

DOCKET NO. D-2004-035-3

DELAWARE RIVER BASIN COMMISSION

Discharge to a Tributary of Special Protection Waters

**Bear Creek Management Company, LLC.
Groundwater and Surface Water Withdrawal
Longswamp Township, Berks County, Pennsylvania**

PROCEEDINGS

This docket is issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) on December 8, 2023 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 Berks County Planning Board has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on August 7, 2024.

A. DESCRIPTION

1. **Purpose.** The purpose of this docket is to approve the renewal of an existing supply of groundwater and surface water to the docket holder's Bear Creek Mountain Resort and Conference Center for snowmaking and potable use from existing Wells 1, 2, 3, 4, 5 and 6, and a pond (Lower Pond). The total groundwater withdrawal from the six (6) on-site wells will remain at 11.37 million gallons per month (mgm). The total allocation of all sources will remain at 37.82 mgm.

2. **Location.** The project wells are completed in Precambrian Gneiss and are located in the Swabia Creek Watershed, within the drainage area to the Lower Delaware Special Protection Waters, in Longswamp Township, Berks County, Pennsylvania. Swabia 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 to supply the docket holder's Bear Creek Mountain Resort and Conference Center for snowmaking and potable use 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 Bear Creek Mountain Resort and Conference Center is a winter sports complex featuring twenty-one (21) trails for skiing, snowboarding and snow tubing as well as lodge amenities and a conference center. The property consists of 335 acres with 86 acres of ski slopes.

Water demand for the facility is allocated to two (2) separate systems, potable water supply system and the snowmaking system. Potable water is supplied by groundwater using the existing Wells 1, 2, 5 and 6. Snowmaking is supplied using surface water stored in the Lower Pond. Occasionally, as additional water is required for snowmaking, Well 4 and treated wastewater effluent from the docket holder's wastewater treatment plant are used as supplementary water to the Lower Pond if natural precipitation and snow melt is not adequate. The wastewater treatment plant (Docket No. D-2005-016-4) was approved by the Commission to discharge up to 0.035 mgd to the Lower Pond for snowmaking operations. Additionally, the Lower Pond is also feed by the Upper Pond which in turn is feed by the Gypsy Pond, the Triple Pond, and the storm water detention basin. The ponds are not run of stream ponds to Swabia Creek.

Snow-making operations are subject to weather conditions but average 40 days per year and operate approximately 8 hours per snow-making event. An eight-hour snow-making shift pumps approximately 2.5 million gallons of water through the system. Of this volume, an estimated 85% (2.14 mg) is converted to snow while the remaining 15% (360,000 gallons) is returned to the Lower Pond by gravity through the snow-making system's piping. All snow melt and surface water runoff is directed into the Gypsy Pond where it overflows to the Upper Pond and finally back to the Lower Pond.

The average and maximum demand for potable water supply is 0.016 million gallons per day (mgd) and 0.364 mgd, respectively. The average and maximum demand for snowmaking operations is 1.289 mgd and 2.14 mgd, respectively. The total average and maximum demand for potable water supply and snowmaking operations is 1.305 mgd and 2.504 mgd, respectively. The docket holder does not estimate an increase in average and maximum demand over the next ten years. The allocation of 37.82 mgm should be sufficient to meet the future demands of the docket holder's facility.

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

WELL NO.	DEPTH (FEET)	CASED DEPTH/ CASING DIAMETER	PUMP CAPACITY (GPM)	YEAR DRILLED
1	300	50' / 6"	35	2004
2	300	60' / 6"	75	2004
3	Unknown	Unknown	0	Unknown
4	Unknown	Unknown	43	Unknown
5	300	33' / 8"	50	2003
6	300	52' / 8"	30	2004

Well 3 is currently not in operation but is reserved for possible future use.

