

DOCKET NO. D-2002-045-3

DELAWARE RIVER BASIN COMMISSION

Located in Drainage Area to Special Protection Waters

**BlueTriton Brands, Inc.
Ground Water Withdrawal and Importation
Upper Macungie Township, Lehigh County, Pennsylvania**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on March 2, 2021 for renewal of an allocation of groundwater and review of a groundwater water withdrawal project (Application). The groundwater withdrawal project and water bottling facilities were approved by the Pennsylvania Department of Environmental Protection on December 12, 1995 (Permit No. 3396420).

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Lehigh Valley Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on August 11, 2021.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to renew the approval of an existing in-basin groundwater withdrawal of up to 7.23 million gallons per month (mgm) from Well PW-1 and to renew the approval of an importation of up to 23.219 mgm of water from three water sources located in the Susquehanna and Ohio River Basins to supply the docket holder's in-basin bottled water facilities.

2. Location. The bottled water facilities and in-basin well are located in the Iron Run Watershed within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has designated as Special Protection Waters in Upper Macungie Township, Lehigh County, Pennsylvania. Iron Run is classified by PADEP as High Quality supporting Cold Water Fishes (HQ-CWF) in this area. The project well is completed in the Epler Formation.

Groundwater is imported to the facilities from Pine Grove Spring and Valley View Springs located in the Susquehanna River Basin and Boiling Springs located in the Ohio River Basin. Additional sources of groundwater located within the Delaware River Basin (DRB) that supply water to the Breinigsville facility include Hoffman Springs, Arrowhead Springs, Greenwaltz Springs, Sassonan Springs, and Nature's Way Springs.

Specific location information has been withheld for security reasons.

3. Area Served. The in-basin Well PW-1 and groundwater import serve water to the docket holder’s on-site treatment, bottling, and packaging facilities located in Breinigsville, Upper Macungie Township, Pennsylvania. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in the DECISION section of this docket.

4. Design Criteria. The docket holder’s two bottling facilities are on adjacent parcels and occupy 28.5 acres and 83 acres, respectively. The two facilities include a total of 840,000 square feet of water processing, bottling, packaging, and warehouse equipment. Water pumped from Well No. PW-1 is used for distilled and purified product lines. Well PW-1 is located on the original plant site property known as “NWN Allentown I” plant. Imported groundwater is used for NWN’s spring water product lines within both bottling facilities.

The docket holder’s current average and maximum water demands from Well PW-1 are 0.138 million gallons per day (mgd) and 0.318 mgd, respectively. Withdrawals from PW-1 have been highly variable due to construction at the Plant, variable demand for purified bottled water products, and other factors. From March 2016 through March 2020, the average monthly withdrawal was 4.188 million gallons, ranging from 0.006 to 6.169 mgm. Similar-water use patterns are anticipated in the future. The docket holder projects the average and maximum daily water demands to increase to 0.150 mgd and 0.320 mgd, respectively. The projected peak monthly demand is 6.500 mgm. The existing allocation of 7.23 mgm is sufficient to meet the projected peak monthly demand.

5. Facilities. The existing project well has the following characteristics:

WELL NO.	DEPTH (FT.)	CASING DEPTH/ CASING DIAMETER	PUMP CAPACITY	YEAR DRILLED
PW-1	330’	190’/8”	250 gpm	1995

The well is metered.

Prior to distribution, the water from Well PW-1 is treated by carbon filtration prior to reverse osmosis, after which the water undergoes UV irradiation. Water for distilled products bypasses the treatment train, flowing directly to the distiller. Groundwater imported from sources located within and outside of the Delaware River Basin undergoes microfiltration and ultraviolet light disinfection.

The project well is not located in a flood hazard area.

Potable water service is provided by Lehigh County Authority for on-site use (sanitation, bottle washing, etc.), and as a source for producing purified bottled water products.

6. **Other.** Wastewater is conveyed to the Lehigh County Authority City of Allentown sewage treatment facility most recently approved by DRBC Docket No. D-97-14 CP on August 6, 1997. The PADEP issued its most recent NPDES Permit No. PA002600 on March 20, 2003, for this treatment facility. The treatment facility has adequate capacity to continue to receive wastewater from the existing project.

B. FINDINGS

1. Special Protection Waters

In 1992, the DRBC adopted Special Protection Waters (SPW) requirements, as part of the DRBC *Water Quality Regulations (WQR)*, designed to protect existing high water quality in applicable areas of the Delaware River Basin. One hundred twenty miles of the Delaware River from Hancock, New York downstream to the Delaware Water Gap were classified by the DRBC as SPW. This stretch includes the sections of the river federally designated as "Wild and Scenic" in 1978 -- the Upper Delaware Scenic and Recreational River and the Delaware Water Gap National Recreation Area -- as well as an eight-mile reach between Milrift and Milford, Pennsylvania which is not federally designated. The SPW regulations apply to this 120-mile stretch of the river and its drainage area.

