

Public Employees for Environmental Responsibility (PEER)
Comments on Proposed Rewrite Director's Order #21 Donations and Fundraising
Submitted to partnerships@nps.gov
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Introduction

The National Park Service has signaled its intention to begin aggressively pursuing donations from both corporations and park visitors, under a proposed rule change submitted to the *Federal Register* on October 5, 2005. The proposed rewrite of Director's Order #21 on Donations and Fundraising would transform the Park Service's current passive posture of merely accepting donations to one where it would actively ask vendors and other commercial interests for money.

The 74-page plan details new methods whereby park employees may "engage in solicitations of outside sources." The proposed rule change would also repeal the prohibition on seeking or accepting gifts from park concessionaires, permit-holders and other private entities with which the park does business or regulates. In its place, the Park Service proposes non-specific criteria, such as the donation "would not likely result in public controversy."

The focus of the plan is a major drive to increase corporate financial aid to, and presence within, our national parks. To encourage large donations, the proposal substantially liberalizes donor recognition rules so that, for the first time, a corporation could –

- Feature its park-related gift or "partnership" in paid media advertising that includes the arrowhead symbol of the National Park Service;
- Display its slogan as well as its logo on "the electronic screen and associated printed information" of computerized visitor kiosks; and
- Obtain permanent in-park "tablets, plaques or other commemorative installation" as well as the "naming of rooms in a park facility" to celebrate the gift.

The bulk of the proposed rule consists of a detailed how-to manual of fundraising methods. Park managers are urged to be creative in finding ways to "meet the needs of individual donors."

Comments

I. Proposed Rule Subjects National Parks to Corporate Branding Campaigns

To encourage large donations, the proposal substantially liberalizes rules on what is called "donor recognition." This liberalized recognition policy is a thinly disguised scheme to subject the public commons to corporate branding campaigns in which companies are not selling their product per se but are selling themselves and their images.

In addition, the proposed rule would repeal §5.1 (c) [Corporate Advertising] from the current Director's Order which reads:

“The NPS will not allow the Arrowhead symbol or an NPS employee or any part of the uniform to be featured in any commercial advertisement.”

As a consequence, under this plan, a company such as Wal-Mart could run television advertisements portraying it as a caring corporation starring a park ranger who extols Wal-Mart's generous contribution to a national park. Similarly, oil companies, such as Exxon-Mobil, would be allowed to run ad campaigns featuring the NPS Arrowhead official symbol saying the multi-national corporation is a good neighbor because it donated money to enhance wildlife habitat in parks.

A. Pervasive Corporate Presence in Parks Would Be Result

The proposed rule dangles donor recognition within our national parks as an inducement for corporate contributions. A typical provision is proposed §6.3.2 which reads:

“Park managers may allow the non-intrusive display or distribution of materials in parks to educate visitors about an authorized fundraising partnership or activity. The material must identify the NPS fundraising partner and inform visitors how they may receive additional information.”

The proposed rule goes on to describe how donor logos and slogans may be displayed on visitor information and on the electronic screens of computer kiosks. The proposal also expands the ability of donors to have corporate naming of rooms within facilities and display of corporate names and logos on benches, bricks and on wall plaques.

The fact that the rule directs NPS managers to “meet the needs” of donors is implicit recognition of the fact that donor recognition is a thing of value conveyed in exchange for the donation. In effect, NPS, using the rhetoric of donation, is, in reality, selling public space to corporations for display of their names and corporate symbols. The difference between widespread donor recognition and paid advertising become elusive.

Thus, under the proposed rule, there will be few places in the common areas of national parks remaining off-limits to the Nike swoosh or the McDonald's arches.

B. Liquor and Tobacco Display May Not Be Refused

The proposed open-door policy for corporate donor recognition makes no provision allowing managers to selectively refuse recognition to one corporation that is offered to others. As a result, NPS will not be able to refuse display of corporate logos for alcohol, tobacco and gaming interests that it extends to all other corporations.

The proposed rule lacks any nexus between donor recognition and a public benefit (or

lack of a public detriment). The only direct prohibitions against certain corporate donors (save for those in litigation against NPS) being eligible for recognition is contained in proposed §6.1.1 that provides –

“The proposed donor has no known significant recent history of violations, whether criminal or civil in nature...”

