ABSTRACT

Downhill "alpine" ski areas provide access opportunities into the backcountry for a variety of recreation users. Access from ski areas creates administrative concerns as to responsibilities and liabilities relative to public safety.

The Rocky Mountain Region analyzed the backcountry access situation. As a result, Forest Service policy encourages leaving National Forest land open to individuals desiring to venture into the backcountry from downhill ski areas for other recreation purposes such as cross country skiing, snowmobiling, etc. Users must accept personal responsibility in learning to deal with the realities and inherent risks of backcountry recreation. Except where extreme and ongoing avalanche hazards exist adjacent to ski areas, the public has been informed the Forest Service does not plan to close ski area boundaries or adjacent backcountry to other forms of recreation use, especially winter activities. The Forest Service has developed an administrative approach which allows individuals to venture outside the developed ski area on their own recognizance. To achieve a degree of protection to the user and the ski industry, a system of ingress and egress "access gates" are established.

The Forest Service is cooperating with others in educating the public as to backcountry use by making users more aware of the risks and personal responsibilities they accept when going outside the developed areas. The controlled access system works well, meets publics needs, deals with industry concerns, and instills a degree of self reliance on the part of the backcountry user.

MANAGING BACKCOUNTRY USE

Introduction: National Forest System lands belong to the people of the United States and are available for their use and enjoyment, including people within the "global community". The U.S. Department of Agriculture-Forest Service manages the various resources and uses for the overall public benefit. The key principle in administration is to manage the resources, settings, and uses, some to a greater degree than others depending on the situation, rather than just letting events happen.

\[\text{Group Leader, Recreation Special Uses and Winter Sports Administration. Rocky Mountain Region, USDA, Forest Service, Lakewood, Colorado}\]
The Forest Service in their administrative role have certain regulatory responsibilities when dealing with the various provisions of the United States Code, the Code of Federal Regulations, and the Forest Service Manual that govern the use of National Forest System lands. The Forest Service manages various resources, commercial special use operations, and public use of the lands and resources within the framework of the policies of the Agency. The Forest Service does not view its role as one focused on regulating or controlling the publics' enjoyment and behavior while using National Forest lands. These public freedoms are available, so long as their actions are not in conflict with the basic regulations governing such actions. It is also recognized and accepted that experiencing some degree of adventure and risk can be a valid part of some outdoors recreation ventures. The user, therefore, must accept personal responsibility in learning to deal with their activities and actions when enjoying their National Forests. The Forest Service does have a role, however, in trying to mediate user conflicts and interests when publics are unable to do so themselves.

One such user interest is the public freedom to enjoy the backcountry aspects of National Forest lands in all seasons, but more particular winter use.

Background: Each winter approximately 10,000 avalanches are observed in the mountains of the United States. Numerous others fall, but go unobserved. Inevitably, a small percent of these avalanches involve people, structures, and facilities (1). National Forests in the Rocky Mountain Region experience 20 percent of these annual avalanche occurrences. The average number of avalanches recorded each year in Colorado are around 1,850. During the 1989-90 winter season in Colorado, 1,391 avalanches were recorded (2). This slight drop is attributed to below normal snowfall in southwest Colorado during that period.

Between 1976 and 1990 there were 72 avalanche deaths in Colorado. This averages around five per year for the 15 year period. During the previous 65 years, avalanche deaths averaged less than one per year in Colorado (1). During the winter of 1986-87 there were 11 avalanche related deaths in Colorado. Four avalanche related deaths occurred during the 1989-90 season. The increase in avalanche related accidents and fatalities are indicitive of a growing interest in backcountry winter use and the presence of more people in potentially hazardous avalanche terrain. As a result of the increased number of accidents and deaths, the Rocky Mountain Region of the Forest Service in 1987 conducted a review of existing policies, procedures, and practices related to out-of-bounds backcountry skiing in and adjacent to downhill "alpine" ski areas. A special team was assembled from ski industry representatives, local law enforcement officers, search and rescue officials, and Forest Service winter sports specialists. Public input was also solicited and made part of that review (3).

