

**DOCKET NO. D-97-46-3**

**DELAWARE RIVER BASIN COMMISSION**

**DS Waters of America, Inc. and Nestle Water of North America, Inc.  
Spring Water Withdrawal  
Millcreek Township, Lebanon County, Pennsylvania**

**PROCEEDINGS**

This docket is issued in response to an emergency application submitted by DS Waters of America, Inc. (DS Waters) and Nestle Water of North America, Inc. (NWNA) for renewal of an allocation of surface water and review of a surface water withdrawal exportation project on June 27, 2008. The project was previously approved by Docket D-1997-46-2 on May 18, 2005. The project was approved by the Pennsylvania Department of Environmental Protection (PADEP) on April 28, 2005 (Public Water Supply Permit No. 3805502), subject to approval by the DRBC. The Commission's Executive Director granted an Emergency Certificate on June 30, 2008 for the project.

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 the application for this permit. A public hearing on this project was held by the DRBC on September 24, 2008.

**A. DESCRIPTION**

**1. Purpose.** The purpose of this project is to continue the withdrawal of 9.0 mg/30 days of spring water at the Arrowhead Springs Farm. The docket holder proposes to change the exportation area to include not only DS Waters existing facility in West Earl Township, Lancaster County, Pennsylvania, but also add the NWNA water bottling facility in Breinigsville, Lehigh County, Pennsylvania.

The proposed total allocation of ground water is not an increase in existing allocation.

**2. Location.** The project spring water catchments are located in the Tulpehocken Creek Watershed, in the Richland and Leithsville Formations, in Millcreek Township, Lebanon County, Pennsylvania. Specific location information has been withheld for security reasons.

3. **Area Served.** Water derived from Spring Nos. 1 and 3 will be conveyed by truck to both DS Waters water bottling facility located in West Earl Township, Lancaster County, Pennsylvania and the Nwana water bottling facility located in Breinigsville, Lehigh County, Pennsylvania, for distribution throughout the docket holder's customer distribution base.

Water from other springs on-site (Spring Nos. 2, 4, 5, and 6) supply the trout hatchery at the Arrowhead Springs Farm. DS Waters does not have an allocation for these waters.

4. **Physical features.**

a. **Design criteria.** Six ground springs emanate from the Arrowhead Springs property. On June 30, 2008, Spring Nos. 1 and 3 went from supplying the DS Waters bottling facilities in Lancaster and Ephrata, Pennsylvania to providing water for the Nwana spring water bottling plant in Breinigsville. The withdraw allocation for these two springs remains 9.0 mg/30 days.

The remaining springs (Spring Nos. 2, 4, 5, and 6) are not apart of the bottled water supply, but instead support an existing trout hatchery operated by the owners of Arrowhead Springs. The trout hatchery consists of a series of man-made ponds and raceways, holding rainbow trout in different stages of development. A docket application letter is being drafted for this withdrawal and shall be sent shortly.

b. **Facilities.** The catchment for Spring No. 1 is a 6' 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 No. 3 is enclosed within a 31' diameter glass-lined steel enclosure constructed of a concrete ring wall that rests on a stone ring wall. Water from Spring No. 3 is conveyed underground by gravity to an on-site treatment, storage, and tanker-truck-load-out building. Water from Spring No. 1 is pumped to the load-out building. The spring water is loaded out after being pumped from temporary storage tanks through 5-micron (nominal) filters and an ultraviolet light disinfection treatment system into a stainless steel tanker truck for transport to the bottling plant. The withdrawal from both spring catchments is metered.

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

**B. FINDINGS**

On June 27, 2008 Nwana applied to the DRBC via the Emergency Approval process to modify Docket No. D-97-46-2 by changing the bottling location from Lancaster and Ephrata, Pennsylvania to Lancaster and Breinigsville, Pennsylvania. Nwana informed the DRBC that they had recently purchased the withdrawal rights of 300,000 gpd of water from DS Waters, the

former sole docket holder of Docket D-97-46-2, with the intent of increasing supply to their Breinigsville, Pennsylvania plant in order to aid flood victims in the Mid-West. NWNA indicates that in response to record flooding in the Midwest and Mississippi River basin, NWNA has supplied significant amounts of bottled water. DS Waters still owns a portion of the bottling rights and therefore NWNA has asked to be a joint holder of this docket, to which DS Waters has agreed.

DRBC issued an Emergency Certificate on June 30, 2008, granting the addition of NWNA to the docket and changing the service area to encompass both the DS Waters water bottling facility located in West Earl Township, Lancaster County, Pennsylvania and the NWNA water bottling facility located in Breinigsville, Lehigh County, Pennsylvania.

