

**STATE OF VERMONT
SUPERIOR COURT – ENVIRONMENTAL DIVISION**

LAND USE PANEL of the
NATURAL RESOURCES BOARD,
Petitioner

ASSURANCE OF DISCONTINUANCE

v.

JAY PEAK, INC.,
Respondent

Docket No.

VIOLATION

- I. **Failure to file monthly reports in November 2011, December 2011 and January 2012 as required by Condition 8 of Land Use Permit #7R0464-4.**

ASSURANCE OF DISCONTINUANCE

Pursuant to the provisions of 10 V.S.A. § 8007, the Land Use Panel of the Natural Resources Board (Panel) and Jay Peak, Inc. (Respondent) enter into this Assurance of Discontinuance, and stipulate and agree as follows:

STATEMENT OF FACTS AND DESCRIPTION OF VIOLATIONS

1. Jay Peak, Inc. (Respondent), owns and operates a ski area on land subject to Act 250 Land Use Permit Nos. 7R0464-4, as amended, and 7R0854, as amended.
2. On October 21, 1988 the District 7 Commission issued Land Use Permit 7R0464-4 (the 1988 Permit) to Respondent, authorizing the construction and use of a minimum flow structure in the Jay Branch Brook in Jay, Vermont.
3. Condition 8 of the 1988 Permit states:

Whenever the stop logs are in place, the applicant shall monitor the stream flow through the structure on a continuous basis. Monthly reports of the results of this monitoring shall be submitted to the District Environmental Commission for its review. Should the structure fail to pass the one cubic foot per second minimum stream flow, the Commission reserves the right to reconvene the hearing to examine mitigation possibilities.

4. In 2011, Respondent commenced snowmaking operations on November.
5. Respondent failed to file the monthly reports required by Condition 8 of the 1988 Permit for the months of November 2011, December 2011 and January 2012.

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6. Upon inquiry from the Vermont Agency of Natural Resources Watershed Management Division on Sunday, February 12, 2012, Respondent filed the monthly reports required by Condition 8 of the 1988 Permit on Tuesday, February 14, 2012.
 7. On or about February 14 Respondent became aware that the level sensor that is the basis for river flow calculations was providing data that was far below expected values. Upon reviewing the data, Respondent immediately ceased withdrawals pending further investigation.
 8. Other than a few hours in March 2012, Respondent did not operate the water withdrawal system for the remainder of the ski season.

AGREEMENT

Based on the aforementioned Statement of Facts and Description of Violations, the parties hereby agree as follows:

- A. Respondent shall comply with Land Use Permit Nos. 7R0464, as amended, and 7R0854, as amended.
- B. No later than thirty days following the entry of this Assurance as an Order by the Superior Court, Environmental Division, Respondent shall pay a civil penalty for the violations set forth herein, pursuant to 10 V.S.A. Ch. 201, in the amount of **\$5,250.00** (U.S. dollars), by check made payable to: **Treasurer, State of Vermont**.
- C. Within ten days of executing this Assurance, Respondent shall send a check in the amount of **\$10.00** (U.S. dollars), to pay the fee for recording a notice of this Assurance in the land records of the municipality where the Project is located, payable to: **Town of Jay**.
- D. All payments required by this Assurance shall be sent to:

Denise Wheeler, Business Manager
Land Use Panel of the Natural Resources Board
National Life Records Center Building
National Life Drive
Montpelier, Vermont 05620-3201
- E. Respondent shall neither deduct, nor attempt to deduct, any payment, penalty, contribution, or other expenditure required by this Assurance from its state or federal taxes.
- F. The State of Vermont and the Land Use Panel reserve continuing jurisdiction to ensure future compliance with all statutes, rules, and regulations applicable to the facts and violations set forth herein above.

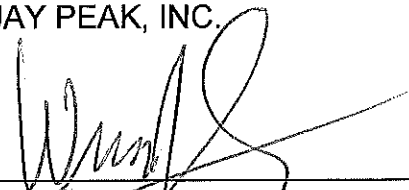
- G. Nothing in this Assurance shall be construed as having relieved, modified, waived or otherwise affected the Respondent's continuing obligation to comply with all other applicable state or local statutes, regulations or directives.
- H. This Assurance shall become effective only after it is signed by all parties and entered as an order of the Superior Court, Environmental Division. When so entered by the Superior Court, Environmental Division, this Assurance shall become a judicial order pursuant to 10 V.S.A. § 8007(c). In the event that such order is vacated, the Assurance shall be null and void.
- I. This Assurance sets forth the complete agreement of the parties, and it may be altered, amended, or otherwise modified only by subsequent written agreements signed by the parties hereto or their legal representatives and incorporated in an order issued by the Superior Court, Environmental Division. Representations not set forth in this Assurance, whether written or oral, shall not be binding upon any party hereto, and such representations shall have no legal force or effect.
- J. Pursuant to 10 V.S.A. § 8007(d), Respondent shall not be liable for any additional civil or criminal penalties with respect to the specific facts described herein, provided that Respondent fully complies with the agreements set forth above.
- K. When this Assurance has been entered as a judicial order pursuant to 10 V.S.A. § 8007(c), violation of any provision of this Assurance shall be deemed to be a violation of a judicial order and may result in the imposition of injunctive relief and/or penalties, including penalties set forth in 10 V.S.A. chapters 201 and/or 211.
- L. This Assurance is subject to the provisions of 10 V.S.A. § 8007.

SIGNATURES

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted. Further, I, William S Stenger, the undersigned, hereby state under oath that I am duly authorized to enter into this Assurance of Discontinuance on behalf of Jay Peak, Inc.

JAY PEAK, INC.

By:



William S. Stenger

(print name)

BE IT REMEMBERED that on the 31 day of October, 2012, personally appeared William Stenges, signer of the foregoing instrument, who is known to me or who satisfactorily established his/her identity to me and acknowledged the same to be his/her free act and deed.

Before me,

Karen L Bennett
Notary Public
My Commission Expires: 2/10/15

The provisions set forth in this Assurance of Discontinuance are hereby agreed to and accepted.

DATED at Montpelier, Vermont, this 6th day of December, 2012.

LAND USE PANEL

By: Ronald A. Shems
Ronald A. Shems, Chair

Wheeler, Denise

From: Fitzgerald, Brian
Sent: Monday, December 03, 2012 3:59 PM
To: NRB - Comments
Cc: Kline, Mike; LaFlamme, Pete; Kessler, Gary
Subject: Comment on Land Use Panel v. Jay Peak, Inc.

Ms. Kehne:

There is some information missing from the AOD that would provide some context and help explain the basis for the proposed penalty. Specifically, Agency of Natural Resources Watershed Management Division staff reviewed water level data and other information submitted by Jay Peak. We concluded that the water level sensor was not providing accurate readings during the period from November 2011 to February 2012. Any calculations based on those readings could not be considered accurate estimates of streamflow, so it was not possible to determine if Jay Peak had failed to comply with conservation flow requirements or if any environmental harm had resulted.

Thank you for the opportunity to comment.

BTF

Brian T. Fitzgerald
Streamflow Protection Coordinator

Vermont Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division
1 National Life Drive, Main 2
Montpelier, VT 05620-3522

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Conservation is a cause that has no end. There is no point at which we will say our work is finished.
- Rachel Carson



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