



# Minimizing agricultural landholder liability from recreational use of private lands



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## I. Introduction

Ranchers and farmers in Wyoming and the United States continue to search for new sources to supplement their agricultural incomes. While many seek off-farm jobs, others are boosting income by allowing clients to engage in a wide range of recreational activities on their lands. [59; 65; 58] A recent study of supplemental income sources, conducted for the Agribusiness Division of the Wyoming Business Council, found hunting and fishing activities represented the second most frequent source of supplemental income for the respondents' farms and ranches. [65] Operators permitting hunting and fishing on their lands received on average an additional \$7,300 in income. Other recreational activities, such as riding, roping, and bed and breakfasts, generated an average additional income of \$13,500 for those who answered the Business Council's survey. [65]

While opening agricultural lands to recreation gives Wyoming farmers and ranchers an opportunity to supplement their incomes, these same activities also create new challenges. A number of University of Wyoming Cooperative Extension Service

(UW CES) publications address some of the natural resource and financial concerns (see Appendix A); however, this bulletin provides readers with information regarding the potential legal risks associated with establishing a recreational ranch enterprise in Wyoming. Concerns about high liability risks have been mentioned in the past by Wyoming agriculturalists as reasons for not permitting recreational activities on their lands. [59] Wyoming's legislators have sought to address these concerns by passing two statutes – Wyoming's Recreation Safety and Use Acts – designed specifically to lessen the potential legal liability exposure for certain recreational experiences.

Although the bulletin spends significant time describing potential legal liability exposures, the discussion is still only an introduction. Each operation's legal exposures are unique, and the laws governing these risks have continued to change over time. Therefore, the authors' primary goal is to give readers general information they, along with their attorneys and risk management teams, can use in preparing the best plan for their operations. This bulletin is not intended to be a substitute for competent legal and risk management advice.

## II. Selected liability exposures confronting Wyoming ranch recreation enterprises

### Recreational activities currently provided on Wyoming farms and ranches

Table 1 summarizes the various types of outdoor recreational activities being used by Wyoming's farmers and ranchers to generate supplemental income from their agricultural lands. Grants of access for hunting and fishing appear to be the leading form of ranch recreation activities in the state. Moreover, an increasing number of these same farmers and ranchers are providing customers with a wide range of other recreational goods or services in the form of lodging, meals, horse rentals, guiding and outfitting services, and dude ranch experiences. Table 2 shows the frequency and range of supplemental gross income being generated by various types of ranch recreation activities. [65]

Table 3 describes the legal liability exposures that various types of ranch recreation activities create. For simplicity, this bulletin divides these risks into two general categories: those associated with granting access and those tied to the provision of other goods and services.

### Liability exposures arising from simply granting access

#### *Adult entrants*

Many Wyoming farmers and ranchers are supplementing their agricultural incomes by charging an access fee to customers who want to hunt, fish, bird watch, sight-see, gather rocks, or run four-wheel drive vehicles on private lands. Traditionally, landholders' liability from allowing access to their lands was related to whether the entrants were classified by the courts to be trespassers, licensees, or invitees. Trespass-

ers were individuals who had entered or remained on another's land without permission. Licensees were persons who entered with permission but whose entrance did not benefit the landholders. Individuals occasionally permitted to camp on a rancher's property without paying an access fee were also licensees. Fee hunters fell into a third category – business invitees, or people who had permission to enter the property for the potential economic benefit (in this instance the fee) of the landholders.

Under the traditional, common law or judge-made rules, landholders owed the lowest duty of care towards trespassers and licensees; however, landholders were not to willfully or wantonly injure trespassers, and they were not to set traps to harm them. In some states, landholders were required to look for trespassers known to frequent a limited area before engaging in any dangerous activities. Similarly, licensees only had "naked permission" to be on the land and were expected to accept its existing conditions. Landholders owed licensees the same duty owed trespassers – not to willfully or wantonly injure them. In addition, courts in many states required landholders to notify licensees of any hidden defects on the property. Landholders were not obligated to inspect their property beforehand, and licensees were obligated to exercise reasonable care in dealing with known or obvious dangers. [48, at 412]

Landholders owed the highest duty of care to business invitees under the traditional common law rules. Landholders were required to exercise reasonable care to not injure business invitees, to warn them of

**Table 1.** Wildlife and recreational activities on Wyoming farms and ranches in order of frequency. Based upon a survey of 4,096 respondents.

Activity	Category	Number of times activity was reported	Percent of all reports (based on 4,096 respondents)
Game hunting	Hunting or fishing	545	13.3%
Guiding or outfitting	Hunting or fishing	155	3.8%
Riding or dude ranching	Recreation	94	2.3%
Bird hunting	Hunting or fishing	89	2.2%
Working ranch activity	Recreation	87	2.1%
Fishing	Hunting or fishing	79	1.9%
Cabin rental/trailer parking for hunting	Hunting or fishing	79	1.9%
Roping	Recreation	61	1.5%
Prairie dog hunting	Hunting or fishing	51	1.3%
Bed & breakfast	Recreation	39	1.0%
Sight-seeing/bird watching	Recreation	32	0.8%
Rock picking	Recreation	19	0.5%
Four-wheeling	Recreation	18	0.4%
Boarding horses	Recreation	11	0.3%
Riding lessons	Recreation	7	0.2%
Mobile home sites for summer recreation	Recreation	2	0.1%
Guest cabins or motel	Recreation	2	0.1%
Small game hunting	Hunting or fishing	1	0.02%
Carriage rides	Recreation	1	0.02%
Art camp	Recreation	1	0.02%
Weddings	Recreation	1	0.02%
Christian retreat center	Recreation	1	0.02%
Fossil cabin museum	Recreation	1	0.02%
Teaching horse backpacking	Recreation	1	0.02%

SOURCE: Wyoming Agricultural Statistics Service, "Wyoming Farm and Ranch Supplemental Income Survey 2000," Table 7 (Wyoming Business Council, Agribusiness Division, 2000).

any known hidden dangers, to inspect the property and discover possible dangerous conditions, and to take reasonable precautions to protect them from harm. [48, at 425-26; 49, at § 343; 36, at 305-307]

Many states, either through statutes or judicial decisions, have modified the common law rules governing landholder liability. Some states now impose the same duty of reasonable care on landholders, regardless of whether an entrant has permission to be on the land. Other states have estab-

lished a two-tiered system of liability, maintaining the minimal standard owed to trespassers while imposing a new duty of reasonable care for all other entrants on landholders.

The Wyoming's Supreme Court adopted the two-tier system of landholder liability in a 1993 case, *Clarke v. Beckwith*. [13] Landholders, according to the Wyoming Supreme Court, are now obligated to exercise "reasonable care under the circumstances" to protect any person having per-

**Table 2.** Frequency of gross income ranges for selected wildlife and recreation activities on Wyoming farms and ranches reported by five or more respondents.