C. Appropriateness Left to the Questionable Judgment of Political Appointees

In media comments, Interior Secretary Gale Norton has said that she is excited about this plan and promises that corporate displays will be “appropriate” and “tasteful.” As the ultimate decision-maker on the appropriateness of NPS Partnerships with corporations, Ms. Norton would make her personal taste the ultimate arbiter of what displays or advertisements will be approved. Reliance on this sort of personal “smell test” is an inappropriate basis for making public policy determinations.

Moreover, Ms. Norton’s own record gives pause regarding the soundness of her judgment. In 2004, Ms. Norton approved a televised National Football League season kick-off extravaganza on the National Mall, featuring the unveiling of a new soda pop (Pepsi Vanilla) and scantily clad dancers bumping and grinding with the Capitol Dome and Lincoln Memorial as backdrop.

Her philosophical orientation and past approvals suggest that Ms. Norton has yet to meet a “partnership” proposal that she does not like.

II. Proposed Rule Lacks Clear Ethical Guidelines

A. Repeal of “Prohibited Sources” Rule Is Inherently Troublesome

The proposed rule would repeal the current §4.5.2 [Prohibited Sources] that provides:

“The NPS will not accept a direct donation from persons or entities... (b) that have or are seeking to obtain a contract, lease, grant or other business, benefit or assistance from the NPS. This prohibition includes concessioners...”

It is highly questionable for any federal agency to accept, let alone solicit, funds from businesses seeking concessions from it.

B. Slippery Subjective Standards Will Inevitably Lead to Scandal

The proposed rule removes easily understandable bright line prohibitions and replaces them with slippery, “don’t get caught” kind of standards. For example, the Park Service proposes to substitute non-specific criteria, such as the gift “would not likely result in public controversy” or “Maintains the impartiality, and appearance of impartiality, of NPS and the Department of the Interior, and of NPS and Departmental employees.”

These new standards call for situational determinations based upon the “totality of the circumstances surrounding the potential donation.” In other words, each donation is going to require subjective calls by either political appointees or senior executives – a situation that is a recipe for ethical disaster.

The totality of circumstances standard forces park managers to wade into ethical swamps with no flashlight. Park managers will be put into the same position as politicians deciding whether to accept campaign contributions from interests vitally interested in the politician’s future votes. So it will not be surprising under this proposal, to see park managers caught up in the same sort of seamy contribution scandals that today entrap politicians.

III. Proposed Rule Fosters Corrupting Donor Influence Over Park Policies, Practices and Personnel

It is quite natural that large donors exert a form of gravitational influence over the donee institution. Even under today’s more restrictive rules, the Park Service bends its practices to favor donors. As reported in the November, 23, 2005 edition of *New York Times*, the Park Service actions relative to the reopening of the Statue of Liberty were influenced by its donor “partner.” For example, NPS was found by the Interior Inspector General to have maintained –

“an unusually close relationship between the [Statue of Liberty-Ellis Island] foundation and the agency, one in which Park Service staff members helped ‘eliminate any fundraising competition’ from other nonprofits interested in assisting in projects at the monument.”

Under the proposed rule with its keep-the-customer-satisfied approach, one can reasonably expect such unhealthy or unfair collusions to multiply.

This collusive influence from donors becomes particularly troublesome when the donor is the manufacturer of all-terrain vehicles, a telecommunications company with cell towers in national park units, park concessionaires or others with direct stakes in park resource management decisions.

The proposed rules contain language restricting gifts that compromise or may appear to compromise park management decisions. Those provisions, however, will be ineffectual when large gifts are first accepted months before the donor corporation approaches the park to seek a reciprocal concession. In such cases, the proposed rules make no provision for returning earlier gifts that have later created inappropriate entanglements.

The proposed rules, in ways both explicit and implicit, magnify the influence of big donors on park policies. For example, proposed §7.1 [Corporate Advertising] states –

“Upon execution of a Proud Partner Agreement, the Director will notify all park managers of the new Proud Partner, the purposes set forth in the Proud Partner

agreement, the category of corporate or business donor affected and the effective dates of the agreement.”

After such a pronouncement, a park manager would undoubtedly be intimidated about taking any action that might displease a “Proud Partner.”

