



United States
Department of
Agriculture

Forest
Service

Caribou-Targhee National Forest
Soda Springs Ranger District

410 East Hooper Avenue
Soda Springs, ID 83276
(208) 547-4356

RECEIVED
FEB 23 2009

File Code: 2540-1

Date: February 20, 2009

Norman Sorensen
RVG Trust
5314 North 250 West Suite 210
Provo, UT 84604

Department of Water Resources
Eastern Region

**CERTIFIED MAIL – RETURN
RECEIPT REQUESTED
NUMBER: 7006 2150 0002 6977 4590**

Dear Mr. Sorensen:

We see you have filed an Application for Permit 24-10772 with the Idaho Department of Water Resources (IDWR) to divert 3.0 cfs from Webster Creek. Your application shows two points of diversion, the second or (#2) being in the NWNESW Sec. 5, T8S, R46E. This is National Forest System (NFS) land according to our records.

You need to be aware that all occupancy and use of NFS land must be authorized by the Forest Service in accordance with 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 251.50, and 36 CFR 261.10(a). RVG Trust has not contacted the Forest Service about this matter, and as a result, we have no information or details about what is being proposed. Because you are not authorized to occupy and use NFS land concerning this situation, there is no ability to exercise the beneficial use stated in your application. To do so could be a violation of the laws and regulations cited above. This letter serves to notify you of the need to request and obtain the necessary authorization from the Forest Service.

Please find enclosed a brochure "Obtaining a Special Use Authorization with the Forest Service" which describes the basic proposal and application process. The procedures and criteria to be considered in this situation include specific direction to deny proposals for use of NFS land which can reasonably be accommodated on non-NFS lands and not to authorize the use of NFS lands just because it affords the applicant a lower cost and less restrictive location when compared with non-NFS lands. You will have to provide evidence and documentation to the Forest Service including estimated costs of development and attempts and efforts to secure water on non-NFS land by other means such as drilling a well, pumping from the creek, and developing another source of water that does not encumber NFS land. This needs to lead to the conclusion that there is no other reasonable source of water available. If other reasonable sources are not diligently sought, a special use authorization must be denied.

If it is determined your proposal could be accepted you would have to identify the facilities and construction activities planned on NFS land in the form of a proposal. This proposal must be of sufficient detail so it can be evaluated against two levels of screening criteria and applicable policy. If your proposal meets these criteria and policy requirements you will need to submit a formal application for the proposed occupancy and use of NFS land. Acceptance of an application does not guarantee issuance of an authorization. The project must be assessed in accordance with applicable laws such as the Endangered Species Act, the Historic Preservation Act, and the National Environmental Policy Act. It is during this formal application phase that it



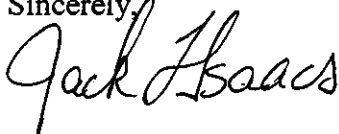
may be appropriate for an application for a water right permit to proceed although it could be quite some time before a final decision on the occupancy of NFS land is made.

The decision could include requiring conditions be placed on the water right to protect federal interests on NFS land. As you can see, numerous factors must be taken into account when the occupancy and use of NFS land is considered.

By a copy of this letter we are notifying IDWR and Rocky Mountain Environmental Associates that further processing or approval of this application should not proceed until you receive authorization from the USDA Forest Service for this use of NFS land and resources.

If you have any questions about this matter, please contact me at (208) 547-4356.

Sincerely,

A handwritten signature in black ink that reads "Jack Isaacs". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

JACK L. ISAACS
District Ranger

"CC": Idaho Department of Water Resources
Rocky Mountain Environmental Associates
Steve Spencer, USFS
Jim Laprevote, USFS

Enclosures

CITE: 36CFR251

TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY
CHAPTER II--FOREST SERVICE, DEPARTMENT OF AGRICULTURE
PART 251--LAND USES-

Subpart B--Special Uses

Sec. 251.54 Proposal and application requirements and procedures. (e) Pre-application actions. (1) **Initial screening.** Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(2) Results of initial screening. Any proposed use other than a noncommercial group use that does not meet all of the minimum requirements of paragraphs (e)(1)(i)-(ix) of this section shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements. If the proposal was submitted orally, the authorized officer may respond orally. If the proposal was made in writing, the authorized officer shall notify the proponent in writing that the proposed use does not meet the minimum requirements and shall simultaneously return the request.

(5) Second-level screening of proposed uses. A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration.

In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

FSM 2700 - SPECIAL USES MANAGEMENT
WO AMENDMENT 2700-99-1
EFFECTIVE 02/26/1999

2703 - POLICY.

2703.2 - Denial of Use. Deny proposals for uses of National Forest System land which:

1. Are inconsistent with Forest land and resource management plans;
2. Are in conflict with other forest management objectives; or applicable Federal statutes and regulations; or
3. **Can reasonably be accommodated on non-National Forest System lands**, provided however, that First Amendment group uses (freedom of assembly and worship) may not be denied on this basis.

Do not authorize the use of National Forest System lands just because it affords the applicant a lower cost and less restrictive location when compared with non-National Forest System lands.

How do I answer all the questions?

