

**Report to the Colorado General Assembly:**

# **PARKS AND RECREATION**



**COLORADO LEGISLATIVE COUNCIL**

**RESEARCH PUBLICATION NO. 154**

**November , 1970**

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OF THE  
COLORADO GENERAL ASSEMBLY

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The Legislative Council, which is composed of five Senators, six Representatives, and the presiding officers of the two houses, serves as a continuing research agency for the legislature through the maintenance of a trained staff. Between sessions, research activities are concentrated on the study of relatively broad problems formally proposed by legislators, and the publication and distribution of factual reports to aid in their solution.

During the sessions, the emphasis is on supplying legislators, on individual request, with personal memoranda, providing them with information needed to handle their own legislative problems. Reports and memoranda both give pertinent data in the form of facts, figures, arguments, and alternatives.

PARKS AND RECREATION

Legislative Council  
Report to the  
Colorado General Assembly

Research Publication No. 154  
November 1970

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## COLORADO GENERAL ASSEMBLY



### LEGISLATIVE COUNCIL

ROOM 46 STATE CAPITOL  
DENVER, COLORADO 80203  
892-2285  
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REP. BEN KLEIN  
REP. CLARENCE QUINLAN

November 20, 1970

To Members of the Forty-eighth Colorado General Assembly:

In accordance with the provisions of House Joint Resolution No. 1034, 1969 Session, the Legislative Council submits for your consideration the accompanying report pertaining to parks and recreation in Colorado.

The Committee appointed by the Legislative Council to conduct the two-year study reported its findings and recommendations to the Legislative Council on November 20, 1970. The Council adopted the report at that time for transmittal with favorable recommendation for consideration by the First Regular Session of the Forty-eighth Colorado General Assembly.

Respectfully submitted,

/s/ Representative C. P. (Doc) Lamb  
Chairman

CPL/mp

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REP. CLARENCE QUINLAN

November 20, 1970

Representative C. P. (Doc) Lamb  
Chairman  
Colorado Legislative Council  
Room 46, State Capitol  
Denver, Colorado 80203

Dear Mr. Chairman:

Pursuant to House Joint Resolution No. 1034, 1969 Session, the Interim Committee on Parks and Recreation submits the following report for consideration by the Legislative Council. The Committee's findings and recommendations are the result of six meetings and several field trips in 1970 during which the Committee considered the problems, programs and financing of parks and recreation.

Respectfully submitted,

/s/ Senator George Jackson  
Chairman  
Committee on Parks  
and Recreation

GJ/mp

## FOREWORD

Pursuant to H.J.R. No. 1034, 1969 Session, the Legislative Council appointed the following committee to conduct a study on the formulation and the financing of a long-range program of state parks and recreation, as well as the feasibility of maintaining Colorado's quality environment:

Senator George Jackson,  
Chairman  
Rep. Ted Schubert,  
Vice Chairman  
Senator Wayne Denny  
Senator Chet Enstrom  
Senator J. D. MacFarlane  
Senator Allegra Saunders  
Senator Sam Taylor

Rep. Dominic Coloroso  
Rep. Eldon Cooper  
Rep. Tom Dameron  
Rep. George Fentress  
Rep. Vincent Grace  
Rep. Earl Johnson  
Rep. Harold Koster  
Rep. Phil Massari  
Rep. Austin Moore  
Rep. Ralph Porter  
Rep. Carl Showalter  
Rep. Keith Singer

A progress report on the first year of the Committee's study was submitted to the Second Regular Session of the Forty-seventh General Assembly. During the second year of study, the Legislative Council's Committee on Parks and Recreation held six regular meetings. Members of the Committee also participated in several field trips: to the site of the Chatfield Dam and the proposed Roxborough Park; to examine the Rifle Falls Fish Hatchery and the Rifle Gap State Recreation Area; to tour the Steamboat Lake State Recreation Area; and to examine the established and proposed recreation areas at Grand Junction.

The Committee wishes to express its appreciation for assistance rendered by Tom Ten Eyck, Executive Director, Department of Natural Resources; Harry Woodward, Director, and George O'Malley, Assistant Director for Parks, Division of Game, Fish and Parks. The Committee also wishes to thank the many representatives of sportsmen's, recreation, and conservation groups and wildlife organizations for their contributions to the Committee's study.

Becky Lennahan of the Legislative Drafting Office provided bill drafting services to the Committee. Legislative Council staff assisting the Committee included Kay Miller, Research Associate and Dorothy Jakelsky, Research Assistant.

November, 1970

Lyle C. Kyle  
Director

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## COMMITTEE FINDINGS AND RECOMMENDATIONS

At present there are 23 state park and recreation areas, all of which may be classified as natural environment areas -- offering opportunities for fishing, boating, and camping. Although the Committee strongly supports continued development of such facilities by the Division of Game, Fish and Parks, the Committee is concerned that the state of Colorado is not helping to meet the needs of a broad cross section of citizens and visitors searching for other types of public recreational activities. For example, most state park and recreation areas are located some distance from business and residential areas and hence are not useful to the city dweller who has some leisure time during or after his work day to devote to recreation. The elderly, young children, adolescents, handicapped, low income and other persons with limited means of transportation often find the state recreation areas inaccessible or of use only a few days per year. Finally, many citizens and visitors simply do not find that state park areas provide the open space, park, recreation, historic or other public services which they believe should be met.

It is the consensus of the Committee that the ever-changing demands for public recreation call for state participation beyond its traditional natural environment park system. In view of the complexity and financial costs of meeting broad-based recreational demands in Colorado, however, the Committee recognizes that the state cannot provide all the answers for public recreation. Local communities, in particular, are in a better position to identify the recreational needs of their citizens and visitors. The state of Colorado can then assist these communities to solve their own public recreational problems.

### State Incentive Program to Local Governments for Park and Recreation Development

Specifically, the Committee recommends that a state financial incentive program be established to encourage local communities to acquire and develop park and recreational facilities. The Committee recommends that the state provide up to 50 percent state matching funds to local communities for the cost of park and recreation projects authorized and approved by the Division. For projects where federal funds are available, the Committee recommends that state participation be limited to up to 50 percent of the non-federal share. The rationale behind the dual percentage system is not only that there is less need for state funds when federal funds are available, but also that the state may want to give added financial impetus to certain types of projects for which federal monies are not available.

Use of Federal Funds Limited. The federal grant program which provides most of the assistance to political subdivisions for outdoor recreation projects is the Land and Water Conservation Program. While these monies are to provide assistance for both acquisition and development, it has been a matter of practice, particularly in Colorado, that the major share of the federal funds have gone to political subdivisions for development projects rather than acquisition. One reason for this policy is that there is a large amount of recreation land in Colorado, particularly on the Western Slope, and land acquisition is to have priority over development only in those areas where a scarcity of recreation lands exist. Secondly, because of limited federal funds, it has been the policy to distribute these monies "to get the most mileage". To accomplish this goal, development projects have been chosen over those involving acquisition, because it is felt that actual development of a park comes closer to meeting recreational needs than the mere acquisition of land which will later have to be developed. Nevertheless, the preservation of open space by political subdivisions is needed in rapidly developing urban areas. Steps should be taken to meet these future needs by setting aside open space through land use planning, easements, or purchase.

A high priority is given to water oriented recreation projects in the distribution of the Land and Water Conservation money. The state recreation program emphasizes water based activities. The Committee believes that the state should encourage political subdivisions to diversify their recreational facilities by providing a portion of state matching funds for the types of projects for which federal funds are not authorized.

"Local" Recreation Facilities Provide Diversity -- Fulfill Total State Need. A second area in which local governments need assistance is in developing more recreational facilities such as swimming pools, tennis courts, mini parks, etc., which have been traditionally viewed as areas of local responsibility. Federal Land and Water Conservation grants are not generally available for these types of facilities because they do not fulfill the multiple use criteria which projects must meet to qualify. However, there is much justification for state financial assistance for these types of facilities. For one thing, these facilities cannot be regarded as serving only the local population. City parks, particularly in small towns, serve as popular meeting places and picnic areas for people from the surrounding countryside and nearby communities as well as tourists. Regional and state-wide swimming meets, various tournaments and playoffs are often held at "local" facilities.

Another very convincing argument for state participation in the development of community facilities is that they are often used by citizens of the state who are unable to enjoy those state recreation areas which are located, for the most part, away from

the immediate centers of population. Many of the most frequent users of local recreational facilities are those who lack the transportation or financial resources to get to the areas located outside of the cities and towns. Senior citizens and low income persons who may never get to one of the state recreation areas derive a great deal of pleasure from mini parks and other recreational facilities located within walking distance of their neighborhoods.

Administration of State Matching Program. The Committee believes that the Division of Game, Fish and Parks in the Department of Natural Resources is the logical agency to administer a financial incentive program to local government for park and recreation development. In establishing project priorities for distribution of funds, the Division should take into consideration the growing interest in using floodplains for recreational development, particularly in urban areas. The Division should also set a high priority on projects which will serve the recreational needs of the elderly, young children, adolescents, handicapped, low income and other persons with limited means of transportation.

The non-federal share of park monies, whether state or local, should be obtained from a variety of sources. For example, the state share could come from the General Fund and the Game Cash Fund. Use of the Game Cash Fund would, of course, be in proportion to the project involvement with fish and wildlife activities. The local share could be derived from monies from cities and towns, counties, recreation districts, and payment could be in-kind in lieu of cash.

If the state recreation program is to be designed to benefit all the citizens of the state, then it must include some mechanism for assisting in the development of all kinds of facilities which meet the diverse needs and interests of people in Colorado. The Committee believes that criteria establishing eligibility for state matching funds would have to be carefully prepared. Such standards would have to be flexible enough to allow a wide variety of local recreational proposals to be given consideration by the Division and the Commission.

#### Addition of Recreation Consultants to Parks Staff

The Committee recommends that funds be appropriated to allow Parks to hire professional consultants to assist local communities in planning activities concerning parks and recreation. The Municipal League, local recreation specialists, and the Colorado Parks and Recreation Society have all made requests for the state to provide technical assistance for development of local park and recreation programs. Such positions would be vital, particularly if the state initiates a program of state financial

assistance to local governments for park and recreation development. State consultants could help local recreation planners to develop proposals that are in conformance with state specifications. Particularly, with a program of state financial assistance, state consultants could help local communities in planning recreational facilities and programs that will benefit a number of people in the state.