By encouraging park managers to actively solicit contributions to supplement park budgets, potential donors inevitably obtain much greater access to and influence over park decision-makers. Thus, park scientists, administrators or law enforcement personnel who find themselves involved with actions that affect donors’ interests become inherently at risk for pressure or retaliatory action to prevent irritating or alienating a donor who is providing a measurable portion of that park’s budget or is the key sponsor of a high-profile project.

Consequently, by fostering an all-encompassing quest for donors, the proposed rule becomes an insidious and pervasive corrupting influence on impartial park management.

IV. Proposed Rules Provides No Greater Accountability Over Use of Funds

Although it is clear that that the thrust of the proposed rule is to increase donations from outside sources, the rule provides for no public accounting of the funds thus donated. As a consequence, individual parks may be able to amass slush funds of donated funds that are not subject to the same oversight or reporting requirements as congressionally appropriated funds.

This lack of accountability has two dimensions: 1) opacity or secrecy surrounding particular corporate or foundation gifts and 2) absence of any cumulative reporting that provides the public an accurate picture of each park’s various revenue streams.

The National Park Service should provide some sort of mechanism whereby private partnership agreements may be reviewed and commented upon by the general public. In addition, NPS should specify some measure of transparency so that the end use of donated funds can be traced by members of the public and so that the total amount of donated funds received by a park can be generally known.

V. Proposed Rule Would Authorize Official Solicitation of Funds from Park Visitors

The proposed rule would authorize park officials to ask visitors for money. As provided in proposed §6.3 [Solicitation of Visitors] –

“The NPS may provide opportunities for visitors to choose to receive information about authorized NPS fundraising partners and their activities through displays containing written information about the partnerships, visitor comment books, commonly used NPS forms such as permit applications, or backcountry or campground registrations, and through park newspapers. However, direct

personal solicitation of park visitors is not permitted **unless specifically authorized by the Director.**” (Emphasis added)

Thus, without further authorization, park officials could distribute “donor envelopes” in “informational materials” to every visitor entering a unit of the National Park System.

Further, the rules vest in the NPS Director untrammelled discretion to order park personnel to directly approach visitors and solicit funds. The Director need not explain or put forth any finding as to need or appropriateness prior to ordering nationwide solicitation of the public by uniformed NPS staff. Moreover, the proposed rule lacks any limit on how aggressively park staff may solicit for funds once they are authorized to do so by the Director.

The public already pays twice for national parks, once with taxes and again with the steadily rising visitor fees charged at entrance gates. Under the proposed rule, national parks would get yet a third shot at the public’s wallet.

Either passively or actively soliciting money from the visiting public may negatively affect the visiting experience and lower public satisfaction with national parks.

VI. Proposed Rule Restricts Employee Speech

The proposed §2.3 [Employee Representations] provides that –

“Employees who solicit, encourage, or support fundraising activities may not portray Congress, the Department, or their bureau as having failed to meet their responsibilities.”

This restriction on employee speech is problematic in that employees may be prohibited from saying things that are, in fact, true. If sufficient financial resources were made available to national park needs, park officials would not have to solicit private parties for funds.

Should this proposed rule become the basis for employee discipline, issues of First Amendment free speech guarantees may become an issue.

VII. Proposed Rule Undermines Public Support for National Park System

To the extent that one effect of this proposed rule is to make the public aware of broad corporate support for national park projects, the public may perceive a diminished need for financial support for the National Park System from tax revenues.

Further, growing corporate “partnership” identification with national parks may also lessen the public’s own identification or feeling of ownership of these public institutions.

National parks are part of the public commons. This proposed rule would lead to greater commercialization of the public commons. This more prominent commercial presence

may make the parks feel more like the commercial theme parks, such as Disneyland, and less like part of a shared common heritage.

VIII. NPS Has Not Demonstrated the Need for Proposed Rule Revision

In repeated public statements, the Interior Department has defended the Bush administration record for funding park improvements and maintenance projects. If the Bush administration support is adequate to meet these needs, why is the pursuit of outside funds needed?

The National Park Service has presented no fiscal or programmatic information supporting the need for this proposed rule revision. The total absence of any justifying information suggests that any negative impacts, no matter how slight, may outweigh the relative merits of the proposal.

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