RANGER ACTIVITIES INFORMATION EXCHANGE

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Chief Ranger's Comments

The new chief of the Branch of Resource and Visitor Protection is Dick Martin, currently the superintendent of Wrangell - St. Elias in Alaska. Dick, a professional forester by education, worked initially for the U.S. Forest Service in Alaska and as a forester for the Bureau of Land Management. He then came over to the National Park Service and worked as a ranger in Olympic, Mount Rainier, Sequoia and Yosemite before taking on the superintendency of the largest area in the System.

Dick brings a tremendous background of experience and recognized credibility from his peers in the field. He has been president of the Association of National Park Rangers and knows and understands the challenges, demands, frustrations and realities of working in parks. Dick is also a very active member of the Alaska Region's position management training team. He is committed to improving the management of the ranger profession. An article which Dick recently wrote for Courier articulates some of our shared responsibilities in fixing some of our own problems.

I am looking forward to Dick's arrival at the end of February to keep the ball rolling in here. Two other positions will be on the street within the next few weeks - the resource management position vacated by Steve Hodapp and a coordinator for drug and ARPA enforcement programs. We need to get folks with strong field experience for these positions.

ARPA Funds and FTE's

The National Park Service received $500,000 as a line item in the FY 90 budget for protection of archeological resources, and should receive a similar or increased amount for the same purpose next fiscal year. After due deliberation and discussions with regional offices, we decided to apply this year's funds to training ($106,000), enhanced electronic protection of archeological sites ($100,000), and improvements to archeological protection operations ($294,000).

The money allocated to training will be used to fund 40-hour ARPA classes at FLETC and other locations around the country. We anticipate that we'll be able to fund course costs and travel and per diem for from 60 to 90 students. The money being dedicated to the equipment will be employed to procure a variety of electronic devices. A determination on ways to distribute and maintain this equipment will be made once we have it in hand. None of the operational money will be used to fund additional permanent staff this year, but several proposals which involve seasonal staff - a total of 20 FTE's in five regions - have been approved and funded.

Grazing Management Update

In 1986, 118 units of the National Park System reported grazing or livestock use of one type or another. Since grazing in NPS areas is so often administered by another agency for us, it is important that the Service have input on grazing management issues which can affect the parks. For this reason, Ranger Activities continues to actively work with various groups on grazing and range management issues. Such groups include the Range Issues Work Group, the Grazing Lands Forum, and the Society for Range Management.

The Range Issues Work Group meets here in Washington on a regular basis to discuss issues of common interest to the government land management agencies. In addition to the National Park Service, members of the Work Group include the Bureau of Land Management, the Forest Service, the Soil Conservation Service, and the Extension Service. The Grazing Lands Forum is a nationwide group of both government and non-government organizations interested in the impacts of grazing management on the land and its natural resource values. Other groups we're involved with include the Grazing Terminology Committee which is working toward standardizing grazing terminology in order to facilitate clearer communication between different agencies and groups.

Of course, our participation in the above activities would be impossible without input from the parks. For that reason, a grazing/pasturing questionnaire was sent to the field in 1986. The information provided by the parks in reply to that questionnaire proved so useful that a computerized database has been created on grazing and pasturing of livestock in the parks. It has, however, been three years now since the information in the database was collected and it's time to update it. Rather than have the parks fill out an entirely new questionnaire, we are going to send each park a printout of the information from the database which pertains to their particular park. Updating a form on which the information is already printed will hopefully not take as much time as filling out an entire form again. We would like to take this opportunity to thank Bill Sweetland of Bandelier for creating the grazing database as well as entering the information on each park unit. His efforts are greatly appreciated.

36 CFR Penalty Provisions

The fine penalty provisions of 36 CFR 1.3 were outdated by the Criminal Fine Improvement Act of 1987, Public Law No. 100-185, which changed the current Federal law related to criminal fines and supercedes the penalty provisions which have been in effect since the Act of March 4, 1909 (An Act to Codify and Amend the Penal Law of the United States).

Early in January, Ranger Activities drafted a revision of Title 36 which would have established penalty provisions in accordance with the Criminal Fine Improvement Act. After reviewing the draft regulation, the Solicitor's Office contacted the Justice Department to determine Justice's position on the effect of the Act on petty offenses.

