

DOCKET NO. D-1998-027-5

DELAWARE RIVER BASIN COMMISSION

**BlueTriton Brands, Inc.
Spring Water Withdrawal
Lynn 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 December 3, 2021 for renewal of an allocation of spring water previously approved by the DRBC on December 5, 2012 (Application). The Pennsylvania Department of Environmental Protection (PADEP) approved Hoffman Springs Nos. 1 and 2 as public water supply sources on October 8, 1986, (Permit No. 1396119), and Spring No. 3 on June 22, 1989 (Permit No. 3986504-A1). On April 4, 1996, PADEP approved Public Water Supply Permit No. 3396420 for operation of the docket holder's bottled water system, including treatment facilities and several sources including the project springs. On May 5, 2006, PADEP issued an amendment to Permit No. 3396420 authorizing construction to modify the Hoffman Springs facilities consistent with Docket D-98-27-2. On June 2, 2008, PADEP approved the Mattos Catchment No. 1 spring source for augmentation to Ontelaunee Creek and modification of the Hoffman Springs facilities in 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 10, 2022.

A. DESCRIPTION

1. Purpose. The purpose of this project is to renew the allocation to withdraw up to 9.3 million gallons per month (mgm) of water from the docket holder's three existing spring water sources (Hoffman Springs Nos. 1, 2, and 3) to supply its existing bottled water operations and to renew the allocation to withdraw up to 2.015 mgm or an average of 65,000 gpd of water from the spring source known as the Mattos Catchment No. 1 used to augment flow in Ontelaunee Creek.

2. Location. The project springs are located in the Ontelaunee Creek Watershed in Lynn Township, Lehigh County, Pennsylvania. Ontelaunee Creek near the project withdrawals is designated by the PADEP as Exceptional Value (EV), supporting Cold Water and Migratory Fishes (CWF, MF). The springs were formed by variations in the shallow glacial till and colluvium composing the surficial geological formation which allows groundwater to migrate upward from underlying sand layers under artesian head. The springs occur within areas underlain by the Martinsburg Formation but do not principally emanate from this bedrock source but rather from the surficial geological formation.

Specific location information has been withheld for security reasons.

3. Area Served. Raw water from Hoffman springs is transported via tanker truck to the docket holder's bottling plant in Upper Macungie Township (Breinigsville), Lehigh County, Pennsylvania, for filtration, processing, and packaging for distribution. The docket holder also occasionally supplies a limited amount of water, without charge, from the Hoffman spring water loadout station to the New Tripoli Volunteer Fire Company and the Lynnport Volunteer Fire Company for emergency firefighting. The water provided is included within the docket holder's withdrawal limitations as specified in Condition C.5. in the Decision Section. 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 Hoffman spring catchments passively collect spring water, which is naturally discharged, and the Hoffman spring water is diverted to a loadout facility and transported to the docket holder's bottling facility. Existing average daily, maximum daily and peak monthly water demands are 0.298 mgd, 0.470 mgd and 9.297 mgm, respectively. The ten-year future projected maximum daily and peak monthly water demands are anticipated to be 0.500 mgd and 9.300 mgm, respectively.

Withdrawals from the Mattos Catchment No. 1 are only used to augment the flow of Ontelaunee Creek when Ontelaunee Creek flows are less than a trigger flow of 0.6 cubic feet per second (cfs) and to assist the docket holder to meet the existing passby flow in Ontelaunee Creek of 0.3 cfs. Any excess water in the Mattos Catchment No. 1 is discharged into the Henry West Stream. Up to 65,000 gpd of water may be used to supplement Ontelaunee Creek when the flow in the Henry West Stream exceeds 0.3 cfs. The allowable withdrawal and transfer of water from Mattos Catchment No. 1 will be reduced to 50,000 gpd when the flow in the Henry West Stream equals or is less than 0.3 cfs.

5. Facilities. The existing project spring catchments have the following characteristics:

CATCHMENT NO.	DEPTH (FEET)	CASED DEPTH/ CASING DIAMETER	PUMP CAPACITY	YEAR CONSTRUCTED
Hoffman Spring 1	10'	9' / 72"	gravity	1997
Hoffman Spring 2	12'	11' / 72"	gravity	1997
Hoffman Spring 3	8'	7' / 66"	gravity	1989
Mattos Spring 1	23'	21' / 72"	gravity	2006

All spring withdrawals are metered in accordance with the DRBC-approved Operation and Monitoring Plan.

Prior to entering the distribution system, the water is treated by ultraviolet light irradiation.

The project facilities are not subject to flooding.

