

Greetings.

It was good to meet with you all, albeit via teleconference, regarding the issues involving the Bitterroot Ski Club.

I think first and foremost we need come back to something that seems to have been overlooked at the outset in our handling of this issue and that is the protection of our employees and the Forest Service. While I completely understand the club's genuine surprise by our letter outlining our ethics infractions (I wish we had learned about the matter sooner) they must understand that we have a duty to protect (and in this case correct) our employees from criminal and administrative sanction. In addition, we also have a duty to the agency; to not place it in a compromising public position where remedial administrative action as a result of negative media attention must be taken. We were therefore obligated to take the corrective measures we did promptly notifying the appropriate Forest Service Line and Staff Officers that we did not have the authority to allow government property to be used by non-government employees as a prize in a raffle.

I do want to correct the club's perception that we are asserting that they are in violation of any law/regulation. The ethics rules and their application ONLY apply to federal employees. From our perspective we did not do a good job at the inception of our partnership ensuring that our agreement was ethically sound. I attribute this to the fact that twenty years ago the agency did not have a dedicated ethics office nor were our agreements/partnership folks as ethically savvy as they are today.

However, instead of dwelling on the past or assigning blame within the agency we would rather spend our efforts in developing a plan of action that looks toward the future while keeping our important relationship with the club on solid ethical footing. To this end we will explore what options are available for our continued partnership, what actions need to take place immediately, and our concern if we do not mitigate these issues immediately.

1. Gordon Reese Cabin as a “Prize”:

With respect to the Cabin, under our federal regulations our employees have a duty to protect and conserve government property and shall not use such property, **or allow its use**, for other than authorized purposes (Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation) 5 C.F.R. 2635.704.

Here, the use of government property as a prize in a gaming/gambling activity is impermissible. There is no authority that either allows a non-federal entity to use government property as a prize in lottery or raffle nor is there any authority under the Federal Property Management or ethics regulations that authorizes us to allow the use of government property in this manner (5 C.F.R 2635.101(b) and 5 C.F.R 2635.704).

In addition to the issue of the government property being the ‘subject’ of a raffle is the Stevi (Stevensville) Ranger Station’s selling of tickets for this event. Under both 5 C.F.R. 735 and 41 C.F.R. 102-74.935 the selling of these raffle tickets constitutes prohibited gambling activity (Federal employees cannot sell/solicit the sale of raffle tickets while on duty or on government property—likewise they cannot purchase them while on duty). Further, the sale of such raffle tickets on behalf of any entity (including a partner) constitutes impermissible fundraising (for both gambling and fundraising there is no bifurcation between the ticket sale and the event participation, either part constitutes both impermissible fundraising/gambling).

Lastly, a reasonable person viewing the Chief Joseph Extravaganza flyer (attached) could come to the conclusion that the agency endorses the club’s activities/views/enterprise. Unfortunately, the government cannot be seen to endorse any non-federal entity (NFE), even a partner. Because the government cannot possibly endorse all the worthwhile entities it must therefore endorse none of them 5. C.F.R. 2635.702. There are exceptions to this rule but this activity does not fall within an exception.

2. Allotment of Days—Gordon Reese Cabin

During the period of approximately 1 December—15 April the agency offers the “hosting” of the cabin. This essentially means that a person or persons signed up to host the cabin perform certain tasks (shovel snow, mop, etc.) in exchange for staying overnight.

Those wishing to “host” the cabin contact the district or register on recreation.gov Currently, the club receives an allotment of “host” days (approximately 65 or ½ the winter season) at the Gordon Reese Cabin. For at least the last several years the club has had a host selection night (sept/oct) where club members reserve nights before they are offered to the public

This understanding appears to be verbal and based upon at least a decade of past practice. The current Volunteer Service Agreement states that all services are non-compensable. Further, the attached 2012 operating plan does not list an “allotment of days” as part of the list of items the Forest Service is obligated to provide.