#### Remove Statutory Restrictions from Municipalities in Recreational Development

There are several statutory provisions which hamper municipalities in the area of park land acquisition and development. For example, sections 139-87-2 and 139-88-2 require that cities and towns must, prior to acquiring land for park development, submit the question to a vote of the people. The vote may be taken at a regular or special election, but nevertheless the process is time-consuming and expensive and a town may lose an opportunity to acquire a needed park site due to the requirement of electorate approval. It seems to be an unnecessarily cumbersome process to require a vote to be taken concerning the acquisition of a small lot for a mini park especially when time may be a factor and the expense of an election might exceed the cost of purchasing the lot. The Committee recommends amending sections 139-87-2 (1) and 139-88-2 to remove the requirement of submitting the question of acquisition of park land to a vote of the people. Section 139-88-13, which establishes the procedure for such election, would also have to be amended.

The Committee further recommends revising subsections 139-60-1 (1) and (3), C.R.S. 1963, (1967 Supp.) which require that cities and towns submit floodplain zoning proposals to the Colorado Water Conservation Board. While the above listed subsections were amended in 1966 as a reaction to the floods in 1965 and grant specific floodplain zoning authority to cities and towns, one effect of the law in practice is that political subdivisions have been obliged to prepare lengthy and expensive documents to submit to the Water Conservation Board. Municipalities believe they should have the power to zone floodplains without prior designation by the Water Conservation Board. Since the General Assembly has encouraged local governments to become actively involved in park and recreation development by giving them the legal tools to designate areas as open space, the Committee believes steps should now be taken to remove those legal restrictions which make it difficult for local governments to function efficiently in these areas.

## Funds for State Park and Incentive Programs

Traditionally, parks and recreation have always been given a low priority in the allocation of available state revenues. Nevertheless, many citizens of Colorado have indicated an intense interest in having the General Assembly place greater emphasis on parks and recreation. In October of 1970, the Committee reviewed the Game, Fish and Parks Division land acquisition and development requests to improve the state's park and recreation program. The requests for fiscal 1971-72 total over \$5,000,000 for state programs alone. Also, the Committee is requesting that adequate monies be allocated to implement a proposed state incentive program to assist local governments with park and recreation activities. For fiscal 1971, the federal government is expected to provide about \$1,000,000 of Land and Water Conservation monies for local park and recreation programs in Colorado. In addition to matching federal funds, the Committee believes that the state should provide monies to communities for which Land and Water Conservation funds are not available. In any event, the incentive program will require a substantial investment of state dollars. The Committee believes that such an investment is worthwhile, particularly since such an investment of state funds will not obligate future state revenues for the maintenance and operation of these facilities. The participating communities would be responsible for maintenance and operation.

Therefore, the Committee recommends that the General Assembly develop a program to provide adequate funds annually for both state facilities and for state participation in local park activities. In the event that the members of the General Assembly can not reach agreement on funding these programs from general revenues, the Committee believes that the General Assembly should provide an opportunity for the voters of Colorado to approve or disapprove a program for financing state and local park activities at the General Election in 1972.

Finally, the Committee recommends that the House and Senate Committees of Reference on Game, Fish and Parks be given an opportunity to review the budget requests of the Division of Game, Fish and Parks and make recommendations to the Joint Budget Committee and the General Assembly.

## Separation of Parks Administration and Funding

In the summer of 1970, the Committee held a public hearing on the need for creating a separate Parks Division in the Department of Natural Resources. At this time, the Committee reviewed the present joint administration of game and fish programs with park and recreation. The August 19 hearing revealed that staff personnel of the Division, as well as the individual commissioners, were divided on whether the "game and fish" and

"park programs" should be separated or administered jointly. For example, both Commissioners Ford Strong and Dean Suttle supported the existing organization of the Game, Fish and Parks Division, while Commissioner Harry Combs, was emphatic in urging separation of these activities.

Tom Ten Eyck, Executive Director of the Department of Natural Resources, also expressed support for continuing the present organizational system:

Mr. Ten Eyck expressed his personal view that the law should stand as it is but that different internal organization might be considered. He stated that inconvenient communication channels do exist, especially for parks, and that the majority of the staff has a philosophy and approach geared to game and fish. He emphasized that parks had a poor start when it was in its own division, and then there were problems when parks was combined with game and fish, and that if the Division were split again parks would suffer a third setback in terms of the cooperation with game and fish. He commented that some administrative problems would occur if parks were separated from game and fish. For example, more personnel might be hired for the parks program who would be doing unnecessary paralleling and overlapping of the work of game and fish personnel. However, he stated that the cash funds could be clarified with accounting procedures and the separation of the two areas for cost purposes should be a fairly simple matter. He added that he would continue to support a repayment to the Game Cash Fund from the General Fund to pay the debt that parks owes to the Game Cash Fund.\*

In view of the conflicts in testimony and information provided to the Committee concerning a separate "Division of Parks", the Committee believes that data presented supporting the creation of a new division was not sufficient to warrant such a recommendation at this time.

Game Cash Fund to Remain Inviolate. The Committee strongly supports the recommendation of Mr. Ten Eyck that the monies owed to the Game Cash Fund for services rendered to park programs, roughly \$250,000, should be reimbursed from the General Fund. Both sportsmen's groups and game and fish personnel have expressed

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\*Committee on Parks and Recreation, Colorado Legislative Council, "Minutes of Meeting", August 19, 1970, p. 3.

concern that the Game Cash Fund must remain inviolate. According to the provisions of the federal law which makes federal monies available to states for fish and wildlife purposes, all monies collected from the sale of state game and fish licenses must be devoted to purposes related to game and fish. Detailed accounting procedures have been developed to identify Game and Fish personnel or equipment which is used for Parks' projects.

#### Power of Condemnation for Park and Recreation Purposes.

In the recodification of the Game, Fish and Parks law in 1969, reference to eminent domain was deleted. Now, through the general powers of the state, the Division may have the authority to acquire property through the use of eminent domain. Because this authority is not clearly spelled out in the statutes, however, there might be a challenge of any attempt by the Division to acquire property by use of this procedure.

A situation where eminent domain may be the only way to acquire a much desired piece of recreational property is in the case of Roxborough Park. The state has long expressed an interest in purchasing the property to develop into a recreation area. Recently, the option to buy the property has been purchased by another developer, and the property may be out of the reach of the state unless it can be acquired through eminent domain.

As recreational property becomes more scarce and as the state is forced to compete with private enterprise for the acquisition of sought-after property, the question of the power of eminent domain again becomes an issue. While the Committee does not believe that the power of eminent domain should be used indiscriminately for the acquisition of recreational property, it is nevertheless the consensus that there are instances when there is just cause for employing this tool.

For this reason, the Committee recommends that the Governor be given the express power to condemn property for recreational purposes. In this way, the power is not exercised by a state agency whose primary concern is recreational development. The state park and recreation agency could make recommendations to the Governor that he use the power of eminent domain to acquire recreational property for the state, but the final decision would remain with the Chief Executive to weigh the request against other relevant considerations. While the Committee recognizes that section 50-1-2 (2), C.R.S. 1963, as amended, provides that the Governor sign petitions in cases where property is taken by the state for specified purposes, the members believe that the statute should be amended by the addition of a new subsection stating that the Governor give careful consideration to petitions to acquire recreational properties by eminent domain.

## Public Use of Streams

The Committee held an open hearing on the question of public use of streams which evoked considerable response. Both sides of the issue were given equal time and careful consideration. The Colorado Constitution states that the waters of every natural stream in Colorado belong to the public and are dedicated to the use of the people. The Constitution also protects private property owners from trespass. Property owners have a valid concern in being fearful of any public entity having the authority to take property without just compensation. Sportsmen, on the other hand, have a right to enjoy the use of the water of the state when it does not impinge upon the property rights of another.

Therefore, the Committee recommends that the General Assembly amend the Colorado statutes by the addition of a subsection to 148-21-2, Colorado Revised Statutes 1963, as amended, (1969 Perm. Cumm. Supp.) to read:

(1) (b) It shall be lawful for any person to float water craft down any of the natural streams of this state for non-consumptive, recreational purposes that include, but are not limited to, angling and pleasure boating, irrespective of the ownership of the bed thereunder and irrespective of their navigability. This right shall be exercised without damage to underlying or adjoining property. It shall be trespass to walk on the stream bed or adjoining bank when passing over and through privately owned property, except it shall be lawful to disembark to pull, push, or carry the craft over or around an obstruction. The rights herein granted may be exercised only when there is lawful access to the natural streams of this state, and in no case shall said public rights interfere with or supersede present and future rights to appropriate and divert or impound the waters of the natural streams of this state.



## STATE INCENTIVE GRANTS FOR LOCAL PARK AND RECREATION PROJECTS

In an attempt to determine whether other states have launched programs to provide state financial assistance to local governments for park and recreational development, the staff contacted 49 states. Of 40 responses received, 18 states have programs where some direct financial assistance is available to local governments; two additional states report that they provide technical assistance in recreational planning; and two other states expect the subject to be discussed at the upcoming legislative session.

A brief review of these responses from states having incentive programs follows.

Alaska. The legislature at its session (1969) established a revenue sharing program which provided for grants to local agencies for various purposes. This year the program was expanded by the addition of a \$5 per capita grant to those cities or boroughs exercising parks and recreation power.

Arkansas. While Arkansas does not have a local matching program at present, the State Parks and Recreation Commission reports that they plan to propose such a program to the legislature in the upcoming session.

California. By virtue of a recent bond issue and in accordance with a formula provided in the bond issue, California provides financial assistance to local governments.

Connecticut. Connecticut does provide financial assistance to municipalities in establishing park facilities by matching the local contribution for receipt of Land and Water Conservation Fund grants. Under this program, the state contributes 25 percent, the municipality 25 percent, and the federal government makes up the remaining 50 percent.

