

**DOCKET NO. D-1997-046-5**

**DELAWARE RIVER BASIN COMMISSION**

**BlueTriton Brands, Inc.  
Spring Water Withdrawal  
Millcreek Township, Lebanon County, Pennsylvania**

**PROCEEDINGS**

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on March 4, 2022 for renewal of an allocation of spring water and review of a spring water withdrawal project (Application). The project was most recently approved by the Pennsylvania Department of Environmental Protection (PADEP) on August 15, 2022 (Public Water Supply Permit No. 3396420).

The Application was reviewed for approval under Section 3.8 of the *Delaware River Basin Compact*. The Lebanon County Planning Commission has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on November 9, 2022.

**A. DESCRIPTION**

- Purpose.** The purpose of this docket is to renew the approval to continue a withdrawal of up to 9.3 million gallons per month (mgm) of spring water from Springs 1 and 3 for the purpose of water bottling and to continue to divert up to 2.232 mgm of Spring 3 overflow to supply the docket holder's trout hatchery house.
- Location.** The project is located in the Mill Creek Watershed in Millcreek Township, Lebanon County, Pennsylvania. The project is underlain by the Richland and Leithsville geologic formations. Mill Creek in the area of the project site is designated by PADEP as a Trout Stocked Fishery (TSF).

Specific location information has been withheld for security reasons.

- Area Served.** Water from Springs 1 and 3 will continue to be conveyed by truck to the docket holder's water bottling facility located in Breinigsville, Lehigh County, Pennsylvania for bottling and distribution. Water from Springs 1 and 3 may also be sold to DS Waters of America, Inc. (DSW) and conveyed by truck to the DSW water bottling facility located in West Earl Township, Lancaster County, Pennsylvania.

A portion of overflow from Spring 3 is directed year-round through the hatchery house. Water from Springs 2, 4, 5, and 6 and the unused portion of flow from Spring 1 also located on the site, flows through the trout hatchery in-stream, unenclosed raceways and ponds located at the Arrowhead Springs project site. 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.** Six springs (Springs 1 through 6) emanate from the Arrowhead Springs property. Discharge from the springs flows generally northward through the existing, small-scale trout hatchery located on the property and on to the East Branch Mill Creek (hereinafter referred to as Mill Creek). The trout hatchery consists of a series of man-made, unenclosed, in-stream ponds and raceways, holding trout in different stages of development. The in-stream ponds and raceways are man-made modifications of various braided channels formed downstream from the spring discharge locations at the site.

Springs 1 and 3 are developed as sources for bottled water purposes. Currently only Spring 1 is used. The catchment for Spring 1 is a 6-foot diameter stainless steel, circular, open-bottom tank set in a bed of compacted gravel and sealed off from surface water infiltration with compacted clay. Spring 3 is enclosed within a 31-foot diameter glass-lined steel enclosure constructed of a concrete ring wall that rests on a stone ring wall.

Water for bottled water production purposes is pumped from Spring 1 to the tanker truck loading station located along West Bethany Road. Active pumping only occurs when the water storage silos are not full. When not pumping, most of the discharge from Spring 1 enters the pond/raceway system directly from the spring catchment. A portion of Spring 1 discharge often continues to flow by gravity through system piping at approximately 50 gpm when not pumping. That gravity flow passes through the load station, entering the pond/raceway system at the Yard Pool. The tanker loading facility was recently upgraded with two new 40,000-gallon water storage silos and a flowmeter that records daily total pumping from Spring 1 to the silos prior to tanker loading. Withdrawals are also metered at the tanker loading station during truck filling. Existing average daily, maximum daily and peak monthly water demands for bottling purposes are 0.138 mgd, 0.518 mgd and 8.1437 mgm, respectively. The ten-year future projected average daily, maximum daily and peak monthly water demands are anticipated to be 0.300 mgd, 0.648 mgm and 9.300 mgm, respectively

A portion of overflow from Spring 3 (50 gpm) is directed year-round through the hatchery house to supply trout eggs, fry, and fingerling with a steady flow of spring water. This water flows through the hatchery house and is released to the head of three in-line ponds that ultimately flow into Mill Creek. The continued allocation of 2.232 mgm of overflow from Spring 3 for hatchery use should be sufficient for the needs of the hatchery house. Water from Spring 3 is not currently used for bottling purposes. The docket holder requested that the source remain in the docket for use as a backup supply. Prior to use, a separate flowmeter must be installed to measure flows from the spring to the tanker loading station.

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

<b>SPRING NO.</b>	<b>CATCHMENT CONSTRUCTION</b>	<b>DIAMETER (FEET)</b>	<b>PUMP CAPACITY (GPM)</b>	<b>YEAR CONSTRUCTED</b>
1	Stainless steel	6 feet	450 gpm	2005
3	Glass lined steel	31 feet	gravity	Approximately 1990

All spring withdrawals used for bottling purposes are metered.