The review resulted in a few surprises. The public and the media took great interest in the review. Approximately 180 individual or group responses were received on the subject. Numerous newspaper articles, television specials, and radio news briefs were featured during that time. The report was finalized in late August of 1987
and released to the public on September 18, 1987. The report was divided into six specific subject areas relative to winter backcountry use:

1. Where Forest users do not come in contact with developed ski areas.
2. Where users utilize ski areas facilities to gain elevation and access to the backcountry, but do not return directly to the ski area after their outing.
3. Situations where skiers use ski area facilities to gain repeated daily access to undeveloped National Forest lands outside the ski area boundary.
4. Avalanche awareness and education.
5. Colorado Avalanche Information Center and role.
6. Funding alternatives for search and rescue organizations, including local county sheriffs’ departments.

**HIGHLIGHTS OF THE 1987 BACKCOUNTRY REVIEW**

The overwhelming majority of the public comments resulting from the 1987 review called for not closing the backcountry, no restrictions on backcountry use, reliance on individual responsibility, and the need for increased education efforts. The basic recommendations were to revise existing directives to more clearly outline policies dealing with public discretionary use of the backcountry from developed ski areas, and to consider the use of a hazard warning system at selected trailheads.

**User Categories:** The 1987 study recognized three distinct user situations relative to their interface with downhill ski areas and out-of-bounds skiing in the backcountry.

The first category of backcountry users identified are those that do not use or come in contact with developed ski areas. This group includes cross-country skiing, ski touring, snowmobiling, snowshoeing, snowplay, and snowboarding. Access is from trailheads, parking lots, edge of highways, directly from rural community centers, and by helicopter. The Federal land estate, including National Forests, provides the most extensive opportunity in the nation for an unconfined outdoor recreation experience free of the urban interface and influence, in both summer and winter. National Forest recreation objectives call for protecting the long-term public interest by maintaining and enhancing open space options; public accessibility; along with cultural, wilderness, visual, and other natural resource values as free from urbanization and regimented control as possible.

The second category of users recognized were those that utilized ski area facilities to gain access to higher elevations within the developed area, but then leaving the area boundary and not returning. This user is more reflective of ski touring groups and some snowmobiling activities where they pick up the tour group on top of the mountain. Access to the backcountry is from within the ski area boundary. Users in this category are generally experienced skiers. They access all types of terrain from steep avalanche chutes, deep powder runs, to gentle cross-country terrain. In most cases the terrain accessed is National Forest land, but in some situations other public and private lands are used.
The third category of backcountry user identified, and the one of major concern to both the ski industry and Forest Service from a safety and liability standpoint, are those skiers going out-of-bounds repeatedly during the day while gaining access through the developed ski area lift facilities. This type of use is almost totally the downhill skier who has purchased a daily lift ticket and has better than average skiing ability. Skiers are usually after untracked powder outside the ski area boundary. Users in this category may or may not preplan the out-of-bounds backcountry experience. The generally accepted term for this is "yo-yo" skiing. This type of skiing venture is the one most likely to entice other inexperienced skiers within the developed area to leave via the same route. Recommendations for dealing with this type use were: close the ski area boundary when avalanche hazards are recognized; when appropriate, add the backcountry area being utilized to the managed ski area boundary; and/or place a permanent Forest Supervisor "Closure Order" on the area. Adoption of one or a combination of these control measures would be based on individual area needs and on-the-ground situations.

Responsibility: When on National Forest lands, ski areas operators have authority and responsibility for activities within the development boundary or special use permit area in which they are authorized to operate. This authority does not extend beyond the authorized area or for the safety of people once they leave the authorized development boundary and access National Forest lands open to the public, provided the boundary is appropriately marked. Ski area operators in the Rocky Mountain Region are encouraged to set their own boundary management guidelines and policies within the principles and direction of the Colorado Ski Safety Act (4). This direction is then incorporated into the Winter Operating Plan which is a requirement of the permit. Most of the areas provide some form of controlled access to the backcountry. Study recommendations suggested the special use permit requirements be amended to incorporate a boundary management section in the Operating Plan. The objectives are to develop uniformity among ski areas and Forest Service Regions, conform to state laws, coordinate with local law enforcement officials, focus on avalanche awareness and educational needs, develop consistent access gate procedures, and provide uniform backcountry access procedures that can be adopted in principle on a Nationwide basis.

