

September 27, 2012

The Honorable Tom Vilsack
US Department of Agriculture
Office of the Secretary
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Chief Tom Tidwell
USDA/Forest Service
201 14th Street, S.W.
Washington, D.C. 20024

Dear Secretary Vilsack and Chief Tidwell:

The Water Resources Review Committee is an interim committee of the Colorado General Assembly that is authorized to review water issues and propose legislation related to the conservation, use, development, and financing of Colorado's water resources. We, the undersigned members of the committee, are writing to express our opposition to Forest Service Directive Number 2709.11-2012-2, adopted on March 6, 2012, that applies to ski area permit holders (the "2012 Ski Area Water Clause"). The committee heard testimony on ski area water rights and the 2012 Ski Area Water Clause at its September 6 and 7, 2012, meetings. We are deeply concerned that the agency is violating federal and state law by attempting to use its permitting authority to take ownership of water rights obtained by private parties under Colorado state law. Accordingly, we request that the agency rescind the 2012 Ski Area Water Clause and work with the ski industry to develop a water policy that meets the needs of all the parties and the interests of the affected states.

Colorado's tourism industry is a vital source of economic activity for the state, including Colorado's 22 ski areas that operate on federal land under permit from the U.S. Forest Service. The 2012 Ski Area Water Clause not only threatens ski areas and the state's tourism economy, it threatens the state's water laws by unlawfully interfering in the state's allocation and administration of water rights.

Because of the significant percentage of the state's water supply that originates on National Forest System lands, we are also concerned about the agency's related change in policy, Clauses D-24 through D-27, that could affect other entities that have water rights associated with National Forest System lands, including cities and counties, owners of recreation residences and summer resorts, and businesses such as ranches, mines, timber industry and utilities. This change in policy, adopted on April 15, 2011, in FSH 2709.11, poses a threat to the current system of state allocation and administration of water rights in Colorado, and likewise should be rescinded.

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We are also opposed to the Forest Service's policy of withholding water improvement permits in exchange for stockwater rights. This policy is a threat to federal grazing lands throughout the west and must be addressed. We are alarmed by an increasing number of examples in which the Forest Service has made efforts to acquire ownership of water rights in return for the continuance of permitted activities on National Forest lands. We have witnessed this activity with water districts and, recently, with permitted ranching activities. Roughly 40 percent of the nation's cow herd and 50 percent of the sheep herd use federal lands.

While the Forest Service has not formally rejected use permits in Colorado, it has delayed issuing those permits in order to pursue its policy of obtaining stockwater rights in other states. This delay has prevented the full use of the range by wildlife as well as livestock. The Forest Service's demand is contrary to the prior appropriation doctrine for water rights which exists in much of the West, including Colorado. The federal government, except in narrow cases, continues to give deference to those state water laws, regulations, and agencies. For the benefit of the resource and our economy, the Forest Service must immediately re-evaluate and discard its policy and actions whereby water rights are demanded in exchange for permitted uses.

We urge the Forest Service to return to a consensus-based approach and develop a water policy that meets the needs of both water owners and the agency, and protects the state of Colorado's interests as well.

Sincerely,

Representative Jerry Sonnenberg, Chair

Senator Gail Schwartz, Vice-Chair

Representative Randy Baumgardner

Senator Greg Brophy

Representative Keith Swerdferger

Senator Angela Giron

Representative Ed Vigil

Senator Mary Hodge

Representative Roger Wilson

Senator Ellen Roberts