On July 16, 2008, the DRBC approved amendments to its *WQR* that provide increased protection for waters that the Commission classifies as Special Protection Waters. The portion of the Delaware River and its tributaries within the boundary of the Lower Delaware River Management Plan Area was approved for SPW designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1). and 2). of the *WQR, Administrative Manual - Part III*, states that projects subject to review under Section 3.8 of the *Compact* that are located in the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan that controls the new or increased non-point source loads generated within the portion of the docket holder's service area which is also located within the drainage area of SPW. The project is located within in the drainage area to the SPW. Since this project does not entail additional construction and expansion of facilities/service areas and there are not any new or increased non-point source loads associated with this approval, the non-point source pollution control plan requirement is not applicable at this time.

2. Water Importation/Exportation

The project will continue to import water from three sources located in the Susquehanna and Ohio River Basins outside of the Delaware River Basin. Water is imported into the basin via tanker truck. These sources include the Pine Grove Springs located in Pine Grove Township, Schuylkill County, Pennsylvania that is permitted by the PADEP and the Susquehanna River Basin Commission (SRBC) for a withdrawal of up to 0.288 mgd; the Valley View Springs located in Hegins Township, Schuylkill County, Pennsylvania permitted by the PADEP and

SRBC for a withdrawal of up to 0.200 mgd; and the Boiling Springs located in the Town of Deer Park, Garrett County, Maryland permitted by the Maryland Department of the Environment (MDE) for a withdrawal of up to 0.261 mgd.

This importation of up to 0.749 mgd or 23.219 mgm was approved by the Commission in Docket D-2002-045-2 on March 7, 2012. This docket renews the approval of the import from these sources with no increases in quantity.

3. Groundwater Monitoring Program

The docket holder will continue the ongoing long-term hydrologic monitoring and reporting program that tracks conditions in Well PW-1 and the surrounding aquifer. The monitoring program includes water levels and flow measurements from Well PW-1, water level measurements reported by USGS for USGS monitoring well LE-644, and precipitation data from the NOAA station at the Lehigh Valley International Airport (NWS call sign ABE). This docket requires the continuation of the monitoring program as described in Section C. DECISION Condition C.3. of this Docket.

4. Other Findings

The transfer of Docket D-2002-045-2 from Nestle Waters North America Inc. to BlueTriton Brands, Inc. was approved by the Commission on April 29, 2021.

Docket D-2002-045-2 incorrectly indicated that one of the three imported sources was located in the Potomac River Basin. Information contained in the 2021 application indicated that this source is located in the Ohio River Basin.

The DRBC estimates that the project withdrawals, used for the purpose of bottled water, result in a consumptive use of 100 percent of the total water use. The DRBC definition of consumptive use is defined in Article 5.5.1.D of the *Administrative Manual – Part III – Basin Regulations – Water Supply Charges*.

The project is designed to conform to the requirements of the *Water Code (WC)* and *Water Quality Regulations (WQR)* of the DRBC.

The project does not conflict with the Comprehensive Plan and is designed to prevent substantial adverse impact on the water resources related environment, while sustaining the current and future water uses and development of the water resources of the Basin.

C. DECISION

Effective on the approval date for Docket No. D-2002-045-3 below, Docket No. D-2002-045-2 is terminated and replaced by Docket No. D-2002-045-3. The project and appurtenant facilities as described in in Section A.4. (Design Criteria) and A.5. (Facilities) are approved subject to the following conditions, pursuant to Section 3.8 of the *Compact*:

Monitoring and Reporting

1. The docket holder shall continue to report to the PADEP all surface and groundwater sources described in this docket in accordance with the Pennsylvania Regulations (Title 25 - Environmental Protection, [25 PA. CODE CH. 110], Water Resources Planning).

2. The project withdrawals shall be metered by means of an automatic continuous recording device, flow meter, or other method, and shall be measured to within 5 percent of actual flow. Meters or other methods of measurement shall be subject to approval and inspection by the PADEP as to the type, method, installation, maintenance, calibration, reading and accuracy. A record of daily withdrawals shall be maintained, and monthly totals shall be reported to the PADEP annually and shall be available at any time to the Commission if requested by the Executive Director.

3. A groundwater monitoring program is required to obtain data on groundwater conditions in the project area. The docket holder shall continue to implement the groundwater monitoring program as submitted by the docket holder in a letter dated January 26, 2012. This program includes the following:

A. **Ground Water Level Monitoring** - The docket holder shall measure water levels in Well PW-1 and obtain and compile water level measurements reported by USGS for USGS monitoring well LE-644 to estimate annual ground water fluctuations caused by seasonal changes and/or production well pumping and detect water level declines that may adversely affect groundwater levels in the project area.

B. **Reports** - All monitoring data, including records required in Condition C.2 herein shall be submitted to the Commission in an annual report due by June 1. The docket holder is encouraged to submit the annual report electronically. The report shall be prepared by a hydrogeologist and shall assess the effects of well withdrawals on the local hydrogeologic system. This report shall include an evaluation of the monitoring data required by this docket approval and such information as deemed appropriate by the hydrogeologist or required by the Executive Director.

C. The Executive Director may modify or extend the monitoring program or temporarily suspend or modify this docket at any time if review of the hydrologic data and/or any other information indicates such action is necessary or appropriate.