It must be stressed that individuals skiing out-of-bounds in disregard of posted "boundary closures" by a ski area operator, under provisions of the Colorado Ski Safety Act or other regulatory measures, is unacceptable behavior. Violators will be apprehended and prosecuted when caught violating such closure orders. Managed or controlled "ingress or egress" in to the backcountry from developed ski areas must not be confused with violations of specific "boundary closures", even though both situations may coexist as part of the ski area boundary management plan.

Avalanche Awareness: After evaluating the overall backcountry situation, it was evident avalanche awareness and education had fallen behind the demand and user curve. Some people are using the backcountry with little or no knowledge of avalanche and other type winter hazards. However, the records show that a large majority of
those involved in avalanche accidents or fatalities were individuals with considerable winter backcountry experience and some basic avalanche awareness training. That is why many of them are in difficult and hazardous situations to begin with. The most consistent recommendation from those involved in the review centered on the need for a more concerted public awareness and education effort. It was also recognized such an effort is broad in scope and the responsibility does not center in any one organization or group. The bottom line is the backcountry user has a personal responsibility to prepare him/herself for the venturesome outing. The review also pointed out the need for a more central focus on a cooperative and coordinated joint education and awareness effort.

Some of the education and backcountry awareness recommendations were: better utilize trailhead bulletin boards, increased use of the standard "yellow" avalanche sign, have ski areas include avalanche awareness information on trail maps, develop avalanche and backcountry awareness information brochures, utilize electronic signs across Interstate Highways that access the mountains, increase the capability of the public avalanche information telephone network, make existing avalanche films more accessible to the general public, develop new film/video sources for public distribution, better utilize radio/TV and other media sources in state-wide education efforts, and increase the number and availability of local avalanche training courses.

In addition to direct education efforts, the need to expand and better utilize capabilities of the Colorado Avalanche Information Center was identified. The Center provides a valuable service to winter outdoor recreationists, ski areas, state highway department, and other winter backcountry users. The majority of the winter use in Colorado occurs on National Forest land. The Center utilizes reports from about 20 ski areas and Forest Service winter sports administrators. Avalanche information phone numbers are the primary method used by the public, ski areas, helicopter skiing operators, and others winter users to obtain information on backcountry conditions. More telephone lines were proposed and installed throughout Colorado to accommodate the information network. The need for increased financial support was also identified. The Centers operating budget for the 1989-90 season was $109,759. The largest contributors are Forest Service ($55,000), Colorado Highway Department ($20,000), and Colorado Ski Country USA ($15,000) (2).

THE QUESTION OF LIABILITY

The issue of public safety and liability relative to winter backcountry use, especially when accidents or fatalities occur out-of-bounds, is a major source of concern to all involved. The need for a well thought out and objective boundary management program, that takes into account all interests and concerns, is necessary in order to administer the backcountry winter use now occurring. It should be noted that National Forest System lands belong to the general public, not the Forest Service, not the ski industry, not special interest groups, but the public at large. Forest Service policy FSM 2303, Item #7 states, "Enhance recreation experiences through a minimum of regulation and law enforcement." Direction in FSM 2350.3, Item #5 states, "Regulate
users only to the extent necessary to provide for user safety; to protect the natural, cultural, and historical resources; and to achieve the recreation experience objectives." Additional policy guidance in FSM 2351 (R2 Supplement #99) provides direction for "National Forest Lands Adjacent to Developed Winter Sports Sites" and for "Closures." It calls for permittee posting of area exit points with warning signs and provides guidance under 36 CFR 261.53 (e) for Forest Supervisor closures orders.

There are a number of questions that surface relative to backcountry user responsibilities and liabilities. Some of these are: should the skiing public be allowed to leave the developed area (out-of-bounds); if not, how will restricted areas or zones be posted and enforced; if so, how will access points be designates and controlled; who is responsible for deciding-ski area operator, Forest Service or jointly; if accidents or fatalities occur, what liabilities, if any, may be associated?

