

**DOCKET NO. D-2015-021 CP-1**

**DELAWARE RIVER BASIN COMMISSION**

**Special Protection Waters**

**Pennsylvania Department of Environmental Protection  
Bureau of Abandoned Mine Reclamation  
Jeanesville Mine Fire Groundwater and Surface Water Withdrawal  
Banks Township, Carbon County and Hazle Township, Luzerne County, Pennsylvania**

**PROCEEDINGS**

This docket is issued in response to an Application submitted by the Pennsylvania Department of Environmental Protection (PADEP) Bureau of Abandoned Mine Reclamation (BAMR) to the Delaware River Basin Commission (DRBC or Commission) on October 22, 2015 for approval of an allocation of groundwater and surface water and review of a groundwater water and surface water withdrawal project (Application). An emergency approval for this project was issued by the DRBC's Executive Director in accordance with Section 2.3.9.B. of the Commission's Administrative Manual-Rules of Practice and Procedure on December 21, 2015. Activities. The PADEP National Pollutant Discharge Elimination System (NPDES) General Permit (Permit No. PAG-02-1113-15-003) for stormwater and Chapter 105 Water Obstruction and Encroachment General Permit for the project are still pending.

The Application was reviewed for inclusion in the Comprehensive Plan and for approval under Section 3.8 of the *Delaware River Basin Compact*. The Carbon County Planning Commission and Luzerne County Planning Commission have been notified of pending action on this docket. A public hearing on this project was held by the DRBC on February 10, 2016.

**A. DESCRIPTION**

**1. Purpose.** The purpose of this project to withdraw up to 46.5 million gallons per month (mgm) of groundwater from the proposed Quakake Mine Pool Well and surface water from the Hazleton City Authority Water Department's Raw Water Mixing Reservoir to be used to abate the Jeanesville Mine Fire.

**2. Location.** The Jeanesville Mine Fire site is located in the Beaver Creek Watershed in Banks Township, Carbon County and Hazle Township, Luzerne County, Pennsylvania. The proposed well will be completed in the Llewellyn Formation and is located in the Beaver Creek Watershed in Banks Township, Carbon County, Pennsylvania. The Hazleton City Authority Water Department's Raw Water Mixing Reservoir is located in the Hazle Creek Watershed in Hazle Township, Luzerne County Pennsylvania. Beaver Creek near the project site is designated

by the Pennsylvania Department of Environmental Protection (PADEP) as supporting Cold Water Fishes (CWF).

Specific location information has been withheld for security reasons.

3. **Area Served.** Water withdrawals will be used solely for the purpose of abating the Jeanesville Mine Fire and cooling excavate prior to it being stockpiled for reused in mine site reclamation. The service area is outlined on a map included 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. **Physical features.**

a. **Design criteria.** The BAMR expects that water demand to abate the mine fire will approach 1.5 million gallons per day. Water for fighting the mine fire will be sourced from either the Quakake Mine Pool Well or the HCAWD's raw water mixing reservoir if the mine pool well cannot provide all of the necessary demand. The allocation of 46.5 mgm should be sufficient to meet the water demands of the BAMR.

b. **Facilities.** The proposed project well and surface water intake have the following characteristics:

WELL NO.	DEPTH	CASED DEPTH/ CASING DIAMETER	PUMP CAPACITY	YEAR DRILLED
Quakake Mine Pool	TBD approximately 300-400 feet	TBD	TBD	TBD

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY	7Q10 FLOW AT INTAKE (CFS)	NOTES
HCAWD Raw Water Mixing Reservoir	HCAWD Raw Water Mixing Reservoir	TBD	Not Applicable	Pump from mixing reservoir will be portable and temporary

The well and intake withdrawals will be metered.

Prior to use, the withdrawn water will not be treated.