Florida. Grants and loans are provided under a small projects program funded from the state land acquisition trust fund. There is no specific matching requirement, but there is a maximum in state support of \$50,000 for any single project.

Georgia. A 1969 law enables the Commissioner of Conservation, with the approval of the Governor, to establish a "state assistance fund" which may be used to match federal, city and county funds to acquire lands for recreational purposes and to improve or develop outdoor recreational facilities. The fund cannot be used to finance more than 25 percent of the total cost of each local project and the local authority must finance at least 25 percent of the total cost. No state funds are avail-

able to local units unless such projects are approved by the federal government. The information provided did not include the amount appropriated to the fund.

Idaho. Idaho does not have a program of financial assistance to local governments for recreational development. However, the Department of Parks does assist counties, cities, and small communities in planning and gives other technical assistance in regard to park acquisition and development.

Massachusetts. Massachusetts has a series of incentive programs which the Department of Natural Resources provides to local park or conservation agencies.

- 1) A fifty percent financial reimbursement program for land acquisition programs by community conservation commissions.

- 2) Financial aid to Conservation Districts for administrative costs and pilot land management projects designed to promote wise land and water conservation.

- 3) Technical aid to communities in master planning. (The Natural Resource teams are made up of the Department's personnel, the Division of Fisheries and Game, the Extension Services and the U.S. Soil Conservation Service.) Inventories are developed and recommendations made to the community. It is the community's responsibility to incorporate those elements of the team's technical report into their over-all master plan.

- 4) Technical aid to private landowners and community recreation agencies in developing outdoor recreation facilities.

Michigan. Michigan recently passed a \$100 million recreational bonding referendum, \$30 million of which is available as seed money for local development. Primarily these funds are matching funds in the proportion of 25 percent state, 25 percent local and 50 percent federal funds. The \$100 million program is basically a five year program; however, additional bonds can be sold and the program extended by legislative act.

Minnesota. The state of Minnesota has a state incentive or matching program for local or regional development that is financed by a lump sum appropriation made from a special tax on cigarettes. Minnesota statutes provide that twelve and one-half percent of the revenues received from the cigarette tax fund be credited to a special "natural resources fund".

Nebraska. The state of Nebraska has a program whereby a one cent cigarette tax is made available to local governments to match federal grants.

Nevada. Nevada has one small program which does not require local matching monies. Monies from the Marine Fuel Tax Fund are made available to local entities for the development of boater-oriented facilities.

New Jersey. In 1961 New Jersey enacted a \$60 million Green Acres Bond Acquisition Program. The act provided that \$40 million be utilized for the acquisition of state-owned lands. The remaining \$20 million was made available to counties, municipalities, etc., on a 50 percent matching basis for acquisition of open space lands for park purposes. The Chief of Parks reports that practically 95 percent of the funds provided have already been spent for acquisition of open space lands and there is a dire need for an additional Green Acres Acquisition Program.

New York. The state of New York has two major grant-in-aid programs for regional, county and municipal park acquisition and development. The original bond issue, in 1960, of one-hundred million dollars for acquisition of lands is practically exhausted. Subsequently, an additional two-hundred million dollar bond issue has been available for acquisition and development with primary emphasis on development. The second \$200,000,000 program is already fully committed. No details of the criteria for distribution or percentage of matching monies required were given.

North Carolina. North Carolina has no monetary or matching system to encourage local or regional park development. However, consultant and advisory assistance in matters of planning is available through the Recreation Division of the Department of Local Affairs.

North Dakota. At present North Dakota has no state incentive program to local governments for park development. However, the Park Service reports that they expect the subject to be before the legislature this January.

Oregon. Oregon provides financial assistance to local governments in two areas: 1) development of boating facilities and 2) assistance in maintenance of local museums. Direct consultation and advice is also available to units of local government.

Pennsylvania. Pennsylvania has two programs. The first provides \$70 million for the acquisition of lands for recreation, conservation and historical purposes, of which \$20 million is allotted for local government assistance. The 1964 act authorized issuance of bonds to raise the \$70 million, pursuant to an enabling constitutional amendment approved by the voters in 1963. Under the program the state is to pay 50 percent of the cost of lands to be acquired by political subdivisions for recreational, conservation and historical purposes. The second program pro-

vides \$500 million, of which \$75 million is allotted to local governments for planning, development and acquisition purposes. This legislation was passed in 1967 pursuant to a constitutional amendment passed in 1967. Under the program the state grants-in-aid to political subdivisions provide up to 50 percent of the cost of acquiring and developing park, recreation and open space lands and for studies conducted to determine park and recreation needs and the location of facilities.

Rhode Island. Since 1964 Rhode Island has had a Green Acres Land Acquisition Program whereby state financial assistance is available to local governmental units to acquire lands for recreation and conservation purposes. An application for state funds shall include the following: 1) a description of the land to be acquired; 2) a statement of the purposes to which the lands will be devoted; and 3) a comprehensive plan for the development of the land approved by the governing body of the local unit. Once the regulations concerning the administration, use and development of the lands have been adopted, they cannot be altered without the approval of the state program director.

The state will provide 50 percent of the non-federal share of the cost of acquisition in the case of a single local unit. In the case where two or more contiguous units have joined together to present a joint comprehensive plan for development, the state will provide 75 percent of the non-federal share of the cost of the lands.

Vermont. Vermont has a program to assist local park development. Where 50 percent Federal Land and Water Conservation funds are available, the state will provide 40 percent and the local government pays 10 percent of the project cost.

Washington. As a result of two state referendums, one for authorizing \$10 million and the other for \$40 million, as well as an initiative to allow the use of unreclaimed taxes paid on gas consumed in water craft, 50 percent of the proceeds are passed onto local agencies on a matching basis. (The director of the Parks and Recreation Commission indicated that "This has had a very delightful positive effect upon the growth of parks and recreation in the State of Washington. It should also be noted that a part of the increase in local parks and recreation programs is a result of our consultation service.")

Wisconsin. Through its Outdoor Recreation Act, the state provides the following grants-in-aid:

- (1) \$1 million annually for acquisition and development of local parks;
- (2) \$350,000 annually for recreational lake development;

- (3) \$50,000 annually for long-range natural resources planning;
- (4) \$45,000 annually for engineering site planning local parks;
- (5) \$100,000 annually for recreation area development on county forests entered under the state law (28 counties);
- (6) \$200,000 estimate annually for snowmobile registration which is returned to counties for trail construction;
- (7) \$100,000 annually for developing boat access to public waters.

#### RELATIONSHIP OF ADMINISTRATION OF PARKS TO GAME AND FISH

In an attempt to obtain a clear picture of the administration of game, fish and parks in Colorado, particularly the relationship of game and fish activities to park programs, the Council staff interviewed personnel of the Department of Natural Resources, members of the Game, Fish and Parks Commission, and the Game, Fish and Parks employees. The goal of the staff was to attempt to identify park services and personnel integrated with game and fish operations, areas of cooperation, and general impressions of the staff as to the relationships of the two programs.

The comments and observations that follow are the outcome of hours of discussion with Tom Ten Eyck, Director of Natural Resources; Harry Woodward, Director of the Game, Fish and Parks Division; George O'Malley, Assistant Director for Parks; Larry Riordan, Assistant Director for Field Operations; several Game, Fish and Parks Commissioners; regional game, fish, and parks managers; regional parks managers; the Budget Officer and Chief Accountant; Division of Administration, Department of Natural Resources; and numerous other Game, Fish and Parks personnel.

#### Legislative History of the Game, Fish, and Parks Division

Pursuant to the provisions of Chapter 216 of the Session Laws of Colorado 1963, the powers, duties, functions, funds, and properties of the State Park and Recreation Board were transferred to the Game and Fish Department and the Department was thus renamed the Department of Game, Fish and Parks. At the same time

the Game and Fish Commission was given regulatory and policy-making authority over park and recreation matters and renamed the Game, Fish, and Parks Commission.

As a result of executive reorganization via the Administrative Code of 1968, the Department of Natural Resources was created and the Game, Fish, and Parks Department became a Division within the Department of Natural Resources.

Game, Fish, and Parks Commission. When the responsibility for parks and recreation was placed in the newly named Game, Fish, and Parks Department in 1963, the composition of the Commission was also changed from nine to eleven members -- eight from designated game and fish (and later parks) districts, two at-large members and the Governor as an ex officio member. In addition the following amendment was made to Section 62-2-1 (2) (a), Colorado Revised Statutes:

No person shall be appointed a DISTRICT member of the commission unless he shall be well informed on the ~~subject~~ SUBJECTS of wildlife conservation and restoration, AND OUTDOOR RECREATION.

And finally the following provision was added regarding the selection of the at-large members:

NO PERSON SHALL BE APPOINTED A MEMBER FROM THE STATE AT LARGE UNLESS HE SHALL BE WELL INFORMED ON THE SUBJECTS OF PARKS AND OUTDOOR RECREATION. 1/

In 1967 the Coordinator of Natural Resources replaced the Governor as the ex officio member of the Commission and Senate consent was required in the appointment of Commissioners. 2/ The 1968 Administrative Code named the Director of the Department of Natural Resources as the ex officio member. The 1969 recodification of Chapter 62, Colorado Revised Statutes, reduced the Commission to ten members with the Director of the Division of Game, Fish and Parks serving the Commission as recording secretary. Two of the Commissioners are appointed at-large and two members each from the four districts created by statute. 3/

1/ Section 62-2-1 (2), (c), C.R.S. 1963.

2/ Chapter 39, Session Laws of Colorado 1967, p. 54.

3/ Chapter 62, Colorado Revised Statutes, Volume 11.

## Organization of the Division

Appendix A contains an organization chart for the Game, Fish and Parks Division. There are four main sections within the Division each headed by an assistant director -- Parks and Recreation Planning, Game and Fish Planning, Field Operations, and Services. The Division has 514 full-time-equivalent (FTE) authorized positions as of July 1, 1970. Approximately 80 of these positions are paid for out of Parks Cash and these employees devote most of their time to parks activities. The remaining 434 employees are paid with Game Cash Funds and devote the majority of their time to game and fish activities.

