

DOCKET NO. D-1991-046-4

DELAWARE RIVER BASIN COMMISSION

Located in Drainage Area to Special Protection Waters

**Blue Ridge Real Estate Company
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 May 19, 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 of the *Delaware River Basin Compact*. The Carbon County Planning Board has been notified of pending action on this docket. A public hearing on this project was held by the DRBC on May 8, 2024.

A. DESCRIPTION

- 1. Purpose.** The purpose of this docket is to renew the approval of an allocation of 12.4 million gallons per month (mgm) of surface water from an existing intake on Tobyhanna Creek for golf course irrigation.
- 2. Location.** The project intake is located in the Tobyhanna Creek-Lehigh River Watershed within the drainage area of the of the section of the non-tidal Delaware River known as the Lower Delaware, which the Commission has classified as Special Protection Waters in Kidder Township, Carbon County, Pennsylvania. Tobyhanna Creek at the project site is designated by the Pennsylvania Department of Environmental Protection (PADEP) as High-Quality Waters supporting Cold Water Fishes (HQ-CWF) and Migratory Fishes (MF).

Specific location information has been withheld for security reasons.

- 3. Area Served.** The project withdrawals described in this docket will continue to be used to supply water to the docket holder's golf course irrigation system only. The same intake facility is also used to supply water for snow making operations at the JFBB Ski Areas, Inc. - Jack Frost Ski Area as described in DRBC Docket No. D-1993-057-3 approved on September 16, 2015. 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 project golf course is an 18-hole golf course located on 204 acres and consists of 31 acres of fairways and tees, 3.5 acres of greens and 65 acres of roughs. The average and maximum daily irrigation water demand is 0.1 million gallons per day (mgd) and 0.4 mgd, respectively. The docket holder does not estimate an increase in the 10-year projected average or maximum daily irrigation demands. The domestic demand served by a well during the months of operation is approximately 600 gpd which is below the DRBC groundwater withdrawal review threshold and is not subject to Commission review and approval.

The irrigation system is sourced from a 400 gpm capacity submersible pump located at the Jack Frost Ski Area intake structure on Tobyhanna Creek near its confluence with Lehigh River. The intake area is surrounded by a chain link fence covered by fine nylon webbing to prevent fish, leaves, twigs and debris from entering the intake structure. Water from Tobyhanna Creek is pumped to a 1.7 million-gallon capacity (1.0 million gallons usable) lined storage reservoir. Water is pumped from the reservoir to irrigate the golf course and is metered daily during the irrigation season. The docket holder has a computerized irrigation and control system, which includes fertilizer application through the irrigation system and automatic soil moisture and weather monitoring to manage the application of water.

5. **Facilities.** The existing surface water intake has the following characteristics:

INTAKE ID	WITHDRAWAL SOURCE	PUMP CAPACITY	7Q10 FLOW AT INTAKE (CFS)	YEAR CONSTRUCTED
Tobyhanna Creek Intake	Tobyhanna Creek	400 gpm	22.4	1972

The surface water intake is metered.

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

6. **Other.** Domestic wastewater from the project is conveyed to the docket holder’s sewage treatment facility which received approval most recently approved by DRBC Docket No. D-1985-081-2 on January 22, 1986. The PADEP has issued National Pollutant Discharge Elimination System (NPDES) Permit No. PA0034118 for this treatment facility. The treatment facility has adequate capacity to continue to receive wastewater from the existing 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 intakes providing water supply to the docket holder are 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.22. 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 pass-by flow requirement. DRBC staff previously estimated the seven-day low flow with a recurrence interval of 10 years (Q_{7-10}) at the point of withdrawal to be 22.4 cubic feet per second (cfs) or 14.5 mgd. 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 Tobyhanna Creek shall be made and the entire natural stream flow must be allowed to pass. No withdrawals shall be made until flow in Tobyhanna as measured below the intake is above 23.3 cfs for at least a 24-hour period.

The docket holder shall continue to monitor streamflow using United States Geological Survey (USGS) gage No. 0144772 (Tobyhanna Creek near Blakeslee, Pennsylvania gage). This gage is located 4 river miles upstream of the project withdrawal and when the Q7-10 flow is occurring at the USGS gaging station it can be extrapolated as occurring at the point of withdrawal. The docket holder shall continue to monitor the pass-by requirement in accordance with Section C. DECISION condition C.8. in this docket.

4. Other Findings

The DRBC estimates that the project withdrawals, used for the purpose of golf course irrigation, result in a consumptive use of 90 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-1991-046-4 below, Docket No. D-1991-046-3 is terminated and replaced by Docket No. D-1991-046-4. 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 daily withdrawals shall be maintained, and monthly totals shall be reported to the PADEP annually quarterly 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*.

Other Conditions

4. During any month in the irrigation season only (April 15 through October 15) the withdrawal from the intake shall not exceed 12.4 million gallons. Irrigation withdrawals shall not be made concurrently with any withdrawals used for snow making as approved in DRBC Docket No. D-1993-057-3. The intake shall not be pumped above the maximum rate and monthly allocation as indicated below:

INTAKE ID	MAXIMUM RATE (GPM)*	MONTHLY ALLOCATION (MGM)
Tobyhanna Creek Intake	400 gpm	12.4

* Based on a 24-Hour Average

5. 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 substantially 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 substantial for purposes of this provision.

6. 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 three 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.

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 withdrawal from Tobyhanna Creek shall not result in the stream flow in the Tobyhanna Creek to be less than 22.4 cfs (14.5 mgd) as measured at USGS Gage No. 01447720. Withdrawal rates shall be reduced as appropriate to ensure that the withdrawal rate will not reduce the instantaneous flow below 22.4 cfs as measured at USGS Gage No. 01447720. Whenever the stream flow in Tobyhanna Creek is 22.4 cfs (14.5 mgd) or less than this amount at USGS Gage No. 01447720, no withdrawal shall be made and the entire natural stream flow must be allowed to pass. The pumps shall be shut off, not permitting any additional withdrawals from the Tobyhanna Creek until the 24-hour mean stream flow as measured at USGS Gage No. 01447720 is at least 23.3 cfs.

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. 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).

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

13. 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.

14. 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*.

15. 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).

16. 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).

17. 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).

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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: June 5, 2024

EXPIRATION DATE: June 5, 2034