Activity	\$1-\$999		\$1,000-\$9,999		\$10,000-\$29,999		\$30,000-\$49,999		\$50,000 and over		Totals	
	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.	No.	Pct.
Big game hunting	227	46%	199	40%	46	9%	11	2%	14	3%	497	100%
Guiding & outfitting	21	15%	65	46%	30	21%	6	4%	19	13%	141	100%
Riding/dude ranching	12	15%	33	41%	15	19%	7	9%	13	16%	80	100%
Bird hunting	23	29%	36	45%	13	16%	5	6%	3	4%	80	100%
Working ranch	14	20%	28	39%	12	17%	5	7%	12	17%	71	100%
Fishing	8	11%	40	56%	13	18%	6	8%	5	7%	72	100%
Cabin/trailer parking for hunting	19	26%	34	46%	10	14%	5	7%	6	8%	74	100%
Roping	19	39%	23	47%	5	10%	0	0%	2	4%	49	100%
Prairie dog hunting	14	30%	18	38%	7	15%	2	4%	6	13%	47	100%
Bed & breakfast	11	31%	14	39%	5	14%	3	8%	3	8%	36	100%
Sight-seeing/bird watching	9	29%	10	36%	3	11%	2	7%	5	18%	28	100%
Rock picking	5	33%	7	47%	0	0%	1	7%	2	13%	15	100%
Four-wheeling	5	33%	5	33%	2	13%	1	7%	2	13%	15	100%
Boarding horses	1	14%	4	57%	1	14%	1	14%	0	0%	7	100%
Riding lessons	0	0%	3	60%	2	40%	0	0%	0	0%	5	100%

SOURCE: Wyoming Agricultural Statistics Service, "Wyoming Farm and Ranch Supplemental Income Survey 2000," Table 8 (Wyoming Business Council, Agribusiness Division, 2000)

mission to enter their lands. [13, at 296] The new rule does not change the previous prohibition against willful or wanton harm of trespassers. For all others, the key issue in determining liability is “[t]he foreseeability of the injury, rather than the status of the lawful entrant.” [Id.] In interpreting this requirement, the Wyoming Supreme Court quoted from a 1977 North Dakota case:

An occupier of premises must act as a reasonable man in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to another, the seriousness of the injury, and burden of avoiding the risk... *O’Leary v. Coenen*, 251 N.W.2d 746, 751 (N.D. 1977). [Id., at 296]

In illustrating the application of this new balancing test, the Wyoming Supreme Court in *Clarke* also cited an earlier Wyo-

ming case in which a visitor, who had received a general invitation the previous year to visit an unoccupied summer cabin, was injured. [2] Disregarding the licensee-invitee distinction, the Wyoming Supreme Court in the earlier case concluded that no duty of care had been violated. “[T]he visit,” it said, was “unexpected, unplanned, and unprepared.” [13, at 296] One might reasonably conclude that farmers and ranchers who only occasionally allow individuals to enter their lands to recreate might make a similar claim, regardless of whether a fee is charged. They would be obligated to notify potential entrants of any hidden dangerous condition they are aware of, but otherwise would not be obligated to tell entrants of obvious dangers or to conduct a search of the property for hidden dangers prior to granting permission to enter their lands. The *Clarke* case,



**Table 3.** Care required of ranch recreation providers based upon types of service provided and entrants' status.

Nature of service	Unapproved access only	Approved access only	Approved access plus meals and housing	Approved access plus rental of personal property
Type of access	Trespasser	Licensee or business invitee	Business invitee	Licensee or business invitee
Standard of care	<p>May not willfully or wantonly harm.</p> <p>Special duties if trespasser is a child who is attracted to a dangerous artificial condition on the land.</p>	<p>Reasonable care.</p> <p>Special duties may be created if the landholder specifically warrants the safety of the land.</p>	<p>Reasonable care.</p> <p>Compliance with health and safety regulations.</p> <p>Special duties may be created as a result of contractual or common law duties owed guests by innkeepers.</p>	<p>Reasonable care in the maintenance, selection, or instructions given regarding personal property rented.</p> <p>Special duties may be created if provider expressly or impliedly warrants (promises) to the guests that the personal property rented is safe or fit for the particular purpose it is to be used.</p>
Examples of liability exposures	<p>Spring gun, placed in vacant building, injured a trespasser.</p> <p>Trespassing child injured when climbs on a poorly arranged hay stack.</p>	<p>Permitting camping (without warning) in an area which the landholder knows is subject to flash flooding.</p>	<p>Guest becomes sick after drinking unpasteurized milk or due to failure to properly vent cabin heater.</p> <p>Guest's room is broken into and jewelry stolen.</p>	<p>Rental of a horse with a known tendency to bite.</p>
Additional comments	<p>Trespassers are also obligated to exercise reasonable care.</p> <p>Landholders are not liable to trespassing children for injuries caused by natural conditions.</p>	<p>Entrants are obligated to exercise reasonable care.</p> <p>Landholders are not liable to entrants for injuries caused by apparent hazards.</p>	<p>Guests are obligated to exercise reasonable care.</p> <p>Innkeeper liability for stolen property is subject to statutory exemption.</p>	<p>Borrower is obligated to exercise reasonable care in using rented personal property.</p>

however, may subject landholders to additional liability if they routinely allow others to recreate on their land, even if no access fee is charged. In that case, the visit cannot be said to be unexpected. It will be left to a jury to apply the new balancing standard and determine the landholder's duty of care or for the landholder's attorney to convince the court that the recreational enterprise is protected under Wyoming's Recreation Use (no charge) or Safety Statutes.

### ***Child trespassers and the "attractive nuisance" doctrine***

Historically, the common law imposed additional duties on landholders when child trespassers were involved. The "attractive nuisance" doctrine held that landholders were liable for artificial conditions on their lands that reasonably might be expected to implicitly attract children to their property. Although Wyoming courts recognized the doctrine of attractive nuisance as far back as 1936, early Wyoming cases were often reluctant to apply it. [1] In a 1992 case that involved a trespassing child and a rail yard, the Wyoming Supreme Court adopted the following standard, based upon the Restatement (Second) of Torts, §339 (1965), to determine a landholder's potential liability for attractive nuisances:

A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if

(a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and

(b) the condition is one of which the possessor knows or has reason to know and which he realizes or should realize will

involve an unreasonable risk of death or serious bodily harm to such children, and

(c) the children because of their youth do not discover the condition or realize the risk involved in intermeddling with it or in coming within the area made dangerous by it, and

(d) the utility to the possessor of maintaining the condition and the burden of eliminating the danger are slight as compared with the risk to children involved, and

(e) the possessor fails to exercise reasonable care to eliminate the danger or otherwise to protect the children. [60, at 1049, quoting 49]

To be successful under the attractive nuisance doctrine, injured children or their guardians must show that an "artificial condition" is involved. This stipulation would rule out suits based upon injuries to trespassing children that were related to stone outcroppings, natural water bodies, or trees. Courts in several western states have ruled that irrigation ditches do not ordinarily constitute artificial conditions for purposes of the attractive nuisance doctrine [51; 62; 45]; however, the Wyoming Supreme Court has not specifically addressed this point. The injured children or their guardians must establish by a majority of the evidence the elements (a) through (d) listed above. If they establish these points, then a duty of reasonable care (element (e)) is imposed upon the landholder.