The three Hoffman spring catchments are each covered stainless steel catchments equipped with watertight access hatches. Each Hoffman spring catchment has a single outlet pipe and a single overflow pipe. Water flows into each of the Hoffman spring catchment structures under the force of gravity from the underground stratum feeding the natural spring vents. Spring water entering the three Hoffman spring catchments drains by gravity through individual pipelines to a common distribution box, where they combine prior to being pumped through a single pipeline to the tanker truck loadout station. Those spring flows that are in excess of withdrawals for bottling purposes are discharged either through the individual spring catchment overflow pipelines or through a bypass pipeline in the valve box prior to the spring source waters mixing in the distribution box. The valve box bypass pipeline discharges to an intermittent stream referred to as the West Stream. The West Stream joins the Ontelaunee Creek near the loadout station. At the loadout station, spring water from the Hoffman spring catchments passes through ultraviolet light disinfection and cartridge filtration prior to being stored for loading and transportation. At the Hoffman loadout station, on-site storage consists of three 27,000-gallon stainless steel storage tanks.

The Mattos spring catchment has a construction similar to the Hoffman spring catchments. Spring water collected in the Mattos spring catchment is conveyed by gravity to a valve pit. Spring water to be utilized for augmentation of Ontelaunee Creek is then conveyed via a pipeline which crosses under State Route 309 to the Hoffman Springs property and discharged into Ontelaunee Creek at a location above the existing Hoffman Flume 2. Augmentation water is conveyed from the Mattos property to the Hoffman Springs property by gravity. If necessary in the future, the docket holder may install and utilize a booster pumping facility installed on the Mattos property below the valve pit if necessary to effectively convey the water to the Hoffman property. Excess water collected from the Mattos spring catchment is conveyed from the valve box via a pipeline to discharge into the Henry West Stream at a point approximately 850 feet upstream of flume MSFL 3.

Hoffman spring water is transported for further processing at the docket holder's bottling facility, known as the Breinigsville Plant, in Upper Macungie Township, Lehigh County, Pennsylvania. At that plant, nine raw water silos store water from the project springs and other sources.

B. FINDINGS

1. Mattos Spring Flow Augmentation to Ontelaunee Creek

The Mattos Catchment No. 1 can convey water to Ontelaunee Creek to augment Ontelaunee Creek flows when combined flows at Flumes Nos. 2 and 3 drop below a trigger level of 0.6 cfs and also to allow the docket holder to meet the aforementioned passby flow in Ontelaunee Creek. The docket holder may convey up to 2.015 mgm (65,000 gpd) of water to supplement Ontelaunee Creek while the flow in the Henry West Stream exceeds 0.3 cfs. The docket holder cannot convey more than 1.55 mgm (50,000 gpd) when the flow in the Henry West Stream is equal to or less than 0.3 cfs. Specific details of Mattos Spring Augmentation Flows are described in Section C. DECISION Condition C.6. through C.9.

2. Passby Flow

The docket holder shall continuously monitor the Ontelaunee West Stream and the Ontelaunee East Stream at Flumes Nos. 2 and 3, respectively. Whenever the combined streamflow as measured in the flumes is equal to or less than 0.3 cfs (0.19 mgd), no withdrawal from Hoffman Springs 1, 2 or 3 shall be made for water bottling purposes, and withdrawals shall only be for emergency firefighting purposes as described in Section C. DECISION Condition C.10.

3. Operations and Monitoring Plan

During the term of this docket, the docket holder is required to continue to implement the hydrologic and biologic monitoring and reporting program detailed in the O&M Plan submitted May 31, 2013, revised April 18, 2019 and approved by the Executive Director on April 30, 2019 (see Section C. DECISION Condition C.3.)

4. Other Findings

A transfer of approval of DRBC Docket No. D-1998-027-4 from Nestle Waters North America Inc. to BlueTriton Brands, Inc. was approved by the DRBC Executive Director on April 29, 2021.

The DRBC estimates that the project withdrawals, used for the purpose of bottled water supply, 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-1998-027-5 below, Docket No. D-1998-027-4 is terminated and replaced by Docket No. D-1998-027-5. The project and appurtenant facilities as described 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. The docket holder is required to continue to implement the hydrologic and biologic monitoring and reporting program in the West Stream, East Stream and upper mainstem of Ontelaunee Creek, the drought emergency plan, and all other aspects described in the Operation Plan for Hoffman Springs (O&M Plan) approved by the Executive Director on April 30, 2019. The Executive Director may modify the O&M Plan if the results indicate that a change is required or appropriate.

4. The docket holder will continue to prepare and submit to the DRBC, PADEP and PFBC, an annual hydrologic monitoring report and annual report on the results of the aquatic biologic monitoring program performed at Mattos and Hoffman properties in accordance with the approved O&M Plan. Such annual reports shall be submitted on or before April 30 of each calendar year, summarizing the observations and results of monitoring conducted in the previous calendar year.