The project is not located within the 100-year flood hazard area.

c. **Other.** With the exception of water lost to evaporation in suppressing the fire, any non-evaporated water will percolate into the Quakake Minepool and will ultimately remain in the Delaware River Basin, Lehigh River Watershed.

d. **Cost.** The overall cost of this project is estimated to be \$12,600,000.

e. **Relationship to the Comprehensive Plan.** This project is included in the Comprehensive Plan with the approval of Docket No. D-2015-021 CP-1.

## B. **FINDINGS**

On December 21, 2015, an emergency certificate was granted by the Executive Director of the DRBC in accordance with Section 2.3.9.B. of the Commission's Administrative Manual-Rules of Practice and Procedure to the PADEP BAMR for permission to withdrawal up to 46.5 million gallons per month (mgm) of groundwater from the proposed Quakake Mine Pool Well to support the applicant's firefighting efforts at the Jeanesville coal seam mine fire in Banks Township, Carbon County, Pennsylvania and Hazle Township, Luzerne County, Pennsylvania. The emergency certificate was also issued to the Hazleton City Authority Water Department (HCAWD) approving a temporary increase in the allowable withdrawal from Lehigh River source at Rockport, Lehigh Township, Carbon County, Pennsylvania for fire flow if the proposed Quakake Mine Pool Well cannot provide sufficient water demand for firefighting. The emergency certificate provides a temporary increase in the allowable withdrawal from HCAWD's Lehigh River Withdrawal (DRBC Docket No. D-1990-010 CP-1) from 2.5 million gallons per day (mgd) to 3.5 mgd for mine firefighting purposes only. The approval contained in the Emergency Certificate for the BAMR Quakake Mine Pool Well expires upon approval of this docket and is thereafter controlled by the expiration date of this docket. The provisions and conditions of the emergency certificate that apply to HCAWD's temporary increase in withdrawal from the Lehigh River are also temporary and shall expire upon the expiration date of this docket. The provisions and conditions of the emergency certificate issued to the HCAWD that remain active include:

- Approval for HCAWD to temporarily increase its withdrawals from the Lehigh River from 2.5 mgd to 3.5 mgd for mine fire abatement purposes only.
- The HCAWD shall meter all withdrawals from the Lehigh River. Withdrawals from the Lehigh River in excess of 2.5 mgd shall be used only for abatement of the Jeanesville Mine fire. Withdrawals from the Lehigh River shall not exceed 3.5 mgd.
- The HCAWD shall comply with the passing flow requirement set forth in its current DRBC docket (D-1990-010 CP-1) and PADEP Water Allocation Permit. A flow of not less than 53.4 mgd (82.7 cfs) shall be allowed to pass the HCAWD's Lehigh River Intake whenever water is withdrawn at the intake. When the streamflow below the intake is less

than 53.4 mgd, no water may be withdrawn and the entire natural flow shall be allowed to pass the intake.

- Temporary withdrawals from the Lehigh River are subject to water supply charges in accordance with DRBC's *Administrative Manual Part III – Basin Regulations, Water Supply Charges*. BAMR and HCAWD are jointly and individually responsible for timely payment of all applicable charges.

### **Background**

The original Surface Mine Permit (SMP) was issued for the mine in 1974. The site was re-permitted in 1986. The current SMP includes 964 acres in Hazle and Banks Townships in Luzerne and Carbon Counties, Pennsylvania. The PADEP states that the fire is burning at both a pre-Mining Act abandoned mine site and an actively mined site off Route 93 near the Luzerne County line. The current permittee of the active mine site is Pagnotti Enterprises, Inc. and the landowner is Lehigh Valley Anthracite/Pagnotti Enterprises. There are currently two active mining operations on the Pagnotti SMP: 1) Wet Slope Operation on the west side of SR 3017/SR 4001 (operated by Latona Mining) and 2) Jeanesville Operation on the east side of SR 3017/SR 4001 (operated by Hazleton Shaft Corporation). No. 1 Contracting Corp. previously operated a strip mine on the east side of SR 3017/SR 4001 on the Pagnotti property until about 2011, this operation was backfilled by Hazleton Shaft Corp. in conjunction with their new operation