The jury is still out on whether the attractive nuisance doctrine will create significant liability exposures for Wyoming agriculture. Following remand in the 1992 case, the Wyoming Supreme Court upheld the jury's determination that the injured

child and his guardians had failed to meet their burden of proof:

Sufficient evidence supported the jury's negative answer to the fourth interrogatory: "Is the utility to Union Pacific of maintaining the condition and the burden of eliminating the danger slight as compared with the risk to children involved?" As we stated above, the evidence indicated that the risk to children was not great, and [the child and his guardians] fail to direct us to any evidence which demonstrated that the utility to Union Pacific of maintaining the rail yard was slight as compared to the risk to children. [61, at 784]

The court also noted that the railroad did not know that this was a place where children had been trespassing; the place where the child was injured was more or less inaccessible; and the railroad was not aware that the yard posed serious risk (no child had been injured or killed in an accident during the past 16 years). In contrast, the Wyoming Supreme Court's 1936 case found the defendant was aware that children had been trespassing on the electric power poles and that the uninsulated wires posed a significant hazard to the children. These findings were enough to require the power company to exercise reasonable care to protect other children. [1]

#### **Additional liability exposures arising from other ranch recreation activities**

##### ***Injuries arising from the provision of food***

Ranch recreation enterprises serving food to their customers face a number of additional legal liability exposures. Wyoming's uniform commercial code indicates that people who routinely sell meals to customers impliedly warrant (promise) the food will be fit and pass without objection in the trade. [Wyo. Stat. § 34-2-314] Traditional common law rules further obligate

providers to exercise reasonable care in food preparation and storage. The Wyoming Supreme Court has yet to decide a case that outlines what either this common law duty or statutory implied warranty specifically requires. [Compare 39 with 32] In a 1991 case, the Wyoming Supreme Court held that a café owed a duty to a customer who was choking and in imminent need of medical assistance. The café was obligated to summon medical assistance but not to render first aid. [20; see also 33] It should be noted that the Wyoming statutes specifically exempt persons from civil liability "who in good faith render emergency care or assistance without compensation at the place of an emergency or accident...for acts or omissions in good faith." [Wyo. Stat. § 1-1-120]

In 2000, the Wyoming legislature adopted the Wyoming Food, Drug, and Cosmetic Safety Act [Wyo. Stat. § 35-7-109 *et seq.*], which creates a single statutory plan governing food safety. This act repeals all previous commodity-based safety statutes and eliminates previous regulations specifically designed to cover bed and breakfast and ranch recreation enterprises. [5] The new regulation provides that "[a] person shall not operate an establishment...without a valid license..." [66, Chapter 2, Section 1(a)] Section 2(a) of this same chapter indicates:

No establishment shall serve, hold for sale or sell food to the public without a valid license. An agriculture producer shall be exempt from the licensure requirement in this section for processing, distributing, storing or sale of any raw agriculture commodity he produces.

The statute says " '[e]stablishments' means and includes any place or any area of any establishment in which foods...are displayed for sale, manufactured, processed,

packed, held, or stored.” [Wyo. Stat. § 35-7-110(a)(xi)] The regulation specifically includes “bed and breakfast” facilities in its definition of establishments. [66, Chapter 1, Section 8 (a)(xlvii)(A)(I)] It also defines the following important terms:

(xi) Bed and breakfast facility’ means a private home which is used to provide temporary accommodation for a charge to the public with not more than four (4) lodging units or not more than a daily average of eight (8) persons per night during any thirty (30) day period and in which no more than two (2) family style meals are provided per twenty four (24) hour period.

(li) Family style meals’ means a meal prepared in a bed and breakfast facility or ranch recreation facility and served in the same facility around a common table(s). At no time would a menu or a preselected list of foods be available, and all foods not consumed, which were of a potentially hazardous nature, would be discarded following the meal.

(cxv) Ranch recreation facility’ means a ranch/farm facility containing or having under use agreement one hundred sixty (160) acres or more which may for a charge to the public provide activities for not more than a daily average of eight (8) persons in any given thirty (30) day period or may include sleeping facilities in not more than four (4) sleeping units along with accompanying family style meals. Meals and lodging shall be considered an adjunct to the activities which take place on the ranch and are not available to non-registered guest. This definition does not apply to a dude ranch.

What additional duties do these rules impose on ranch recreation operations? Chapter 1, Section 17, of these rules, titled “Bed and Breakfast and Ranch Recreation Requirements,” provides:

(a) Food service provided at bed and breakfast and ranch recreation facilities shall be for the bona fide guests of said

facilities and shall not be available for charge or otherwise to other members of the public that might be present.

(b) The kitchen in a bed and breakfast or ranch recreation facility in a home may be equipped the same as any normal home style kitchen provided food safety procedure can be achieved.

Therefore, ranch recreation enterprises that provide food must first obtain a license from the Wyoming Department of Agriculture. Owners must satisfy the general requirements of the regulations (e.g., opening the facility for inspection), and they must ensure their business fits within the definition of a ranch and recreation facility (e.g., size limitations, family-style meals, service only to bona fide guests, etc.) if they want to qualify for bed and breakfast and ranch recreation enterprises. If they satisfy the requirements, the operators may use a normal home-style kitchen, provided they can show that food safety procedures can be achieved.

Regarding governmental penalties for violating this act, the statute provides: “In addition to any other remedies, the director may apply to the district court for injunctive relief from any person who violates [its substantive requirements].” [Wyo. Stat. § 35-7-112(b)] The statute does not further describe what these “other remedies” might be. Does violation of its provisions create a private cause of action for injured customers? Because of its recent passage, the Wyoming Supreme Court has not had an opportunity to address this question.

### ***Personal and property damages to guests staying on the property***

The prior Department of Health regulations governing bed and breakfasts and ranch recreation enterprises has specific rules regarding sleeping rooms. [5, 9-10]

The new Wyoming Department of Agriculture regulations do not. Ranch recreation enterprises that provide sleeping rooms to guests must comply with local fire and other safety codes. Additionally, under common law, persons who “keep[] an inn, hotel, motel or house for the lodging and entertainment of travelers” are labeled “innkeepers” and are subject to special duties regarding the person and property of their customers. [6, at 788; 7] There are no cases specifically addressing whether ranch recreation enterprises are innkeepers. Cases in other states, however, have found providers of bed and breakfast services and tourist cabins are innkeepers. [37 (bed and breakfast); 37 and 56 (tourist cabins)] The Wyoming Supreme Court has held that lessors of mobile home sites are not innkeepers. [22] Therefore, farmers and ranchers renting summer parking sites for travel trailers are not subject to the innkeeper rules that follow, though they would be obligated as landlords to inspect the rental space before turning it over to the tenant.