Name and Address - Include the full name(s) to be used. If the application includes real property, the name(s) on the legal document must match the application.

Applicant's Agent - This person must be at least 21 years old and may or may not be the same as the applicant. Documentation should be included to verify that this person may sign on behalf of the applicant.

Project Description - Include enough detail to enable the Forest Service to determine feasibility, environmental impacts, benefits to the public, the safety of the request, lands to be occupied or used, and compliance with applicable laws and regulations.

Environmental Protection Plan - Include proposed plans for environmental protection and rehabilitation during construction, maintenance, removal, and reclamation of the land.

Map - Provide a detailed map (U.S. Geological Survey quadrangle or equivalent) or plat (survey or equivalent) showing the requested use in relation to NFS land, identification of applicant's property (if applicable), scale, map legend, legal description, and a north arrow.

Technical and Financial Capability - Provide documentation to assure the Forest Service you are capable of constructing, operating, maintaining, removing the use off NFS land, and reclaiming the land after the authorization terminates.

Alternatives - You must first consider using nonfederal land. Lower costs or fewer restrictions are not adequate reasons for use of NFS lands. Provide alternative locations for the proposal in your application.

What does an authorization cost?

Cost Recovery Fees - An assessment of fees to recover agency processing costs for special use applications and monitoring costs for special use authorizations. These fees are separate from any fees charged for the use and occupancy of NFS lands.

Land Use Fees - This is an annual rental fee based on the fair market value for the uses authorized and is payable in advance. Fees are established by appraisal or other sound business management principles.

Other Associated Costs - You may be responsible for providing information and reports necessary to determine the feasibility and environmental impacts of your proposal; and compliance with applicable laws and regulations; and terms and conditions to be included in the authorization.

Your local Forest Service office:

The United States Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs). Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotope, etc.) should contact the USDA's TARGET Center at (202) 720-2600 (voice or TDD).

To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

Obtaining a Special-Use Authorization with the Forest Service

The Application Process



U.S. Department of Agriculture
Forest Service

Forest Service Special-Uses Program

The Forest Service manages over 192 million acres of national forests and grasslands that comprise the National Forest System (NFS). Today, our growing population and mobile society have created a demand for a variety of uses of these federal lands. Often these diverse needs require specific approval. The Forest Service provides services that support our national policy and federal land laws. The Agency's special-uses program authorizes uses on NFS land that provide a benefit to the general public and protect public and natural resources values. Currently there are over 74,000 authorizations on the NFS lands for over 180 types of uses.

Each year, the Forest Service receives thousands of individual and business applications for authorization for use of NFS land for such activities as water transmission, agriculture, outfitting and guiding, recreation, telecommunication, research, photography and video productions, and granting road and utility rights-of-ways. The Forest Service carefully reviews each application to determine how the request affects the public's use of NFS land. Normally, NFS land is not made available if the overall needs of the individual or business can be met on nonfederal lands.

What are special-use authorizations?

A special-use authorization is a legal document such as a permit, term permit, lease, or easement, which allows occupancy, use, rights, or privileges of NFS land. The authorization is granted for a specific use of the land for a specific period of time.

When do I need an authorization?

1. If you will need to occupy, use, or build on NFS land for personal or business purposes, whether the duration is temporary or long term.
2. If there is a fee being charged or if income is derived from the use.
3. If an activity on NFS land involves individuals or organization with 75 or more participants or spectators.

Application Process

Is my proposal appropriate?

1. Your request must be consistent with laws, regulations, orders, policies of NFS lands, other federal laws, and applicable State and local health and sanitation laws.

2. Your request must be consistent or made consistent with the standards and guidelines in the applicable Forest Land and Resource Management Plan.

3. Your request must not pose serious or substantial risk to public health or safety.

4. Your request must not require exclusive or perpetual right of use or occupancy.

5. Your request does not unreasonably conflict or interfere with administrative uses, other scheduled or authorized existing uses, or use of adjacent non-NFS lands.

6. The proponent must not owe any fees to the Forest Service from a prior or existing special-use authorization.

7. No gambling or providing of sexually oriented commercial services can be authorized on NFS land, even if permitted under state law.

8. No military or paramilitary training or exercises by private organizations or individuals can be authorized on NFS land, unless it is federally funded.

9. No disposal of solid waste or storage or disposal of radioactive or other hazardous substances can be authorized on NFS land.

How do I apply?

1. Contact a Forest Service office and request an application. Application information is also available on the special uses home page at <http://www.fs.fed.us/recreation/permits>

2. Prior to submitting the proposal, you are required to arrange a preapplication meeting at the local Forest Service office where the use is being requested. A staff member will discuss your proposal, potential land use conflicts, application procedures and qualifications, probable time frames, fees, bonding requirements, additional coordination with other agencies, environmental reports, and field reviews.

3. Most commercial uses require additional information with the application. You may need business plans, operating plans, liability insurance, licenses/registrations, or other documents. A commercial use is when an applicant intends to make use of NFS lands for business or financial gain.

4. Complete and submit the application form, including supporting documents, to the local Forest Service office. An incomplete proposal could delay the processing.