Other Conditions

5. During any month, the combined withdrawal from all sources shall not exceed 11.315 million gallons. No source shall be pumped above the maximum rate and monthly allocation as indicated below:

SOURCE ID	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
Hoffman Springs 1, 2 and 3 (combined)	420 gpm	9.30 MGM
Mattos Spring 1	45.2 gpm	2.015 MGM

* Based on a 24-Hour Average

6. During any day when the flow in the Henry West Stream, as measured at Flume MSFL 3, is greater than 0.3 cfs, the withdrawal from Mattos Catchment No. 1 for transfer to augment the flow of Ontelaunee Creek shall not exceed 65,000 gpd. During any day when the flow in the Henry West Stream, as measured at Flume MSFL 3, is equal to or less than 0.3 cfs, the withdrawal from Mattos Catchment No. 1 for transfer to augment the flow of Ontelaunee Creek shall not exceed 50,000 gpd. For purposes of determining compliance with this condition, the flow of Henry West Stream at Flume MSFL 3 shall be observed once per day as specified in the O&M Plan.

7. Water from Mattos Catchment No. 1 will be conveyed to Ontelaunee Creek when the combined flow in the Ontelaunee Creek, as measured at Hoffman Flumes 2 and 3, is equal to or less than 0.6 cfs (± 0.05 cfs). No withdrawal from Mattos Catchment No. 1 shall be made for purposes of augmenting flow in Ontelaunee Creek when withdrawal from Hoffman Springs Nos. 1, 2 and 3 has ceased in accordance with Condition C.10., below and in accordance with Condition C.9., below, water collected in Mattos Catchment No. 1 shall be discharged to the Henry West Stream. Flow augmentation from Mattos Catchment No. 1 to Ontelaunee Creek will resume when the hydrological conditions, combined with the augmentation from Mattos Catchment No. 1, can sustain a flow in Ontelaunee Creek, as measured at Hoffman Flumes Nos. 2 and 3, equal to or greater than 0.3 cfs. Flow augmentation from Mattos Catchment No. 1 to Ontelaunee Creek shall continue until hydrological conditions are again able to sustain a flow in the Ontelaunee Creek, as measured at Hoffman Flumes 2 and 3, without flow augmentation from Mattos Catchment No. 1, of greater than 0.6 (± 0.05 cfs).

8. The flow from the Mattos Catchment No. 1 shall be measured via a meter before the water enters the valve box. The water from Mattos Catchment No. 1 that is utilized to augment the flow of Ontelaunee Creek shall be measured both at the discharge side of the valve box (where the water enters the conveyance pipeline) and at or near the point of discharge into Ontelaunee Creek.

9. Water withdrawn from the Mattos Catchment No. 1 can only be used to supplement the Ontelaunee West Stream, and any excess spring water collected in Mattos Catchment No. 1 shall be discharged to the Henry West Stream.

10. The docket holder shall continuously monitor the Ontelaunee West Stream and the Ontelaunee East Stream at Flumes Nos. 2 and 3, respectively. Whenever the combined streamflow as measured in the flumes is equal to or less than 0.3 cfs (0.19 mgd), no withdrawal from Hoffman Springs 1, 2 or 3 shall be made for water bottling purposes, and withdrawal shall only be for emergency firefighting purposes.

11. At the request of the DRBC Project Review Manager, the docket holder shall convene and participate in a meeting or conference call involving representatives of DRBC, PADEP, PFBC, and docket holder's consultant(s) for the purpose of reviewing the results of the hydrologic and biologic monitoring program and discussing any related issues and concerns relating to operation of the project, the hydrogeologic system, or aquatic biota.

12. The spring catchments and operational records shall be available at all times for inspection by the DRBC.

13. The spring catchments shall be operated at all times to comply with the requirements of the WC and *WQR* of the DRBC.

14. Section 2.3.10 of the Commission's Rules of Practice and Procedure (18 C.F.R. 401.41), limiting the Commission's approval to three years in the absence of an expenditure of substantial funds by the project sponsor in reliance on the approval, is hereby waived for good cause shown in accordance with Section 2.9.3 (18 C.F.R. 401.123) of the same regulations. This approval shall expire on the expiration date set forth below unless prior thereto the docket holder has applied to the Commission to renew or extend this approval.

15. 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.

16. 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.

17. 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*.

18. 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).

19. 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).

20. 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).

21. 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 to ensure the proper control, use and management of the water resources of the Basin.

22. 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.

23. 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.

24. 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.

25. 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 8, 2022**

EXPIRATION DATE: **September 8, 2032**