With respect to innkeepers’ liability and personal injuries caused by conditions within a guest room, a 1998 Wyoming Supreme decision held that innkeepers are obligated to exercise “ordinary care to keep the property in a reasonably safe condition for the purpose for which the property was reasonably intended.” [30, at 1356] In this case, the guest fell when a bar he was leaning on in the shower pulled away from the wall. The Wyoming Supreme Court acknowledged that the separation of the bar from the wall did not establish a breach of the innkeeper’s duty of care. The defendant, a Holiday Inn, also argued that the plaintiff presented no evidence that it had improperly installed, maintained, or inspected the shower. Nev-

ertheless the Wyoming Supreme Court concluded:

[Plaintiff] and his wife both testified that the wall was mushy, crumbly and rotted where the bar came out. From this testimony, a jury could reasonably infer that the condition of the wall had occurred over a sufficiently long period of time that Holiday Inn, in the exercise of reasonable diligence, should have discovered and fixed the problem. [Id., at 1358]

Arguably, an innkeeper’s obligation regarding a guest’s personal injuries from conditions outside the room is equivalent to that of a landholder to entrants. A 1984 New York case, for example, held that a dude ranch was not liable when a guest stumbled on a dirt path. [41] The court held that the dude ranch had no obligation to post notices or block the path where there was no evidence of any hidden dangerous conditions on it. Similarly, a 1958 Illinois case addressed the duty owed by a state park lodge to a cabin guest who fell over a precipice while viewing the nearby scenery. [56] The Illinois Court of Appeals noted that the defendant-innkeeper was obligated “to keep in a safe condition those portions of the premises included within the invitation to the invitee, including reasonably safe means of ingress and egress, even where the mode chosen is not the customary one but one which is allowed by the owner.” [Id., at 83; 161 N.E.2d 597] However, with respect to the defendants’ obligations regarding the recreational area, the court concluded:

This accident occurred in a seven hundred acre park located along the Illinois River, containing all the scenic attractions and potential dangers which customarily are to be found in a park of this kind. Defendant could not, of course, be expected to warn against the innumerable

hidden dangers in a seven hundred acre park, nor could he be expected to light those same potentially dangerous places during the darkness or when visibility is restricted. [Id., at 83-84; 161 N.E.2d. 597-98]

The Illinois court refused to impose a different standard for care that would depend upon whether the injuries were caused by an artificial or a natural condition. [Id.] In contrast, under Wyoming law, landholders are not liable for injuries to guests caused by natural accumulations of snow and ice. [Compare 46 (natural accumulation) with 54 (artificial accumulation)]

Historically, innkeepers were strictly liable for property theft from guest rooms. [42] State statutes have limited this duty. Wyo. Stat. § 33-17-101 provides:

Every landlord or keeper of a public inn or hotel in this state, who shall keep in his place of business an iron safe, in good order and suitable for the purpose hereinafter named, and who shall post or cause to be posted in some conspicuous place in his office, and on the inside of every entrance door to every bed chamber, the notice hereinafter mentioned, shall not be liable for the loss of any money, jewelry or other valuables belonging to his guests or customers, unless such loss shall occur by the hand or through the negligence of such landlord, or by a clerk or servant employed by him in such hotel or inn; provided, that nothing herein contained shall apply to such amount of money or other valuables as is usually common and prudent for any such guest to retain in his room or about his person.

Wyo. Stat. § 33-17-102 describes the content of the required notice.

### ***Bailments***

What about ranch recreation operators who loan guests horses for riding, guns for target hunting, or inner tubes for swimming or sledding? A bailment, under com-

mon law, refers to the lending of personal property to another with an expectation that the item will be returned. As a general rule, individuals who loan personal property to others without charge (a gratuitous bailment) are only obligated to inform borrowers of any known defects. In contrast, ranch recreation operators who rent equipment or animals to their guests (a mutual benefit bailment) are obligated to exercise reasonable care in selecting, inspecting, and maintaining the property. [3; 48, at 716-17] Some courts also have held that individuals who regularly rent personal property to others impliedly warrant that the articles are suitable for the intended purpose. [3; 10] Under this rule, injured guests only need to demonstrate that the rented article was not fit for the intended purpose; they are not obligated to prove that the owner knew or could have learned of the defect.

### ***Injuries caused by other animals under the control of the ranch recreation enterprise***

A landholder's liability also extends to dangers created when guests come into contact with livestock. As a general rule, animal owners are only liable for injuries caused by domestic animals – dogs, cattle, or sheep, for example – if an animal has had some dangerous tendency, if the owners knew of this tendency, and if the owners failed to warn the entrant. Owners also would be liable for injuries suffered by guests because of the owners' or their employees' negligence in handling the animal. [38] Injuries caused when a horse bucks after an employee places three riders on it might qualify as negligent. [35; see also 21] Owners of wild animals – the pet raccoon, for example – are absolutely liable for any animal-caused injuries, even though the animals have not displayed any

dangerous tendencies in the past. [48, at 541] Guests are obligated to exercise reasonable care when around animals; however, a guest's negligence does not eliminate the owner's duty. This fact will simply be taken into account by the jury in fixing comparative fault and damages.

***Ranch recreation enterprise's liability for its employee's actions***

Under common law, ranch recreation enterprises may be liable for injuries to others caused by their employee's actions. Under the principle of respondeat superior, as adopted by the Wyoming Supreme Court, employers are liable for both the negligent and intentional torts of their employees if such tort is committed within the scope of their employment. [14] With respect to intentional actions (e.g., purposefully ramming another's car), the Wyoming Supreme Court requires that the actions be, in part, in furtherance of the employers' interests and that the use of force is reasonably expected by the employer. [Id., at 135] In contrast, if the actions causing the injury did not occur while the employee was working (e.g., the injury occurred when the guest and employee left the ranch to drink at a local bar), were not designed to further the employer's interest (e.g., employee theft of a guest's property), or would not be reasonably expected or foreseeable by the employer (e.g., use of excessive force), then the ranch recreation employer would not be liable under this principle. [8; 64]

Employers also may be liable for the intentional actions of employees under the doctrine of negligent hiring. In these cases, the employee's actions often are not designed to further the employer's interest, and the principle of respondeat superior would not apply. The Wyoming Supreme

Court explained the doctrine of negligent hiring in a 1992 case:

We accept the special definition of this cause of action set forth in Restatement (Second) of Agency § 213 (1958):

A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:

\* \* \*

(b) in the employment of improper persons or instrumentalities in work involving the risk of harm to others...[18, at 258]

In applying the doctrine of negligent hiring, the key issue is the employer's knowledge. The Oklahoma Supreme Court has written:

An employer is found liable, if – at the critical time of the tortious incident –, the employer had reason to believe that the person would create an undue risk of harm to others. Employers are held liable for their prior knowledge of the servant's propensity to commit the very harm for which damages are sought. [43, at 600]

Employers may not avoid liability under the doctrine of negligent hiring by not thoroughly interviewing potential employees. In a case involving the sexual assault of a 16-year-old girl by an usher at a rock concert, the Court of Appeals in Washington held:

Past Washington decisions tend to employ a type of balancing test to determine if the given employment warrants the extra burden of a thorough background check. See, e.g., *La Lone v. Smith*, 39 Wash.2d 167, 172, 234 P.2d 893 (1951) ("One may normally assume that another who offers to perform simple work is competent. If, however, the work is likely to subject third persons to serious risk of great harm, there is a special duty of investigation.") (quoting 1 Restatement, 465, Agency, § 213) ...

