

DOCKET NO. D-1990-111 CP-3

DELAWARE RIVER BASIN COMMISSION

Special Protection Waters

**Town of Newton
Groundwater Withdrawal and Water Importation
Town of Newton, Sussex County, New Jersey**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on April 28, for renewal of an allocation of groundwater and review of a groundwater water withdrawal and water importation project (Application). The project was previously approved by the Commission in Docket No. D-90-111 CP RENEWAL on June 26, 2003. The withdrawals were approved by the New Jersey Department of Environmental Protection (NJDEP) on November 21, 2012 (Water Allocation Permit No. 5225). A renewal application to NJDEP for renewal of its water allocation permit requesting the same allocation as approved in its existing water allocation permit is pending.

The Application was reviewed for continuation of this project in the Comprehensive Plan and for approval under Section 3.8 of the *Delaware River Basin Compact*. The Sussex County Planning Board has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on November 8, 2022.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to renew the approval of an allocation of 10.85 million gallons per month (mgm) of groundwater from Well PW-1 and an importation of water of up to 38.75 mgm from two surface water sources located in the Hudson River Basin for use in the docket holder's public water system. The Town of Newton is not requesting an increase in the groundwater allocation from that contained in its prior DRBC approval.

2. Location. The project well is completed in Allentown Dolomite and is located in the Headwaters to Paulins Kill Watershed in the Town of Newton, Sussex County, New Jersey. The docket holder's surface water sources, Morris Lake and Wallkill River (Pine Swamp Brook) are located approximately 7 miles east of Newton in Sparta Township in the Hudson River Basin. The project's groundwater withdrawal and service area are located in the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is designated by the Commission as Special Protection Waters.

Specific location information has been withheld for security reasons.

3. **Area Served.** Well PW-1 and the water imported from the Hudson River Basin serves the Town of Newton and a small portion of Andover and Sparta Townships. The service area is outlined on a plan entitled “Town of Newton Existing Water Distribution System” submitted with the Application. 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 Town of Newton supplies water to an estimated population of 8,110 via 2,163 domestic, 293 commercial service connections and reports an average and maximum daily water demand of 0.730 million gallons per day (mgd) and 0.808 mgd, respectively. The docket holder projects the 10-year average and maximum daily water demand to increase to 1.216 mgd and 1.270 mgd, respectively. The existing peak monthly demand is 24.242 mgm and is estimated to increase to a peak of 35.9 mgm by year 2031. The combined surface water importation and groundwater allocation of 38.75 mgm should be sufficient to meet the docket holder’s future monthly demands.

The Town of Newton water distribution system is supplied by two surface water sources, Morris Lake and Pine Swamp Brook, both located outside of the Delaware River Basin and Well PW-1, located in the Delaware River Basin. Presently, the Town of Newton’s water demands are met entirely by the surface sources. Well PW-1 has not been used since November 6, 2000. Water from Morris Lake is treated at the water filtration facility in Sparta Township, New Jersey, adjacent to Morris Lake. Treated water then flows by gravity through approximately 9 miles of water mains to the Town of Newton’s water distribution system. Groundwater from Well PW-1, when used, undergoes filtration by membrane cartridges, VOC reduction by air stripping, disinfection by gas chlorination and corrosion control by zinc orthophosphate. The distribution system contains a 2.0 million gallon capacity water storage tank to provide additional water during peak demand periods.

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

WELL NO.	DEPTH	SCREENED INTERVAL	PUMP CAPACITY	YEAR DRILLED
PW-1	400’	80’ – 141’	420*	1990

* equipped with valving that limits discharge to 200 gpm.

All water service connections are metered.

Well PW-1 and the treated surface water imported into the basin are metered.

The project facilities are above the 100-year flood elevation.

The water system is presently interconnected with Sparta Township which is used only for emergency purposes.

6. **Other.** Wastewater is conveyed to the Town of Newton sewage treatment facility most recently approved by DRBC Docket No. D-88-13 CP on April 22, 1992 and is currently covered by the Administrative Agreement between DRBC and NJDEP under OP-1988-013 CP. The treatment facility discharges treated wastewater to Moores Brook, a tributary to Paulins Kill in the Delaware River Basin. The discharge is regulated by NJDEP under NJPDES Permit No. NJ0020184. The treatment facility has adequate capacity to continue to receive wastewater from the existing project.

