

**National Ski Areas Association's
Testimony to the House Natural Resources Committee's
Subcommittee on National Parks, Forest and Public Lands on
"Forest Service Regulatory Roadblocks to Productive Land Use and Recreation:
Proposed Planning Rule, Special-use Permits, and Travel Management"**

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Testimony

Thank you for the opportunity to testify today on behalf of the National Ski Areas Association. NSAA has 121 member ski areas that operate on National Forest System lands under a special use permit from the US Forest Service. These public land resorts accommodate the majority of skier visits in the U.S. and are located in the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Hampshire, New Mexico, Oregon, Utah, Vermont, Washington and Wyoming. Sixteen (16) members of the Natural Resources Committee have public land ski areas in their state. At the outset, we would like to thank Chairman Bishop for highlighting the important topic of water rights for special use permittees in this oversight hearing this morning. We would also like to thank Representative Tipton from Colorado for his leadership on the issue and recent correspondence to the Secretary of Agriculture on behalf of ski areas.

Collectively, ski areas invest hundreds of millions of dollars on water rights to support and enhance their operations. Ski areas use water for snowmaking, lodging facilities, restrooms, culinary purposes and irrigation. Water is crucial to ski area operations and ski area water rights are considered valuable assets to ski area owners. Ski areas require permit language that protects these rights and accommodates the complex and diverse water systems and state laws through which water is appropriated and applied to a beneficial use on Forest Service lands.

The ski industry and the Association have worked collaboratively and in partnership with the Forest Service over the past decade to address the interests of both the industry and the Forest Service on water matters. Specifically, the parties reached a consensus water clause in 2004 that has been in effect for the past seven years which the Forest Service now seeks to change, despite the fact that there have been no problems with the existing clause. The existing clause provides for exclusive ski area ownership of water rights that arise off of the ski area permit area, and co-ownership by the ski areas and Forest Service of certain water rights that arise on the special use permit area.

From the ski areas' standpoint, the current arrangement is working well and does not require any changes. However, the Forest Service is now imposing a new water clause that requires the ski areas to transfer exclusive ownership of many types of water rights

to the federal government. These are valuable private property rights which the Forest Service now wants for free. Not only would ski areas *not* be compensated for these valuable water rights, they would also lose the ability to control the uses for which this water is applied in the future. If these water rights are owned by the U.S. government, the ski area would have no guarantee that the water will continue to be used for ski area purposes in the future.

Moreover, the new water clause would also prohibit ski areas in perpetuity from selling or transferring ownership of certain other water rights that were purchased or developed by the ski areas entirely on private or non federal lands. No compensation is offered for this restriction and this restriction would have a significant adverse effect on the value of these ski area assets. The rationale provided by the Forest Service for making changes to the clause at this time is that “there is a new sheriff in town.”

Ski areas object to these new requirements. Requiring ski areas to transfer ownership or limit the sale of water rights without compensation is no different than the government forcing a transfer of ownership of gondolas or chairlifts, snowcats, or snowmobiles, or even exercising eminent domain without any compensation. It is unprecedented to require the ski industry to surrender ownership of valuable assets to the U.S. government without any compensation.

All water right owners, not just ski areas, should be concerned about this precedent. Because of the significant percentage of water that originates on National Forest System lands, this change in policy poses a threat to the current system of state allocation and administration of water rights. This issue is larger than just ski areas – it would impact all entities that have water rights associated with any National Forest System lands including cities and counties, owners of recreation residences, marinas and summer resorts, and other businesses such as ranching, mining, or utilities.

Water right allocation is generally a matter of state, not federal law. State law allows private ownership of water rights for diversion and use on federal land. Rather than unlawfully taking property from private entities as a permit condition to use or occupy National Forest System lands, the agency must acquire and exercise federal water rights on its own in priority in accordance with state laws.

As I mentioned, ski areas have developed water rights at great expense and effort. Resort owners have invested hundreds of millions of dollars in acquiring water rights to enhance their operations and the experience of their guests. Ski areas have been excellent stewards of these resources and are in the best position to protect these water rights as they have the expertise, staffing and resources necessary to maintain them.

Congress has not delegated to the Forest Service the authority to require the ski areas to transfer ownership of water rights to the U.S. as a permit condition. Likewise, the Property Clause of the U.S. Constitution does not give the agency the authority to use permitting conditions as a basis to obtain federal ownership of privately owned water rights without the payment of fair compensation.

Ski areas will not agree to the new water clause and respectfully request Congress' assistance in reversing this new Forest Service policy. The ski areas intend to ensure that private property interests are protected and state laws regarding water rights are honored.

Thank you for your consideration of this testimony.