

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-cv-00048-AP

NATIONAL SKI AREAS ASSOCIATION, INC.,

PETITIONER,

v.

**UNITED STATES FOREST SERVICE, an agency of the United States Department of
Agriculture,
UNITED STATES DEPARTMENT OF AGRICULTURE, and
HARRIS SHERMAN, Under Secretary for Natural Resources and Environment of United
States Department of Agriculture,**

RESPONDENTS.

**JOINT CASE MANAGEMENT PLAN FOR PETITION FOR REVIEW
OF AGENCY ACTION**

1. APPEARANCES OF COUNSEL

For Petitioner

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2. STATEMENT OF LEGAL BASIS FOR SUBJECT MATTER JURISDICTION

The Court has federal question jurisdiction under 28 U.S.C. § 1331, the Administrative Procedure Act, 5 U.S.C. § 706, and the Regulatory Fairness Act, 5 U.S.C. § 611.

Respondents may assert the following jurisdictional defenses: failure to state a claim, standing and ripeness. Respondents do not waive their right to assert any other applicable jurisdictional defenses.

3. DATES OF FILING OF RELEVANT PLEADINGS

A. Date Petition for Review Was Filed:

The Original Complaint was filed January 9, 2012. The First Amended Complaint was filed March 12, 2012.

B. Date Petition for Review Was Served on U.S. Attorney's Office:

The Original Complaint was personally served on the U.S. Attorney's Office on January 10, 2012. The First Amended Complaint was served through the Court's ECF system on the date of its filing, March 12, 2012.

B. Date Answer or Other Response Was Filed:

Respondents filed their Answer to the First Amended Complaint on March 26, 2012.

4. STATEMENT(S) REGARDING WHETHER THIS CASE RAISES UNUSUAL CLAIMS OR DEFENSES

Petitioner seeks a nationwide injunction of a Forest Service policy that was adopted without the procedures mandated by the Administrative Procedure Act, National Forest Management Act, and Regulatory Fairness Act. Respondents deny that the statutory procedures cited by Petitioner

apply to the challenged action, and deny that that challenged action is contrary to law or agency authority.

5. OTHER MATTERS

None.

6. BRIEFING SCHEDULE

The parties have conferred, and propose the schedule set forth below. The parties agree that the merits briefs shall comply with the rules of the United States Court of Appeals for the Tenth Circuit regarding length.

A. Deadline for Filing Administrative Record:

May 2, 2012.

B. Deadline for Parties to Confer on Record Disputes:

May 11, 2012.

C. Deadline for Filing Motions to Complete and/or Supplement the Administrative Record:

May 18, 2012.

D. Petitioner's Opening Brief Due:

If the Parties file no motions to complete or supplement the administrative record, Petitioner's Opening Brief shall be filed no later than June 1, 2012.

If either Party files a motion to complete or supplement the record, Petitioner's Opening Brief shall be filed no later than 20 days after resolution of such motions.

E. Respondents' Response Brief Due:

Thirty (30) days following the filing of Petitioner's Opening Brief.

F. Petitioner's Reply Brief (If Any) Due:

Fifteen (15) days following the filing of Respondents' Response Brief.

7. STATEMENTS REGARDING ORAL ARGUMENT

A. Petitioner's Statement:

Petitioner submits that the policy implications of the Forest Service water rights directive, and Petitioner's requested nationwide injunction, warrant oral argument. Petitioner anticipates that oral argument would assist the Court in resolving the claims based on the record.

B. Respondents' Statement:

Respondents concur that the legal issues raised in Petitioner's petition warrant oral argument.

8. CONSENT TO EXERCISE OF JURISDICTION BY MAGISTRATE JUDGE

Indicate below the parties' consent choice.

A. () All parties have consented to the exercise of jurisdiction of a United States Magistrate Judge.

B. (X) All parties have not consented to the exercise of jurisdiction of a United States Magistrate Judge.

9. OTHER MATTERS

None at this time.

10. AMENDMENTS TO JOINT CASE MANAGEMENT PLAN

The parties agree that the Joint Case Management Plan may be altered or amended only upon a showing of good cause.

DATED this 5th day of April, 2012 .

BY THE COURT:

s/John L. Kane

U.S. DISTRICT COURT JUDGE

APPROVED:

s/Ezekiel J. Williams

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