### Services Section.

The Services Section is responsible for business management for the entire division. Purchasing, warehousing, data processing, etc., are all responsibilities of the Services Section. There is a large public relations unit of 25 persons which is responsible for developing and maintaining public support for the division's programs, activities, and functions. The Services Section is also responsible for all the land and water acquisition and leasing and contracting with concessionaires to run facilities at Game, Fish, and Parks areas. In addition, the Services Section is responsible for contracting with agents such as sporting goods stores, etc., to sell hunting and fishing licenses, boat permits, etc. The monthly sales reports are forwarded to the accounting section, where the accounts are reconciled and records kept.

Of approximately 60 positions in the Services Section, Game Cash monies pay for 57 positions and Parks Cash pays for three. Two of the Parks Cash positions are in the licensing section and the other is a janitorial position. Most of the services provided by the Services Section such as purchasing, warehousing, publications, etc., lend themselves well to benefitting both the game and fish and parks programs.

Division of Administration, Department of Natural Resources. Some of the functions which were formerly performed by the Game, Fish, and Parks Division have been transferred to the newly created Division of Administration in the Department of Natural Resources. In the fall of 1969, the budgeting, accounting, and personnel functions were transferred from the Services Section of Game, Fish and Parks to the Division of Administration. While the personnel who perform these functions are still located at the game, fish and parks offices, they are now departmental employees. However, while they are nominally department employees, they are still paid out of Game, Fish and Parks funds (largely Game Cash). Even though the major share of their time

is spent on Game, Fish and Parks matters, since it is by far the largest division in the department, they nevertheless perform services for the other divisions and the department as a whole. This arrangement is a cause for some concern especially to people who are attempting to insure that Game Cash monies are spent only on functions directly related to game and fish matters. It has been suggested therefore that these personnel should be part of the department's budget or the divisions should reimburse the department for that portion of personnel time spent on their agency's budget, accounting, or personnel matters.

It is possible that in the future the Division of Administration may take over more of the administrative functions presently performed by the divisions. For example, the Division of Administration might assume responsibility for purchasing for the entire department. Data processing is another function which might logically be moved to a departmental administrative office. However, staff of the Services Section of Game, Fish, and Parks explain that even though some of these functions might be moved out of the Division, they will continue to have quite a bit of responsibility and work in these areas. For instance, although the personnel function was transferred out of the Services Section to the Division of Administration, the Assistant Director for Services and his secretary still spend time on personnel matters.

#### Game and Fish Planning

The Game and Fish Planning Section, as the title indicates, is concerned solely with game and fish matters, primarily planning and research. The 47 employees in the section are paid entirely from Game Cash monies. This section is responsible for all game, fish and land planning activities. The section administers and supervises the federal aid game and fish program -- specifically those under the Pittman-Robertson, Dingell-Johnson, and Commercial Fisheries Research Acts. The section also has an Environmental Resources Chief who is responsible for liaison and coordination relating to developing water resources and highway construction programs.

#### Parks and Recreation Planning

The smallest section in the Division is the Parks and Recreation Planning Section. There are a total of 33 positions in this section -- 14 of the positions are strictly related to parks and recreation matters and paid for out of Parks Cash. The Parks Cash personnel in this section are as follows: two administrative assistants and a secretary who are responsible for administering the federal Land and Water Conservation Program; a senior planner, an interviewer, a statistician and a clerk who are re-



sponsible for state-wide comprehensive outdoor recreation planning; a parks program coordinator and secretary who are responsible for planning, developing and evaluating the state parks program, and concession negotiation; two landscape architects and a junior engineer technician; and the Assistant Director for Parks Planning and his secretary.

The section's organization chart also shows a recreation planning unit headed by an outdoor recreation counselor who would counsel with political subdivisions on development of their outdoor recreation programs. While funds have been requested to fill the three positions in this unit, the positions have never been funded.

The largest unit in the section is the engineering unit. In addition to the two landscape architects and one junior engineer technician who work on parks projects, there are 19 other engineers in this unit who work solely on game and fish projects and are paid out of Game Cash monies.

### Field Operations

By far the largest section in the Division of Game, Fish and Parks is the Field Operations Section. There are over 300 employees in this section. There are 23 people in administrative positions in Field Operations, most of them located in the central Game, Fish and Parks office in Denver. These persons include the Assistant Director of Field Operations, a coordinator of field operations, personnel in game and fish management services, law enforcement administration, and hunter safety. The balance of the employees in this section are actually in the field working in law enforcement, on fish rearing or hatchery units, game management areas, state park and recreation areas, or in the regional office. Approximately 61 of the field staff are parks personnel and the remaining 239 are concerned primarily with game and fish programs.

The state is divided into four regions for the purpose of field operations. Each region is headed by a regional manager who is responsible for both game and fish programs and park services in his area. An assistant regional manager is assigned to each region. These assistants work directly with the regional manager and are primarily responsible for the activities of the area supervisors engaged in game and fish activities. The regional parks managers report directly to the regional manager and supervise all of the state recreation areas.

All requests for purchasing, use of equipment, etc., must go through the regional manager. Thus under this organizational arrangement, the establishment of priorities for use of equipment and services will be determined by the regional manager. The

training, orientation, and interests of the regional manager probably have considerable bearing on the establishment of program priorities for the regions.

Other regional staff positions include the regional game and fish biologists, aerial operations, a regional office maintenance crew and a regional motor pool. Office space equipment is shared by the game and fish personnel and the parks personnel. Fairly extensive records are kept of the supplies used by the parks personnel and the Parks Cash fund is charged with this expense.

There is common use made of the equipment in the region. In most instances, the game and fish program has the majority of the equipment and the parks program has benefitted from the use of this equipment. However, since much of the equipment was purchased with Game Cash funds, game and fish projects often take priority over park projects in the assignment of equipment.

The balance of the regional field operations staff is assigned to areas within the region. Each area has a supervisor who oversees the Wildlife Conservation Officers (WCO's) and the rest of the staff working in his area. Personnel other than the WCO's work on fish rearing and hatching units or on wildlife management areas. The personnel assigned to these positions are principally game or fish biologists or wildlife conservationists and have little if any contact with the parks personnel and projects. One exception to this statement is at the Rifle Fish Hatchery where the personnel of the hatchery have worked closely with the parks personnel at Rifle Falls Recreation Area.

Cooperation in Field Operations. When the parks function was merged with the Game and Fish Department in 1963, perhaps it was anticipated that there would be a good deal of cooperation and common use of staff between the game and fish and parks programs. This has developed to a certain degree. Wildlife Conservation Officers are assigned to certain areas in a region and one of their primary functions is to check fishing and hunting licenses, size limits, bag limits, etc. When they are performing this function at recreation areas, they also are authorized to check boat licenses and park permits. They may also be used to perform certain other duties on park and recreation sites, especially during the peak season. They have assisted in some maintenance functions such as emptying trash barrels, building privies, etc.

Parks personnel are also used in the game and fish programs. Most parks personnel are authorized to check fishing and hunting licenses and do this routinely when they are checking boat licenses in the summer. Parks personnel are kept busy during the peak season with parks responsibilities but during the off season are frequently used in the game and fish program. For

example, during the big game season, parks personnel generally man the game check stations. Sometimes they are involved in building game control fences, etc.

While there has been some common use of personnel, it has not always occurred as voluntarily and naturally as might have been anticipated. As one regional Game, Fish and Parks manager said, "Cooperation between game and fish and parks personnel has occurred because we make it occur. We plan it that way." In some cases the WCO's may have been reluctant to perform some of the more menial tasks connected with parks maintenance and parks personnel may have preferred to devote time to parks rather than spend time on game and fish projects.

### General Observations and Comments

#### Game Cash Fund

A topic which constantly recurred in Council staff discussions with game and fish personnel involved the sanctity of the "Game Cash Fund". Game and fish staff appear to be intent on insuring that the fund remains inviolate and, perhaps, rightly so. In 1969, the General Assembly gave clear direction in the recodification of game and fish laws that steps be taken to keep an accurate account of expenditures by purpose. <sup>4/</sup> Of course, sportsmen's organizations and wildlife groups have been active in reviewing the Division's records and procedures to see that this mandate is implemented.

Unfortunately, the careful separation and delineation of expenses is not complementary to fostering integration and co-operation of game activities with park management. Perhaps, the delineation of funds even fosters an attitude of distrust and resentment among Division personnel. Tedious accounting of office space, equipment use, personnel time allotted to one or another function, etc., contribute to the division of employee loyalties.

In part, the separation of funds has contributed to an apparent reluctance on the part of a number of employees to "get together" in the true sense of a Division. Each seems to feel an allegiance to his own special interest whether it be game, fish, or parks. Because of such attitudes, the Division has in some

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<sup>4/</sup> Section 62-2-15, C.R.S. 1963, 1969 Supp.

respects been merged in name only. Again, there is constant pressure from outside groups to make sure Game Cash is used on game and fish projects only. Many Division personnel feel that as long as special interest groups continue to keep this issue in the limelight, the Division can never truly be integrated.

Some individuals contend that the issue would simply die if the General Assembly appropriated funds to reimburse the Game Cash Fund for monies allegedly spent on parks. It is estimated that \$250,000 of Game Cash has been spent on parks and has not been repaid.

It also has been suggested that in addition to appropriating funds to the parks program to pay this outstanding debt, substantial new park monies are needed to fund the parks program at a level that would insure operation independent of Game Cash support. A final part of this recommended solution would entail the appropriation of surplus Game Cash funds. For the last two years this surplus has been over three million dollars.

A second, more radical, solution calls for the elimination of the Game Cash fund altogether. Proponents of this solution contend that the department has sophisticated enough accounting procedures to provide a reasonable allocation of receipts and expenditures by source and purpose. Such accounting would meet requirements of Pittman-Robertson and Dingell-Johnson monies. Some states including Michigan and several Eastern states have abolished their Game Cash funds with no loss of federal funds.