Under the ethics rules employees are required to act impartially and not give preferential treatment to any private organization or individual (5 C.F.R. 2635.101(b), 5 C.F.R. 2635.501). Here, the act of conferring upon a non-federal entity the benefit of a pre-public offering of 65 “host days” (amounting to half the winter season) and the discretion over the selection of hosts does exactly what the regulation was designed to prevent— extends real or perceived preferential treatment to the club and potentially an economic benefit.

Further, there is neither precedent nor authority for employees to attempt to bind the government by granting such an allocation 5 C.F.R. 2635.101(b) (Since there is an absence of authority here the allotment scheme may also constitute a misuse of government resources/property.)

3. Potential 18 U.S.C. 201 Violation:

Last but certainly not inconsequential are the possible criminal violations our Forest Service employees could be subject to in continuing to provide these economical and/or ? benefits to the Bitterroot Ski Club. These rules are in place to avoid situations such as this where a non-federal entity

begins to feel entitled and/or has the expectation of receiving a special benefit from the Federal Government because of what the non-federal entity has provided or will provide in the future.

This issue involving the cabin as a prize, in our view, comes dangerously close to violating 18 U.S.C. 201, a criminal statute. Essentially, 201 prohibits anyone from *directly or indirectly giving, offering, or promising anything of value to any public official or person in order to influence an official act or induce a public official to do or omit to do any act in violation of the lawful duty of such official.*

While it may not have been the club's intent, their letter directed to Russ Reibe, District Ranger for the Wisdom District, may violate this criminal statute. Ranger Riebe, with the advice of the ethics branch, notified the Club that the use of the cabin (government building) as the subject of a raffle and the allocation of exclusive "hosting" days were impermissible.

Following a recount of the services the club provides to the agency (most of page 2 of the attached letter) the club states twice: [**"your agency needs to find a way to permit its (the cabin's) use (as a prize) now and in future years"** (page 1)] and [**" I (club president) also must insist that we (the club) have a permit or permission, in the interim, for the use of the Gordon Reese Cabin as a "prize" for our current fund raiser, "The Extravaganza" (page 3)].**

It is possible to read this as it is the club's expectation that in exchange for its many services (past, present, and future,) that the District Ranger authorize or otherwise permit the raffle to continue despite having already fulfilled his lawful duty as a government employee by officially informing the club that their planned usage was impermissible. Our office cannot advise Ranger Riebe to grant the Bitterroot Ski Club its requests and violate a criminal law.

CONCLUSIONS:

Gordon Reese Cabin as a "Prize":

We have, in a letter dated 2 February 2012 informed our partner that based upon the foregoing, we cannot authorize the use of the cabin as a raffle prize. Despite the short notice we had an obligation under 5 C.F.R. 2635.704 to not allow the cabin's use in a manner which would cause us to violate our ethical rules or adversely affect our employees.

We believe that there can be a creative substitution made and Chef Sharp's services could occur in another location. Further, the cabin is but one of 5 prizes being offered—substituting a prize of comparable value, while inconvenient, would not eviscerate our partner's fundraising event.

We think we have done our due diligence in informing the club that use of the cabin as a prize is impermissible (via email message from the District Ranger and letter dated 2 February). Should the club move forward with the raffle (after we have notified them that we have withdrawn our consent to use the cabin) they would be subject, like anyone where permission by the owner or custodian was revoked, to criminal trespass. However, we would hope they would not pursue a course of action that may affect them criminally but also result in negative ethical implications for our employees and which may end up affecting our future relationship as partners.

Allotment of Days—Gordon Reese Cabin

We have a duty to ensure government property is used for authorized purposes and that the access to it, when permissible, is fair and devoid of any hint of preferential treatment or results in a loss of impartiality in the public's eyes.

While we maintain that the allotment of 65 days or ½ the winter season is not sustainable under the ethical regulations beyond this year both the forest and the ethics branch (along with the partnership office, grants and agreements, and other interested parties) will look for ways to revise the winter 'Hosting' program that balances the efforts of the club and the interests of the public.

Electronic Enclosures:

- Bitterroot Club Response Letter dated Feb. 7, 2012
- Volunteer Service Agreement 2011—2012
- FY12 Ops Plan
- Chief Joseph 'Fundraising flyer'