The current Jeanesville Mine operation began in spring 2011 and mining began fall to winter 2011. The fire was first noticed in early 2012 as mining progressed eastward from the pre- Act pit adjacent to southwest edge of Jeanesville. Initially, the mine fire was thought to be in the coal silt/old pit area near the north edge of the pre- Act pit, but venting was also noted along the south edge of the proposed mining area. Previous mining to the south of the active pit area was reviewed at that time and available information indicated that much of the upper coal seams were removed by past mining. As Hazleton Shaft Corp. continued to mine and excavate the mine fire, it became clear that the fire was not isolated to one small area. Part of the fire appears to be off the area of the SMP area Hazleton Shaft Corp. is mining. District Mining contacted the Bureau of Abandoned Mine Reclamation (BAMR) to help develop a plan to evaluate what could and should be done to address the mine fire on the pre-Act mining area. Hazleton Shaft Corp. is currently excavating the underground mine fire within the limits of their proposed mining area and is constructing an isolation trench to prevent the mine fire from progressing eastward. The BAMR proposes to construct an isolation trench along the southern boundary of the active mine area to prevent southward fire progression. The water withdrawn from either the Quakake Mine Pool Well or the HCAWD's raw water mixing reservoir will be used to extinguish any fires and cool hot material encountered during the excavation of the southern isolation trench. Cooled excavate will be used to fill and reclaim abandoned mine pits on the pre-Act mining area.

With the exception of water lost to evaporation in suppressing the fire, any non-evaporated water will percolate into the Quakake Minepool and will ultimately remain in the Delaware River Basin, Lehigh River Watershed.

The DRBC received a docket application from PADEP for the project on October 22, 2015. PADEP also requested emergency approval to proceed with the groundwater withdrawal and surface water withdrawal project and demonstrated that such approval is necessary to protect public health and to prevent the mine fire from progressing any further.

Without the increased reliance on the Lehigh River Intake for firefighting purposes at the Jeanesville Mine Fire, HCAWD would have had difficulty meeting its own public water supply system demands. Low precipitation in the area of HCAWD's Susquehanna River Basin Sources reduced their available yields and required them to alternate sources to allow for recharge to occur. If utilized, the BAMR will withdrawal raw water from Hazleton's 3 million gallon capacity raw water mixing reservoir located at the Hazleton water filtration plant located approximately 0.77 miles from the mine fire. The water will be pumped from the reservoir utilizing a portable temporary pump. The work is expected to be completed within two years.

### **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 Milrift 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 well/surface water intake providing water supply to the docket holder are located within in the drainage area to the Special Protection Waters. Since this project does entail construction and there are new or increased non-point source loads associated with this approval, the non-point source pollution control plan requirement is applicable at this

time. Accordingly, Special Condition(s) II.(y.z) have been included in the Decision section of this docket.

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 fire abatement, 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*.

### **Drought Management and Contingency**

During declared drought emergencies PADEP BAMR will work with their contractor to reduce withdrawals to the absolute amount necessary to continue to abate the mine fire. While much of the water used to extinguish the mine fire will be lost to evaporation and be consumptively used, some portion of the withdrawal will infiltrate back to the mine pool from which the well is pumping. BAMR will also make every attempt to capture water at the surface and recycle it to abate the mine fire. Additionally, the HCAWD must still comply with the passing flow requirement set forth in its current DRBC docket (D-1990-010 CP-1) and PADEP Water Allocation Permit. A flow of not less than 53.4 mgd (82.7 cfs) shall be allowed to pass the HCAWD's Lehigh River Intake whenever water is withdrawn at the intake. When the streamflow below the intake is less than 53.4 mgd, no water may be withdrawn and the entire natural flow shall be allowed to pass the intake.