#### Role of the Game, Fish and Parks Commission

A fundamental question is whether the Game, Fish and Parks Commission as currently constituted has adequate time to spend on park matters after lengthy deliberations relating to game and fish. Some responses to this question, including responses from some Commission members themselves, indicated that due to lack of time, and sometimes interest, the Commission gives only cursory examination to parks matters. On the other hand, others responded that the Commission has adequate time to devote to all the items on its agenda. It was pointed out for example that the Commission has formed a Parks Committee within its own membership.

One factor that may hamper the Commission in its deliberations concerning parks is that eight members represent regions and sometimes tend to promote regional interests. This fact might tend to undermine the Commission's goal of developing a parks program that will result in maximum benefit to the state as a whole. It was pointed out that the Commission has never assigned capital construction priorities to parks and recreation areas. Perhaps the Commissioners have not been able to reach

agreement on such priorities because of their regional interests. It may be argued that members of the General Assembly may have loyalty to their own district but this regionalism is balanced by the fact that there are 100 members in the General Assembly. However, this balancing factor may not be present in a ten-man Commission.

#### Difference in Philosophy and Orientation of Game and Fish and Parks Personnel

As was pointed out earlier, game and fish and parks personnel work together and sometimes share responsibilities particularly in the field. However, in some cases the game and fish personnel begrudge the time they spend on parks and vice versa. Variations in educational backgrounds, experiences, and orientation of the personnel probably contribute to such negative attitudes. For example, Wildlife Conservation Officers usually have training in wildlife conservation or technology and their primary occupational interest is game and fish. Many of the parks managers have had formal training in parks and recreation and are concerned with problems of people and high density recreation. Instead of spending their "off-season" time at game check stations they would rather be developing their park areas.

An example of the difference in philosophies that can sometimes lead to disagreement might be the proper way to develop an area around a reservoir. A parks man might favor thinning the trees to provide spaces for camping and scenic access to the water. A game man might envision the thick growth as an ideal habitat and breeding area for game birds and would oppose thinning or trimming the trees. Such different approaches can lead to strife and make cooperation difficult.

A final problem is that the parks personnel in many ways are still regarded as "newcomers" to the Division. For the most part, they are under the supervision of game and fish personnel. This feeling of subordination to superiors who are not always sympathetic to their programs is frustrating to many parks personnel. They feel that not until they can talk to the game and fish people as their equals will the parks program receive the recognition it deserves.

#### Role of Department of Natural Resources

The departmental concept envisioned in the 1968 Reorganization Act is starting to become a reality as departmental budgets are developed and more functions are centralized in departmental offices. As explained earlier, a number of former division functions have been transferred to a newly created departmental administrative office. It is conceivable, if not probable, that with time more functions may be taken over by the

department. For example, purchasing, publications and even engineering might be services that could be performed by departmental employees and made available to all component divisions.

In the event that Game, Fish and Parks were separated into two divisions, the Department of Natural Resources could be a strong force in insuring that similar activities are integrated. Furthermore, reorientation of personnel by fostering departmental loyalties might assist in giving broader perspective to existing programs and services.

### Internal Reorganization

A question may be asked as to whether internal reorganization could reduce personnel conflict and make the Division a more viable force. Although reorganization might not serve as a total solution, it could reduce some of the conflicts that are apparent within the Division. For example, one of the major frustrations to the parks personnel in the central office is that they do not have a direct line of communication to parks personnel in the field because of the involved line authority of the field operations section. Perhaps some reorganization could be instituted so that parks planners could work more directly with parks personnel in the field, fish planners with the fish biologists and hatchery and rearing personnel in the field, and so on.

## ORGANIZATION OF PARK AGENCIES IN 42 STATES

In early June of 1970, the Legislative Council staff sent a questionnaire to all the other states inquiring about each state's organization of their parks and recreation agency. Of the 42 states which responded, seventeen have separate departments of parks and recreation, 24 have a separate division of parks and recreation within a department (usually a conservation or natural resources department). A few have other responsibilities in addition to parks and recreation such as the care of historic sites or the state forests. A majority of the states have advisory boards or commissions for their park agency, whose powers vary from purely advisory to the policy making authority for the parks and recreation agency. With the single exception of South Dakota, which has a Department of Game, Fish and Parks, all of the other states have separated Game and Fish from Parks.

Many of the letters from the states included opinions about the need for a separate parks and recreation department. For example, William Penn Mott, Director of California's Department of Parks and Recreation stated that:

I would like to strongly recommend that you consider setting up a separate park and recreation department to administer Colorado's state parks. This is a full-time responsibility and requires the very careful attention and expertise of a staff that understands the natural and historical preservation problems of the state as well as the recreation needs of the people living within the state.

Kermit McKeever, Chief, Division of Parks and Recreation, West Virginia Department of Natural Resources, wrote the following:

In many states the park and recreation program has experienced outstanding growth over the past several years and can expect such to continue in the future. I believe it will be imperative in most progressive states in the near future that a Department of Parks and Recreation be established to take care of the state's needs and to assist the lower levels of government in developing sound park and recreation programs for their entities.

Several of the states also remarked upon the current trend toward consolidating all those agencies dealing with resources into one large department. Lawrence Stuart, Director, Maine State Park and Recreation Commission made the following observation:

I must comment that Maine is recognized as having a strong State Park and Recreation System

and I am sure that the reason we have been able to do so well has been due to the fact that we have not been under the domination of the special interest of Fish and Game, Forestry, etc. The sad part of the story is that because we have done so well and because we have been designated as the Liaison Officer with the Federal Government and have some control over the disbursement of federal funds, there is a movement afoot now for the reorganization of all Natural Resource agencies into one monster department with a "secretary" in charge answerable to the Governor.

Suggestions for remedying Colorado's present structure of the Division of Game, Fish, and Parks were also offered. Connecticut's Director of the Park and Forest Commission made the following proposal:

I would heartily encourage the State of Colorado to give thought to decentralization, rather than centralization. I would recommend that a separate commission be established to be responsible for the Park Division in the Department of Natural Resources, entirely separate from the Game and Fish Commission.

On the other hand Oris J. Scherschligt, Chief, Division of Parks and Recreation, Department of Game, Fish and Parks, South Dakota, who is familiar with the Colorado system, recommended that:

It appears to me that the internal organization might be the problem in Colorado. Placing the parks' field operation under the game and fish regional supervisor is undesirable. Instead a parallel regional field supervisor for parks, not under the supervisor of the regional Game, Fish and Parks director and reporting directly to the parks chief would return control of that function to the parks division.



## PUBLIC USE OF STREAMS

On July 17, 1970, the Committee held a public hearing on the question of whether public recreational use could be made of stream beds or banks in areas in which the lands adjoining a stream are held in private ownership. Perhaps this question arose from the growing concern on the part of members of the General Assembly to meet the increased demand for recreational opportunities, particularly water-based activities, for the state's expanding population. In exploring the problem of public access to streams and lakes, the staff attempted to compile information on court decisions in Colorado and other states. However, this summary is not intended to be a legal critique of the problem, but simply an expression of some of the recent concerns of courts and individuals in regard to the availability of such lands for public use.

### General Approaches to Public Access

According to Joseph B. Gaudet, in an article in the California Law Review:

There are presently two general views in the United States on the right to use a body of water for on-site recreational purposes. A minority of states follow the traditional common law rule that under all circumstances the owner of the bed has exclusive use of a body of water for recreation. The majority of states have, to varying degrees, discarded or rejected title to the bed as controlling and have focused on the suitability of a body of water for recreational use. Some states have gone so far as...to allow recreational use by anyone who may gain access without trespassing on the uplands (the land above ordinary high water level of the lake or stream). One state (Missouri)... allows a fisherman to walk on a privately owned bed.... 5/ (Parenthesis added.)

5/ Water Recreation -- Public Use of "Private" Waters, 52 Cal. L.R. 171. Eldor v. Delcours 364 Mo. 835; 269 S.W. 2d 17. In this case, the court held that even though the river was non-navigable, and was privately owned, the river was a public way over which the public had a right to proceed. Furthermore, since the fish in the river belonged to the state the public also had a right to fish in the river.

In any event, recent decisions of the courts of the various states have begun to emphasize the importance of water for recreation.

Navigability. Generally, two major terms keep recurring in most legal opinions and discussions of the public right to use water for recreational purposes -- "navigability" and "beneficial use". It is almost universally accepted that the public has a right to use the surface of "navigable" waters. On the other hand, the riparian owners of lands adjoining non-navigable streams have the exclusive right to use the surface of such waters under common law. Needless to say, the definition of what constitutes "navigability" has been a major issue in many disputes concerning public access. Furthermore, the states have not been consistent in establishing criteria for navigability or the applicability of the concept.

Corpus Juris Secundum points out:

Waters may be considered navigable for some purposes and not for others,...and a stream may be navigable and floatable in the sense that it is a highway for navigation and is subject to that easement, but not navigable in the sense that the ownership of the bed of the stream is retained by the public. (cited are: Hobart-Lee Tie Co. v. Grabner, 219 S.W. 975, 206 Mo. App. 96., Luscher v. Reynolds, 153 Or. 625, 56 Pac. 2d 1158.) It has been held that the term "navigable" has been extended and includes waters that are not navigable in the ordinary sense, and that the question whether or not waters are navigable depends on the natural availability of waters for public purposes, taking into consideration the natural character and surroundings of a lake or stream.... (Parenthesis added.)6/

The legal concept of navigability embraces both private and public rights and this, according to one author, results in a situation where the different interests cannot be determined by simple formula which would fit all streams and all types of circumstances at any given time.