Although [the employee's] job was not high paying, the circumstances of his employment put him in a position of responsibility. A jury might well conclude that it was reasonable for concert patrons to look upon [the employee] as one authorized to perform security functions, and that, therefore, [the employer] should have more extensively examined [the employee's] background before hiring him...[11, at 255; 868 P.2d 887-88]

The Colorado Supreme Court has held that an employer's duty to investigate is tied to the employee's likely contact with the public. [15] Therefore, an employer would be under a greater obligation to conduct a background check when hiring a cowboy to conduct ranch recreation rides than for herding livestock. The employer would have an even greater duty in employing this person to conduct such rides for children rather than for adults.

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### III. Two Wyoming statutory limits on landholders' liability toward recreational users

#### Wyoming's Recreation Use Act

A 1987 survey of Wyoming farmers and ranchers, evaluating interest in ranch recreation activities, indicated that over three-quarters of the respondents permitted access to their land without charge. [59] For these agricultural producers, Wyoming's Recreation Use Act provides broad protection from legal liability.

The complete text of the Wyoming Recreation Use Act is found in Appendix B. The act, subject to some minor editorial changes in 1989, has remained virtually the same since its adoption by the Wyoming legislature in 1965.

The act is intended to encourage landholders (owners, lessees, and possessors) to allow the public free access to their lands for recreational purposes by limiting their liability exposures. Wyo. Stat. § 34-19-102 indicates that landholders are not responsible (to persons who do not pay a charge) to keep the lands safe or to provide any warnings of any dangerous condition, use, structure, or activity and to those who are on the land for recreational purposes.

Among other things, Wyo. Stat. § 34-19-103 provides that landholders do not make any implied assurances concerning the property's safety and do not assume any responsibility for injury to the entrant's person or property. However, Wyo. Stat. § 34-19-105 specifically states that landholders permitting free public access are still liable for "willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity." This means under Wyoming's Recreation Use Act, landholders basically owe recreational entrants the same duty of care they owe trespassers.

The Wyoming courts have had few opportunities to interpret the Recreation Use Act. [16; 17; 28; 44; 55; 67] Court rulings in other states, interpreting similar statutes, provide some additional insight into how this statute will be applied in Wyoming. [4; 12, at 12-13]

First, Wyoming's Recreation Use Act does not apply in cases where landholders charge an access fee. The term "charge" generally has been limited to a monetary



fee paid specifically by the injured party to obtain access to the recreational lands. [4, at 379-83; but see 31] Courts in other jurisdictions have been unwilling to find a “charge” where a fee is required for other services (but not for access) or is required for a specific class of persons (hunters, for example) but not for the injured party (children or hikers). [23; 24]

Second, Wyoming’s Recreation Use Act provides protection only from liability suits based on injuries caused by defects on the recreational land. Land is broadly defined under Wyo. Stat. § 34-19-101(a)(i) to include “land, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to realty.” The federal court in Wyoming has restricted this definition somewhat by refusing to apply the act to lands located in industrial parks. [28] Courts in other states have similarly limited application of their states’ recreational use act to agricultural or undeveloped lands. [4, at 307-310; 12, at 13]

Third, Wyoming’s Recreation Use Act focuses only on landholder duties arising out of the injured party’s status as an entrant. The statute provides no protection to guides or outfitters who have a right of access but exercise no “control” over the land. Similarly, landholders remain liable if they lend recreational equipment known to be defective (see discussion above regarding bailments).

### **Wyoming’s Recreation Safety Act**

The Wyoming Legislature passed the Recreation Safety Act in 1989. [26: 27] The act exempts providers of sports or recreational opportunities from any liability associated with the “inherent risks” of that activity. Other states, adopting similar stat-

utes, have limited this exemption to specific kinds of recreational activities (e.g., skiing). [12] In contrast, the definition of “sports or recreational opportunity” in the Wyoming Recreation Safety Act covered virtually every recreational activity farmers and ranchers might offer. Even so, the Wyoming Legislature in 1993 modified the definition of covered sports or recreational opportunities to include “other equine activity” in addition to “horseback riding.” It also incorporated a lengthy definition of the phrase “equine activity.” Wyo. Stat. § 1-1-122(a) now says:

(iii) ‘Sport or recreational opportunity’ means commonly understood sporting activities including baseball, softball, football, soccer, basketball, swimming, hockey, dude ranching, nordic or alpine skiing, mountain climbing, river floating, hunting, fishing back country trips, horseback riding and any other equine activity, snowmobiling and similar recreational opportunities...

(iv) ‘Equine activity’ means:

- (A) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines;
- (B) Any of the equine disciplines;
- (C) Equine training or teaching activities, or both;
- (D) Boarding equines;
- (E) Riding, inspecting or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;
- (F) Rides, trips, hunts or other equine activities of any type however informal or impromptu;
- (G) Day use rental riding, riding associated with a dude ranch or riding associated with outfitted pack trips; and
- (H) Placing or replacing horseshoes on an equine.

Aside from four-wheeling and other nonwinter, motorized recreational activities and parachuting, para-gliding, and other nonearth-bound recreational activities, it is hard to think of any sport or recreational opportunities not specifically included in this list. Even these activities may be implicitly covered, depending upon how the Wyoming courts read the phrase "...and similar recreational opportunities."

Wyoming's Recreation Safety Act does not protect all possible defendants. The term "providers" under the statute does not include equipment sellers. Wyo. Stat. § 1-1-122(a) indicates:

(ii) "Provider" means any person or governmental entity which for profit or otherwise, offers or conducts a sport or recreational opportunity. This act does not apply to a cause of action based upon the design or manufacture of sport or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational opportunity.

Therefore, a helmet maker would not be protected if a customer was injured as a result of a flaw in the helmet's "design or manufacture." What about the liability exposure of a ranch recreation enterprise that gives its customers defective helmets? Arguably the Recreation Safety Act has no impact on the provider's obligation to exercise reasonable care in maintaining and selecting such personal property for its recreational guests (see below).

Wyoming's original Recreation Safety Act was confusing regarding what incidents constituted "inherent risks," and it did not obligate providers to exercise any duty of care. Section 1-1-122(a)(i) of the original act defined inherent risk as "any risk that is characteristic of or intrinsic to any sport or recreational opportunity and which cannot reasonably be eliminated, altered or con-

trolled." This definition required not only a finding that the risk was "characteristic of or intrinsic to" the opportunity but also that it could not "reasonably be eliminated, altered or controlled." [25, at 565] The Wyoming Supreme Court held that it would normally be for the jury rather than the court to decide if a particular risk was inherent under the 1989 statute. [Id., at 566]

The Wyoming Legislature amended the definition of inherent risks in the Recreation Safety Act twice in the 1990s. Among other things, its 1993 amendments established a separate standard for inherent risks in equine activities. In 1996, the Wyoming legislature again revisited the question of inherent risks and created a new, single rule for both equine and nonequine activities. Wyo. Stat. § 1-1-122 now provides:

(a) Any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for any and all damage, injury or death to himself or other persons or property that results from the inherent risks in that sport or recreational opportunity.