The Service was recently advised by the Solicitor's Office that the Justice Department has concluded that Congress intended that the revised petty offense fine levels of 18 U.S.C. 3571 apply to all Federal petty offenses, whether defined in Title 18 United States Code or elsewhere. According to the Justice Department, the maximum fine levels as of December 11, 1987 for petty offenses have been established by Congress as $5,000 for individuals and $10,000 for organizations. The Justice Department has advised the Offices of the United States Attorneys, and a number of Federal magistrates are now applying the higher fine levels.

The Department's Solicitors are currently considering Justice's opinion and its impact on Interior bureaus. The Assistant Solicitor for Parks and Recreation is holding the Service's revised regulation for Section 1.3 pending the Departmental decision. If Interior agrees that the Criminal Fine Improvement Act does apply to Interior bureaus, then the revised rule will be published and implemented through the Federal Register in the near future.

Crider v. United States

On October 10, 1989, the United States Court of Appeals, Fifth Circuit, reversed a lower court ruling which awarded Randy Crider $7.5 million in damages for injuries received in an accident which allegedly occurred because two Padre Island park rangers failed to perform their duty to take him into custody for drunken driving.

The incident which led to the court case began at 3:40 p.m. on July 23, 1983, when the rangers stopped 18-year-old John Landry in the park for speeding. While talking with Landry, the rangers detected the aroma of alcohol on his breath and searched his car. They found a small amount of marijuana, a pipe, a partially empty bottle of whiskey and eight bottles of beer. Although the district court found that Landry was intoxicated at the time he was stopped, the rangers did not charge him with driving while intoxicated or arrest him. Instead, they wrote Landry mandatory appearance citations for possession of a controlled substance, possession of alcohol by a minor, speeding and failure to have mandatory liability insurance. One of the rangers told Landry not to drive for an hour and a half so that he could sober up, then both rangers left to take the two girls who were with Landry back to their office and arrange transportation for them.

Landry left the scene immediately after the rangers did. Later that day he picked up a friend, James Wallace, illegally purchased more whiskey, and went home to "drink it up" with his friends. Throughout the evening and into the early morning, Landry continued to drink alcohol and smoke marijuana. Sometime after midnight, Landry took Wallace home. On his way back, he collided with the motorcycle ridden by Crider. The accident occurred at 1:40 a.m. as Landry attempted to pass three cars while driving 80 miles per hour. Crider suffered a severed left arm as a result of the collision, and his left leg was later amputated above the knee due to severe, accident-related injuries.

Crider later filed suit under the Federal Tort Claims Act (FTCA), alleging that the park rangers were negligent in not arresting Landry and that such negligence was a proximate cause of his injuries. The district court, after a non-jury trial, ruled that the rangers had been negligent and held the United States liable for Crider's damages.

The United States appealed, arguing that:

* the government cannot be held liable because law enforcement decisions like those made by the rangers fall within the "discretionary function" of the FTCA;
* Texas law imposes no tort duty on rangers to restrain an intoxicated driver;
* the district court erred in holding that the rangers' alleged negligence, ten hours before the accident, was a proximate cause of Crider's injuries;
* the district court erred in awarding a structured judgement and in failing to make the findings of fact required to justify the damages awarded.

The court chose to limit its analysis to the second of these four issues, since it was considered to be the pivotal issue. Since FTCA defers to state laws on issues of liability, the court stated that "the dispositive inquiry here is the first question addressed in all negligence cases: whether the defendants, the park rangers, owed a duty to the plaintiff." The court then examined two areas of Texas law, "either of which arguably determines whether a 'private individual' would be liable to Crider 'under like circumstances.'" The first concerned an officer's duty to arrest or restrain a suspect in order to prevent third-party injuries; the second pertained to an employer's duty to "prudently restrain" an employee from causing harm to a third party.

"Texas courts have twice considered on the merits, irrespective of official or sovereign immunity claims, whether a police officer has any tort duty to protect the public from acts of a criminal suspect," the Fifth Circuit judges said. "Each time, the court declined to impose any such duty." In the first of these cases, Dent v. City of Dallas, the court noted that other states have "'uniformly held that the officer's duty is a duty to the public at large to enforce the criminal law and that the officer owes no special duty to the individual injured'", and concluded that the officer in question "had breached no actionable duty to the deceased." Part of the court's decision in Dent is then cited: "'If we were to uphold the finding of liability on the part (of the officer) for his actions, then to avoid liability, police officers would have to arrest all persons stopped by them for whatever reason (be it jaywalking, expired license tags, etc.) lest these persons attempt escape and cause injury to somebody during their flight from justice. Sound jurisprudence as well as the public interest could not tolerate such a holding.'" The court's findings in the second case, Munoz v. Cameron County, were similar.