7. **Relationship to the Comprehensive Plan.** The Town of Newton water supply project was first included in the Comprehensive Plan by the Commission in Docket No. D-90-111 CP on May 20, 1992. In accordance with Section 2.30.4 of the Commission's Water Code, the Town of Newton's importation of up to 38.75 mgm of water from Morris Lake and Wallkill River (Pine Swamp Brook) outside of the Basin is hereby continued in the Commission's Comprehensive Plan. Any increase in the quantity or change of source of water imported under this docket is deemed to be substantial and will require Commission approval of a modification to the Comprehensive Plan in accordance with Section C. DECISION condition C.6.

B. FINDINGS

1. Special Protection Waters

In 1992, the DRBC amended its Water Quality Regulations (WQR) by the addition of regulations for the protection of Special Protection Waters (SPW), designed to maintain the quality of interstate waters where existing quality is better than the established stream quality objectives. As the result of its initial classifications and subsequent amendments, the Commission has designated the entire non-tidal main stem Delaware River from Hancock, New York to Trenton, New Jersey as SPW. DRBC's SPW regulations apply within the designated reaches and their drainage area.

The project well and service area are located within the drainage area to SPW. Sections 3.10.3A.2.e.1) and 2) of the WQR state that projects subject to review under Section 3.8 of the Compact that are located within the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan (NPSPCP) 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. Since this project involves the renewal of an approval for existing activities and does not entail additional construction or expansion of facilities or create new or increased non-point source loads, the NPSPCP requirement is not applicable at this time. Section C. DECISION condition C.26. of this docket provides that at such time, if ever, as additions to the area served by the docket holder's withdrawals are proposed, the docket holder will be required to demonstrate compliance with an approved NPSPCP in accordance with DRBC's SPW regulations.

2. Water Audits for Public Water Supply Systems Serving Greater than 100,000 gpd

Section 2.1.8 of the Water Code states that it is the policy of the Commission to establish a standardized water audit methodology for owners of water supply systems serving the public to ensure accountability in the management of water resources. Voluntary Water Audits were encouraged for public water supply systems through December 31, 2011 (Section 2.1.8.B.). Effective January 1, 2012, the owners of each public water supply system are required to implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding AWWA guidance (Section 2.1.8.C). Water audits shall be submitted annually to the Commission by March 31. The Town of Newton is required to begin submitting its annual Water Audits on March 31, 2023.

3. Water Allocation

The NJDEP water allocation permit No. 5225 is valid for a period of 10 years from the effective date of December 1, 2012 and will expire on November 30, 2022. The docket holder has applied for renewal of the NJDEP water allocation permit and requested the same allocation as previously approved by NJDEP. The maximum diversion rates provided by the NJDEP Water Allocation Permit for all diversion sources (Well PW-1, Morris Lake and Wallkill River (Pine Swamp)) are 38.75 mgm and 393 million gallons per year. Additionally, the water allocation permit provides a pump capacity limit of 420 gpm and a monthly allocation of 10.85 million gallons for Well PW-1 and a pump capacity limit of 1,500 gpm of water transferred from the Morris Lake wet well to the water treatment facility. Based on the NJDEP permitted allocations, the maximum water importation into the Delaware River Basin is limited to 38.75 mgm and 393 million gallons per year.

4. Relationship with the New Jersey – DRBC Administrative Agreement

Basin water withdrawals such as the withdrawal described in this docket is a regulatory program eligible for administration under the One Permit Program. The One Permit Program allows the Signatory Party Agency and Commission to incorporate requirements and determinations of both entities in a single permit or other approval instrument, pursuant to a duly adopted Administrative Agreement. The administrative agreement between the Commission and the New Jersey Department of Environmental Protection Dated March 2015, outlines the process whereby the DRBC and the NJDEP will follow a single process led by the NJDEP, and the NJDEP will issue a single permit that covers all the standards, rules, requirements, terms and conditions for each withdrawal that can be covered by the state's Water Allocation Program for withdrawals. As such, the docket holder's existing groundwater water withdrawal are approved by and will continue to be regulated by NJDEP in accordance with the March 2015 Administrative Agreement between the DRBC and the NJDEP. As such, this allocation may change as a result of future permit actions by NJDEP (See Section C. DECISION condition C.6).