### **Surface Water Charges**

Temporary withdrawals from the Lehigh River used by BAMR for the purpose of abating the mine fire are subject to water supply charges in accordance with DRBC's Administrative Manual Part III – Basin Regulations, Water Supply Charges. BAMR and HCAWD are jointly and individually responsible for timely payment of all applicable charges for both consumptive and non-consumptive use of surface water in accordance with the emergency approval issued on December 21, 2015.

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**

I. Effective on the approval date for Docket No. D-2015-021 CP-1 the project and the appurtenant facilities described in the Section A "Physical features" shall be added to the Comprehensive Plan.

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 and report to the PADEP all surface and ground water sources described in this docket in accordance with the Pennsylvania Regulations (Title 25 - Environmental Protection, [25 PA. CODE CH. 110], Water Resources Planning).

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

c. The well and intake 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 month (31 days), the combined withdrawal from all water sources shall not exceed 46.5 million gallons. No source shall be pumped above the maximum monthly allocation as indicated below:

<b>SOURCE</b>	<b>MONTHLY ALLOCATION</b>
Quakake Mine Pool	46.5 MG
HCAWD Raw Water Mixing Reservoir	46.5 MG

e. The well shall be equipped with readily accessible capped ports and minimum ½ inch inner diameter (ID) drop pipes so that water levels may be measured under all conditions.

f. Within 30 days of completion of construction of the approved project, the docket holder is to submit to the attention of the Project Review Section of DRBC a Construction Completion Statement (“Statement”) signed by the docket holder’s professional engineer for the project. The Statement must (a) either confirm that construction has been completed in a manner consistent with any and all DRBC-approved plans or explain how the as-built project deviates from such plans; (b) report the project’s final construction cost as such cost is defined by the project review fee schedule in effect at the time application was made; and (c) indicate the date on which the project was (or is to be) placed in operation.

g. This approval of the construction related to the Quakake Mine Pool Well as described in paragraph A.4.a of this docket shall expire three years from date below unless prior thereto the docket holder has commenced operation of the subject project or has provided

the Executive Director with written notification that it has expended substantial funds (in relation to the cost of the project) in reliance upon this docket approval.

h. The project withdrawals from the Quakake Mine Pool Well and the HCAWD mixing basin shall be metered with automatic continuous recording devices that measure 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.

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 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.

j. The docket holder shall 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.

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

l. Sound practices of excavation, backfill and reseedling shall be followed to minimize erosion and deposition of sediment in streams from any new facilities or repair related construction.

m. 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.

n. 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.

o. 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*.

p. Unless an extension is requested and approved by the Commission in advance, in accordance with paragraph 11 of the Commission's Project Review Fee schedule (Resolution No. 2009-2), the docket holder is responsible for timely submittal of a docket renewal application on the appropriate DRBC application form at least 12 months in advance of the docket expiration date set forth below. The docket holder will be subject to late charges 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 (or the later date established by an extension that has been timely requested and approved), 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.

q. 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.

r. 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 permit 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 permit holder shall provide written notice to all potentially affected water users of the permit holder's responsibilities under this condition. **Any well or surface water supply that is impaired as a result of the permit holder's project withdrawal shall be repaired, replaced or mitigated at the permit 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 permit holder to take interim actions to mitigate such impacts, pending completion of the investigative report and any long-term repair, replacement or mitigation.

s. 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.

t. DROUGHT EMERGENCY LANGUAGE

i. 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.

u. 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.

v. Prior to May 10, 2016 the docket holder shall submit for approval by the Executive Director of the DRBC, a Non-Point Source Pollution Control Plan (NPSPCP) that includes post-construction stormwater management plans in accordance with Article 3.10.3A.2.e.1). and 2). of the *Water Quality Regulations*. The Executive Director can, for good cause, extend the date of the NPSPCP submission.

w. 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: March 16, 2016**

**EXPIRATION DATE: March 10, 2018**