



RANGER ACTIVITIES INFORMATION EXCHANGE



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Chief Ranger's Comments

The 025 project is still taking a great deal of my time. In addition to several presentations at the Ranger Rendezvous, I have talked to chief rangers' conferences in NCR and MWR, will speak on the subject at the SWR chiefs' conference in December, and have spent an afternoon discussing it with a Ranger Skills class at Albright.

Progress is being made on the classification guideline that will be used to help classify positions against the 025 standard. This guide will give more consistent criteria for evaluation of work in interpretation, emergency medical services, search and rescue and law enforcement. Bill Blake and Mike Murray of Yosemite spent three days in WASO and were very helpful in assisting Personnel with the writing of law enforcement and search and rescue criteria for this guide.

Rangers have to become more knowledgeable concerning position management, a personnel classification tool which involves organization of work, use of the classification system and composition of position descriptions to properly reflect the work organized in a given project. It is our responsibility to manage positions, and no one else's. Rangers work for rangers. If we don't develop our personnel management skills, we cannot successfully meet our responsibilities.

We are working with the WASO Budget Office to develop guidance for the use of emergency law and order and search and rescue funding. The 1987 appropriation bill restricted the reprogramming authority of the NPS and appears to require that any reprogramming for either category must be approved by the joint committee if it involves funds other than ONPS. Directive 86-6 will stay in effect and we will review any request against the criteria found in that document. Recurring events cannot be funded. Parks should look to the persons or organizations who hold permits for an event to recover unbudgetted costs, as is provided in this year's continuing budget resolution.

New Fee Program Agenda

As you no doubt know by now, Congress has authorized a one-year fee collection program which will implement most of the proposals which were contained in the draft bill supported by the Park Service. The main difference is that, instead of requiring the Service to collect fee revenues and spend them in the same year, Congress has provided about \$58 million in advance for operations and directed that all fee revenues be deposited in Treasury's general fund as offsetting receipts. The following is a quick rundown of what will be happening over the next few months to get the program on line.

The field was asked to provide information to this office on anticipated monetary needs for administration of the program in fiscal 1987, and a final listing was jointly prepared by Ranger Activities and Budget which listed the

parks that will be involved in the program, their new fees, and their projected revenues. The list is to be presented to the regional directors during their meeting here the first week of December, and will then go to appropriate Congressional committees on December 15th (as required by the legislation) for two weeks of review. This listing, along with an explanation of the program, will appear in the Federal Register on January 1st; a thirty day comment period will follow. The new fees program will begin on February 1st wherever possible, with the remaining designated areas brought on line as soon as any problems are resolved. If you have any specific questions on how the system will work, direct them to your regional fee coordinator.

NPS-22 Revisions

NPS-22, the guideline on recreation fee collection, has not been revised since February of 1978, and a task force will begin work on updating it in December. It will become a more generalized guideline on the entire recreation fee program, with chapters on, among other topics, the Land and Water Conservation Fund Act, the Servicewide reservation system, fee types, fee collection methods, and criteria for determining which types of fees are appropriate for which areas. The task force's first meeting will be at Harper's Ferry between December 15th and 19th; the projected completion date is May 1st, but interim guidelines on specific fee collection problems will likely appear before then.

If you have comments or suggested revisions to the guideline, contact any of the members of the task force: Bruce Powell, Lincoln Birthplace (chairman); Lynne Nakata, Western Regional Office; Kristin Bardsley, Yosemite; Linda Cowles-Green, Shenandoah; Jan Hill, Everglades; Rich Rambur, John Kunec and Linda Balatti, WASO.

Field Incidents

San Juan River: Ranger Marlene Zichlinsky of Jean Lafitte has provided Exchange with further information on the August drowning of Grand Canyon ranger David Fonseca. Zichlinsky, who was one of eight people on the trip, reports that most of the group went for a hike after dinner on the first day of a raft trip down the river, and that, because of precarious footing on the route they were following, they decided to swim across the river to hike back on the other side. The current, however, proved faster than anticipated, and Fonseca was unable to make it across. Several members saw him go down in the main current. His body has not yet been recovered.

Rocky Mountain: Acting on information received during an undercover operation, rangers were able to successfully investigate and determine that a bighorn ram that two hunters had claimed was taken outside of the park during the bighorn season in September had actually been killed in the park's Never Summer Mountains. The rangers could find no evidence that the animal was shot at Snow Lake, which was the location the hunters had specified, and instead followed ATV tracks to a point near Box Canyon, where a gut pile was found. When confronted, the two waived their rights and signed written confessions, and they were found guilty of the charges. The hunter who actually killed the ram forfeited the ATV and his weapon, was fined \$525, ordered to pay the ATV's owner \$2,500 in restitution, required to perform 40 hours of community service, and sentenced to 120 days in jail, suspended for two years, during which he is not allowed to hunt in Colorado; the other hunter was fined \$425.

