

DOCKET NO. D-1993-053-3

DELAWARE RIVER BASIN COMMISSION

Special Protection Waters

JFBB Ski Areas, Inc.

Surface Water Withdrawal

Kidder Township, Carbon County, Pennsylvania

PROCEEDINGS

This docket is issued in response to an Application submitted by RKR Hess, Inc. on behalf of JFBB Ski Areas, Inc. (JFBB) to the Delaware River Basin Commission (DRBC or Commission) on April 7, 2014 for a renewal and approval of an existing allocation of surface water and review of a surface water withdrawal project (Application). This project was previously approved by the Commission on May 18, 2005.

The Application was reviewed for continuation and approval under Section 3.8 of the Delaware River Basin Compact. The Carbon County Planning Board has been notified of pending action on this permit. A public hearing on this project was held by the DRBC on September 9, 2014.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to approve the renewal of an existing supply of surface water for snowmaking purposes at the docket holder's Big Boulder Ski Area resort from an existing intake on Big Boulder Lake. The total allocation of surface water will remain 125 million gallons per month (mgm). JFBB is not requesting an increase in surface water withdrawal allocation from that contained in its prior approval.

2. Location. The project intake is located on Big Boulder Lake, which is a tributary of Tunkhannock Creek, which is a tributary of Tobyhanna Creek and is located in Tobyhanna Creek Watershed, within the drainage area to the Lower Delaware Special Protection Waters, in Kidder Township, Carbon County, Pennsylvania. Tobyhanna Creek near the project site is designated by the Pennsylvania Department of Environmental Protection (PADEP) as supporting High Quality – Cold Water Fishes (HQ-CWF) and Migratory Fishes (MF).

Specific location information has been withheld for security reasons.

3. **Area Served.** The project withdrawals will be used for snowmaking purposes for the docket holder's Big Boulder Ski Area resort only.

4. **Physical features.**

a. **Design criteria.** The docket holder operates their intake on Big Boulder Lake to provide up to 4.03 million gallons per day (mgd) for snowmaking purposes. The snowmaking facilities mix water with compressed air to produce snow. Big Boulder Lake was created to provide a dependable source of water for snowmaking.

Big Boulder Lake has approximately 185 acres of surface area and a volume of 67 million gallons when the reservoir is level with the spillway crest at elevation 1,775 feet. Prior to the creation of Big Boulder Lake circa 1958, water for snowmaking was originally drawn from Grass Lake. Two dams were built to enlarge Grass Lake and create Big Boulder Lake. Big Boulder Dam was constructed in 1958 by the Lehigh Coal and Navigation Corporation.

The lake was created by two dams (A and B), each dam consisting of an earth embankment constructed on a foundation of silts, sands, and boulders. Dam A also includes a reinforced concrete spillway, a steel footbridge and sluice gates for outlet control and lake lowering. Dams A and B are approximately 29 feet and 18 feet high, respectively. A reinforced concrete measuring weir was constructed about 500 feet downstream of the Dam A spillway. The measuring weir incorporates a small pipe which ensures discharge of the minimum flow of 0.12 million gallons per day (0.18 cfs) as required by the PADEP Dam Permit Nos. D13-093 (Dam A) and D13-119 (Dam B), issued in May 1959, when the weir crest is not overflowing. At the upstream end of the lake is an intake tower with sluice gate and pump house, owned and controlled by the docket holder. The sluice gate is controlled by a hand wheel located on top of the intake tower and water flows by gravity from the intake tower to a pump house for pumping to the snowmaking facilities.

b. **Facilities.** The docket holder's existing surface water intake has the following characteristics:

| INTAKE NO. | WITHDRAWAL WATER BODY | PUMP CAPACITY (MGD) | 7Q10 FLOW AT INTAKE (CFS) | YEAR CONSTRUCTED |
|------------|-----------------------|---------------------|---------------------------|------------------|
| 1 | Big Boulder Lake | 4.03 | 0.18 | 1958 |

Surface water withdrawals are metered.

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

The snowmaking system is presently not interconnected with any other distribution system.

c. **Other.** Wastewater is conveyed to the Big Boulder Corporation sewage treatment facility most recently approved by DRBC Docket No. D-1985-025-2 on May 7, 2013. The PADEP issued its most recent NPDES Permit No. PA0061182 on February 1, 2013 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

B. FINDINGS

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 intake providing water supply to JFBB is located within in the drainage area to the Special Protection Waters. Since this project does not entail additional construction and expansion of facilities or service areas (i.e., there aren't 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.

The docket holder will continue to provide a 0.12 mgd (0.18 cfs) maintenance flow as required by its PADEP Dam Permit Nos. D13-093 and D13-119. The required minimum maintenance flow from the lake is designed to prevent draw down in the lake by more than three feet during the late summer months when minimum groundwater recharge and high evaporation occurs and no projects withdrawals are necessary. During winter months, the required minimum release can be maintained while withdrawals are being made with little impact to the lake level, since evaporation is less and groundwater recharge is normally greater.

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

JFBB shall pay for surface water use in accordance with the provisions of *Administrative Manual Part III Basin Regulations – Water Charges*.

The DRBC estimates that the project withdrawals, used for the purpose of snowmaking, result in a consumptive use of 22 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 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-1993-053-3 below, Docket No. D-1993-053-2 is terminated and replaced by Docket No. D-1993-053-3.

II. The project as described in the Section A “Physical features” is approved pursuant to Section 3.8 of the *Compact* and is granted this withdrawal permit pursuant to Section 10.3 of the *Compact* and *GWPAR*, 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.

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

c. The surface water 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, the total withdrawal from the surface water intake shall not exceed 125 mgm or 750 mgy (125 mgm x 6 months). The intake shall not be pumped above the maximum instantaneous rate and monthly allocation as indicated below:

| INTAKE NO. | INSTANTANEOUS RATE (GPM) | MONTHLY ALLOCATION (MILLION GALLONS) |
|------------|-----------------------------|--|
| 1 | 3,000 | 125.0 |

e. The docket holder shall pay for surface water use in accordance with the provisions of *Administrative Manual Part III Basin Regulations – Water Charges*.

f. The docket holder will continue to provide a 0.12 mgd (0.18 cfs) maintenance flow as required by its PADEP Dam Permit Nos. D13-093 and D13-119. The required minimum maintenance flow from the lake is designed to prevent draw down in the lake by more than three feet during the late summer months when minimum groundwater recharge and high evaporation occurs and no projects withdrawals are necessary. During winter months, the required minimum release can be maintained while withdrawals are being made with little impact to the lake level, since evaporation is less and groundwater recharge is normally greater.

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 annually by June 30, to the PADEP. Withdrawal records 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, 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.

j. The docket holder shall incorporate and implement reasonable conservation practices and measures consistent with efficient utilization of water resources.

k. No new water service connections shall be made to the 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.

l. 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.

m. 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 permit. 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* and the *GWPAR*.

n. 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.

o. 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.

p. If the monitoring required herein, or any other data or information demonstrates that the operation of this project significantly affects or interferes with any domestic or other existing uses of ground or surface water, or if the docket holder receives a complaint by any existing ground or surface water users within the zone of influence of the withdrawal, the docket holder shall immediately notify the Executive Director of any complaints by any ground or surface users 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 ground or surface water user which is substantially adversely affected, rendered dry or otherwise diminished 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.

q. 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 non-essential 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. 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 10, 2014

EXPIRATION DATE: September 10, 2024