"Diverse elements enter into application of the legal tests as to navigability, and such tests must take into consideration variations in the uses to which streams may be put and in the density of the traffic. To be navigable, a body of water must be permanent in character, of sufficient size, and so situated that it may be used for purposes common or useful to the public in the locality...." <sup>7/</sup> For example, the Wisconsin Supreme Court has held that a stream may be considered to be navigable if it is possible to float logs, rafts of lumber, etc. The ability to float such items need not be continuous throughout the year but must occur annually. Following on this test of navigability, the court ruled:

We take it that a stream which is of sufficient capacity to float logs is of sufficient capacity to float some kind of a boat or skiff,...and if there are some places where, in consequence of bars or other obstructions, neither logs nor boat will pass without human help, the boat may be aided down the stream...without trespass on the banks. <sup>8/</sup>

Expanding Wisconsin's concept, the Michigan courts have ruled that a stream was navigable although the only evidence for this conclusion was the fact that it had once been used for logging and this practice had long been discontinued. <sup>9/</sup>

In the above-cited cases, the general rule is that the owner of the adjoining lands retains ownership in the bed of the stream, subject to the right of the people to use the water for navigation within the limits defined by the courts. Generally, in these states, the right to use the waters for recreation is considered to be an incident to the public easement of navigation.

Historically, navigability has been a major test or criteria concerning public use of a stream. However, in some jurisdictions the courts are considering other factors. The public may be entitled to fish (and perhaps carry on other recreational activities) despite the objections of the landowner.<sup>10/</sup> In some jurisdictions it has been recognized either by statute or deci-

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<sup>7/</sup> Ibid. p. 63.

<sup>8/</sup> Olson v. Merrill, 42 Wis. 203, cited in Willow River Club v. Wade, 76 N.W. 273; 100 Wis. 86.

<sup>9/</sup> Ne-Bo-Shone Assn. v. Hogart, 81 F. 2d 70 (1936).

<sup>10/</sup> 47 American Law Reports Annotated, p. 395.

sion that the particular character (physical capacity) of the lake or stream for one or more public uses determines whether the lake is public or not.<sup>11/</sup> In Arkansas, a 1945 decision concluded that it had always been the law to allow the public to hunt or fish on privately owned land that had not been enclosed. Finally, the application of the general rule that public access depends on navigability may yield when a statute authorizes the public to fish in non-navigable waters.<sup>12/</sup>

Beneficial Use. The Council staff prepared a memorandum for the Committee on Game, Fish, and Parks in 1968, concerning the beneficial use of water. The memo was devoted to the problem of appropriating water for game and fish and other recreational purposes. Briefly, the memo pointed out:

...Colorado's Constitution provides three categories of water uses that have superior rights over any other water appropriations (domestic, agriculture and manufacturing). However, in all other possible categories of surface water appropriations, Colorado law appears to be silent as to the priority status that should be given to lesser appropriations, e.g., recreation, mining, hydro-electric power, etc. Furthermore, in regards to recreation, Colorado statutes apparently do not specifically define, other than by implication, that recreation would be considered to be a beneficial use of water...."<sup>13/</sup>

This was changed in 1969 when the General Assembly specifically declared recreation to be a beneficial use.<sup>14/</sup>

Although there may not appear to be any relationship between the problem of appropriating water for a beneficial use and public recreation of the stream (surface water and banks), Joseph Sax, points out:

<sup>11/</sup> 57 American Law Reports Annotated, p. 570.

<sup>12/</sup> Medlock v. Galbreth, 208 Ark. 681; 187 S.W. 2d.545; Cited in 47 American Law Reports Annotated, p. 395.

<sup>13/</sup> "Water For Recreational Use", Memorandum No. 5, Committee on Game, Fish and Parks, Colorado Legislative Council staff, March 27, 1968.

<sup>14/</sup> Chapter 373, Session Laws of Colorado 1969.

A majority of states now hold that there is at least some public right of recreation in streams and lakes.... Typically, a claim is made for public right to float, or walk down a stream and fish, free of efforts by owners of riparian land (owners of the land adjoining or including the bank of the stream) to fence the stream.... To the extent that the public right or easement is recognized, the state can be said to recognize recreational uses as beneficial. However, it should be noted that the problem in these cases is not the typical competition among users for a limited supply; rather it is a conflict between a limited and restrictive use and a very broad public use.... 15/ (Items in parenthesis added.)

Mr. Sax closes the above discussion with the following question:

....Since recognition of a public right to recreation tends to enlarge the uses of waters within a state, could it be said that under the usual economic tests...where the goal is enlarging national income, a public right of fishery is clearly a beneficial use or a more beneficial use than is any power of exclusion in riparian owners?..... 15/

#### Public Rights In Various States

Wyoming. In 1961, the Wyoming Supreme Court adopted the position that the public had a right to the use of waters suitable to public use irrespective of land ownership or any test of navigability. The court said:

Irrespective of the ownership of the bed or channel of waters, and irrespective of their navigability, the public has the right to use public waters of this state for floating useable craft and that use may not be interfered with or curtailed by any landowner. It is also the right of the public while so

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15/ Joseph L. Sax, Water Law, Cases and Commentary, Boulder, Colorado, Pruett Press, Inc., 1965.

lawfully floating in the states water to lawfully hunt or fish or do any and all other things which are not otherwise made unlawful. 16/

It should be pointed out that this Wyoming decision restricted the public's right to the use of the waters themselves and granted to the public the use of the beds and banks of the stream only to the degree that such use was incidental to floating. Wading or walking on the stream bed or bank was disallowed but the court said that the bed of the stream or channel may be scraped by the boat's bottom and people may disembark to pull, push or carry the craft over the obstruction. 17/

Minnesota. Perhaps one of the earliest decisions supporting the concept that the public has a right to use waters which run over privately owned land (even if they were not classed as navigable) because they are suitable for a broad public use, was Lamprey v. State (Metcalf), Minnesota 1893. In this decision the court said in part:

...if under present conditions of society, bodies of water are used for public uses other than mere commercial navigation, in its ordinary sense, we fail to see why they ought not to be held to be public waters, or navigable waters, if the old nomenclature is preferred. Certainly, we do not see why boating or sailing for pleasure should not be considered navigation, as well as boating for mere pecuniary profit. Many, if not the most, of the meandered lakes of this state, are not adapted to, and probably will never be used to any great extent for commercial navigation; but they are used -- and as the population increases, and towns and cities are built up in their vicinity, will be still more used -- by the people for sailing, rowing, fishing, fowling, bathing, skating, taking water for domestic, agricultural, and even city purposes, cutting ice, and other public purposes which cannot now be enumerated or even anticipated. To hand over all these lakes to private ownership, under any old or narrow test of navigability, would be a great wrong upon the public for all time, the extent of which cannot perhaps, be now even anticipated. 18/

16/ Day v. Armstrong, 362 P. 2d 137 (Wyo. 1961).

17/ Day v. Armstrong, 362 P. 2d 137 (Wyo. 1961).

18/ Lamprey v. State (Metcalf), 53 N.W. 1139 (Minn. 1892).

Colorado. In Hartman v. Tresise (1904), the Colorado Supreme Court ruled that a 1903 statute, allowing the public the right to fish in any public stream in the state, stocked at the public expense, was unconstitutional because it attempted to make lawful, a trespass by one man on the property of another contravening Article 2, Section 15 of the Colorado Constitution which prohibits the taking of private property without just compensation.

In this case, the action was brought by a property owner (the plaintiff) to prevent another (the defendant) from fishing in a natural stream flowing through his property. The District Court ruled in favor of the defendant upon the grounds that citizens of Colorado have the constitutional and statutory right to fish in its natural streams, particularly when the waters thereof have been stocked with fish at public expense, against the wish and protest of the owner of the land through which the stream flows. The District Court said:

The ratification of this (Colorado's) Constitution by the United States government amounted to a declaration on the part of the government that the state should have a perpetual easement over the public lands of the United States for the natural streams contemplated by the Constitution, of which these streams were a part, and that all persons acquiring a part of the public domain acquired the same subject to this constitutional provision and this right of the state. 19/ (Word in parenthesis added.)

Apparently the provision referred to above, is Section 5 of Article 15, Colorado Constitution which declares that the water of every natural stream is public property, subject to the right of appropriation as later provided.

On review of the case, the Supreme Court held that the District Court ruling was in error for two reasons. First, under the terms of the Enabling Act, when Colorado became a state, it gave up the right to dispose of public lands and recognized the right of Congress to dispose of the same. When Congress did sell these lands, the patent to the lands did not contain any easement or reservation of any public right of fishery. Secondly, the power of the state is not such that it can, without compensation to the owner, take any part of the lands from him for the use of another without just compensation. The Supreme Court said:

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19/ Hartman v. Tresise, 84 Pac., 685 (1904).

....Neither the state, nor an individual, nor a corporation to whom the right of eminent domain is delegated, can take private property for public use without just compensation; much less can the state, without any compensation at all take the private property of one, and give it to another citizen to be enjoyed by the latter for a mere private use. The Legislature cannot make lawful a trespass by one man upon the lands of another by providing that, if any damage is thereby done, a recovery therefor may be had. That is just what our General Assembly by its statute has attempted. But the act contravenes the provisions of section 15 of article 2 of our state Constitution, and is clearly in conflict with the laws of Congress relating to the disposition of the public domain.<sup>20/</sup>

In the above quoted decision Justices Gabbert, Goddard, and Maxwell agreed in the majority opinion - Justice Gunter concurred specially, but believed the decision should have been based on different grounds. However, Justices Steele and Bailey dissented. The dissent may be of interest in view of public access rights granted in other states.<sup>21/</sup>

Justice Bailey argued that it is a rule of law that when the title to the bed of a river is in one owner and the title to the water is in another, the right of fishery follows the owner of the water -- in this instance, the people of the state of Colorado. The Constitution provides that the title to all waters in the state are property of the public until they are appropriated for specific uses. They are dedicated to the uses of the people to be used as they see fit subject only to one condition; that of the right of appropriation for beneficial uses. "It is idle to say that the waters of the streams are dedicated to the public for the purpose of appropriation, because these are not the words of the Constitution. It is a grant made subject to that right... If the dedication to the people was for appropriation, there is no dedication...." <sup>22/</sup>

In as much as the right of public fishery has always existed in streams known as public streams, the right of fishery exists in the natural streams of Colorado, because, the water being dedicated to the public, makes the streams in which that water

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<sup>20/</sup> Ibid., p. 687.

<sup>21/</sup> Ibid., p. 688-694.