4. The docket holder shall implement to the satisfaction of the Bureau of Watershed Management, PADEP, a continuous program to encourage water conservation in all types of use within the facilities served by this docket approval. The docket holder will report to the Bureau of Watershed Management, PADEP, on the actions taken pursuant to this program and the impact of those actions as requested by the PADEP.

Other Conditions

5. During any month, the withdrawal from Well PW-1 shall not exceed 7.23 million gallons. Well PW-1 shall not be pumped above the maximum rate and monthly allocation as indicated below:

WELL NO.	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
PW-1	250 gpm	7.23 mgm

* Based on a 24-Hour Average

6. The docket holder is responsible for timely submittal to the DRBC of a docket renewal application on the appropriate application form including the appropriate docket application filing fee (see 18 CFR 401.43) at least 6 months in advance of the docket expiration date set forth below. The docket holder will be subject to late filed renewal surcharges in the event of untimely submittal of its renewal application, whether or not DRBC issues a reminder notice in advance of the deadline or the docket holder receives such notice. In the event that a timely and complete application for renewal has been submitted and the DRBC is unable, through no fault of the docket holder, to reissue the docket before the expiration date below, the terms and conditions of the current docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

7. During any month, the total combined importation of groundwater from the Susquehanna and Ohio River Basins into the Delaware River Basin shall not exceed 23.219 million gallons.

8. The well and operational records shall be available at all times for inspection by the DRBC.

9. The well shall be operated at all times to comply with the requirements of the WC and WQR of the DRBC.

10. The wells shall be equipped, where possible, with readily accessible capped ports and minimum ½ inch inner diameter (ID) drop pipes as repairs or modifications are made at each existing well so that water levels may be measured under all conditions.

11. The docket holder shall implement to the satisfaction of the PADEP, a drought or other water supply emergency plan.

12. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

13. The docket holder is permitted to provide the water approved in this docket to the areas included in Section A.3. Area Served of this docket. Any expansion beyond those included in Section A.3. Area Served is subject to DRBC review and approval in accordance with Section 3.8 of the *Compact*.

14. The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 CFR 401.43).

15. This approval is transferable by request to the DRBC Executive Director provided that the project purpose and area served approved by the Commission in this docket will not be materially altered because of the change in project ownership. The request shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

16. The docket holder shall request a name change of the entity to which this approval is issued if the name of the entity to which this approval is issued changes its name. The request for name change shall be submitted on the appropriate form and be accompanied by the appropriate fee (see 18 CFR 401.43).

17. The issuance of this docket approval shall not create any private or proprietary rights in the water of the Basin, and the Commission reserves the rights to amend, alter or rescind any actions taken hereunder in order to insure the proper control, use and management of the water resources of the Basin.

18. If the monitoring required herein or any other relevant data or information demonstrates that the operation of this project is interfering with or otherwise impairing existing uses of ground or surface water, or if the docket holder receives a complaint from an existing ground or surface water user within the zone of influence of the withdrawal alleging such interference or impairment, the permit holder shall immediately notify the Executive Director, and unless excused by the Executive Director, shall investigate the demonstrated or alleged impacts. For purposes of this condition, notification shall mean either (a) electronic transmittal of written notice to the Executive Director via email (using addresses posted on the DRBC website); or (b) written notice to the Executive Director and a telephone call to the Project Review Section at 609-883-9500, ext. 216. (Oral notification must always be accompanied by

immediate written notification directed to the Executive Director.) In addition, the docket holder shall provide written notice to all potentially affected water users of the docket holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the docket holder's project withdrawal shall be repaired, replaced or mitigated at the docket holder's expense.** The scope of the options to consider for repair, replacement and/or mitigation shall not be limited solely to those that are owned, operated, or controlled by the project sponsor. An investigation report and/or mitigation plan prepared and certified by a licensed professional engineer and/or a licensed professional geologist shall be submitted to the Executive Director as soon as practicable following notice of the demonstrated or alleged impairment consistent with this paragraph. The Executive Director shall make the final determination regarding the scope and sufficiency of the investigation and the extent of any mitigation measures that may be required. Where ground and surface waters are rendered unavailable, unusable, or unsuitable for the pre-existing use, the Executive Director may direct the docket holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation.

19. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

20. For the duration of any drought emergency declared by either Pennsylvania or the Commission, water service or use by the docket holder pursuant to this approval shall be subject to the prohibition of those nonessential uses specified by the Governor of Pennsylvania, the Pennsylvania Emergency Management Council, PADEP, or the Commonwealth Drought Coordinator to the extent that they may be applicable, and to any other emergency resolutions or orders adopted hereafter by the Commission.

21. Any person who objects to a docket decision by the Commission may request a hearing in accordance with Article 6 of the *Rules of Practice and Procedure*. In accordance with Section 15.1(p) of the *Delaware River Basin Compact*, cases and controversies arising under the *Compact* are reviewable in the United States district courts.

BY THE COMMISSION

APPROVAL DATE: September 9, 2021

EXPIRATION DATE: September 9, 2031