



USDA Forest Service
Rocky Mountain Region

Topic: Water Resources Review Committee –Update on the Draft U.S. Forest Service Ski Area Water Rights Directive, Groundwater Directives, Manual Language – Maribeth Gustafson

Location: Denver, Colorado – Colorado State Capital

Date: Thursday, August 7, 2014

Good afternoon members of the Water Resources Review Committee,

My name is Maribeth Gustafson and I am the Deputy Regional Forester for Operations for the Rocky Mountain Region of the U.S. Forest Service. I am pleased to follow up with you on the Agency's draft ski area water rights directive, which is currently out for public comment [ending August 22, 2014]. I will also touch on a few other water related issues the agency is currently working on in my remarks.

As I have shared in prior meetings, the Forest Service's interest in ski area water rights is to ensure that we sustain recreation opportunities and economic benefits for the State and local communities well into the future. Historically, the Forest Service has had water rights clauses in ski area permits for over 30 years. Those ski area permits required transfer of water rights to the United States.

The previous clause, released in 2011 and revised in 2012, was vacated by the court based on procedural grounds. The Forest Service conducted four group listening sessions and three open houses in April 2013 to identify concerns from diverse stakeholders. Two of these meetings were held in Denver. The input from these sessions was used to create the proposed ski area permit clauses.

What we heard from you and other valued constituents includes:

- Any clause must respect state laws regarding appropriation of water rights, including recognizing the difference between prior appropriation and riparian doctrines.

- The transfer of water rights to the United States is not necessary for sustained operations of the ski areas. There are other means of keeping water with the ski area permit that may be acceptable to water rights owners.
- Any revised clause should supersede existing water rights clauses in ski area permits that require transfer of water rights to the United States.
- The Forest Service has a responsibility to manage the lands entrusted to its care for multiple uses, such as outdoor recreation, range, water, timber, fish, and wildlife. Water is a critical component to meet that mandate.

I think you will find the current draft clauses incorporate these recommendations.

In fulfilling our responsibility to the public to ensure that water will be available for ski areas into the future, the proposed water rights clause for prior appropriation states focuses on non-severability of water rights rather than transfer of water rights ownership. The current ownership of existing water rights is maintained, and future water rights will be acquired in accordance with applicable State law.

In place of the ownership transfer requirement of previous clauses, the draft clause requires:

- An inventory of water rights necessary to support ski area operations on the National Forest System;
- “Non-severability” of the permitted water rights identified as necessary for sustained operation of the ski area. Any sale of the ski area as a whole would require the water rights remain with the assets of the area to be transferred to the buyer, and;
- Maintenance of a performance bond to ensure privately owned ski area improvements, including water developments, are removed in the event the ski area permit is not reauthorized. In such cases, disposition of water rights would be subject to state appropriation laws.

We greatly value our strong and ongoing relationship with the ski industry, state, county and local governments who are important partners in sustaining skiing opportunities on National Forest System lands. Your written comments and those of your constituents will be most valuable as we work to finalize a version that meets the needs of the public, and supports the communities and industry that are so vital to Colorado.

As I mentioned at the beginning of my remarks, nationally, in addition to the ski area water rights, the Agency is working on proposals including groundwater directives and amending manual language to clarify and provide a consistent and efficient approach to assessing water resources on National Forest System lands. I understand the release of multiple proposed directives can be confusing as they have overlapping public comment periods.

Water availability and quality are a concern across the country for ecosystem viability and for human use. A number of factors, such as drought, insect and disease outbreaks, fire suppression, and development in the wildland urban interface have led to an increased risk of fire and potential impacts to watershed function and water resources.

The goal of the proposed groundwater directives (now out for comment) is to:

- Improve the quality and consistency of our approach to understanding groundwater resources on National Forest System lands, and;
- To better incorporate consideration of those resources to inform agency decision making.

The proposed directive does not specifically authorize or prohibit any uses, and is not an expansion of authority. The agency recognizes and honors the States' authority in the allocation and appropriation of water. The proposed directive would not infringe on a States' authority to allocate water, nor would it impose requirements on private landowners. We look forward to the involvement across Colorado and have extended the groundwater comment period to September 3, 2014.

In addition to the Ski Area Water Rights clause and the groundwater directives, which the agency has been working on for the past decade, the Forest Service is also proposing to amend our Manual for Water Quality Management and to establish a National Best Management Practices (BMP) Program Handbook.

The Forest Service developed a national set of BMPs in 2012 to ensure effective implementation and enhance consistency with the Clean Water Act, State and Tribal water quality programs. The updated direction provides a systematic approach for implementing, monitoring and documenting BMPs across National Forest System lands.

The comment period to amend the Forest Service Manual and establish Handbook direction has been re-opened. Your comments are welcomed by August 21, 2014.

The condition of the forested watersheds is of great interest across Colorado. One of our goals in the Rocky Mountain Region is to retain and restore the ecological resilience of forests and grasslands that provide a broad range of services to society. This goal is based on our commitment to resource management and is driven by dedicated efforts to make land and water ecosystems more sustainable, more resilient, and healthier.

Through these efforts, we are working to further that goal regionally, and to ensure consistency across the Agency, whether it's administrating ski area permits, evaluating groundwater, or fulfilling Clean Water Act responsibilities. Our commitment is to do that in partnership with federal, state and local entities.

Thank you for your time.

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