<sup>22/</sup> Ibid.



flows, public streams. It is scarcely correct to say that the right of fishery existed in navigable streams simply because they were navigable. The act of fishing is not necessarily connected with the act of navigation. Their being navigable made them public and their being public gave them the right of fishery. So that, it ought not to be said that fishing is limited to navigable streams. Navigation is only one of the ways by which a stream may be made public. There is no higher authority for making a stream public than the declaration of the people themselves, in their compact of organization dedicating it to the use of the people.... When by the Constitution, the water of the natural streams of the state was declared to be the property of the public, and was dedicated to the use of the people, there was also dedicated to their use a right of way through the channel of every natural stream of the state, because such right of way is a necessary incident to the full and complete use and enjoyment of that grant, and no private ownership can defeat such right of way...." 23/

### Summary

R. E. Clark notes that the common law of inland waters has been dependent on doctrines developed from the law concerning coastal waters which owe their debt to the law of the sea itself. 24/

That historical development explains in large part our contemporary emphasis upon "navigability" as a test of the public interest in inland waters; ....

Another major historical factor that has influenced the law of the public interest in inland waters, is that until recently, the public exerted no substantial demand for the use of inland waters other than for transportation and, to a lesser extent, for fishing.... With the passing of time, of course, people have gradually been able to make more and varied uses of our inland waters. But,

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23/ Ibid., p. 692.

24/ Waters and Water Rights, Robert E. Clark, Ed., Vol 1, p. 203.

even so, at the time the United States was formulating its laws concerning inland waters, a substantial and broad public demand for their use was still undeveloped. Throughout most of the history of the United States there has been little occasion for the courts to consider demands other than navigation.

It must be recognized that there are numerous decisions which restrict public uses to waters which are navigable under the federal test or those where the bed is publically owned. But it must be just as clearly recognized that there is, by now, a very strong current of authority supporting public use of waters over private lands, either on the basis of a much more liberal state rule of 'navigability' than the federal test, or simply on the basis that the waters in question are suitable for broad public uses even though they may not be classified as 'navigable'....<sup>25/</sup>

Apparently, a majority of the states have begun to seriously consider the ever growing demands of the public for recreational opportunities. In many jurisdictions this has extended to allowing the public to use waters which may have once been considered to be closed private property. However, while the general trend appears to be one of granting the public greater rights in the use of a state's natural rivers, streams and lakes, the courts of the various states have not adopted anything approaching a uniform policy. Thus, in one state a person may be allowed to use the water in a stream for boating but he may not be allowed to wade along the bed. In other states a persons right to use such water may be extended to the high water mark along the banks. In any case, what may be significant is the general trend to open waterways to public use. The Oregon statutes contain an example of legislation permitting such use of stream beds (see Appendix C).

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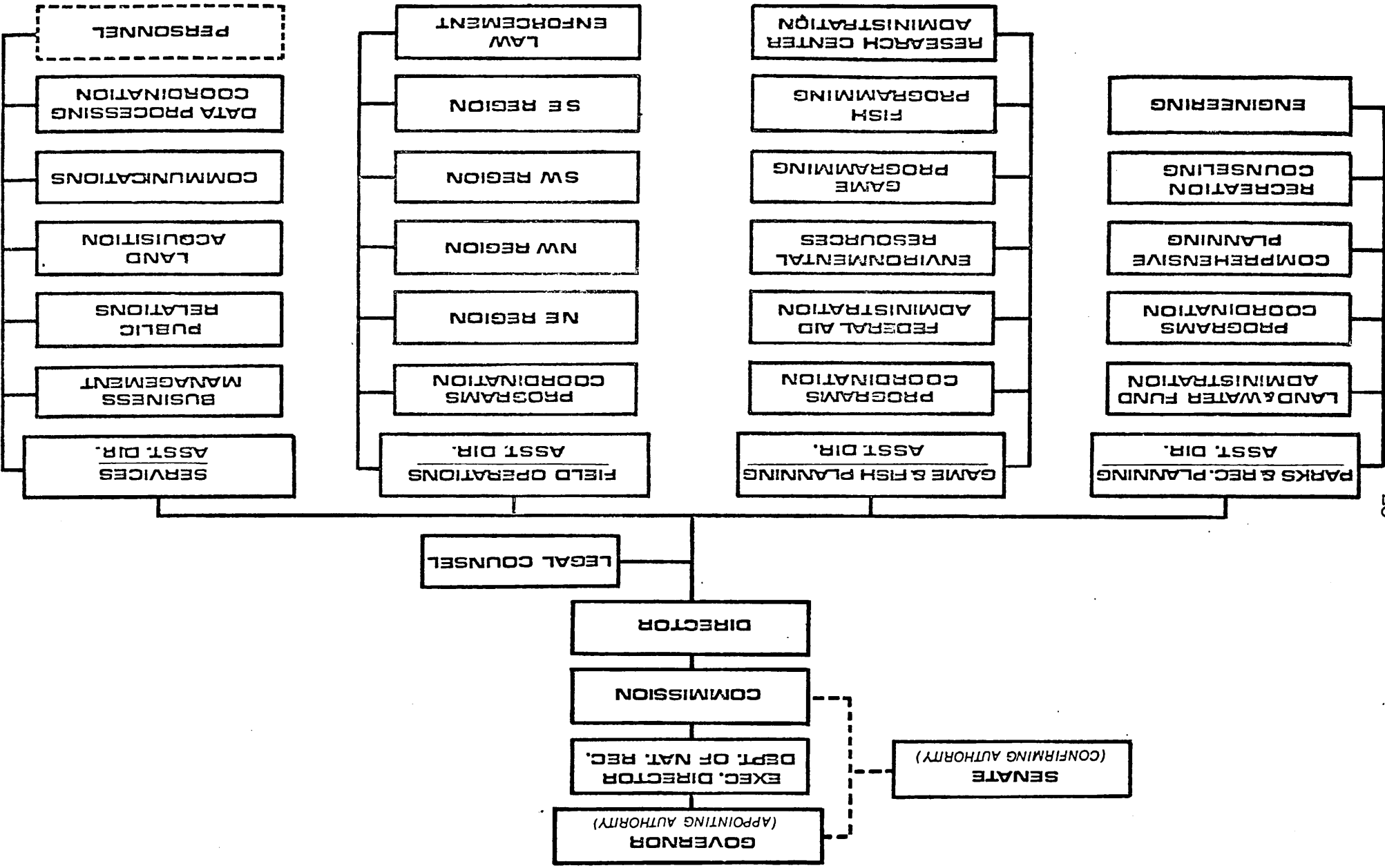
<sup>25/</sup> Ibid., p. 214.

# COLORADO GAME, FISH and PARKS DIVISION

APPENDIX A

March 1970

## ORGANIZATION CHART



Appendix B

SURVEY OF 42 STATE PARK AND RECREATION AGENCIES

<u>State</u>	<u>Name of Agency Responsible for Parks &amp; Recreation</u>	<u>Responsibilities Other than Parks or Recreation</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Responsibilities Other than Parks and Recreation</u>	<u>Miscellaneous</u>
Alabama	Div. of Outdoor Recreation and Div. of State Parks, Dept. of Conservation	None	11 member Conservation Advisory Board	Advisory but does assist in formulating policy for the department.	The board functions for the entire Department of Conservation.	Game and Fish is a separate division in the Department of Conservation.
Alaska	State Park and Recreation Agency, Division of Lands, Dept. of Natural Resources	Acquisition, management and disposal of state lands and administers state forest lands.	Board of Environmental Quality	Board will pass on proposed land use development policy, etc.	Other duties concerning the environment.	Commissioner of Natural Resources intends to recommend to the Governor creation of a separate Division of Parks and Recreation. In the event another division is created he recommends neither the Lands nor the Parks and Recreation Division would have a Board or Commission to advise it.
-29- Arizona	Arizona State Parks	The Arizona State Parks also administers historic parks and sites.	7 member State Parks Board	The Board is the state parks authority.	--	--
	Arizona Outdoor Recreation Coordinating Commission	--	3 member Ariz. Outdoor Recreation Coordinating Commission composed of department heads.	The Commission is the state recreation authority.	The Commission also administers: 1) Land and water conservation funds 2) State Lake Improvement Fund Allocations 3) Coordinated Outdoor Comprehensive Planning	
Arkansas	Arkansas State Parks, Recreation and Travel Commission	Tourist programs for the state	7 member Ark. State Parks, Recreation and Travel Commission.	Policy making.	None	--
Calif.	Calif. State Park & Recreation Dept. within the Resources Agency	Historic parks & monuments.	9 member Park & Recreation Commission  2 Advisory boards	Policy making.  1) riding & hiking trails 2) establishment & marking historical sites.	None	The Secretary of the Resources Agency coordinates the activities of all the departments within his secretariat.