**Boundary Management Requirements:** The Forest Service views its responsibility as one of management and administration, not one focused on restriction. This is consistent with the Agencies overall direction. The Forest Service, as a condition of the new "Ski Area Term Special Use Permit", authorized under the National Forest Ski Area Permit Act of October 22, 1986, has incorporated a mandatory section in all new permits under requirements for Operating Plans to deal with boundary management (6). The ultimate responsibility for accepting boundary management proposals is the Forest Supervisor. Ski area operators should not be liable for activities outside the boundary of the developed ski area since they have no direct authority to regulate or control public use and behavior outside their authorized area. The exception to this is when out-of-bounds activity are in violation of local and state laws/regulations that may endanger the skiing public using the developed area. When this occurs, the operator and Forest Service will cooperate in working to control or minimize the problem.

**Search and Rescue:** One of the main concerns with out-of-bounds skiing is the dangers associated with search and rescue operations when an incident occurs. There is the inherent risk to those individuals who often endanger themselves in a rescue attempt. In the case of ski area employees, it is the risk plus the concern of diverting critical manpower resources away from the ski area to the rescue operation. These ski area employees are also needed at the area for the protection and safety of their guests. Search and rescue in most cases is the direct responsibility of the local law enforcement departments. It is often, however, the ski area that has the best trained and qualified personnel that can respond in a timely manner. Thus, the moral responsibility to act promptly and divert attention to an accident when it occurs. This is especially critical in cases of avalanche and other type search and rescue operations when time is critical.

**Access Gates:** The access gate system was designed to regulate, inform, and minimize risks and liabilities associated with out-of-bounds type skiing. Gates are also placed in such a manner that skiers leaving the developed area, through the gate system, can not directly ski through the controlled access point without stopping or climbing.
Warning signs at each gate exit point are usually worded to inform people that they will be accountable for their own safety, the cost of rescue, and other expenses incurred if search and rescue operations are required. A copy of the "ACCESS POINT NOTICE TO BACKCOUNTRY TRAVELERS" is enclosed as Appendix # A. This notice is used extensively throughout the Rocky Mountain Region at backcountry access gates, trailheads, and information brochures. It is tailored to serve as an all season warning notice so year-round consistency is achieved.

**Limits of Liability:** In some states, limits of responsibility and liability are defined. In Colorado, House Bill 1205, Section 13-21-115 to C.R.S. 1973, defines a landowner as "---an authorized agent or person in possession of conditions of real property, or for responsible activities conducted or circumstances existing on real property." Two parts of Section 13-21-115 that affects ski areas are:

---"(3)(b) If the plaintiff entered or remained upon such property with the consent of the landowner, but the entry was for the plaintiff's own purpose and not the purpose of the landowner, the plaintiff may recover only damages caused by the conduct of the landowner's active operations upon the property or by the landowners failure to warn of dangers which are not ordinarily present on the property of the type involved and of which the landowner actually knew." (5)

---"(3)(c) If the landowner has expressly or impliedly invited the plaintiff onto the real property for the purpose of the landowner, the plaintiff may recover for damages caused by the landowner's deliberate failure to exercise reasonable care to protect against dangers which are not ordinarily present on property of the type involved and of which he actually knew."

The Colorado legislature approved Senate Bill 90-80 in 1990 which substantially curtails skier remedies in the event of a downhill skiing accident. That action amended the "Ski Safety Act of 1979" by barring claims by skiers against the area operator for a downhill skiing injury suffered as a consequence of any accident, irrespective of the negligence of the area, except if caused by the ski area operator's breach of one of the limited duties set out in the Ski Safety Act (C.R.S. 33-44-101 et seq.).

Similar statutes may exist in other states that help define responsibilities and limits of liability. These type regulations must be used to guide policy and signing situations when dealing with out-of-bounds and backcountry public use and access situations.

Some publics feel the Forest Service should attempt to control avalanche conditions in the backcountry. The concerns relative to controlling potential avalanche situations in the backcountry are the uncertainty and lack of permanency of such actions, and secondly, the false sense of security such actions may leave with the public. Forest Service policy is not to control backcountry avalanche situations, unless such conditions have a direct effect on a developed ski area, public transportation system, or authorized commercial operation such as helicopter skiing. Avalanches
conditions in the backcountry are difficult to forecast on a site specific basis. Thus, control activities would be difficult, if not impossible, on a broad scale forest-wide basis. Backcountry users must understand such control measures are impractical, would have no reliability for safety purposes, and would only lead to a false sense of security for those using the backcountry.

