

NATIONAL
SKI AREAS
ASSOCIATION



April 13, 2015

Rep. Scott Tipton
218 Cannon HOB
Washington, DC 20515
Fax: (202) 226-9669

Re: Ski Industry Support for the Water Rights Protection Act

Dear Congressman Tipton,

I am writing on behalf of the ski industry to express support for the Water Rights Protection Act of 2015. At the outset, the ski industry would like to express our deep appreciation of your efforts to protect ski area water rights over the past several years. While ski areas have enjoyed a long and successful partnership with the Forest Service spanning almost eight decades, water rights have been an area of serious contention. Ski areas have experienced four changes in Forest Service water policy in the last ten years. We have been encouraged by the new shift in agency policy away from U.S. ownership of ski area water rights, but at the same time discouraged by the Forest Service's recent draft Groundwater and Water Quality/BMP Directives. These facts underscore the need for Congressional assistance in ensuring that water rights are protected in the long term and that state law is respected by the federal government. We support the Water Rights Protection Act because it will provide statutory protection of our water rights and the stability we need to grow and succeed in the future.

The Water Rights Protection Act would stop the federal government from taking water rights, both surface and groundwater, from private parties in violation of state water law and 5th Amendment property rights protections. The intent of the bill is narrow – to protect valuable property interests of ski areas and other permittees that use federal land from seizure without compensation by the federal government. Essentially everyone agrees on the need for this protection, given past and current Forest Service policy that demands transfer of valuable water rights to the U.S. without compensation.

Although the USFS issued a draft water clause for ski areas in 2014 that does not require transfer of ownership of water rights, outside of the ski area permit context, the agency is keeping policy on the books that requires permittees to transfer their water rights to the U.S. and apply for new water rights in the name of the U.S. These Forest Service clauses, known as USFS Handbook Clauses D-24 to 27, apply to marinas, recreation residences, summer resorts, water facilities, and other entities that have special use permits. These clauses could

apply to ski area water as well, to the extent a ski area has a separate permit for a water facility outside of its permit boundary. Additionally, the Forest Service still has a “possessory interest” policy on the books that applies to all special use permittees, including ski areas. This policy, found in Forest Service Manual Section 2541.32, provides “[C]laim possessory interest in water rights in the name of the United States for water uses on National Forest System lands.” These policies demonstrate the clear need for Congressional action. The Water Rights Protection Act of 2015 would ensure that all USFS policy is consistent with the language in the bill. We strongly support that.

The intention of the Water Rights Protection Act is not to impact stream health or aquatic species in any way. The bill expressly states “[N]othing in this Act affects the implementation of the Endangered Species Act.” The bill does not alter in any way the minimum stream flow protections that are set and enforced by the states on virtually every river and stream. Ski areas support and abide by these minimum stream flow requirements and feel strongly that it is the state’s role to set these standards. Additionally, the bill includes a savings clause in Section 5 that is intended to make it clear that that the measure has no other impact than to protect permittees’ water rights from federal encroachment. NSAA feels that the savings clause language could be improved upon, and would suggest an amendment in the future that expressly states that the bill has no impact on any existing bypass flow authority. This change would make it clear that the bill has no impact on stream health or aquatic species and will allow stakeholders to focus on the real issues presented by the bill.

Ski areas are great stewards of water resources. Although it varies from region to region, studies and water court decrees show that approximately 80 percent of the water used for snowmaking returns to the watershed. Since the majority of water used for snowmaking is water purchased by a ski area, brought onsite through diversions, stored on-slope, and typically released more slowly back into the watershed with the seasonal melting of the winter snowpack, snowmaking typically benefits the watershed in which it is taking place. This also benefits downstream users, and can help counteract the harmful effects of drought. In addition to using a whole array of conservation measures, many resorts impound or store water in reservoirs for use during low flow times of the year. **The ability to control our water assets and investments – which will be the outcome of passage of the Water Rights Protection Act - will enable us to continue this stewardship in the future.** It will also allow us to continue to provide a high quality recreation opportunity for millions of people on the National Forests.

In closing, we thank you for your work to date on this issue, and we look forward to continuing to work together in cooperation to ensure the bill’s passage.

Sincerely,

A handwritten signature in black ink, consisting of a stylized first name and a last name that appears to be 'Berry'.

Michael Berry

President