

**Statement  
Dan Jiron  
Regional Forester, Rocky Mountain Region  
U.S. Department of Agriculture Forest Service**

**Before the Colorado General Assembly  
House Agriculture, Livestock, & Natural Resources Committee**

**Regarding Limitations on a Landowner's Ability to  
Impose Conditions on a Water Right Owner as a  
Condition of Permission to Use Land**

January 28, 2013

---

Chairman Fischer and Members of the Committee, good afternoon, and please allow me to introduce myself, as this is the first time I have addressed this Committee. My name is Daniel Jiron, and I am the Regional Forester for the Rocky Mountain Region of the USDA Forest Service. I am a Colorado native and went to a Colorado high school, to CSU in Pueblo, and to Regis University in Denver. I served as the district ranger on the South Park District of the Pike National Forest as well as a variety of other positions in three Forest Service regions and in the agency's national office in Washington, D.C. I also served as an aide to retired U.S. Senator Ben Nighthorse Campbell in his Washington DC office.

Thank you for the opportunity to provide a statement. National Forest System (NFS) lands occupy approximately 192 million acres of national forests and grasslands in 43 states. Maintaining supplies of clean water and protecting watersheds were major reasons for establishing the NFS. The Organic Administration Act of 1897 recognized the importance of watershed protection and expressly gave the federal government jurisdiction over water usage on NFS lands by requiring that all water within the boundaries of the national forest be used under the rules and regulations of the United States as well as under the laws of the states.

The Agency has a variety of programs and authorities that focus on water resources. Most of these programs involve partners and communities at all scales. Examples include the Watershed Condition Framework and how it assesses the condition of Forest Service watersheds and prioritizes restoration efforts. The new National Forest Planning Rule shows the commitment of the Agency towards conservation and restoration of water resources by focusing on restoration as a main component of forest planning.

Another example includes how State and Private Forestry works with private landowners to conserve, maintain, and restore water resources on private lands. Each state forestry agency has developed a State Forest Action Plan that in many states addresses water quality and quantity.

The U.S. Forest Service supports the outdoor recreation economy and recognizes the important role that our public national forest lands play in local economies. For example, we estimate that downhill skiers and snowboarders at 22 ski areas in national forests in Colorado contribute approximately \$1.5 billion to the local and state economy. In 1986, Congress directly addressed the Forest Service's authority to allow development of ski areas on NFS lands. In the National Forest Ski Area Permit Act of 1986, Congress provided that permits are to be issued "subject to such reasonable terms and conditional as the Secretary deems appropriate."

We want to see that mountain communities not only survive but thrive based on the success of recreational opportunities offered in nearby national forests. In recent years, this has often meant that snowmaking is required for ski areas to open on time and ensure quality skiing for local and long-distance visitors alike. By ensuring that water stays with the land for snowmaking and other purposes necessary for ski area operations, Forest Service policy supports the viability of these activities which are so important to Colorado's skiers as well as to the economy of the mountain communities.

Today I am here to speak about a bill and resolution before you, House Bill 13-1013 and Colorado House Joint Resolution 13-1004 which are both related to ski area water rights. As a matter of policy, the Forest Service does not take a position on legislation. Moreover, because some of these issues are subject to ongoing litigation, I am limited in what I can discuss with you today. However, I would like to address some of the issues that are raised in the bill and resolution.

The Forest Service respects the rights of states to allocate water available for appropriation and the role of states in administering water rights. In furtherance of its cooperative relationship with states, the Forest Service has signed several memoranda of agreement with states, including Colorado. The Forest Service fully participates in Colorado State Water Court proceedings under the McCarran Act and the Colorado Water Rights Determination and Administration Act of 1969.

However, while states grant the right to use water in priority, states cannot grant access to the water. Access is an occupancy and use of NFS land that must be authorized under federal law if access is to be granted. The grant of federal access to the water source is discretionary (under most circumstances) and may require limiting or conditioning the right to divert water to protect the federal estate. In this case, the Forest Service is protecting a viable ski area program that needs water to be sustained.

In response to this ruling, the Forest Service will be moving forward with a public process that will allow ski areas and other constituents to work together to address these issues with a long term goal of a thriving ski industry where water stays with the land for ski area purposes. We anticipate that this public process for the creation of a directive to meet these goals will begin in earnest later in the spring.

I anticipate that the agency's public process for developing a new directive on this issue will allow us to move forward with a dialogue in an inclusive manner with all interested stakeholders. I look forward to working with you in that process to find creative solutions that serve all of Colorado and the nation.

The Forest Service has long had a policy that new water rights acquired for water arising on NFS lands in support of multiple-use purposes such as recreation and grazing are to be held in the name of the United States, not in the name of the permittees. This policy guarantees that future permit holders will have sufficient water to continue these valued activities on NFS lands. This has been a National Forest Service policy since 1974. This policy does not apply to water rights for water transferred off NFS lands for uses that do not support multiple-use purposes on NFS lands, such as municipal water supplies or irrigation water supplies on private land.

Corporate interests may fluctuate, but our obligation to publically-owned NFS lands and the uses they support are for the long term. The first Forest Service Chief, Gifford Pinchot, charged the agency to manage "for the greatest good, for the greatest number, for the long term." Our water rights policy exists to serve that aim. It helps sustain skiing in the national forests, which is a common interest of skiers, skiing communities, and the many businesses involved in supporting the outdoor recreation economy.

The Forest Service issues ski area permits for the use and occupancy of federal land for a specific use and a specific term. The relationship between the agency and ski area permittees is analogous to the relationship between a landlord and tenant, similar to the relationship between state land boards in the west and grazing and other permittees authorized to operate on state lands. The Forest Service's historic water ownership policy is consistent with the practices of state land boards throughout the west and with sound management of publicly owned lands generally.

For example, the Colorado State Land Board requires grazing lessees to acquire new stock water rights needed for grazing programs on State lands as an agent of the State Land Board. As in Colorado, water rights developed on state trust lands in Idaho, Montana, South Dakota, Utah, Arizona, New Mexico, and Wyoming must be acquired in the name of the state and not in the name of the tenant. Western states and their water courts have always recognized the public interest in keeping the water with the land for these permitted uses, just as the U.S. Forest Service does.

Skiing is part of the identity and economic lifeblood of Colorado. Ski areas in the national forests contribute substantially to rural and state economies and to the unique quality of life here. It is our obligation to help provide the natural resources needed for these world-class opportunities now and in the future and to work with the ski industry to achieve that goal.

I hope that we can move forward with a dialogue on these issues with all interested stakeholders. Thank you for your time and the opportunity to come before you today.