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
Conn.	State Park and Forest Commission	State forests.	6 member State Park and Forest Commission	Appoints a director and determines policy.	None	--
Florida	Division of Recreation and Parks, Dept. of Natural Resources	--	5-member advisory council for <u>each</u> park or recreation area under the Division's jurisdiction			
			Inter-agency Advisory Committee	Coordinates the activities of the state agencies which work in fields related to parks and recreation.	--	--
Georgia	Dept. of State Parks, Historic Sites, and Monuments, in the Division of Conservation, under the Executive Dept. of State	Outdoor recreation directly related to the State Parks System.	No advisory board	--	None	--
	Georgia Recreation Commission	--	Advisory Council of Recreation Commission (not less than ten members)	Consults and advises cities, counties, and private sections on recreation organization programs and staffing.	None	--
Hawaii	Division of State Parks, Board of Land and Natural Resources Dept. of Land and Natural Resources	Historic sites.	6 member Board of Land & Natural Resources	Purview over all divisions of the department and jurisdiction mainly in the area of land protection, acquisition, etc.	None	A new plan for reorganization of the Division of State Parks, titles the new agency the Division of State Parks, Outdoor Recreation, and Historic Sites.
Idaho	Dept. of Parks	Assists counties, cities, communities, and state agencies in park acquisition and development, and in planning.	6 member Park Board	Supervises the department and determines its policy.	None	--

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
Illinois	Div. of Parks and Memorials, Dept. of Conservation	Memorials and interpretive recreation programs.	9 member Conservation Advisory Board	Recommends policy and has no other authority.	None	--
			21 member Ill. Recreation Council	Serves in an advisory capacity.	None	--
Indiana	Div. of State Parks, Bureau of Land, Forest and Wildlife Resources, Dept. of Natural Resources	None	12 member Natural Resources Commission	Makes policy.	Makes policy for the entire Dept. of Natural Resources	--
			12 member Advisory Council for Land, Forest and Wildlife Resources	Advises the Division of State Parks.	Advisory to the Division of Museums and Memorials and the Division of Fish and Wildlife	--
Kansas	Kansas Park and Resources Authority	Planning and developing natural resources of state to provide a system of state parks.	9 member Kansas Park and Resources Authority	Appoints a director, and has policy making and administrative powers.	None	--
			15 member Joint Council on Recreation	Develops policy and long-range plans for outdoor recreation. Advisory to the Authority.	None	--
Kentucky	Dept. of Parks	8 historical shrines and 3 cafeterias for state employees.	3 member Parks Board	Advisory.	None	--
Louisiana	State Parks & Recreation Commission	None	9 member State Parks & Recreation Commission	Appoints a director and determines policy.	None	There is a move to consolidate all natural resource agencies into <u>one</u> agency.
Maine	Maine State Park & Recreation Commission	The Commission is also responsible for: Keep Maine Scenic Program (anti-litter, junk cars, etc.); Provides maps, educational information for snowmobiles.	5 member Maine State Park and Recreation Commission.	A policy making body.	None	The director indicated that there is a move to consolidate all natural resource agencies into one agency and that he is opposed to this.

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
Mass.	Div. of Forests and Parks, Dept. of Natural Resources	The Division's other responsibilities include: a) State beaches; b) Year-round skating rinks & swimming pools; c) forest-fire control; d) insect and disease control; e) aid to community shade tree depts.; & f) land management assistance to private landowners.	5 member Natural Resources Board	Policy making.	Policy decisions for the entire Department of Natural Resources.	As of calendar 1971 a Dept. of Environmental Affairs is created which is a secretarial type agency for coordinating all agencies working with environment. The director noted that there has been some discussion about developing a separate Division of Recreation.
Michigan	Dept. of Natural Resources	Scenic and historical sites.	5 member Natural Resources Commission	Appoints Director, Assistant Director, and Executive Assistant of the Department.	Makes policy decisions for the entire Dept. of Natural Resources.	--
			Recreation Advisory Committee	Establishes priorities of local projects according to specified criteria, for disbursement of seed money from the state.	--	--
Minnesota	Div. of Parks and Recreation, Dept. of Conservation	None	Minn. Council of State Parks (advisory citizens group)	Considers state park legislative proposals and participates with the div. in the presentation of state park programs to the legislature.	None	--
Mississippi	Miss. Park System	None	Miss. Park System 7 member Bd. of Directors	Board of directors determines park policy.	None	--
			Local Advisory Committee (one for each State Park)	Advise the System and Park personnel	--	--
Missouri	Missouri State Park Board	Historical sites.	6 member State Park Board	Determines policy.	None	--
	Missouri has no state-wide recreation agency		13 member Inter-Agency Council for Outdoor Recreation	Considers outdoor recreation problems affecting the various agencies which comprise it.		The state authority for dealing with federal agencies in the area of parks, of and recreation.

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
Montana	Recreation & Parks Division, Dept. of Fish and Game	Historic sites.	1) Recreation Advisory group 2) Historic sites advisory group  Outdoor Recreation Advisory & Planning Committee (not more than 20 appointed members)	Advisory to Division.  Advisory to Department.	None  None	--  --
Nevada	State Park System, Dept. of Conservation & Natural Resources	Development of a State Historical registry. Marking of historic sites.	State Park Advisory Commission 7 appointed members	Advises on state park policy.	--	The Director of the Division suggested that a single advisory commission for all divisions of the dept. would be better than separate ones for each division. He also noted that Fish and Game is a separate department and would be better placed as a division.
New Hampshire	Div. of Parks, Dept. of Resources and Economic Development	None	Resources and Economic Development Advisory Commission 7 appointed members	Advisory for policy making.	Jurisdiction is for the entire Dept. of Resources and Economic Development.	The director suggests that state parks be administered by a citizens administrative committee.
New Jersey	1) Bureau of Parks and 2) Bureau of Recreation, Div. of Parks, Forestry & Recreation Dept. of Environmental Protection	Bureau of Recreation deals solely with local political subdivisions who desire assistance in formulating recreational development plans.	Advisory Council 11 appointed members	Advises the Commissioner of Dept. on all matters pertaining to the division.	None	--
New Mexico	State Park and Recreation Commission	None	State Park and Recreation Commission 7 appointed members	Appoints the director and determines policy.	--	--
New York	Agency of Parks and Outdoor Recreation	Motor Boat Activities. Snowmobiles. State Historic Sites.	State Council of Parks & Outdoor Recreation 11 members made up of each of the Regional State Park Commissions.	Advisory.	--	--



<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
North Carolina	Div. of State Parks Dept. of Conservation & Development	None	State Parks Committee. 4 members named from among the 27 members of the Conservation and Development Bd.	Formulates policy matters, and presents resolutions to the Conservation and Development Board concerning the Division.	--	--
			Conservation & Development Bd. 27 appointed members	Determines the Division's policy.	Overall policy-making body of the Department.	--
North Dakota	N.Dak. Park Service	Certain historic sites.	State Park Advisory Council 5 appointed members	Advisory in nature; fee & park regulations must be endorsed by board.	None	--
Ohio	Div. of Parks & Recreation, Dept. of Natural Resources	Location and preservation of natural areas and scenic rivers.	Ohio Parks and Recreation Council. 7 appointed members.	Advises in developing recreational facilities throughout the state.	None	--
Oregon	State Park & Recreation Division, State Highway Commission	None	State Highway Commission. 3 appointed members	Determines the Division's policy and regulations.	Travel promotion.	--
			State Parks and Recreation Advisory Committee	Only advisory but the director of the division stated in his response that the comm.'s suggestions weigh heavily with the State Highway Commission.	--	--
Pennsylvania	Bureau of State Parks Dept. of Forests and Waters	None	State Forest Commission. 4 appointed members	Controls activities on all state <u>forest</u> lands	None	--
			Pennsylvania Dept. of Community Affairs	Responsible for local Govt., outdoor recreation and open-space requirements.	None	--
Rhode Island	Div. of Parks & Recreation, Dept. of Natural Resources	a) pays for maintenance of many historical sites, and b) maintains several parkways.	Advisory Council of the Department of Natural Resources. 7 appointed members	Advisory.	Also advises the other divisions in the department.	--

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
South Carolina	Dept. of Parks, Recreation and Tourism	None	12 member State Parks, Recreation & Tourism Commission	Appoints the Director, and determines policy.	None	--
South Dakota	Parks Division, Dept. of Game, Fish, and Parks	Works with the state highway dept. in maintaining and developing a roadside park system in the state. Responsible for the maintenance and development of lake access or fishing access program.	Game, Fish and Parks Commission. 8 appointed members	Parks Division under the Commission supervision.	Also administers other divisions of the Department.	--
Tennessee	Div. of State Parks, Dept. of Conservation	Maintains and patrols wildlife on park areas.	Conservation Commission. 6 appointed members	Advisory.	Advises all of the Department of Conservation.	--
Texas	Park Services, Parks and Wildlife Dept.	Dept. has 4 services: a) Wildlife Services b) Water Safety Services c) Administrative Services d) Park Services (also historic sites)	3 member Parks and Wildlife Commission (Several parks have separate advisory bds)	Policy direction.	--	In 1969 the legislature established the Texas Conservation Foundation to accept gifts of land, money or securities for conservation and recreation purposes.
Virginia	Div. of Parks, Dept. of Conservation & Economic Development	Historical monuments.	Board of Conservation and Economic Development. 12 appointed members	Determines policy.	Policy making agent for the entire department.	--
			Advisory Committee on State Parks. 5 appointed members	Advisory.	None	--
Washington	Parks and Recreation Commission	a) in conjunction with State Highways Commission for development & operation of scenic and Recreational Highway System. b) historic preservation agency. c) liaison with Nat'l Park Service. (over)	Parks & Recreation Commission 7 appointed members	Determines policy & hires the Director.	None	--

<u>State</u>	<u>Name of Agency</u>	<u>Other Responsibilities</u>	<u>Board or Commission</u>	<u>Role of Board or Commission</u>	<u>Other Responsibilities</u>	<u>Miscellaneous</u>
Washington (Cont.)		d) Youth Development & Conservation Corp. e) resident youth camp program. f) consultation with cities and counties. g) water safety program.				
West Virginia	Div. of Parks and Recreation, Dept. of Natural Resources	Administers the laws and regulations pertaining to beautification of state highways & other public areas.	Department of Natural Resources Advisory Commission.	Advisory.	Has an overall advisory function to the Director of Natural Resources.	--
Wisconsin	Bureau of Parks and Recreation, Dept. of Natural Resources	The bureau administers 50 parks and 5 recreation forests.	7 member Natural Resources Board (organized into operating committees)	Policy making.	None	There is also a Division of Forestry and Recreation (recreation on Forest lands).
Wyoming	Recreation Commission	Protection and preservation of all state historic sites.	Recreation Commission. 9 appointed members	Determines policy. The governor appoints a director who serves as secretary to the Commission.	None	--
			Advisory board. 1 appointed member from each county.	Advisory.	None	--

## APENDIX C

### OREGON LAW ALLOWING PUBLIC ACCESS TO STREAMS

Navigable rivers, sloughs or streams between the lines of ordinary high water thereof, of the state, and all rivers, sloughs, and streams flowing through any public lands of the state, are public highways for the purpose of angling, hunting, or trapping thereon. Any rights or title to such streams, or the land between the high water flowlines or within the meander lines of navigable streams, are subject to the right of any person owning an angler's, hunter's or trapper's license of this state to go upon and angle, hunt or trap therein or along their banks.\*

\*Section 498-125, Oregon Revised Statutes 1953, revised to 1969.