DOCKET NO. D-2008-012 CP-2

DELAWARE RIVER BASIN COMMISSION

Drainage Area to Special Protection Waters

White Haven Borough
Groundwater Withdrawal
Foster Township, Luzerne County, Pennsylvania

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on April 24, 2018 to renew the approval of a groundwater withdrawal project (Application). The project site known as White Haven Mountain Springs is owned by the docket holder and leased by a third party that operates the withdrawals. The water is hauled to a bottling facility located in the Delaware River Basin. The project was approved by the Pennsylvania Department of Environmental Protection (PADEP) on February 25, 2008 (Permit No. 2406545).

The Application was reviewed for continued inclusion in the Comprehensive Plan and for approval under Section 3.8 of the Delaware River Basin Compact. The Luzerne County Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on February 13, 2019.

A. DESCRIPTION

1. **Purpose.** The purpose of this docket is to renew the approval of a groundwater withdrawal of up to 4.189 million gallons per month (mgm) from existing Wells 1 and 2 for bottled water operations.

2. **Location.** The project wells are completed in the Mauch Chunk Formation within the Linesville Creek Watershed, a tributary to the Lehigh River, within the drainage area of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters. The Lehigh River near the project site is designated by the Pennsylvania Department of Environmental Protection (PADEP) as High Quality Waters supporting Cold Water Fishes and Migratory Fishes (HQ-CWF, MF).

   Specific location information has been withheld for security reasons.
3. **Area Served.** Water from the project wells is withdrawn and transported by truck to a bottling facility located in Upper Macungie Township, Lehigh County, Pennsylvania. For the purpose of defining Area Served, the Application is incorporated herein by reference consistent with conditions contained in Section C. DECISION.

4. **Design criteria.** The docket holder owns the Linesville Springs property and is under contract with a third-party operator who operates the withdrawals under PADEP Public Water Supply Permit No. 2406545. Bulk water from the wells is trucked to a bottling facility located in Upper Macungie, Lehigh County, Pennsylvania. Based on withdrawal records provided by the docket holder, the current (2017) existing average and maximum daily water demand is 0.072 million gallons per day (mgd) and 0.119 mgd, respectively. The projected ten-year future maximum water demands are 0.140 mgd and 4.2 mgm.

5. **Facilities.** The existing project wells have the following characteristics:

<table>
<thead>
<tr>
<th>WELL NO.</th>
<th>DEPTH (FEET)</th>
<th>CASED DEPTH/CASING DIAMETER</th>
<th>PUMP CAPACITY (GPM)</th>
<th>YEAR DRILLED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>600</td>
<td>40’ / 6”</td>
<td>60 gpm</td>
<td>Pre-1938</td>
</tr>
<tr>
<td>2</td>
<td>600</td>
<td>40’ / 6”</td>
<td>60 gpm</td>
<td>Pre-1938</td>
</tr>
</tbody>
</table>

All wells are metered.

The water is treated by filtration and ozonation prior to transferring to onsite storage tanks.

The project wells are not in the 100-year floodplain.

6. **Relationship to the Comprehensive Plan.** The project was previously included in the Comprehensive Plan by the Commission in Docket No. D-2008-012 CP-1 on May 14, 2008.

**B. FINDINGS**

1. **Special Protection Waters**

   In 1992, the DRBC adopted Special Protection Waters 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 Milraft 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 *Water Quality Regulations* 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 Special Protection Waters designation and clarity on definitions and terms were updated for the entire program.

Article 3.10.3A.2.e.1) and 2). of the *Water Quality Regulations, 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 Special Protection Waters 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 Special Protection Waters. The wells providing water supply to the docket holder are located within in the drainage area to the Special Protection Waters. Since this project does not entail additional construction or expansion of facilities 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. Accordingly, Special Condition C.19. has been included in Section C. DECISION.

2. **Water Allocation/Withdrawal Rates/ Reporting**

This docket renews the approval of a combined total allocation of 4.189 mgm. The docket now specifies the maximum rates of 43 gpm and 54 gpm at Wells 1 and 2, respectively. These rates are consistent with the PADEP pumping rate limitations as specified in Special Condition B. of PADEP Public Water Supply Permit No. 2406545.

Upon review DRBC staff found that the two groundwater sources had not been registered and withdrawals were not being reported to PADEP. On January 31, 2019, DRBC staff received confirmation from the PADEP that the two groundwater sources were registered. Water usage data must continue to be reported to the PADEP annually. Based on withdrawal records submitted to the Commission from 2013 through 2018, the maximum monthly withdrawal of 3.284 million gallons occurred in August 2016 and did not exceed the allocation of 4.189 million gallons per 30 days approved in DRBC Docket No. D-2008-12 CP-1.

