

NATIONAL
SKI AREAS
ASSOCIATION



POSITION STATEMENT

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NSAA Litigates Forest Service Water Rights Clause

LAKEWOOD, Colo. – January 10, 2012 – The National Ski Areas Association (NSAA) filed a lawsuit in Federal court in the district of Colorado today against the U.S.D.A. Forest Service (USFS) to challenge a new water rights clause that results in an unconstitutional taking of property.

“We greatly value our longstanding and successful partnership with the United States Forest Service in delivering outdoor recreation experiences for millions of Americans that are unmatched in the world,” said NSAA President Michael Berry. “As always, we will continue to work positively and cooperatively with the agency to provide these opportunities on public land, but water rights are simply too critical and valuable to our operations not to defend ourselves against this outright taking of private property by the U.S. Government.”

The controversial water rights clause requires ski areas operating on Forest Service land to transfer ownership of many types of water rights to the United States government, including water rights that have been purchased with private dollars by ski areas for business operations. From NSAA’s view, 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, grooming machines, or snowmobiles without compensation—except for the fact that water rights are significantly more valuable than these other ski resort assets.

NSAA’s lawsuit should be a wake up call for cities and counties and other entities that have invested in the development of water rights that are in any way associated

with National Forest System lands. Because of the significant percentage of water that originates on National Forest System lands, this change in policy could impact other water owners including cities and counties, owners of recreation residences, marinas and summer resorts, ranchers, mining interests and utilities.

The new water clause also poses a threat to the current system of state allocation and administration of water rights. The Forest Service acted unilaterally in changing its policy, and did not consult with states on its impacts on the state system of allocation and adjudication of water rights.

Prior to litigating the matter, NSAA urged the agency to set aside the controversial water clause and start over on a clause that was within the bounds of the law and protected all parties' interests. NSAA was not alone in making this request, as Sen. John Barrasso (R-WY), Sen. James Risch (R-ID), Sen. Mark Udall (D-CO), Sen. Michael Bennet (D-CO), Colorado Governor John Hickenlooper (D), Colorado representatives Scott Tipton (R) and Jared Polis (D), Doc Hastings (R-WA), Chairman of the House Committee on Natural Resources, Frank Lucas (R-OK) Chairman of the House Committee on Agriculture, Mike Simpson (R-WY), Chairman of the Appropriations Subcommittee on Interior and the Environment, and Jack Kingston (R-GA), Chairman of the House Subcommittee on Agriculture, Rural Development, also requested in writing that the agency issue a moratorium on implementation of the controversial clause.

When the agency refused to withdraw the clause, NSAA was forced to go to federal court to seek judicial review and injunctive relief and protect the rights and interests of its member ski areas. Three ski areas have already been required to accept the clause, effective November 8, 2011, as a term in their special use permit in order to operate. Those ski areas include Powderhorn in Colorado, Alpine Meadows in California, and Stevens Pass in Washington.

THE NATIONAL SKI AREAS ASSOCIATION, LOCATED IN LAKEWOOD, COLO., IS A TRADE ASSOCIATION FORMED IN 1962 FOR SKI AREA OWNERS AND OPERATORS NATIONWIDE.

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