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CHAFFEE COUNTY, COLORADO RESOLUTION NO. 2009-_____

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 voluntarily place a permanent conservation easement on the Project parcels concurrent with construction of the Project and such conservation easement is now considered to be within in the scope 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

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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-___, 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:

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- 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)(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)(j), *Risk from Natural Hazards*;
- m. Section 3-303 (1)(k)(iii), *Quality or Quantity of Recreation Experience*;
- n. Section 3-303 (1)(k)(iv), *Changes in Value of Lands, Loss of Tax Revenue*;
- o. Section 3-303 (1)(k)(v), *Opportunities for Economic Diversification*;
- p. Section 3-303 (1)(k)(vi), *Benefits Accruing County and Citizens Outweigh Loss of Resources or Losses of Opportunity to Develop Resources*;
- q. Section 9-303 (1)(a), *Adverse Affect on Wildlife Species*;
- r. Section 9-303 (1)(b), *Wildlife Habitat or Protection areas, Migratory Routes, Calving Grounds, Migratory Habitats, Nesting Areas, Rare and Endangered Species Habitat*;
- s. Section 9-303 (1)(c), *Adverse Effect on Wildlife Movement, Displacement and Adaptation*;
- t. Section 9-303 (1)(d), *Project Administered to Function in Harmony with Habitat*;

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- u. 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 subsection 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

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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.

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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.** 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 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.

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

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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.

- 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 a public foundation or 501(c)(3) non-profit corporation with an initial endowment(s) totaling no less than \$500,000.00 and future annual programmatic contributions. These funds must be dedicated to projects and activities that are focused on Chaffee County science and/or environmental issues and Chaffee County schools. In its Annual Review, Permittee shall provide documentation that illustrates the amounts of its annual local programmatic funding.

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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 wade fishing easement to Department of Wildlife (“DOW”) on the Bighorn Springs and Ruby Mountain parcels.

4.21 **Fishing Access.** Within 30 days of the Effective Date, Permittee shall work with DOW to determine whether there are any appropriate locations to establish a fishing access on the Bighorn Springs parcel. If such location exists, Permittee shall dedicate such easement to the County 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

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workers 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. Permittee shall document efforts to hire local drivers in the annual report.

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 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.

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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.

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.

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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.

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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.

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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 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.

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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.

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 30 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.

