

First Regular Session  
Sixty-ninth General Assembly  
STATE OF COLORADO

DRAFT  
9.18.12

**BILL 6**

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LLS NO. R13-0110.01 Thomas Morris x4218

**RESOLUTION**

**Water Resources Review Committee**

**SHORT TITLE: "Oppose Forest Service Ski Area Water Permit Reqmnt"**

**JOINT RESOLUTION**

101 **CONCERNING OPPOSITION TO NEW SKI AREA SPECIAL USE PERMIT**  
102 **WATER REQUIREMENTS.**

1 WHEREAS, Most ski areas in Colorado are located in national  
2 forests, and consequently are subject to special use permits issued by the  
3 United States Forest Service; and

4 WHEREAS, Pursuant to federal law, waters arising on federal  
5 lands in the western United States are available for appropriation and use  
6 by the public according to the law of the state in which the federal lands  
7 are located; and

8 WHEREAS, Most ski areas in Colorado have appropriated water  
9 rights to facilitate ski area operations, and while some of this water arises  
10 on federal lands, including national forest lands that may or may not be  
11 subject to the ski area special use permit, some of the water arises on  
12 nonfederal lands; and

13 WHEREAS, The Forest Service has recently changed the terms of  
14 its special use permits for ski areas by issuing Interim Directive

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

1 2709.11-2012-2 (the 2012 Directive); and

2 WHEREAS, The 2012 Directive prohibits ski area operators from  
3 transferring certain water rights associated with the ski area to any third  
4 parties and requires that, if the special use permits are terminated, the ski  
5 area operators must transfer certain water rights associated with the ski  
6 area to the United States or succeeding special use permit holders without  
7 any further compensation; and

8 WHEREAS, Pursuant to federal law, the United States can acquire  
9 water rights, other than by purchase or a similar transaction, in one of  
10 only two ways: By impliedly reserving rights to supply water for the  
11 primary purposes of a withdrawal of federal lands from the public  
12 domain, or by complying with applicable state law to supply water for any  
13 other federal purpose; and

14 WHEREAS, Colorado's constitution provides that water rights are  
15 acquired according to the doctrine of prior appropriation, pursuant to  
16 which the first person to put water to a beneficial use acquires the right  
17 to continue to use the water; and

18 WHEREAS, To effectuate the appropriation of federal water rights  
19 pursuant to state law, the McCarran amendment, 43 U.S.C. § 666, waives  
20 the United States' sovereign immunity for the purpose of adjudicating and  
21 administering water rights pursuant to the applicable state's water laws;  
22 and

23 WHEREAS, A Federal Water Rights Task Force was created by  
24 federal law in response to a controversy in Colorado regarding the Forest  
25 Service's attempt to use its permitting authority to require water users to  
26 relinquish a part of their water supply or to provide water for the  
27 secondary purposes of the national forests; and

28 WHEREAS, In the task force's final report, the task force  
29 concluded that "Congress has not delegated to the Forest Service the  
30 authority necessary to allow it to require that water users relinquish a part  
31 of their existing water supply or transfer their water rights to the United  
32 States as a condition of the grant or renewal of federal permits"; and

33 WHEREAS, No federal law explicitly gives the Forest Service the  
34 authority to prohibit the transfer of water rights owned by the holders of  
35 special use permits or to require the holders of special use permits to  
36 transfer to the United States water rights used on federal lands but arising  
37 off the federal lands; and

38 WHEREAS, The National Ski Areas Association, on behalf of its  
39 ski area members, including 22 ski areas on National Forest Service lands  
40 in Colorado, has sued the Forest Service in federal district court, alleging  
41 that the 2012 Directive amounts to a taking of private property without  
42 due compensation and asking for a declaration that the Forest Service  
43 cannot "condition the issuance of a ski area special use permit on the  
44 assignment of, or restriction of alienability or severance of, water rights";  
45 and

1           WHEREAS, The Water Resources Review Committee has  
2 reviewed the issues raised by this joint resolution and strongly urges the  
3 General Assembly to adopt it; now, therefore,

4           *Be It Resolved by the House of Representatives of the Sixty-ninth*  
5 *General Assembly of the State of Colorado, the Senate concurring herein:*

6           (1) That the General Assembly encourages the Forest Service to  
7 immediately rescind the 2012 Directive and settle the pending litigation  
8 over the 2012 Directive; and

9           (2) That the General Assembly urges the Forest Service to utilize  
10 state laws and procedures to appropriate water rights if it wishes to ensure  
11 that water is available for fish and aquatic habitat protection purposes on  
12 the national forests rather than impose exactions in special use permits.

13           *Be It Further Resolved,* That a copy of this Joint Resolution be  
14 provided to Harris Sherman, Under Secretary for Natural Resources and  
15 Environment of the United States Department of Agriculture; the  
16 members of Colorado's congressional delegation; Glenn E. Porzak;  
17 Geraldine Link, Director of Public Policy for the National Ski Areas  
18 Association; and Melanie Mills, CEO of Colorado Ski Country USA.