In accordance with 18 C.F.R. 401.42(i), upon NJDEP's final action on the application for this withdrawal project, this docket will terminate as to all of its provisions and conditions that pertain to the water withdrawal regulatory program administered by NJDEP under the Administrative Agreement and the docket shall continue in effect as to any provisions and conditions not pertaining only to Covered Programs. The Water Importation allocation of 38.75 mgm approved by this docket (see Section C. DECISION Condition C.7) is one such provision of this docket that is not presently covered by the AA and will continue in effect. A separate DRBC application shall be submitted for approval by the Commission for any increase in the quantity or change of source water imported into the Basin as approved by this docket.

5. Other Findings

The DRBC estimates that the project withdrawals, used for the purpose of public water supply, result in a consumptive use of 10 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. 1990-111 CP-3 below, the project described in Docket No. D-90-111 CP RENEWAL is removed from the Comprehensive Plan to the extent that it is not included in Docket No. D-1990-111 CP-3; Docket No. D-90-111 CP RENEWAL is terminated and replaced by Docket No. D-1990-111 CP-3; 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 project withdrawal 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 NJDEP 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 NJDEP quarterly and shall be available at any time to the Commission if requested by the Executive Director.

2. In accordance with DRBC Resolutions No. 87-6 (Revised) and No. 2009-1, the docket holder shall continue to implement to the satisfaction of the NJDEP, the systematic program to monitor and control leakage within the water supply system. The program shall at a minimum include: periodic surveys to monitor leakage, enumerate non-revenue water and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. The docket holder shall proceed expeditiously to correct leakages and unnecessary usage identified by the program.

3. In accordance with DRBC Resolution No. 2009-1 and Section 2.1.8 of the *Water Code (WC)*, the docket holder shall implement an annual calendar year water audit program conforming to IWA/AWWA Water Audit Methodology (AWWA Water Loss Control Committee (WLCC) Water Audit Software) and corresponding guidance. Water audits shall be submitted annually to the Commission by March 31.

4. The docket holder shall continue to implement its Water Conservation Plan as approved by NJDEP and shall report to the NJDEP on actions taken pursuant to this program and the impact of those actions as requested by the NJDEP.

Other Conditions

5. The well shall not pump above the maximum rate and monthly allocation as indicated below:

WELL NO.	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
PW-1	420	10.85

* Based on a 24-Hour Average

6. During any month, the total withdrawal of groundwater from PW-1 in the Delaware River Basin shall not exceed 10.85 million gallons (based on 31 days). This allocation may be modified as a result of future permit actions by NJDEP in accordance with the March 2015 Administrative Agreement between the DRBC and the NJDEP.

7. During any month, the total importation of water into the Delaware River Basin from Morris Lake and Pine Swamp Brook shall not exceed 38.75 million gallons. A separate DRBC application shall be submitted for approval by the Commission for any increase in the quantity or change of source water imported into the Basin.

8. In accordance with 18 C.F.R. 401.8. of the Commission's *Rules of Practice and Procedure (RPP)*, if at any future time the Project is changed substantially from the Project as described in this docket, it will be deemed to constitute a new and different project for the purposes of Article 11 of the Delaware River Basin Compact and will require Commission amendment of the Comprehensive Plan. In accordance with the same section of the RPP, whenever a change to the Project is made, the sponsor must advise the Executive Director, who will determine whether the change is deemed substantial for purposes of this provision.

9. 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.

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

11. The well shall be operated at all times to comply with the requirements of the WC and WQR 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. Each new water service connection shall include a water meter in accordance with the DRBC's Resolution No. 87-7 (Revised).

14. No water service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in Resolution No. 88-2 (Revision 2).

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

16. No new water service connections shall be made to premises connected to sewerage systems which are not in compliance with all applicable effluent limits contained in State permits and the *Water Quality Regulations* of the Commission.

17. 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.

18. 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*.

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

20. 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 C.F.R. 401.43).

21. 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 C.F.R. 401.43).

22. 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.

23. 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.

24. 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.

25. During any water emergency or other non-emergency declaration by the Governor of New Jersey, NJDEP or the Commission, water service or use by the project docket holder pursuant to this docket approval shall be subject to any order or restriction governing those non-essential uses specified by the NJDEP to the extent that they may be applicable, and to any other emergency resolutions or orders adopted by the Commission.

26. 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 complies with a DRBC approved NPSPCP.

27. 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: December 7, 2022