(b) A provider of any sport or recreational opportunity is not required to eliminate, alter or control the inherent risks within the particular sport or recreational opportunity.

(c) Actions based upon negligence of the provider wherein the damage, injury or death is not the result of an inherent risk of the sport or recreational opportunity shall be preserved pursuant to W.S. 1-1-109.

The new standard applies to customers, whether the inherent risk is known or unknown to them. Unlike the original stan-

dard, providers under the 1996 amendments are not obligated to attempt to eliminate, alter, or control the inherent risk. Providers remain liable for any injuries that are the result of their negligence and not an inherent risk. What is the difference? The Wyoming Supreme Court has yet to address this question, but the Wyoming Federal District Court has in two separate cases.

In *Cooperman v. David*, a plaintiff-guest sued a trail-ride provider for an injury incurred when his saddle slipped. [16] The trail-ride provider claimed that a slipping saddle is an “inherent risk” of horseback riding, and therefore, is exempt from liability under Wyoming’s Recreation Safety Act. The Federal District Court, citing a 1998 Wyoming law review article, said that inherent risks in sporting or recreational opportunities fell into two categories. “It is either a characteristic which is an anticipated part of the recreational activity that helps to make the activity the experience that it is, or it is an undesirable risk that is simply a collateral part of the recreational activity.” [16, at 1318 citing 26, at 270-71] Moguls on a ski slope fall into the first category; bad weather falls into the second.

The parties in *Cooperman* raised a number of factual issues regarding the quality of the instructions given and whether the saddle had been properly cinched. The Federal District Court found that such facts were generally irrelevant in determining whether the injury in question was an inherent risk:

To base an analysis of inherent risk upon the action of the recreational provider, puts the cart before the horse. Such an analysis amounts to a determination of negligence before the determination of duty. That is not to say that the underlying causes of the risk should be com-

pletely ignored in all cases. Whether the slipping saddle was caused by a loose cinch, by an equipment malfunction or by the sabotage of an evil minded third-party may well influence whether the jury considers the risk integral to or characteristic of the activity. [16, at 1318]

The Federal District Court refused both parties’ requests for a summary judgment (a decision based solely on the law), finding that neither party had explicitly addressed whether saddle slippage was an inherent risk of horseback riding. This question, it said, was still a question of fact for the jury. [Id., at 1317] On a subsequent motion for reconsideration, the Federal District Court found in favor of the provider. It based its decision upon the deposition of the plaintiff’s expert witness:

Mr. Anderson’s testimony tends to show that slipping saddles are a common occurrence during horse-back rides. His description of the many causes of slipping saddles and the need to constantly be on guard against loosening cinches indicates that having a saddle slip is characteristic of horseback riding. His remarks on the risk of a slipping saddle meet the parameters articulated in this Court’s prior rulings which govern inherent risk and consequently it appears that summary judgment is appropriate. [Id., at 1320]

A 1999 Federal District Court decision in Wyoming, *Madsen v. Wyoming River Trips, Inc.*, also addressed this question. [40] The case involved a head injury sustained on a white water river-rafting trip when the plaintiff bumped heads with another passenger. The court criticized the *Cooperman* decision for claiming that the recreational provider’s actions were irrelevant in determining if the risk is inherent:

The Court understands [the *Cooperman*] analysis of inherent risk to consider only one thing: The abstract character of the risk. Thus under [this] analysis, the Court never looks to the defendant’s actions to

determine whether there is a duty. In other words, the duty question...is not a fact specific inquiry. Instead, actions of the Defendant are only used to determine whether that abstract risk, e.g., a slipping saddle, is an inherent one.

...Cooperman...found that it was not relevant whether the defendant forgot to cinch the saddle tight so as to prevent it from slipping.... In other words, the relevant inquiry was only whether a slipping saddle was an inherent risk. If this was so, the inherent risk inquiry ends... If the defendant, for instance, forgot to cinch the saddle, this would simply be an exaggeration of an inherent risk... But when one takes the Cooperman analysis to its logical extreme, this Court must conclude that the Wyoming legislature could not have intended this result unless the specific facts presented in Cooperman compelled finding that the risk was inherent.

\* \* \*

...The Court believes that one must look to the specific facts of a case to see whether there is a duty, and not simply look to the abstract character of the risk. Thus, the duty question is best resolved by framing the question correctly. Whether a duty exists [in a hypothetical instance where a provider puts three people on a horse] is determined by asking: 'Is being bucked from a horse, while three people are riding it, an inherent risk?' The question is not simply: 'Is being bucked from a horse an inherent risk.' [35, at 1328]

The Federal District Court in Madsen found that the facts do matter in framing the question as to which of several factors caused the incident. Was it the inherent unpredictability of horses, the relative difficulty of properly cinching a saddle, or the placing of three persons on a single horse? The court then instructed the parties to the rafting incident as to how to frame the inherent risk question:

...Wyoming River Trips should not try to argue at trial that putting people in the front of the boat is simply an exaggeration of the inherent risk of getting jostled while riding in river rapids. This ignores the factual circumstances around the duty inquiry. Instead the proper inquiry is whether being jostled around and bumping heads while people are in the front of the boat (and not in seats) is an inherent risk of river rafting. If the answer is yes, Defendant owed Plaintiff no duty. But the plaintiff may try to argue that she was injured not from the normal inherent risk of being jostled (assuming such an inherent risk does exist) but instead was injured due to the defendant's negligence in overloading the boat. As one can see, overloading a boat would not be an exaggeration of an inherent risk (assuming it is unusual and dangerous to do so). Rather, being injured from overloading the boat is a different risk altogether. The Court cannot stress how important it is to frame the duty question correctly. If the duty question is framed incorrectly, the legislature's intent to allow a cause of action for negligence will be lost. [Id., at 1329]

Which rule governs the determination of whether a particular risk is inherent to a recreational activity? The Tenth Federal Court of Appeals, in upholding the final decision in Cooperman, appears to favor the district court's reasoning in Madsen. [17] It concluded that determining under Wyoming's Recreation Safety Act if a particular risk is inherent is a question of fact, requiring "the same analytical approach to the amended Safety Act as it did to the Safety Act before this amendment." [Id., 1166] In deciding whether a risk is inherent, it said, "We cannot look at the risk in a vacuum, apart from the factual setting to which the rider was exposed." [Id., at 1167] Facts matter, according to Tenth Circuit Court. The judge quoting Madsen, wrote: "While at some level all sports have inherent risks, as we add in the facts of a

specified risk encountered the risk may or may not be inherent. Thus the duty question is best resolved by framing the question correctly.” [Id., at 1167] How then should this analytical principle be applied in the Cooperman case? The court said:

As part of the Coopermans’ burden of showing that [the provider] owed Dr. Cooperman a duty of care, the Cooperman must provide some evidence to explain why the saddle fell, which explanation is not inherent to the sport... The Wyoming legislature expressly stated in the Safety Act that a recreational provider has no duty to ‘eliminate, alter or control the inherent risks within the particular sport or recreational opportunity.’ Wyo. Stat. Ann. § 1-1-123(b). Thus, stating only that the cinch was not tight enough does not show that the risk was no longer inherent to the sport. The Coopermans have the burden of presenting some evidence on summary judgment that would raise a question of fact that the loose cinched saddle was caused, not by an inherent risk, but rather by a risk that was atypical, uncharacteristic, not intrinsic to, and thus not inherent in the recreational activity of horseback riding. The Coopermans have not met this burden. [Id., at 1168-69]