A monitoring program was established in Docket No. D-97-46 for this project, which will remain as a requirement in Docket No. D-97-46-3. DECISION Section II.f. has been included in this docket to provide parameters for the continuing monitoring program.

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

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*.

### **C. DECISION**

I. Effective on the approval date for Docket No. D-97-46-3 below, Docket No. D-97-46-2 is terminated and replaced by Docket No. D-97-46-3.

II. The project and appurtenant facilities as described in the Section A “Physical features” are approved pursuant to Section 3.8 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the PADEP and such conditions, requirements, and limitations are incorporated herein, unless they are less stringent than the Commission’s. The docket holder shall register with the PADEP all surface and ground water sources described in this docket in accordance with the Pennsylvania Water Resources Planning Act (Pennsylvania Act 220).

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

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

d. During any 30-day period, the withdrawal from Spring Nos. 1 and 3 shall not exceed 9.0 million gallons.

e. The docket holder shall pay for surface water use in accordance with the provisions of Resolution No. 74-6, as amended.

f. The project withdrawal must not cause the streamflow to be less than 1.45 mgd at the Arrowhead Springs project line. Whenever the streamflow beyond the Arrowhead Springs site is less than this amount, a withdrawal of 0.1 mgd may be made and the remaining natural stream flow must be allowed to pass. Notwithstanding the above, no withdrawal shall be made and the entire natural flow must be allowed to pass if streamflow is less than 0.1 mgd, the estimated seven-consecutive-day low flow in a 10-year return period (Q7-10 flow). The docket holder shall continue to monitor and report passby flow annually as stipulated in the "Operation & Flow Monitoring Plan", dated June 30, 1998 (revised January 18, 1999). Any change to the Operating Plan shall be approved by the Executive Director of the DRBC.

g. The project withdrawals shall be metered with an automatic continuous recording device that measures to within 5 percent of actual flow. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted if maintenance of the 5 percent performance is not technically feasible or economically practicable. 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.

h. Each new water service connection shall include a water meter in accordance with the DRBC's Resolution No. 87-7 (Revised).

i. The docket holder shall implement to the satisfaction of the PADEP, the continuous program to encourage water conservation in all types of use within the facilities served by this 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.

j. 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).

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

l. 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.

m. 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.

n. 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*.

o. A complete application for the renewal of this docket, or a notice of intent to cease the operations (withdrawal, discharge, etc.) approved by this docket by the expiration date, must be submitted to the DRBC at least 12 months prior to the expiration date below (unless permission has been granted by the DRBC for submission at a later date), using the appropriate DRBC application form. 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 this docket will remain fully effective and enforceable against the docket holder pending the grant or denial of the application for docket approval.

p. 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.

q. If the operation of this project significantly affects or interferes with any domestic or other existing wells or surface water supplies, or if the docket holder receives a complaint by any user of wells or surface water supplies within the zone of influence of the withdrawal, the docket holder shall immediately notify the Executive Director of any complaints by users of wells or surface water supplies within the zone of influence of the withdrawal, and unless excused by the Executive Director, shall investigate such complaints. The docket holder should direct phone call notifications of potential well or surface water interference or complaints of interference to the DRBC Project Review Section at 609-883-9500, extension 216. Oral notification must always be followed up in writing directed to the Executive Director. In addition, the docket holder shall provide written notification to all potentially impacted users of wells or surface water supplies of the docket holder's responsibilities under this condition. Any well or surface water supply which is substantially adversely affected, or rendered dry or otherwise unusable as a result of the docket holder's project withdrawal, shall be repaired, replaced or otherwise mitigated at the expense of the docket holder. A report of investigation and/or mitigation plan prepared by a hydrologist shall be submitted to the Executive Director as

soon as practicable. The Executive Director shall make the final determination regarding the validity of such complaints, the scope or sufficiency of such investigations, and the extent of appropriate mitigation measures, if required. 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.

r. 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.

s. The docket holder and any other person aggrieved by a reviewable action or decision taken by the Executive Director or Commission pursuant to this docket may seek an administrative hearing pursuant to Articles 5 and 6 of the Commission's *Rules of Practice and Procedure*, and after exhausting all administrative remedies may seek judicial review pursuant to Article 6, section 2.6.10 of the *Rules of Practice and Procedure* and section 15.1(p) of the Commission's *Compact*.

**BY THE COMMISSION**

**APPROVAL DATE:**

**EXPIRATION DATE: September 24, 2018**