

**FSH 2709.11 - SPECIAL USES HANDBOOK  
CHAPTER 50 - TERMS AND CONDITIONS**

**52 - SUPPLEMENTAL TERMS AND CONDITIONS**

**52.4 - D Clauses - Resource and Improvement Protection**

D-24 through D-27. Water Rights and Water Facilities. (One or more of these clauses apply to all special use authorizations for use or occupancy that utilizes water, including surface and ground water, and that requires water rights, including riparian and appropriative water rights. Choose the appropriate clauses in consultation with the local Forest Service Water Rights Program Manager. Maintain documentation of privately held water rights in the permit file that includes, at a minimum, the owner's name, state water right identification number, legal documentation of the rights, the purpose of the water use, and the quantity of water used. Delete all instructions prior to printing.)

D-24. Water Rights and Water Facilities.

(Use this clause for authorizing new or existing special uses when they will involve the use of water and the water development and use will occur on National Forest System lands. Do not use this clause for water rights and uses within the boundaries of a permitted ski area for authorized purposes. The Ski Area Term Special Use Permit (form FS-2700-5b) contains its own water rights and water facilities clause for water rights and uses for authorized purposes within the permit boundary. Select or fill in the appropriate use in brackets, and delete the bracketed language as appropriate.)

No water rights  
conveyed

1. Water Rights. This permit does not confer any water rights on the holder. The term "water rights" includes all authorizations, such as certificates, reservations, decrees, or permits, for water use issued under state, local, or other law. Any necessary water rights must be acquired by the holder in accordance with state law and the terms of this permit.

Water rights must  
be in name of U.S.

After this permit is issued, all water rights obtained by the holder for facilities that divert or pump water from sources located on National Forest System lands for use on National Forest System lands, whether authorized or unauthorized, are for the benefit of the United States and shall be acquired in the name of the United States. Any expenses for acquiring water rights shall be the responsibility of the holder and not the responsibility of the United States.

New facilities  
need approval

2. Water Facilities. No ditch, reservoir, well, spring, seepage, or other facility to pump, divert, store, or convey water (hereinafter "water facilities") for which the point of diversion, storage, or withdrawal is on National Forest System lands may be initiated, developed, certified, or adjudicated by the holder without prior written approval from the authorized officer. The authorization of any water facilities in the permit area is granted to allow use of water only in connection with the [recreation residence, resort, marina, or other use] authorized by this permit. If the use of any water facilities in connection with this [recreation residence, resort, marina, or other use] ceases, the authorization to use any associated water facilities also ceases. The United States reserves the right to place

Water use must be  
in connection with  
authorized land use

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any conditions on installation, operation, maintenance, and removal of water facilities that are necessary to protect public property, public safety, and natural resources on National Forest System lands in compliance with applicable law. Any change in the beneficial use of or location of use from a water facility without prior written approval from the authorized officer shall result in termination of the authorization of that facility.

**3. Water Rights Acquired in the Name of the Holder**

(Instruction for paragraph 3: Add this paragraph when water rights required for the use to be authorized have already been obtained in accordance with state law in the name of the holder; acquisition of those water rights did not violate the terms and conditions of the permit; and the water development and use will occur on National Forest System lands. Otherwise delete this clause. Select or fill in the appropriate use in brackets, and delete the bracketed language as appropriate. Delete these instructions.)

- a. Identification of Water Rights. The holder has obtained the following water rights for use under this permit in the holder's name:

State ID #: \_\_\_\_\_

Owner: \_\_\_\_\_

Purpose of Use: \_\_\_\_\_

Decree, License, or Certificate: \_\_\_\_\_

Point of Diversion: \_\_\_\_\_

- b. Revocation or Termination. Upon revocation or termination of this permit, the holder shall transfer the water rights enumerated in paragraph 3a to the succeeding permit holder for use only in connection with the [recreation residence, resort, marina, or other use] authorized by this permit provided that if that [recreation residence, resort, marina, or other use] is not reauthorized, the holder shall promptly petition in accordance with state law to remove from National Forest System lands the point of diversion and water use associated with the water rights or shall relinquish the water rights to the state where they are located.

- c. Abandonment. Upon abandonment of the [recreation residence, resort, marina, or other use] authorized by this permit, any of the water rights enumerated in paragraph 3a that remain in the name of the holder at the time of abandonment shall be deemed to have been transferred to the United States to hold for the benefit of any succeeding

Water rights go to U.S.  
or removed from federal  
lands

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permit holder for use only in connection with that [recreation residence, resort, marina, or other use]; provided that if that [recreation residence, resort, marina, or other use] is not reauthorized, the United States shall retain the water rights or relinquish them to the state where they are located.

No compensation  
for federal impacts  
to private rights

d. Waiver. The holder waives any claims against the United States for compensation for any water rights that are transferred, removed, or relinquished as a result of revocation or termination of this permit or abandonment of the use authorized by this permit, or for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities associated with water rights enumerated in paragraph 3a.

D-25. Water Rights and Water Facilities.

(Use this clause for a right-of-way across National Forest System lands to divert, pump, store, or convey water for a non-Forest Service use off National Forest System lands. Water rights associated with use of that right-of-way may be acquired in the name of the holder. Examples include water rights associated with ditch bill easements and water rights associated with a right-of-way across National Forest System lands for a facility licensed by the Federal Energy Regulatory Commission, a reservoir, or a municipal water pipeline. Delete these instructions.)

Water Rights. This permit does not confer any water rights on the holder. Any necessary water rights must be acquired by the holder in accordance with state law. Any expenses for acquiring water rights shall be the responsibility of the holder. The United States reserves the right to place any conditions on installation, operation, maintenance, and removal of facilities to pump, divert, store, or convey water on National Forest System lands covered by this permit that are necessary to protect public property, public safety, and natural resources on National Forest System lands in compliance with applicable law. The holder waives any claims against the United States for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities under this permit.

No compensation for  
conditions that  
reduce water rights

D-26. Nullification or Modification of Water Rights.

(Use this clause if a water right has been properly claimed under state law, but a final order regarding that claim has not been issued. Renumber the clause as appropriate. Delete these instructions.)

1. Nullification. Authorization of any facilities to pump, divert, store, or convey water under this permit shall cease upon nullification in a state proceeding of the holder's right to use water being pumped, diverted, stored, or conveyed by those facilities.

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2. Modification. Authorization of any facilities to pump, divert, store, or convey water under this permit shall be modified to make use of those facilities consistent with any modification of the holder's water rights that occurs as a result of any state proceedings.

**D-27. Minor Water Uses.**

(Use this clause for minor water uses that do not require water rights, such as water use in connection with recreation residences in a state that does not require water rights for domestic use or water use in connection with priority use outfitting and guiding permits. Consult the local Forest Service Water Rights Program Manager regarding applicable state requirements. Delete these instructions.)

Water Rights. This permit does not confer any water rights on the holder. Water rights are not required by state law and may not be acquired to exercise the minor water uses authorized by this permit.