What kinds of facts would satisfy this burden? The Tenth Circuit Court does not specifically answer this question; however, it does cite an Ohio case that found the risk of a slipping saddle was not assumed where the saddle was not properly cinched. [34] The Tenth Circuit Court concludes:

The different outcomes in these cases can be explained by differing factual scenarios present in each case. While slipping saddles under certain fact specific situation may be inherent, under other facts it may not be inherent. [17, footnote 5, at 1167]

What conclusions can be drawn regarding the protections afforded by Wyoming’s Recreation Safety Act to producers with ranch recreation enterprises? First, the safety statute applies regardless of whether the farmer or rancher charges a fee for the enterprise. Second, the revised act no longer requires providers to “eliminate[], alter[] or control[]” any inherent risks associated with the enterprise. Third, whether a particular risk associated with the recreational enterprise is inherent for purposes of the safety statute remains a question of fact to be determined by a jury. An injured guest will have to show the risk is “atypical, uncharacteristic, not intrinsic to, and thus not inherent” to the recreational activity. According to the Federal District Court in Madsen, injuries caused when a horse bucks after three riders are placed on it do not involve an inherent risk; neither do injuries caused by overloading a river raft. Similarly the Tenth Circuit Court of Appeals in Cooperman argued that injuries caused by setting off firecrackers near a horse would not be the result of an inherent risk. What about a sliding saddle? It depends, the Tenth Circuit Courts says. What about injuries caused by a horse with a known, dangerous tendency? According to the Ohio case, cited by the Court of Appeals in Cooperman, such tendencies “which would subject the rider to greater risks than ordinarily attached to horseback riding” might be grounds to overcome a claim of assumption of risk. [17, at 267]

## IV. Measures to lessen liability exposures for ranch recreation activities

Producers contemplating ranch recreation activities on their property must evaluate the potential financial and liability risk they create. In addressing the liability risk potential of specific activities, producers should adopt a three-step risk management process.

### Three-step risk management process

The first step in controlling risk is to identify and evaluate the potential liability associated with the proposed ranch recreation activity. [29] Landholders should conduct a self-examination of their premises and guest services. This can initially be accomplished by simply walking around the property and identifying any potentially dangerous conditions (e.g, exposed nails, unlocked storage buildings, etc.). Conversations with staff, insurance professionals, and other ranch recreation operators can provide additional information regarding areas of concern. Insurance companies and agents may be able to provide landholders with checklists identifying specific liability exposures. Discussions with public officials should alert operators to any health or safety requirements.

Once producers have identified potential liability exposures created by proposed ranch recreation activities, they must develop a strategy to address them (Table 4). Risk management can be expensive. Farmers and ranchers should focus their attention on risks that are most likely to cause significant losses; however, producers should not limit their attention only to risks for which they are legally liable. Injuries suffered by guests can damage a business reputation regardless of whose fault it is.

In most instances, producers can minimize risk management costs by using a combination of tactics. Risk prevention and loss minimization tactics designed to minimize the probability and severity of loss, respectively, are frequently the easiest techniques to implement (see Table 4). Risk transfer tactics – purchasing insurance, using releases of liability, establishing a separate ranch recreation corporation, etc. – are often more expensive and, generally, require the assistance of a third party (an attorney, insurance agent, or risk management specialist) to implement.

Finally, providers must implement, monitor, review, and periodically update their risk management plans. A risk management plan is effective only if it is implemented. A number of questions should be asked before implementing and monitoring the plan:

- Have all significant liability exposures been identified?
- Has an appropriate risk management tactic been selected?
- Have employees received proper training?
- Have all necessary insurance and other legal documents been prepared?
- Has a system of monitoring and maintenance been developed?

Ranch recreation activity providers must pay continuous attention to changes in health, safety, and other regulations to ensure compliance with the law.

**Table 4.** Illustration of several risk management tactics to minimize liability exposures for ranch recreation enterprises.

Activity	Type of technique	Persons involved	Effect on liability exposure
Lock buildings Gates on private roads	Avoidance	Employer/employee	Eliminate liability exposure by eliminating access. May not be effective if exceptions made so that a pattern of admittance shown or proof that landholder knew of trespassers prior to engaging in hazardous activities.
Inspection program Implementation of maintenance program Use of checklist to warn guests of dangers and instruct them on proper equipment and equipment use Maintain records on accidents identifying causes, responses, and potential measures to eliminate recurrence Screen employees, stock, suppliers, and guests	Reduce probability of claim	Employer/employee Use of safety specialist	Reduce/eliminate liability exposure by lessening likelihood that injury will occur. Well documented maintenance and training program can evidence that business has exercised due care.
First aid training and equipment	Reduce amount of claim	Employer/employee	Reduce liability exposure by lessening the size of claim that would occur if an accident take place.
Purchase of insurance	Transfer	Landholder/insurance company	Transfer risk of loss to Insurance Company. Insured may also be able to take advantage of additional services provided by Insurance Company including safety inspections. Transfer may be ineffective if not all necessary lands, employees, or activities are covered.
Releases	Transfer	Landholder/entrants/attorney	Transfer of risk of loss to entrant. Releases may be ineffective if improperly drawn or if entrant did not clearly intend to waive particular risk.
Incorporating	Transfer	Landholder/attorney	Transfer of liability risk to separate entity, the corporation. Transfer will provide only limited protection to landholders if all of their assets are also transferred to the corporation or if landholders retain liability for injuries caused by the land or by their own negligence as employees of the corporation.
"Lease" to outfitter	Transfer	Landholder/outfitter/attorney	Transfer of liability risk for negligence in provision of outfitting services; retention of liability for actionable injuries on lands under landholder's control.

### **Potential risk management tactics for ranch recreation enterprises**

Once potential liability risks have been identified and evaluated, agricultural producers should evaluate and adopt specific risk management tactics to eliminate or lessen their exposure (see Table 5). [29] The list that follows is not intended to be exhaustive but is representative of risk management tactics farmers and ranchers might consider.

#### ***Avoidance***

Landholders can simply refuse access to avoid liability exposures. This can be done for the entire property (refusing the public access to land for hunting or fishing purposes, for example) or for a specific area by posting that certain parts of the farm or ranch are off limits. Partial exclusion will still permit landholders to supplement their incomes while limiting liability exposures. However, care must be exercised to ensure that guests understand which areas are off limits. Similarly, landholders must not make exceptions. A court could disregard the posting if guests were routinely allowed to enter off limit areas. Also, exclusion by posting may be ineffective to curb legal liability for injuries to young children (see discussion of the attractive nuisance doctrine). Landholders should consider implementing more stringent measures – locking structures or building fences, for example – to discourage children and others from entering posted areas.