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

Portions of the project facilities are located within the 100-year flood plain. The facilities have been constructed and installed to prevent potential damage in the event of a large flood.

## **B. FINDINGS**

### **1. Passby Flow**

The docket holder's spring water withdrawal will continue to be subject to pass-by flow requirements. The project withdrawal must not cause the streamflow to be less than 1.28 mgd at the Arrowhead Springs passby monitoring compliance point and daily withdrawal rates shall be reduced as appropriate to ensure that the withdrawal does not result in flow less than 1.28 mgd at the monitoring compliance point. Whenever the streamflow at the passby flow monitoring compliance point is equal to or less than this amount, no withdrawal shall be made and the entire natural flow must be allowed to pass. The docket holder shall continue to monitor the pass-by requirement in accordance with Section C. DECISION Condition C.10.

### **2. Operation and Monitoring Plan Reporting**

During the term of this docket, the docket holder is required to continue to implement the hydrologic monitoring and reporting program detailed in the Operations and Monitoring Plan submitted September 19, 2022 (see Section C. DECISION Condition C.3.).

### **3. Consumptive Use and Exportation**

The DRBC estimates that the project withdrawals, used for the purpose of water bottling, result in a consumptive use of 100 percent of the total water use. The DRBC estimates that the project withdrawals, used for the purpose of providing flow to the hatchery house, result in a negligible consumptive use. The DRBC definition of consumptive use is defined in Basin Regulations-Water Supply Charges 18 C.F.R. 420.1(d).

Former Docket Nos. D-1997-046-1 through D-1997-046-4 issued for the Arrowhead Springs Facility included the approval for the exportation and 100 percent consumptive use of up to 9.3 mgm of spring water withdrawn from Springs 1 and 3. Spring water is exported from the

Delaware River Basin (DRB) to the Susquehanna River Basin (SRB) in the case where water is sold to DSW as it is transported to their bottling plant located outside of the DRB. Spring water transported to the docket holder's bottling facility remains within the basin until it is bottled, at which time it is difficult to track the ultimate disposition of the water as it is distributed for commercial sale.

**4. Surface Water Charges**

For purposes of Resolution No. 74-6, as amended, the water withdrawn from the spring catchments for water bottling purposes is classified by DRBC as "surface water" (although it may be classified as groundwater for purposes of FDA and PADEP regulations). The docket holder shall pay for surface water use in accordance with the provisions of 18 C.F.R. Part 420 as described in Condition C.4. in Section C. DECISION.

**5. Other Findings**

DRBC Docket No. D-1997-046-4 was transferred from Nestle Waters North America Inc. to BlueTriton Brands, Inc. on April 21, 2021.

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-1997-046-5 below, Docket No. D-1997-046-4 is terminated and replaced by Docket No. D-1997-046-5. 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 continue to implement the hydrologic monitoring and reporting program described in the Operation and Monitoring Plan dated September 19, 2022. The Executive Director may modify the O&M Plan if the results indicate that a change is required or appropriate.

4. For purposes of 18 C.F.R. Part 420, the water withdrawn from the spring catchments for water bottling purposes is classified by DRBC as "surface water" (although it may be classified as groundwater for purposes of FDA and PADEP regulations). As such, the docket holder shall pay for surface water use in accordance with the provisions of 18 C.F.R. Part 420.

5. The docket holder shall implement to the satisfaction of the 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 PADEP, on the actions taken pursuant to this program and the impact of those actions as requested by the PADEP.

**Other Conditions**

6. During any month, the combined withdrawal from all spring sources for water bottling purposes shall not exceed 9.3 million gallons. During any month, the diversion from Spring 3 to the trout hatchery house shall not exceed 2.232 million gallons. No source shall be pumped above the maximum rate and monthly allocation as indicated below:

<b>SPRING NO.</b>	<b>MAXIMUM RATE (GPM)*</b>	<b>MONTHLY ALLOCATION (MGM)</b>
1	450	9.3
3	208	9.3

\* Based on a 24-Hour Average

7. During any month, the total exportation of water from the Delaware River Basin shall not exceed 9.3 million gallons.

8. 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.

9. 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 C.F.R. 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. If 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 pending the grant or denial of the application for docket approval.

10. The project withdrawal must not cause the streamflow to be less than 1.28 mgd at the Arrowhead Springs passby monitoring compliance point and daily withdrawals shall be reduced as appropriate to ensure that the withdrawal does not result in flow less than 1.28 mgd at the monitoring compliance point. Whenever the streamflow at the passby flow monitoring compliance point is equal to or less than this amount, no withdrawal shall be made and the entire natural flow must be allowed to pass.

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

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

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 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*.

16. 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).

17. 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).

18. 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).

19. 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.

20. 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.

21. 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.

22. 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.

23. 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**

**EXPIRATION DATE: December 7, 2032**