

DOCKET NO. D-1993-057-4

DELAWARE RIVER BASIN COMMISSION

Located in Drainage Area to 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 to the Delaware River Basin Commission (DRBC or Commission) on October 16, 2024 for renewal of an allocation of surface water and review of a surface water withdrawal project (Application).

The Application was reviewed for approval under Section 3.8 and for a withdrawal permit under Section 10.3 *Delaware River Basin Compact*. The Carbon County Office of Planning and Development has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on May 7, 2025.

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 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).
- 2. Location.** The project intake is located on Tobyhanna Creek and is located in the 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. For the purpose of defining Area Served, the

Application is incorporated herein by reference consistent with conditions contained in Section C. DECISION of this docket.

4. 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 approximately 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 the docket holder's snowmaking operation.

Domestic water for the docket holder's 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.

5. Facilities. The existing project intake has the following characteristics:

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY (GPM)	7Q10 FLOW AT INTAKE (CFS/MGD)	YEAR CONSTRUCTED
1	Tobyhanna Creek	5,600	31.6/ 20.4	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.

6. Other. Wastewater is conveyed to the Blue Ridge Real Estate Company Jack Frost sewage treatment facility most recently approved by DRBC Docket No. D-1985-081-2 on June 12, 2019. PADEP issued its most recent NPDES Permit No. PA0034118 for this treatment facility. The treatment facility has adequate capacity to receive wastewater from the proposed project.

B. FINDINGS

1. Special Protection Waters

In 1992, the DRBC amended its *Water Quality Regulations (WQR)* by the addition of regulations for the protection of Special Protection Waters (SPW), designed to maintain the quality of interstate waters where existing quality is better than the established stream quality objectives. As the result of its initial classifications and subsequent amendments, the Commission has designated the entire non-tidal main stem Delaware River from Hancock, New York to Trenton, New Jersey as SPW. DRBC's SPW regulations apply within the designated reaches and their drainage area.

The surface water intake providing water supply to the docket holder is located within the drainage area to SPW. Sections 3.10.3A.2.e.1) and 2) of the *WQR* state that projects subject to review under Section 3.8 of the Compact that are located within the drainage area of SPW must submit for approval a Non-Point Source Pollution Control Plan (NPSPCP) 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 SPW.

Since this project involves the renewal of an approval for existing activities and does not entail additional construction or expansion of facilities or create new or increased non-point source loads, the NPSPCP requirement is not applicable at this time. Condition C.24. of this docket provides that at such time, if ever, as additions to the area served by the docket holder's withdrawals are proposed, the docket holder will be required to demonstrate compliance with an approved NPSPCP in accordance with DRBC's SPW regulations.

2. Surface Water Charges

The docket holder shall pay for surface water use in accordance with *Basin Regulations-Water Supply Charges* 18 C.F.R. Part 420. See Section C. DECISION Condition C.3.

3. Passby Flow

The docket holder's Tobyhanna Creek surface water withdrawal will continue to be subject to a seasonal passby flow requirement. The estimated contributing drainage area to Tobyhanna Creek above the docket holder's 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 31.6 cubic feet per second (cfs) or 20.4 mgd. These values are based on the Q7-10 flow of 28.9 cfs from data available from the United States Geological Survey (USGS) Tobyhanna Creek near Blakeslee, PA Gaging Station No. 01447720 (located 4 river miles upstream from the project withdraw) adjusted proportionally for the area of the basin at the withdrawal point for the period of record from 1987-2008.¹

¹ Stuckey, M.H, and Roland, M.A., 2011, Selected streamflow statistics for streamgage locations in and near Pennsylvania: U.S. Geological Survey Scientific Investigations Report 2011-1070, 88 p.

The docket holder shall monitor streamflow using USGS Tobyhanna Creek near Blakeslee, PA Gaging Station No. 01447720 (“USGS gage”). When flow at the USGS gage is 41.4 cfs (Q7-10 flow plus the maximum withdrawal rate) or less the docket holder shall reduce its withdrawal rate as appropriate to ensure that a flow equal to the gage rate minus the withdrawal rate is never less than the Q7-10 flow (28.9 cfs). Withdrawals shall cease entirely if the 24-hour average flow as measured at the USGS gage is 28.9 cfs or less. Whenever the stream flow as measured at the USGS gage is less than 28.9 cfs, no withdrawal from Tobyhanna Creek shall be made and the entire natural stream flow must be allowed to pass. Withdrawals shall not resume until the flow measured at the USGS gage is at least 41.4 cfs for at least a 24-hour period.

4. Other Findings

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 Basin Regulations-Water Supply Charges 18 C.F.R. 420.1(d).

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-1993-057-4 below, Docket No. D-1993-057-3 is terminated and replaced by Docket No. D-1993-057-4. The project and appurtenant facilities as described 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. An exception to the 5 percent performance standard, but no greater than 10 percent, may be granted for surface water withdrawals by the designated agency PADEP if maintenance of the 5 percent performance is not technically feasible or economically practicable. 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 biweekly 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 pay for surface water use in accordance with *Basin Regulations – Water Supply Charges 18 C.F.R. Part 420*.

4. 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

5. During any month, the total withdrawal from the surface water intake shall not exceed 103.33 mgm or 619.8 million gallons per year (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.	MAXIMUM RATE (GPM/CFS)*	MONTHLY ALLOCATION (MGM)
1	5,600/12.5	103.33

* Based on a 24-Hour Average

6. 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.

7. 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 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.

8. The docket holder shall monitor streamflow using USGS Tobyhanna Creek near Blakeslee, PA Gaging Station No. 01447720 (“USGS gage”). When flow at the USGS gage is 41.4 cfs (Q7-10 flow plus the maximum withdrawal rate) or less the docket holder shall reduce its withdrawal rate as appropriate to ensure that a flow equal to the gage rate minus the withdrawal rate is never less than the Q7-10 flow (28.9 cfs). Withdrawals shall cease entirely if the 24-hour average flow as measured at the USGS gage is 28.9 cfs or less. Whenever the stream flow as measured at the USGS gage is less than 28.9 cfs, no withdrawal from Tobyhanna Creek shall be

made and the entire natural stream flow must be allowed to pass. Withdrawals shall not resume until the flow measured at the USGS gage is at least 41.4 cfs for at least a 24-hour period.

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

10. The surface water intake shall be operated at all times to comply with the requirements of the *WC* and *WQR* of the DRBC.

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

12. 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).

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

14. 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.

15. 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.

16. 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*.

17. The docket holder shall be subject to applicable DRBC regulatory program fees, in accordance with duly adopted DRBC resolutions and/or regulations. (see 18 CFR 401.43).

18. 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 CFR 401.43).

19. 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).

20. 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.

21. 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.

22. 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.

23. 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.

24. 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 complies with a DRBC approved NPSPCP.

25. 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:

EXPIRATION DATE: June 11, 2035

DRAFT