

The 2015 Supporting Statement A for OMB 0596-New
Ski Area Water Rights
August 2015

Please Note: Upon OMB approval, the Burden associated with this request will be incorporated into OMB control number 0596-0082 *Special Uses Administration*.

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Pursuant to the court order in *National Ski Areas Association v. United States Forest Service*, the Forest Service (FS) provided an opportunity for public comment in revising the water rights clause for ski areas found in form FS-2700-5b *Ski Area Permit*. On June 23, 2014, the Forest Service published the proposed directive for public comment to correct the procedural deficiencies associated with the 2011 and 2012 ski area water rights clauses that were identified by the court and allows those who would be affected by the proposed directive to participate in its development.

In the Organic Administration Act of 1897, Congress entrusted the FS with authority to “make such rules and regulations and establish such service as will insure the objects of the [National Forests], namely to regulate their occupancy and use and to preserve the forests thereon from destruction”. The Organic Administration Act (16 USC 551) constitutes an “extraordinarily broad” delegation to the FS to regulate use of National Forest System (NFS) lands and “will support Forest Service regulations and management . . . unless some specific statute limits Forest Service powers.”.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**
 - a. What information will be collected - reported or recorded? (If there are pieces of information that are especially burdensome in the collection, a specific explanation should be provided.)**

Applicants for a ski area permit will be required to submit documentation prepared by the applicant’s 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, including all original water rights, 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 FS. Both the original water rights and water facilities to be authorized by the ski area permit will be included in an appendix to the permit.

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

None of these requirements will be especially burdensome on the applicants because in most cases this is information that they will already need to obtain as part of their due diligence in ensuring their ability to operate the ski area. Further, the applicants already have inventory of their original water rights and the water facilities to be authorized by the permit; they will just be required to provide that existing information to the FS.

b. From whom will the information be collected? If there are different respondent categories (e.g., loan applicant versus a bank versus an appraiser), each should be described along with the type of collection activity that applies.

Information will be collected from ski area permit holders and applicants for ski area permits.

c. What will this information be used for - provide ALL uses?

The information will be used to demonstrate that the applicant holds or has access to a sufficient quantity of water to operate the authorized water facilities and activities. The information on original water rights will be used to verify that water necessary to operate a ski area is available and that the right to use the water is in accordance with state law.

d. How will the information be collected (e.g., forms, non-forms, electronically, face-to-face, over the phone, over the Internet)? Does the respondent have multiple options for providing the information? If so, what are they?

The inventory of authorized water facilities and original water rights will be collected in a chart that is part of form FS-2700-5b *Ski Area Permit*. The source information will be provided by the respondent as a hard copy document or email attachment and the FS permit administrator will enter it into the permit.

Documentation of a sufficient quantity of water to operate the ski area including any restrictions on water withdrawal, if applicable, will also be

collected as a hard copy document or email attachment collected by the Authorized Officer for the permit.

e. How frequently will the information be collected?

The information will be collected before issuing a new or modified ski area permit.

f. Will the information be shared with any other organizations inside or outside USDA or the government?

Generally the information will not be shared. However, Special Use permits are public documents, and are available to the public upon request.

g. If this is an ongoing collection, how have the collection requirements changed over time?

Currently, Ski Area permits inventory only those water rights within the permit boundary on NFS land. The Final Directive will require documentation of only original water rights.

Currently, Ski Area permits require identification of authorized improvements on NFS lands. The Final Directive will require specifically that authorized water facilities will be identified in the appendix along with the original water rights to aid in administration of the permit and ensuring sufficiency of water.

Documentation of sufficient quantity of water to operate the ski area has not been an ongoing collection and therefore has not changed over time.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Respondents may submit the information by any means of their choosing, including electronically as attachments to email.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

The information collected is unique to each Ski Area Permit, and therefore does not exist anywhere else.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The minimum amount of information needed to comply with the Final Directive is collected from all respondents.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without this information, the FS would not be able to verify that applicants for Ski Area permits have access to a sufficient quantity of water to operate the facilities and activities to be authorized.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

Respondents are already required to maintain property records and due diligence filings in accordance with state law. The Final Directive does not impose new record keeping requirements.

- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it**

has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no other special circumstances. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.6.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

The request for public comment was embedded in the Federal Register Notice for the Proposed Directive, Volume 79 No. 120, published on June 23, 2014, pages 35513-35521.

Comments regarding information collection generally came from the ski industry which characterized the proposed directive in whole creating an undue burden on them and on the Agency to be in compliance. Comments were not specific on cost and hour burden. As a result of these comments the Agency changed the information collection requirements in the Final Directive. Rather than requiring an inventory of 5 different types of water rights, the Final Directive requires an inventory of only original water rights and ski area water facilities authorized by the permit. In addition, the Final Directive requires an applicant for a new or modified ski area permit to document a sufficient quantity of water to operate the ski area and an applicant for a new water facility to document a sufficient quantity of water to operate the proposed water facility.

