 4.** Prior to issuance of the Special Land Use Permit, the applicant shall submit an approved weed management plan and re-vegetation plan.
- 5.** In order to operate the Project pursuant to this Special Land Use Permit, the applicant shall have a Substitute Water Supply Plan in place to augment the 200 acre feet of spring water and would apply for a plan for augmentation with the water court within 6 months of approval. Upon issuance by the water court of a decree for a plan for augmentation, the applicant no longer needs a substitute water supply plan.
- 6.** The applicant shall submit and the County shall approve a traffic management plan for pipeline construction prior to issuance of any road permit. As part of the traffic management plan and road permits, the applicant 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.
- 7.** The following additional conditions are recommended:

- a. Construction authorized by the Special Land Use Permit shall commence within six months. If construction of the project does not commence within six months of permit issuance, the permit shall terminate unless the Board of County Commissioners agrees to an extension in writing.
  - b. The applicant shall comply with all state and local noise regulations at all times and all light shall be downcast and not infringe on any neighbors.
  - c. The permit is transferable to 51% owned subsidiary of Nestle S.A. (Switzerland) with written notice to the County. Any other transfer or assignment requires the written approval by the Board of County Commissioners, after taking into consideration the special use permit conditions.
  - d. This Special Land Use Permit is issued only for the Project set forth in the applicant's permit application and submittal materials. Any modification to the uses in this Special Land Use Permit that are not designated permitted uses pursuant to the Chaffee County Zoning Resolution, as may be amended, shall require review by the Planning Commission and Board of Commissioners.
  - e. The granting of a Special Land Use Permit approval does not indicate an approval of any future subdivision application.
  - f. The Permit is issued based on the information provided in the application and additional submittals. Any substantial change as determined by County staff in layout or operation of the project from that set forth in the application shall require a permit amendment.
  - g. The Permit shall be reviewed by staff after 10 years for compliance and the permit shall be renewed unless staff determines offensive noise, vibration, smoke, dust, odor, heat or glare has had an adverse effect on nearby property owners, in which case the permit may only be renewed following public hearing by the Planning Commission and Board of County Commissioners.
8. Truck engines and lights shall be shut off during loading.
9. Approval of this Special Land Use Permit is conditioned upon the Chaffee County Permit Authority granting approval of the applicant's Permit requests and any conditions imposed under the 1041 permit.
10. Approval by the County Board of Commissioners of the application does not constitute any implied protection by the County of the quality or quantity of the spring water source. This will not prohibit any future land use application on adjacent lands.

#### **FINDINGS:**

1. Any danger to safety in surrounding areas. The only foreseeable danger is during construction along the County rights-of-way. The applicant has responded that a traffic management plan will be submitted along with County right-of-way permits. The only concern resulting from on-going operations is related to truck traffic generated, discussed in detail following Criteria 15, below. There will be heavy truck traffic on Highway 24/285 Trout Creek Pass. The applicant has agreed to provide a corridor study of that route. The study shall be completed prior to December 31, 2009.
2. Water pollution. Water pollution is a concern with any large project due to generation of dust and sediment with disturbed earth. The applicant indicates they will obtain a stormwater discharge permit from CDPHE prior to start of any construction to mitigate potential stormwater discharge problems. Depending on the type of operation, there is potential for

water pollution resulting from the drilling fluids used for the directional drill under the river. Further information on the drilling process was submitted by the applicant in their SLUP response letter dated February 19, in which the applicant indicates the drilling will occur on the Moltz property with safety precautions in place to prevent fluid discharge to the river, and bentonite grout will be disposed at the landfill. There are no water pollution concerns resulting from the project after construction.

