

ISSUES SUBMITTAL FORM

Date: 12/17/19

ISSUE:	<p>Currently, Park Managers can only issue Special Activities Permits for “noncommercial” events and activities under P-7 #703(1). Should CPW remove this limitation in P-7 #703(1), thus enabling Park Managers to issue permits for commercial <u>and</u> noncommercial events and activities?</p> <p>If yes, corresponding changes are also necessary to P-1 #100(10) (Commercial Use) and P-7 #708(3) (Pass and Permit Fee Schedule).</p>
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DISCUSSION (FACTS AND FIGURES, EXPLANATION OF ISSUE):

Amendments to P-7 #703(1): Park Managers routinely give third parties permission to conduct noncommercial special activities on state park lands, such as a charitable 10K run. Such permission is granted subject to conditions, such as specifying the location of the activity, days and hours of activities, number of attendees and imposing insurance requirements. Current regulation P-7 #703(1) authorizes only noncommercial permits. The proposed change to P-7 #703(1) would enable Park Managers to issue a permit under P-7 #703(1) regardless of whether the activity was commercial or noncommercial in nature.

Given the current lack of regulatory authority to issue special activity permits for commercial events and activities, Park Managers often rely on an agreement / contract to authorize the activity or event. Doing so unnecessarily exposes CPW to claims by the organizer of the event. Permits are a form of a “license” under the State Administrative Procedures Act (State APA). See § 24-4-102(7), CRS. Any claim against CPW related to a permit must be brought within 35 days or is time-barred. § 24-4-106(4), CRS. By comparison, any claim against CPW related to an agreement / contract must be brought within three years. See § 13-80-101(a), CRS.

This issue paper also seeks to insure consistency between the permit appeal process provided in P-7 #703(4) and that of the State APA, § 24-4-104, CRS, by merely incorporating the latter by reference into P-7 #703(4) and repealing the current conflicting provisions of P-7 #703(4).

Amendments to P-1 #100(C)(10) and P-7 #708(3): Currently, P-1 #100(C)(10) mirrors P-7 #703(1) insofar as neither regulation contemplates the issuance of permits for commercial uses. If CPW revises P-7 #703(1) as suggested in this issue paper, a corresponding change to P-1 #100(C)(10) is also necessary.

Currently, P-7 #708(3) states that there is a “Special activity application filing fee” of \$30. If CPW revises P-7 #703(1) as suggested in this issue paper the statewide application filing fee will remain at \$30.00, but additional tiered pricing will be added for the Arkansas Headwaters Recreation Area.

This regulation change does not prohibit CPW’s ability to continue to use cooperative agreements or other contracts, such as Special Use Agreements etc.

STATE LAW REQUIRES CPW TO SOLICIT INPUT FROM STAKEHOLDERS THAT MAY BE AFFECTED POSITIVELY OR NEGATIVELY BY THE PROPOSED RULES. THE FOLLOWING STAKEHOLDERS HAVE BEEN ADVISED OF AND INVITED TO PROVIDE INPUT ON THE REGULATORY CHANGES PROPOSED IN THIS ISSUE PAPER:

***IT IS ASSUMED THAT ALL NECESSARY INTERNAL PARTIES HAVE BEEN NOTIFIED*.**

ALTERNATIVES: (POSSIBLE OUTCOMES or POSSIBLE REGULATIONS):

1. ***Preferred Alternative*:** See redline of P-1 #100(C)(10) and P-7 #703 are attached as Exhibit A.

2. No action, status quo. (Bring this issue paper forward when the updated AD has been completed)	
Issue Raised by:	Rob White, Brad Henley
Author of the issue paper (if different than person raising the issue):	Jake Matter
CC:	
APPROVED FOR FURTHER CONSIDERATION BY:	Margaret Taylor
REQUIRES NEW SPACE IN THE BROCHURE?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
ARE ADEQUATE STAFF AND FUNDING RESOURCES AVAILABLE TO IMPLEMENT?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
REGION, BRANCH, OR SECTION LEADING IMPLEMENTATION	All Regions
RECOMMENDED FOR CONSENT AGENDA?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

SPECIAL ACTIVITIES

703 - SPECIAL ACTIVITIES REQUIRING PERMITS

1. "Special activities" means ~~those noncommercial~~ events or activities which have the potential for an adverse impact on park values or health, safety or welfare of park visitors or which may otherwise require special planning/scheduling for proper management. Special activities shall require prior approval in the form of a special-activities permit. Applications thereof generally shall be made to the Park Manager or Operational Manager at least ninety (90) days prior to the event or activity. Such application must be accompanied by the appropriate application filing fee. This requirement for an application to be filed ninety days prior to an event will be waived in rare circumstances where arrangements can be made in a shorter time without putting undue administrative burden on the Park Manager or Operational Manager, or when no special arrangements are necessary. The Park Manager may impose additional terms, conditions and charges in connection with the permit as reasonably necessary to offset the administrative burden, costs or risks associated with the proposed activities. The Park Manager may retain third party consultants to evaluate the potential adverse impacts of the proposed activity and develop appropriate strategies to offset or mitigate such risks. The applicant shall be notified if the Park Manager decides to retain a consultant, shall be given the opportunity to provide input concerning consultant selection and scope of work. The applicant shall be responsible for the actual costs associated with this consultant review.
2. The decision of whether to approve special activity permits will be made by the Park Manager or Operational Manager when it is determined that the special activities will not involve the use of a park or recreation area by a group of persons totaling more than the park or recreation area's established carrying capacity. Otherwise, the Regional Manager shall make the decision of whether to approve the permits. The decision of whether to approve special activities permits will be based on the impact on park values and/or the health, safety and welfare of park visitors and other affected persons, and also will be based on:
 - a. The nature of the park or recreation area and the types of recreational opportunities/resources it is intended to provide the public
 - b. The carrying capacity of the facility or facilities to be utilized during the special activity compared to:
 - (1) The total number of park visitors (including participants and spectators in the special activity) expected to utilize such facilities; and
 - (2) The total number of vehicles, vessels or persons expected to participate in or be attracted to such activities.

