

D-31. Water Facilities and Water Rights – Ski Areas in Riparian Doctrine States. Include clause D-31 in ski area permits in Michigan, Vermont, and New Hampshire when these permits are issued, reissued, or modified under 36 CFR 251.61. Do not use clause D-31 in western States utilizing a prior appropriation doctrine system. Clause D-31 supersedes all previous ski area water rights clauses in the Directive System. When inserting clause D-31, remove any prior ski area water rights clauses from the ski area permit. If there is a conflict between this ski area water clause and any other Forest Service permit clause regarding water rights or water facilities, this clause shall control. Do not apply the possessory interest policy in FSM 2541.32, paragraph 2, to ski area permits.

Before issuing a new or modified ski area permit in a riparian doctrine State, the authorized officer shall:

(1) Ensure that all water facilities on National Forest System (NFS) lands that are used primarily for operation of the ski area are authorized by the ski area permit, designated on a map attached to the permit, and included in an inventory in Appendix _ to this permit. However, existing water facilities on NFS lands which are authorized by a separate, valid special use permit may remain under such separate authorization, including upon reissuance, if eligible.

(2) Require the applicant to submit documentation prepared by the applicant's qualified hydrologist or licensed engineer demonstrating that the applicant holds or can obtain a sufficient quantity of water to operate the permitted portion of the ski area. The documentation submitted shall identify all water sources, water rights, and water facilities necessary to demonstrate a sufficient quantity of water to operate the ski area, all water facilities to be authorized by the ski area permit, and any existing restrictions on withdrawal or diversion of water that are required to comply with a statute or an involuntary court order that is binding on the Forest Service.

Before authorizing a new water facility under a ski area permit, the authorized officer shall require the holder to submit documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that the holder has sufficient water or water rights to operate the water facility.

“Used primarily for operation of the ski area” in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than any other use.

“Sufficient quantity of water to operate the ski area” means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the applicant's qualified hydrologist or licensed engineer, the applicant has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities to be authorized under the ski area permit in accordance with the proposed operating plan.

F. WATER FACILITIES AND WATER RIGHTS.

“Used primarily for operation of the ski area” in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than for any other use.

“Sufficient quantity of water to operate the ski area” means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the holder’s qualified hydrologist or licensed engineer, the holder has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities authorized under the ski area permit in accordance with the approved operating plan.

1. Water Facilities.

- a. The term “water facility” means a facility located on NFS lands that diverts, withdraws, stores, or distributes water, such as a diversion, ditch, pipeline, reservoir, well, tank, impoundment structure, or similar facility or feature.
- b. The term “ski area water facility” means any water facility on NFS lands that is authorized by this permit and used primarily for operation of the ski area authorized by this permit (hereinafter “ski area”).
- c. The authorized officer may place any conditions, as necessary to protect public property, public safety, cultural resources, and natural resources on NFS lands, on the installation, operation, maintenance, and removal of any water facility, but only in accordance with applicable law. This clause D-31 does not expand or contract the agency’s authority to place conditions on the installation, operation, maintenance, and removal of water facilities at issuance or reissuance of the permit, throughout the permit term, or otherwise. The holder must comply with present and future laws, regulations and other legal requirements in accordance with section I of this permit.
- d. Only ski area water facilities may be authorized by this permit.
- e. An inventory of all ski area water facilities is included in Appendix _ of this permit and shall be updated by the holder upon reissuance of this permit, upon installation or removal of a ski area water facility, or when a listed ski area water facility is no longer authorized by this permit.
- f. If due to a change (e.g., due to change in ownership of the water facility or the associated water rights or a change in the use, location, or season of use of the water) a ski area water facility will primarily be used for purposes other than operation of the ski area, the authorization for that water facility under this permit shall terminate. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, the holder must obtain a separate special use authorization to operate that water facility or to

develop any new water facility on NFS lands that is used primarily for purposes other than operation of the ski area. When such facilities continue to support approved ski area operations at any time of year, the separate special use authorization for these water facilities shall not contain any possessory interest policy based on FSM 2541.32, paragraph 2 (or similar clauses), any waiver provision, or any power of attorney provision. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, if the holder does not obtain a separate special use authorization for these water facilities, the holder shall remove them from NFS lands.

g. Upon termination or revocation of this permit, if the Forest Service does not reauthorize the ski area, the holder may submit a proposal to the Forest Service for a permit authorizing a different use for the ski area water facilities. If a different use is not authorized for those water facilities, the holder shall remove them from NFS lands.

2. Water Rights. This permit does not convey, dispose of, extinguish, or otherwise effect a transfer of any title, rights, or interest of the United States or the holder as a riparian or littoral landowner. The United States and the holder retain all rights, title, and interest they have as riparian or littoral landowners.

APPENDIX_

INVENTORY OF SKI AREA WATER FACILITIES

<List only ski area water facilities authorized by this permit.>

SKI AREA WATER FACILITIES (if none, so state)

Facility Name	Facility Location	Facility Type	Capacity	Purpose of Use