

Ski resorts would sue USFS for water rights

By Anne Knowles

Only a handful of people showed up for a local open house conducted this week by the U.S. Forest Service to get feedback on its controversial stance on water rights for ski resorts.

The Thursday afternoon meeting in the Forest Service office in South Lake Tahoe followed earlier and similarly attended meetings this week in Denver and Salt Lake City. A fourth open house is scheduled next week in Washington, D.C.

The water rights issue came to a head last year in Colorado after the National Ski Areas Association filed suit against the federal agency, saying that a clause in its permits to operate ski resorts on Forest Service land resulted in an unconstitutional seizure of property.



Heavenly's robust snowmaking requires several acre-feet of water each year. Photo/LTN file

The clause requires that water rights acquired by the business to operate the ski resort to be held in the name of the United States.

“The industry says water rights are a state issue and a significant asset,” Jim Pena, associate deputy chief with the Forest Service, told *Lake Tahoe News* at the open house. “We see it as an issue of permit compliance.”

In December, the U.S. District Court in Colorado decided the case and threw out clauses included in 2011 and 2012 permits, saying the Forest Service failed to follow administrative procedure while developing them, which requires a public comment process.

Those permit clauses follow a series of evolving provisions starting in 1982 that have resulted in a mishmash of water rights – 168 owned by the ski resort operators, 65 owned by the Forest Service and 10 owned jointly – throughout the 116 Western ski resorts located on Forest Service land.

The issue is most significant in Colorado where 22 ski resorts own 112 water rights. In California, 25 resorts own three water rights, the Forest Service owns 14 and one is jointly owned. In Nevada, there are three resorts with one right each owned by the ski resorts and Forest Service, according to the USFS.

So the Forest Service is now trying to follow procedure and craft a new clause that would still require water rights to be placed under Forest Service control because the agency says it’s important to keep the water connected to the land.

“Our objective is to find a way to make sure that the water is available through the life of the permit,” said Pena. “The local community is dependent on the ski area and we want to make sure they are viable.”

The agency’s concern is if ski resorts change hands or go bankrupt, the water rights, which can be sold separately and may not be available for future operators.

The NSAA says those concerns can be addressed without

transferring water rights to the government.

“First, the ski area can be required for any future project to demonstrate it has sufficient water or will obtain sufficient water,” said Geraldine Link, director of public policy for the Lakewood, Colo., association. “Second, upon sale, the current owner would offer an option that water rights would go to the buyer.”

The option, the exact details of which is to be determined, would provide that the resort buyer have the first shot at buying the seller’s water rights at fair market value. In the case of a bankruptcy or liquidation of the business, the option would be offered first to the local community or government and if it declined then to the USFS.

“That’s the way to keep water with ski resort without taking property,” said Link.

The ski resorts, which are affected in varying ways, are standing with the NSAA.

“We’ve been following the lead of the NSAA,” said John Rice, general manager at Sierra-at-Tahoe, which is located on Forest Service land. “It isn’t a big issue for us. We have the right for recreational use and for fire protection and domestic use. We have three wells. ... We don’t have much of a snowmaking operation so it’s just not much of an issue here.”

Representatives from Vail Resorts and Squaw-Alpine did not return phone calls.

The USFS is taking public comment now via email at skiareawaterrights@fs.fed.us. The agency plans to publish a proposed clause in the Federal Register in August, followed by a 60-day public comment period. A final clause will be published in February 2014 and included in permits thereafter.

“I’m optimistic we’ll craft a proposal that’s different and

clear and easy to implement,” said Pena.

But if it still requires water rights to be acquired in the name of the United States, the industry won't be happy.

“If the Forest Service issues a clause that requires giving up water rights, the association will challenge it in court,” said Link.