- c. The extent to which the special activity will contribute to the variety of outdoor recreational opportunities available to the people of this state and its visitors.
 - d. The extent to which the activity places an administrative burden on the staff of the park area.
3. Whenever it is determined that any special activity will involve the use of a park or recreation area by a group of persons totaling more than the park's or recreation area's established carrying capacity a thirty day written public comment period and a public meeting shall be required prior to the granting of a permit. The Park Manager or Operational Manager shall publish notice of both the written comment period and the meeting at least once in a newspaper of general circulation in the county or counties wherein said park or recreation area is located. The meeting shall be conducted by the Division representative responsible for the permit issuance decision and shall be held either at the park or recreation area, or within a county in which the park or recreation area is located. Such public meeting is not intended to be an adjudicatory licensing hearing under the provisions of the Colorado Administrative Procedures Act, but only as an opportunity for public comment.
4. ~~Every decision respecting the grant, renewal, denial, revocation, suspension, annulment, limitation or modification of a special activity permit is subject to § 24-4-104, CRS. An application for a permit shall be acted upon promptly, and the applicant shall be notified immediately after the taking of action on the application. If the application is denied, the applicant shall be notified in writing within five working days of such action. Such written notification shall include the basis for the denial. The applicant may submit a written appeal of a denial to the Division Director within sixty days of receipt of the denial, requesting a hearing pursuant to section 24-4-104(9), C.R.S., If the date of the proposed special activity is to occur within the sixty day appeal period, then the applicant shall submit any written appeal as soon as practicable so as to allow a reasonable time for the Director to act upon the appeal. Absent special circumstances justifying a later submittal and depending upon the nature of the proposed special activity and the amount of preparation required on the part of the Division for such activity, generally an appeal submitted less than twenty five days prior to the proposed special activity will be deemed untimely.~~
5. Upon written request, the Division shall waive the requirement for a parks pass for those vehicles when all the occupants are entering state recreation areas and state parks for the purpose of administering permitted special activities and not for the purpose of their own recreation.
6. For special activities where the Division representative responsible for the permit issuance decision determines it will be a greater administrative ease for the Division to administer the activity, an alternative fee of \$4.00 per person per day may be charged

for admission of persons attending or participating in the special activity. This permission shall apply only to groups of twenty or more persons.

7. Nothing in this regulation impairs the specific authority of the Commission pursuant to 33-10-107(1)(d) C.R.S. to enter into cooperative agreements for the development and promotion of Division programs, or the general authority of the Commission pursuant to 33-10-106 C.R.S. to manage all state recreation areas and state parks for both commercial and noncommercial purposes. The authority granted to park managers and regional managers is intended to allow them to address events of limited and local impact, and is specifically intended to coexist with, and not to exclude, the Commission's statutory authorities.

708 - PASS AND PERMIT FEE SCHEDULE

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3. The fees associated with special activities, as provided for in regulation # 703 are:
 - a. Special activity alternate individual fee (applies to groups of twenty or more people in size).....\$4.00
 - b. Special activity application filing fee\$30.00
 - c. Arkansas Headwaters Recreation Area special activity application filing fees:
 1. Standard.....\$30.00
 2. Commercial
- Bboating.....\$400.00
3. Other commercial activities, such as walk and wade fishing, shuttle services, imaging, vending or services, hiking, mountain biking and rock climbing.....\$250.00

100 - PARKS AND OUTDOOR RECREATION LANDS

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C. It shall be prohibited:

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COMMERCIAL USE

10. To use Parks and Outdoor Recreation Lands for a commercial purpose, except:
 - a. Special resource use which shall be authorized by the Commission on a case-by-case basis at a public meeting of the Commission (i.e., mining, timber cutting, grazing, haying, and other similar uses.)
 - b. Uses authorized pursuant to concession contracts issued in accordance with state procurement and fiscal rules; or
 - c. Pursuant to a cooperative agreement with the Division or special activities permit issued by the Division. Commercial use which conflicts with area management plans will not be approved.
 - d. For incidental commercial services that:
 - (1) Are provided by a commercial entity that is providing services incidental to the public use and operation of a State Park. Such services include: renting of pack animals or their services to remove harvested animals; vehicle and vessel repair; locksmith and tow services; vessel launch, retrieval or recovery services; product deliver services; and ride sharing or taxi services;
 - (2) The commercial entity does not solicit for business at, or use the name of, a State Park(s) for advertising;
 - (3) The commercial entity maintains a separate place of business; and
 - (4) The incidental commercial service is not one for which the provider is required by law to obtain a guide or outfitter license.
 - (5) Incidental commercial services does not include commercial boat launch and load services at Navajo State Park.

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