3. **Passby Flow**

PADEP Public Water Supply Permit No. 2406545 contains Special Condition A. that requires that the bypass flow into the stream channel upgradient of the Upper Settling Pond shall be maintained at 21 gallons per minute (minimum) during operation of Wells 1 and 2 and recorded daily. Condition C.II.f. of Docket No. D-2008-12 CP-1 also required maintenance of this passby flow and required the docket holder to submit an Operations Plan, subject to approval by the Executive Director of the DRBC, which shall include a means to monitor and report the passby flow. An operations plan was not submitted to the Commission and stream flow data is not available prior to January 1, 2019.
The PADEP requires that stream flow be measured daily using a 90-degree V-notch weir installed upgradient of the Upper Settling Basin. This weir was found to be present and the water withdraw operator resumed daily streamflow measurements on January 1, 2019.

Streamflow must continue to be measured and recorded at the weir on a daily basis. No withdrawals will be made if the streamflow is less than 21 gpm. Streamflow measurements must be maintained by the docket holder, reported to the Commission annually and made available for inspection by Commission staff at any time if requested by the DRBC Executive Director.

4. **Water Importation/Exportation**

Previously, water from the White Haven sources was hauled to an out-of-basin bottling facility in Pittston, Pennsylvania. Water is no longer hauled to this facility and all water from the Project wells is now hauled to a single bottling facility located in Upper Macungie Township, Lehigh County within the Delaware River Basin.

5. **Consumptive Use**

The Project withdrawals are used for the purpose of bottled water supply and the consumptive use is considered to be 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*

6. **Other Findings**

The project is designed to conform to the requirements of the *Water Code* and *Water Quality Regulations* 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-2008-012 CP-2 below, the project described in Docket No. D-2008-12 CP-1 is removed from the Comprehensive Plan to the extent that it is not included in Docket No. D-2008-012 CP-2; Docket Nos. D-2002-44 and D-2008-12 CP-1 are terminated and replaced by Docket No. D-2008-012 CP-2; and the project and the appurtenant facilities described in in Section A.4. (Design Criteria) and A.5. (Facilities) shall be continued in the Comprehensive Plan. 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. The docket holder shall submit an annual report to the Commission (due by June 30) that contains a listing of the monthly total withdrawals and a table of the daily streamflow measurements.

Other Conditions

4. During any month, the combined withdrawal from all well sources shall not exceed 4.189 million gallons. No well shall be pumped above the maximum rate and monthly allocation as indicated below:

<table>
<thead>
<tr>
<th>WELL NO.</th>
<th>MAXIMUM RATE (GPM)</th>
<th>MONTHLY ALLOCATION (MGM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>43</td>
<td>1.857</td>
</tr>
<tr>
<td>2</td>
<td>54</td>
<td>2.332</td>
</tr>
</tbody>
</table>

5. The project withdrawal must not cause the streamflow to be less than 21 gpm into the stream channel upgradient of the Upper Settling Pond. Whenever the streamflow at this point is less than 21 gpm, no withdrawals shall be made, and the entire streamflow must be allowed to pass.

6. 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.

7. 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 act in accordance with Section 3.8 of the Compact, the docket shall expire as of the expiration date set forth below.
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.

8. 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 401.35).

9. 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 401.35).

10. The wells and operational records including the streamflow measurements shall be available at all times for inspection by the DRBC.

11. The wells shall be operated at all times to comply with the requirements of the Water Code and Water Quality Regulations of the DRBC.

12. 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.

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

14. 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.

15. 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).

16. 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.

17. 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.

18. 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.

19. 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.

20. Prior to allowing connections from any new service areas or any new developments, the docket holder shall either submit and have approved by the Executive Director of the DRBC a Non-Point Source Pollution Control Plan (NPSPCP) in accordance with Section 3.10.3.A.2.e, or receive written confirmation from the Executive Director of the DRBC that the new service area is in compliance with a DRBC approved NPSPCP.

21. Renewal of this docket does not resolve violations, if any, by the docket holder that may have occurred prior to this renewal or that may be ongoing (“prior or ongoing violations”) of provisions of the Delaware River Basin Compact (“Compact”) or of any rule, regulation, order or approval duly issued by the Commission or the Executive Director pursuant to the Compact. The Commission reserves its right to take appropriate enforcement action against the docket holder, including but not limited to recovery of financial penalties consistent with Section 14.17 of the Compact, for any and all such prior or ongoing violations.
22. 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 11, 2019

EXPIRATION DATE: September 11, 2029