INTAKE NO.	WITHDRAWAL WATER BODY	PUMP CAPACITY (GPM)	STORAGE CAPACITY (MG)	YEAR CONSTRUCTED
Lower Pond	Lower Pond	650	6.5	1968

Lower Pond: This impoundment was constructed in 1968. The storage capacity is approximately 6.5 million gallons (mg) and it is the primary source for snowmaking.

Upper Pond: This pond was constructed in 1972 and later enlarged in 2001 to provide a storage capacity of approximately 28 mg. This pond is used primarily for additional storage capacity for the Gypsy, Triple and Detention ponds. Flow from the Gypsy, Triple and Detention ponds is diverted to the Upper Pond when those ponds are full.

Gypsy Pond: This pond was constructed in 1972 and later expanded in 2001 to a storage capacity of 1.2 mg and excess flows are diverted to the Upper Pond. Most of the runoff and snowmelt from the ski mountain is directed to this pond.

Triple Pond: This pond was constructed in 2003 to retain runoff and snowmelt from the triple chair side of the ski mountain. The storage capacity of this pond is approximately 0.5 mg and excess flows are diverted to the Upper Pond.

Storm Water Basin: This basin has a storage capacity of approximately 1.0 mg and provides water to the Lower Pond for snowmaking. Excess flows from the basin are diverted to the Upper Pond.

All water service connections are metered.

All wells are metered.

Prior to entering the potable distribution system, the water is chlorinated and if necessary, the pH is adjusted.

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

6. Other. Wastewater is conveyed to the docket holder's sewage treatment facility most recently approved by DRBC Docket No. D-2005-016-4 on December 6, 2023. The PADEP issued Water Quality Management (WQM) Permit No. 0605408 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.25. 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. Other Findings

The DRBC estimates that the project withdrawals, used for the purpose of potable water supply and snowmaking, result in a consumptive use of 20 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-2004-035-3 below, Docket No. D-2004-035-2 is terminated and replaced by Docket No. D-2004-035-3. The project and appurtenant facilities as described in 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.

5. 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.

Other Conditions

6. During any month, the total groundwater withdrawal from the six (6) on-site wells shall not exceed 11.37 million gallons. The combined withdrawal from all sources shall not exceed 37.82 million gallons. No well or surface water intake shall be pumped above the maximum rate and monthly allocation as indicated below:

WELL NO.	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
1	35	1.55
2	75	3.31
3	0 (currently)	0.93
4	43	1.92
5	50	2.23
6	30	1.34
Lower Pond Intake	650	27.5

* Based on a 24-Hour Average

7. In accordance with 18 C.F.R. 401.8. of the Commission's *Rules of Practice and Procedure (RPP)*, if at any future time the Project is changed materially from the Project as described in this docket, it will be deemed to constitute a new and different project for the purposes of Article 11 of the Delaware River Basin Compact and will require Commission amendment of the Comprehensive Plan. In accordance with the same section of the RPP, whenever a change to the Project is made, the sponsor must advise the Executive Director, who will determine whether the change is deemed materially for purposes of this provision.

8. Section 2.3.10 of the Commission's *Rules of Practice and Procedure* (18 C.F.R. 401.41), limiting the Commission's approval to five years in the absence of an expenditure of substantial funds by the project sponsor in reliance on the approval, is hereby waived for good cause shown in accordance with Section 2.9.3 (18 C.F.R. 401.123) of the same regulations. 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.

9. 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 the docket holder has not applied to renew the docket or the DRBC is unable 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 renewal of the docket.

10. The wells, surface water intakes and operational records shall be available at all times for inspection by the DRBC.

11. The wells and surface water intakes shall be operated at all times to comply with the requirements of the WC and WQR of the DRBC.

12. The wells 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. Existing wells are to be similarly equipped, where possible, with readily accessible ports and ½ inch ID drop pipes as repairs or modifications are made at each existing well.

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

14. 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).

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

16. 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.

17. 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.

18. 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*.

19. 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).

20. 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).

21. 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).

22. 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.

23. 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.

24. 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.

25. 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.

26. 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 5, 2024

EXPIRATION DATE: September 5, 2034