BOUNDARY MANAGEMENT OBJECTIVES AND POLICIES UNDER EVALUATION

The main objectives of ski area boundary management practices associated with backcountry activities on National Forests lands are to: reduce public exposure to avalanche hazards adjacent to both downhill alpine and nordic ski areas; provide a reasonable degree of opportunity for backcountry skiing for those directly seeking such experiences; gain consistency in boundary management practices for the benefit of all concerned; and minimize public exposure to known avalanche risk zones by restricting access through ski operator "boundary closures" and Forest Supervisor "area closures."

Policies dealing with and reflecting boundary management philosophy and objectives are:

1. All downhill and nordic ski areas are required to have and maintain a boundary management section, as part of the Winter Operating Plan. This requirement conforms with provisions included in the new Ski Area Term Special Use Permit, as authorized under the Act of October 22, 1986.

2. Access gates shall be an acceptable way to regulate and control skiers leaving the developed ski areas in critical locations for backcountry skiing experiences. Gates shall be so located that skiers cannot pass through without physically stopping and/or climbing to gain access.

3. Appropriate backcountry warning and individual responsibility notices will be posted at "ingress and egress" access points associated with downhill ski areas on National Forest lands. In the Rocky Mountain Region, the standard "NOTICE TO BACKCOUNTRY TRAVELERS" poster will be displayed at each access gate.

4. Forest Supervisor area closures, in conjunction with boundary closures under the Colorado Ski Safety Act (where appropriate), may be used to restrict access into extreme avalanche hazard zones. All such Forest Supervisor "Closure Orders" must conform to 36 C.F.R. 261.50, and will be enforced when in effect.

5. Out-of-bounds skiing or snowboarding which leads to repeated daily reentry (yo-yo skiing) to the developed ski area shall be controlled and regulated or prohibited.

6. Uniformly apply and enforce boundary management standards subject to the needs of individual ski areas.

7. Coordinate boundary management planning with local law enforcement officials and search/rescue organizations who have direct responsibility for enforcement actions.
8. Identify the need for and methods for informing the skiing public as to avalanche awareness and education opportunities associated with each particular area.

SUMMARY

There is a more heightened demand by Americans, and others in the World community, to actively participate in all forms of outdoor recreation activities. The challenge is to get the American people and their lands together in a way that best meets their growing and ever-changing outdoor recreation needs. Part of the challenge is in managing this public interface with these lands in a way that best serves all parties concerned. When this use occurs in and around downhill "alpine" ski areas in the Rocky Mountain Region each winter season, where over ten million visitors frequent these areas, the management challenges are endless. Thus, as land and resource managers, the Forest Service must actively explore new approaches to helping achieve National Forest land management objectives to better serve the customers. In order to deal with the growing demand for out-of-bounds backcountry skiing associated with developed ski areas, the boundary management objectives and policies outlined above are but one attempt to regulate and manage that use of National Forest System land.

----- REFERENCES -----


(4) Colorado Skier Safety Act of 1979 - Senate Bill No. 203, Title 33, Article 44 and Senate Bill 90-80, Colorado Revised Statutes, Section 2. 33-44-103 --Concerning Limitations on Liability in Connection with the Sport of Skiing. (1979 & 1990)


As a user of National Forest System Lands, you have significant responsibility for your personal safety during any activity you might pursue. The Forest Service does install signs and other information devices at various locations where site conditions warrant. However, the size of the National Forests and the variety of natural and man-made conditions limits placement of signs or other specific warnings and necessitates the use of more general education efforts.

Hazards are not limited to, but include: changing weather conditions; snow; avalanches; landslides; caves; overlooks; falling trees or limbs; high or rushing water; contaminated water; wild animals; becoming lost or over exerted; hypothermia; remnants of mining and other activities involving excavation, tunnels, shafts, decaying structures and a variety of equipment; and changing road and trail conditions. You may also be exposed to unreasonable acts of others.

The Forest Service does not manage or control all of these occurrence. It is your responsibility to know the hazards involved in your activities and to use the proper safety procedures and equipment to minimize the inherent risks and hazards related to your activity.

In order to help visitors enjoy their experience on the National Forests, the Forest Service and other agencies provide information regarding local conditions by various means. This information is available at Forest Service offices, from local residents, outfitters and guides and other reference materials.

U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE