

DOCKET NO. D-1993-057-3

DELAWARE RIVER BASIN COMMISSION

Special Protection Waters

**JFBB Ski Areas, Inc. - Jack Frost Ski Area
Surface Water Withdrawal
Kidder Township, Carbon County, Pennsylvania**

PROCEEDINGS

This docket is issued in response to an Application submitted by Peters Consultants, Inc. on behalf of JFBB Ski Areas, Inc. (JFBB) to the Delaware River Basin Commission (DRBC or Commission) on February 11, 2015 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 15, 2015.

A. DESCRIPTION

1. Purpose. The purpose of this docket is to renew the approval of an existing supply of surface water for snowmaking purposes at the docket holder's Jack Frost Ski Area resort from an existing intake on Tobyhanna Creek. The total allocation of surface water will remain 103.33 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 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 Jack Frost Ski Area resort only.

4. **Physical features.**

a. **Design criteria.** The docket holder operates their intake on Tobyhanna Creek to provide up to 3.33 million gallons per day (mgd) for snowmaking purposes. The snowmaking facilities mix water with compressed air to produce snow. The annual ski season runs from November 15 through March 31.

The average and maximum surface water demand for this project are 0.783 million gallons per day (mgd) and 3.33 mgd, respectively. The docket holder does not project an increase in demand over the next ten years. The allocation of 103.33 mgm should be sufficient to meet the future demands of JFBB. Domestic water for the JFBB facility is supplied by two on-site wells which withdrawal approximately 9,989 gallons per day (gpd) during the ski season months, which is below the Commission's withdrawal threshold and not subject to review.

The intake area is surrounded by a chain link fence covered by fine nylon webbing to prevent fish, leaves, twigs and debris from entering intake pipe. In addition, two intake pipes are isolated from the stream by a concrete wet well with a sluice gate.

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

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY (CFS/ MGD)	7Q10 FLOW AT INTAKE (CFS/ MGD)	YEAR CONSTRUCTED
1	Tobyhanna Creek	14.98/ 8.064	22.4/ 14.5	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 Blue Ridge Real Estate Company sewage treatment facility most recently approved by DRBC Docket No. D-1985-081 on January 22, 1986. The PADEP issued its most recent NPDES Permit No. PA0034118 on November 1, 2012 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 and there are not 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.

Pass-by Flow

The docket holder's Tobyhanna Creek surface water withdrawal will continue to be subject to seasonal passby flow requirements. The estimated contributing drainage area to Tobyhanna Creek above the JFBB surface water intake is approximately 129 square miles. The estimated seven-day low flow with a recurrence interval of 10 years (Q7-10) at the point of withdrawal is 22.4 cubic feet per second (cfs) or 14.5 million gallons per day (mgd). These values are based on data available from the United States Geological Survey (USGS) Tobyhanna Creek Gaging Station No. 01447720 adjusted proportional for the area of the basin for the period of record from 1955 to 2006. Throughout the ski season, the project withdrawal must not cause the stream flow in Tobyhanna Creek to be less than 22.4 cfs at the point of taking and daily withdrawal rates shall be reduced as appropriate to ensure that a minimum of 22.4 cfs passes by the intake. Withdrawals shall cease entirely if the 24-hour average flow as measured below the intake, less the withdrawal, is 22.4 cfs or less. Whenever the stream flow below the intakes is less than 22.4 cfs, no withdrawal from the creek shall be made and the entire natural stream flow

must be allowed to pass. No withdrawals shall be made until flow in Tobyhanna Creek as measured below the intake is at least 37.38 cfs for at least a 24 hour period. The docket holder shall continue to monitor the pass-by requirement in accordance with Condition C.I.i. in this docket.

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-1993-057-3 below, Docket No. D-1993-057-2 is terminated and replaced by Docket No. D-1993-057-3.

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*, 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 103.33 mgm or 619.8 mgy (103.33 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	5,600	103.33

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 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.

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

h. 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.

i. The project withdrawal must not cause the stream flow in Tobyhanna Creek to be less than 22.4 cfs at the point of taking and daily withdrawal rates shall be reduced as appropriate to ensure that a minimum of 22.4 cfs passes by the intake. Withdrawals shall cease entirely if the 24-hour average flow as measured below the intake, less the withdrawal, is 22.4 cfs or less. Whenever the stream flow below the intakes is less than 22.4 cfs, no withdrawal from the creek shall be made and the entire natural stream flow must be allowed to pass. No withdrawals shall be made until flow in Tobyhanna Creek as measured below the intake is at least 37.38 cfs for at least a 24 hour period.

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*.

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 16, 2015

EXPIRATION DATE: September 16, 2025