The Fifth Circuit then examined the liability of the United States in terms of the duty of ordinary private citizens in Texas and reached the same result. The lower court had held that the rangers owed Crider a duty to restrain Landry based on a Texas case, Otis Engineering v. Clark, in which a fatal accident occurred after an employer ordered an intoxicated employee to go home.

"Two factors in Otis appear critical to the duty it created: the employer-employee relationship and the 'affirmative act' by Otis in sending the employee home," said the court. "Even if Otis should be considered in every Texas drunken driving case, neither the relationship between Landry and the park rangers nor their 'affirmative acts' should give rise to legal duty."

"The Otis Engineering duty appears to arise from a relationship in which Otis not only had the ability to control its employee, but also stood to profit from his work and continued well-being," the judges said regarding the first of these two factors. "Their relationship was created voluntarily and mutually....No serious comparison can be drawn between an employer-employee relationship and that of Landry and the park rangers."

"The other prong of Otis, that of an affirmative act of control, poses a more difficult theoretical problem," they said. "In Otis Engineering...the affirmative act of control was held to be sending (the employee) home while intoxicated. Without further intervention by Otis, this order was tantamount to putting him on the road in a dangerous condition. Here, by contrast, the park rangers merely failed to deny Landry the opportunity to drive while intoxicated by not arresting him or taking away his car keys....Landry was on the beach, with plenty of room to relax and no clear need to travel. Thus, the officers' actions by no means foreordained that Landry would drive while seriously intoxicated. The essence of Crider's claim is not an affirmative act of control as in Otis Engineering but the officers' failure to exercise further control by effecting an arrest. Neither the special relationship evident in Otis Engineering nor the affirmative act of control present there can support the imposition of a tort duty upon the park rangers."

The Fifth Circuit therefore concluded that "a 'private individual' would not be liable under 'like circumstances' because Texas law would not impose a duty upon either a police officer or an individual citizen to restrain a drunk driver in a case like this." The decision of the lower court imposing liability was accordingly reversed.

Cave Management

In 1988, Congress passed the Federal Cave Protection Act, which required that the Federal government identify and catalog all caves deemed "significant." An inter-agency committee comprised of Interior and Forest Service representatives has already worked on the definition of "significant" and the creation of criteria for caves to fall under this category. Within the next six months, all land management agencies having caves will probably need to start the evaluation and cataloguing of significant caves. Caves are one resource which should be addressed when preparing park management plans, but they are all too often overlooked. This act will help them become more visible.

Butch Farabee has taken over the cave program - at least temporarily - from Steve Hodapp, who left this office to work for Congress. Butch will probably be transmitting further instructions on upcoming actions regarding caves this spring.

Seatbelt Regulations

The final rule on the mandatory use of safety belts in NPS areas was published in the Federal Register on December 13, 1989 and became effective on January 12, 1990. The NPS seatbelt regulation being implemented by this rulemaking requires that a motor vehicle operator and all front seat passengers be restrained by a properly fastened seatbelt while the motor vehicle is in motion. Children, as defined by applicable state law, are required to be restrained in accordance with state law. The burden of compliance is placed upon the operator.

According to figures provided by staff of the National Highway Traffic Safety Administration, all states have child restraint laws in effect; another 31 states and the District of Columbia have mandatory seatbelt laws in effect. In states that do have a mandatory seatbelt law in effect which can be enforced in NPS areas, the NPS will continue to enforce the applicable state seatbelt law, regardless of whether the provisions of state law are identical to or different from the provisions of this regulation. If some provision of state law prevents the enforcement of the state's mandatory seatbelt regulation within a park, then the NPS regulation will be enforced. The regulation does not apply to a motor vehicle operator or passenger who is occupying a seat that was not originally equipped with a seatbelt by the vehicle manufacturer, nor does it apply to a person with a medical condition that prevents restraint by a seatbelt.

Briefly...

- We are still working at developing an ample inventory of law enforcement leather gear. Once sufficient quantities of each item are on hand, instructions and order forms will be issued to the field. At present, it appears that these items will not be available before March.

- Special pay rates have been approved by OPM for NPS rangers in Philadelphia and the San Francisco area (Contra Costa, Marin, San Francisco, and San Mateo counties). The rates went into effect in December and January, respectively.

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