One comment from the bonding industry asserted that FS form SF-25 is not appropriate for implementing the proposed performance bond requirement because of the form's references to "contracts" and "contractors." The commenter recommended that a new form be developed that is tailored specifically to the obligations under FSM 6560.5. The objection to the use of form SF-25 is moot because the bonding requirement has been removed in the Final Directive.

All of the comments received on the Proposed Directive have been responded to in the response to comments section of the Federal Register Notice for the Final Directive.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

OMB conducted an interagency review of the proposed rule as part of their clearance process. There were no comments from other agencies on frequency of collection, record keeping, or disclosure. Clarification was made to

instructions by modifying their format and a heading was added to the “Restrictions on Water Withdrawal” chart per OMB’s comments. As described above, the information collection requirements have been reduced in the Final Directive from what was proposed; specifically, rather than requiring an inventory of 5 different types of water rights, the final directive requires an inventory of only original water rights and ski area water facilities authorized by the permit. In addition, the Final Directive requires an applicant for a new or modified ski area permit to document a sufficient quantity of water to operate the ski area and an applicant for a new water facility to document a sufficient quantity of water to operate the proposed water facility. The Agency has also removed the bonding requirement.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Because the text of this Final Directive cannot be released prior to it being published in the Federal Register, affected parties are being invited to comment on the above aspects of this information collection in their response to the Federal Register Notice.

9. Explain any decision to provide any payment or gift to respondents, other than re-enumeration of contractors or grantees.

No payment or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no assurance of confidentiality. Special Use permits and state water right decrees are public documents. The information regarding the inventory of water rights necessary to operate a ski area, any restrictions on water withdrawal and private ownership of water rights would constitute public information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. If this request for approval covers more than one form, provide separate hour burden estimates for each form.**

Table 1 - Burden to Respondents

(a) Description of the Collection Activity	(b) Form Number	(c) Number of Responden ts	(d) Number of responses annually per Responden t	(e) Total annual respons es (c x d)	(f) Estimate of Burden Hours per response	(g) Total Annual Burden Hours (e x f)
Inventory of water rights and documentation of restrictions on water withdrawal	FS-2700-5b	40	1.5	60	1.5 hours	90
Totals				60		90

We usually issue only 6 ski area permits a year. However, we think it is likely that reissuance of ski area permits will increase with release of the Final Directive. We estimate there will be 40 permits per year for three years.

The estimated time for the FS-2700-5b was increased using professional judgment to accommodate preparation of the inventory and documentation of restrictions on water withdrawal.

Record keeping burden:

There is no new record keeping requirement placed upon the respondents in relation to this Information Collection.

- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories.**

The cost to respondents is estimated to be \$2,009.70. This figure was calculated by multiplying 90 burden hours by the Mean average hourly rate of \$22.33 for all occupations from the most recent Bureau of Labor Statistics: http://www.bls.gov/oes/2013/may/oes_nat.htm.

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information, (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start-up cost component annualized over its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There are no capital operation and maintenance costs.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information. The response to this question covers the actual costs the agency will incur as a result of implementing the information collection. The estimate should cover the entire life cycle of the collection and include costs, if applicable, for:

- **Employee labor and materials for developing, printing, storing forms**
- **Employee labor and materials for developing computer systems, screens, or reports to support the collection**
- **Employee travel costs**
- **Cost of contractor services or other reimbursements to individuals or organizations assisting in the collection of information**
- **Employee labor and materials for collecting the information**
- **Employee labor and materials for analyzing, evaluating, summarizing, and/or reporting on the collected information**

Table 2 – Cost To Government

ACTION ITEM	PERSONNEL	GS LEVEL	HOURL Y RATE	HOUR S	SALARY
Developing, printing, storing forms, analyzing, evaluating, summarizing, and/or reporting on the collected information	Permit Administrator	GS-11/5	\$27.58	60	\$1,654.80
Authorization of Permit	Authorizing Officer	GS-13/5	\$39.31	30	\$1,179.30
Total				90	\$2,834.10

Hourly rates are taken from OPM: http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/GS_h.pdf

15. Explain the reasons for any program changes or adjustments reported in items 13 or 14 of OMB form 83-I.

This is a new Information collection in relation to a Final Directive. Between the

proposed directive submission and this final directive submission, the Forest Service eliminated the Performance Bond form SF 25 decreasing the burden from 120 to 90 hours. Upon OMB approval, the burden associated with this request will be incorporated into OMB control number 0596-0082 *Special Uses Administration*.

The addition of the requirement to inventory all original water rights used in association with the operation of the Ski area, will increase the number of responses by 60 and the burden by 90 hours per year.

16. For collections of information whose results are planned to be published, outline plans for tabulation and publication.

The information will not be compiled or published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The Agency seeks approval to not display the OMB expiration date, as it may be confusing to respondents. The affected authorizations are for periods of 10 to 40 years, and the OMB expiration date has in the past caused unnecessary confusion and litigation.

18. Explain each exception to the certification statement identified in item 19, "Certification Requirement for Paperwork Reduction Act."

The Agency is able to certify compliance with 5 CFR 1320.