3. Offensive noise. Noise will be generated during construction. The application indicates that noise levels will not exceed those identified in CRS 25-12-103. The statute allows for construction projects to meet the noise levels for an industrial zone (80 db(A) 7 a.m. to 7 p.m., 75 db(A) 7 p.m. to 7 a.m.). The applicant has responded that pipeline construction will occur seven days a week, primarily during daylight hours, but some night time operations may be required to maintain the schedule. Directional drilling is proposed for 35 days, seven days per week, 24 hours per day, and the drill will be located at least ¼ mile away from any residences, and will comply with state noise statutes. After construction there should not be any noise impacts, as pumps and machinery will be inside of structures so that noise is not audible outside the structures, and trucks will be turned off at the loading facility and not be allowed to idle.
4. Offensive vibration. Vibration will occur during construction, particularly during the directional drilling. Vibration is not expected to impact residences due to location on the east side of the river and distance from residences. Offensive vibration is not expected once construction is completed.
5. Offensive smoke. Some smoke will be generated during construction; however it is not expected to be in levels significantly greater than a typical local construction project. Smoke generation is not a concern related to operations following completion of construction.
6. Offensive dust. Some dust will be generated during construction; mitigation and control will be required as part of the stormwater discharge permit and County road cut permits. Dust generation is not a concern related to operations following completion of construction.
7. Offensive odor. Some odor will be generated during construction; however it is not expected to be in levels significantly greater than a typical local construction project. Following completion of construction, since trucks will be shut off and not idle during loading, odor generation is not a concern related to operations.
8. Offensive heat. Some heat will be generated during construction; however it is not expected to be in levels significantly greater than a typical local construction project. Offensive heat is not a concern related to operations following completion of construction.
9. Offensive glare. Hours of construction have not been identified. The applicant responded that any construction during nighttime hours will employ lighting to ensure no offensive glare to neighboring properties. After construction, glare is a concern only as it relates to potential security and other lighting at each site. Lighting plans have not been identified, however the application text indicates all lighting will be downcast and fully shielded. The application indicates that all truck lights will be shut off during loading.
10. Snow storage problems. No snow storage problems are expected. The loading facility is the only facility requiring snow storage, and the site plan includes substantial raingardens where snow can be stored.
11. Wildfire hazard or aggravate an existing wildfire hazard to structures on adjacent property. No increase in any wildfire hazards is expected either during or after construction.
12. Flood hazard or aggravate or increase an existing flood hazard to upstream or downstream

properties. There is none apparent resulting from construction, as long as irrigation flows are coordinated with construction. The applicant responded that bypass pumping will be utilized during construction where the pipeline crosses ditches. After construction, low and high pressure alarms will shut off the pumps to avoid significant leakage.

13. Geologic hazard. No geologic hazards are expected to be impacted or have a significant impact on the project.
14. Unsightly storage outside, not unlike a junk yard. None is expected to be present. The applicant responded that construction staging areas will be short-term, and will be identified along with the traffic management plan required with the road permits. Following construction, the application includes information on removal of structures and landscaping plan for the Loading Station facility, and removal of structures and potential restoration of the Ruby Mountain site.
15. Any other substantial objectionable influence. 1041 regulations address aspects of the proposed application, including impacts of water withdrawals, impacts to wetlands and plant and animal species, and fiscal impacts of the project. Traffic has been identified as a concern under Criteria 1, above.
16. Testimony has been provided that the springs lie at the southern end of the aquifer, so any land use change up gradient of the springs may potentially have a negative impact on the quality and quantity of the spring source.
17. The region of the springs lies in the rain shadow of the Continental Divide and receives only 11 inches of average precipitation. If annual precipitation were reduced by only one inch the region would be considered a desert.
18. The aquifer is recharged by the following: **1.** Snow Melt; **2.** Irrigation of agricultural lands; and **3.** precipitation; in this order of importance.
19. The applicant has submitted a complete application, except for the following items:
  - a. executed easement, deeds, and ditch crossing agreements
  - b. site plans for the Bighorn and Ruby Mountain parcels
  - c. Approved Weed management and re-vegetation plan
  - d. additional information on the preservation logistics (i.e conservation easement?) and habitat management (coordination with adjacent BLM and DOW?) should be presented; and methods of enhancement of agriculture and grazing management in the area,
  - e. Details regarding CDOW and AHRA comments to carefully consider the possibilities of improved public fishing and boating access to the Arkansas River; details regarding the removal of the hatchery and restoration of the property, recognizing that success will be a multi-year project and require multiple agency coordination and permits,
  - f. Clarification regarding the information in the application regarding preservation of the Bighorn parcel as open space and grazing management and a statement to allow construction by Hagen of two residences on the parcel, as related to the consultant and agency reports regarding project impacts to wildlife. ,
  - g. The carrying capacity of US 24 / 285 Trout Creek Pass related to potential impacts of this project has not been analyzed.
20. A final water supply plan has not been submitted and a final plan for augmentation has not been finalized

## **1041 PERMIT:**

The Planning Commission recommended to the Board of Commissioners tabling of the application to allow the applicant additional time to submit and for the County staff and consultants to review the following documents, for further consideration by the Planning Commission:

1. Site plans for the Bighorn and Ruby Mountain
2. Plan to coordinate and cooperate with Division of Wildlife and other agencies on wetlands monitoring, land preservation, grazing management, river access, and bighorn sheep habitat
3. Weed management and revegetation plan
4. Clarification of consultants' reports related to wildlife habitat protection and open space protection.
5. Additional reports, information, plans, and public comments received since March 3.
6. Financial details related to the project.
7. Response to County water counsel's comments on application

The Planning Commission will receive a status update at their March 31 regular meeting, and set a date to continue their discussion at that time.