Yellowstone: In October a federal appeals court overturned two convictions that resulted from Operation Trophy Kill, the undercover investigation conducted in 1984 into illegal hunting in and around Yellowstone. In reversing a lower court decision, the Ninth Circuit said that people hiring out as hunting guides could not be prosecuted for violating the federal law against sale of endangered wildlife. The ruling allows Terry Stenberg to withdraw his guilty plea and overturns the conviction of Earl Fike for their offers to guide undercover agents on illegal hunting trips.

Cape Hatteras: Gary Petersen, the man who tried to shoot and kill ranger Mike Anderson at Cape Hatteras last April, was sentenced in early November to five years in prison following his guilty plea to a charge of assault with a dangerous weapon with intent to do bodily harm. According to chief ranger Larry Roush, the assistant U.S. attorney, Pete Kellen, did an excellent job in obtaining the conviction. Although it would have been possible to have charged Petersen with assault on a federal officer, which carries a ten year maximum sentence, the defense had produced two psychological reports which said that Petersen was insane at the time of the incident. "Without Kellen's persistence," says Roush, "it is highly probable that Petersen would have walked. Obtaining a guilty plea in this case, considering the ammunition the defense had, (demonstrated) an outstanding effort." Petersen still faces state charges for theft of an aircraft.

Moro Rock Court Decision

The United States Court for the eastern district of California has ruled in favor of the Service in an important test of the discretionary function exceptions of the Federal Tort Claims Act.

The ruling stems from a case brought against the Park Service following an incident at Moro Rock in Sequoia National Park in August of 1975. A number of people were on the rock when a storm approached; some of them left, some were on the way down steps from the top, and others were still on the top of the rock when lightning struck. One man who was near the top was killed and another on his way down was seriously injured. Families of both persons entered claims against the government which stated that the Service had "negligently and carelessly failed to provide any warning, guidance or supervision at all in respect to danger of being struck by lightning..." The first case brought up concerned the fatality and was dropped by the plaintiff before it came to trial; the second concerned the injured party and came to trial.

The plaintiff contended that National Park Service authorities - both in the park and in the regional office - knew of or should have known of the dangers of lightning striking a high promontory, and that there should have been a warning sign at the base of the steps leading up Moro Rock. This argument implied that park visitors generally lack a knowledge of such dangers, and there existed a real possibility that a loss in this case would mean that the Service would have to install signs advising the dangers of lightning at the base of every peak with a trail to its top. And, if the court ruled that discretionary function did not apply in this case, a bad precedent would be set for the use of other broad policies as a defense against tort liability. US Attorney Mark St. Angelo and the plaintiff's attorney both agreed to first test discretionary function in court, since there would be no further trial for lack of jurisdiction if the exemption applied.

A review of discretionary function will help to place this case in perspective. The Federal Tort Claims Act of 1946 says that the United States is to be held liable in each state "in the same manner and to the same extent as a private individual under like circumstances." It was obvious that a barrage of claims for "negligence" against government managers who were performing their duties would seriously impair their ability to manage and make them reluctant to make hard decisions for which they might have to answer in court, so Section 2680 provided several significant exceptions to coverage under tort law. The most important of these allows managers reasonable discretion in the normal exercising of their duties and determines abuse based upon how those duties were or were not performed. The question frequently tested in court is whether or not an act or mission falls under the discretionary function exception, and there is considerable inconsistency among various US District Courts on its application.

In the Moro Rock case, National Park Service witnesses were able to establish several reasons why discretionary function applied in this incident:

- the Service had a written policy in effect at the time of the incident which addressed the placement of signs in national parks and said, basically, that a committee would evaluate the advisability of placing any sign "that has been recommended" to ensure conformance with Service standards and mission;
- the park had a sign committee that met regularly and evaluated such recommendations, and had never received any recommendations for placing a sign at Moro Rock (it simply had not come up);
- the Service had a safety program which did not specifically emphasize lightning strikes, no safety personnel had recommended warning signs concerning lightning, and Service management had decided to utilize its limited resources to deal with more frequently occurring safety problems, such as falls, drownings and motor vehicle accidents.

The court determined that it was within the National Park Service's assigned mission to protect the natural environment and make best use of available resources in doing so. It assumed that its policies are based on the designated purpose of the agency, and that qualified persons made the decisions implementing them. Since the question of sign need and placement fell within the discretion of management, the court decided that it had no reason to review the case and therefore dismissed it "for lack of subject matter jurisdiction." It's also important to note that, although the specific placement of a sign at Moro Rock never arose, the broader policy for signs was adequate to make this ruling.

- Dick Wilburn, Chief, Branch of Safety Management

Revisions to Management Policies

Some of you may have wondered about what's happened with the proposed revisions to management policies. According to the responsible office here in WASO, the Department is still in the process of reviewing the first chapter, which deals with the preservation and acquisition of park areas. They are also looking at the possibility of shortening the entire document, and at a return to the old management categories, i.e. natural, cultural and recreational areas. It's expected that there'll be no action on specific policies until the spring. There will be opportunities for further field review before the policies go into any final form.