#### ***Avoid charging fees for access***

Producers wanting protection under Wyoming's Recreation Use Act cannot charge an access fee. The trade off (minimal liability exposure but no access fee income) may not be acceptable for agricultural producers, depending upon their

goals. Alternatively, landholders might charge only some entrants (big game hunters, for example) while either denying access or granting free access to others. Free access does not avoid all liability. Landholders remain liable for willful or malicious failures to warn guests.

#### ***Purchase of liability insurance***

A survey in the 1980s found that at least one insurance company in Wyoming provides additional insurance coverage for agricultural producers seeking to supplement their incomes by charging for ranch recreation activities. [29] Several other insurance companies informally indicated that their farm and ranch policy would provide liability coverage if the insured's ranch recreation activities were only a minor source of income. Producers should contact their insurance providers to check coverage for their proposed ranch recreation activities.

#### ***Releases of liability and indemnification contracts***

In a written release, customers waive their right to sue the provider for any injuries they might suffer as a result of ranch recreation activity. The Wyoming Supreme Court has ruled that such a release may exclude liability for negligent acts but not for injuries arising from willful misconduct or for services demanding a special duty to the public. [52] Violation of Wyoming's food safety laws might give rise to such a special duty.

The Wyoming Supreme Court has ruled that the following four factors must be examined in determining whether a release of liability violates public policy: (1) whether a duty to the public exists; (2) the nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the parties expressed their inten-



tions in clear and unambiguous language. In applying this test, Wyoming state and federal courts have routinely found that no special duty exists between recreational providers and their customers. They have found that such releases are typically the result of a fair bargain and not the result of undue power on the part of the recreational provider. [52 (parachuting); 40 (skiing); 57 (trail rides)] The Wyoming Supreme Court has rejected claims that ordinary negligence must be expressly mentioned in the release for it to be effective. Instead, it has ruled that a release is sufficient to waive liability if the words “clearly and unequivocally demonstrate the parties’ intent to eliminate liability.” [40, at 1062]

The Wyoming Federal District Court has struck down an indemnification clause signed by a customer to a river-rafter company, which sought to hold an innocent customer liable (obligated to pay) for any injuries suffered by himself, his children, or his spouse. [35] The Federal District Court indicated that enforcement of an indemnification clause is a matter of equity. It noted that the Wyoming Supreme Court had upheld indemnification clauses in commercial settings. The Federal District Court concluded, however, that the facts in this case made these indemnification clauses with noncommercial customers different:

While the Wyoming Supreme Court has found that indemnity contracts are enforceable in commercial contexts, it has never held that such contracts were enforceable in a consumer services context such as this. Indeed, the Wyoming Supreme Court has recognized that the “modern trend concerning the right to indemnity is to look to principles of equity.” *Schneider Nat’l, Inc. v. Holland Hitch Co.*, 843 P.2d 561, 572 (Wyo.1992). This case involves a situa-

tion where a consumer, Mr. Madsen, was purchasing services from a member of the business community, Wyoming River Trips. This purchase involved skill of a specialized nature, namely taking one white-water rafting. Mr. Madsen had to put his trust in the defendant. The release does not advise Mr. Madsen of the specific risks inherent in river rafting, or the dangers involved. An indemnitor should know these things before he agrees to indemnify the service provider. Mr. Madsen was not negligent, he was merely an innocent passenger in the boat. It would be unjust to hold a passive individual liable, especially a consumer, for the negligence of business entity. In sum, this case is in stark contrast to previous cases where indemnity agreements were upheld. [Id., at 1325]

Producers interested in utilizing releases or indemnification clauses to limit their liability should consult with an attorney to insure a properly drafted instrument under these standards.

### ***Incorporation***

A traditional tactic employed by many landholders to limit liability exposures is to select a business form that limits the owner’s personal liability. For example, individual investors normally are not personally liable (beyond their initial investment) for the legal obligations of their corporations. Incorporating, however, does not provide much protection if the injury results from the shareholder or employee’s own negligence or if most of the producer’s assets are held by the corporation. So, if the owner is negligent in leading a trail ride, the guest may sue both the corporation under the principle of respondeat superior (thereby exposing the corporate assets) and the owner-employee (thereby exposing the owner’s personal assets). Landholders interested in selecting a business form to limit liability also should

consult with their attorney to properly structure their ranch recreation business to minimize their liability exposure. [29]

### ***Transferring recreational business to a guide or outfitter***

Farmers and ranchers may grant recreational leases to guides or outfitters to bring customers onto their lands. These leases allow producers to transfer the responsibility for managing the recreational activity to a third party while still capturing a portion of their land's recreational income potential. Transfer of recreational leases to outfitters or guides does not shield landholders from all liability. The common law generally holds landholders who retain possession of their property personally responsible for defects on the land. [29] Landholders adopting this practice should still inspect and maintain their property, however. In addition, they should make sure that the guide or outfitter is adequately insured and insist that the landholders be named insureds under the guide or outfitter's liability policy. Landholders adopting this practice should discuss the specifics of these arrangements with both their insurance agents and attorneys.

### ***Establishing a maintenance, training, and screening program***

Establishing a maintenance, training, and screening program constitutes an important risk prevention and reduction tactic. These efforts can include carefully screening guest-service employees before hiring, teaching personnel CPR, informing staff about health and safety regulations, establishing a routine equipment maintenance

program, engaging in periodic inspections to discover and correct any problems, and developing and implementing checklists to alert guests of dangers and to assist them in case of accidents or employee misconduct.

### ***Developing a legal risk management program***

The first step in developing a legal risk management program for a ranch recreation enterprise is assembling a risk management team. Team members should include the owners, ranch employees responsible for carrying out the program, the ranch's attorney, and its insurance agent. Owners also may want to contact other ranch recreation enterprises in the area to learn how the landowners currently manage their legal risks. Some existing ranch recreation enterprises may permit interested parties to work at their places, thereby giving the potential operators a real taste of what it is like to manage a ranch recreation enterprise.

Table 5 provides a basic checklist for implementing a legal risk management program for a ranch recreation enterprise. If questions arise regarding the information, readers should contact the appropriate local authorities. For example, if readers or their customers are considering a bed and breakfast operation but do not know the fire or health code requirements, they should check with their county officials and the Wyoming Department of Agriculture.

Table 5. Implementation checklist.

Activities/questions	Access only	Access plus food	Access plus housing	Access plus rental of personal property
<b>Identifying and evaluating potential exposures</b>				
What recreational activities will be permitted?				
What is the likelihood of injury for each?				
What is the magnitude (\$) of injury for each?				
What legal duties does the ranch recreation enterprise have?				
What legal duties does the customer have?				
<b>Selection of an appropriate risk management strategy</b>				
What particular tactic(s) can be adopted to minimize this legal risk?				
What is the cost of this tactic(s)?				
What remaining legal risk exists if this tactic(s) is adopted?				
<b>Implementation, review, and revision of the risk management strategy</b>				
Who will be responsible for implementing this tactic(s)? When?				
What specific actions must be undertaken to implement this tactic(s)? How will implementation be established in case of a court action?				
How will the effectiveness of this tactic(s) be measured? How will it be demonstrated in case of a court action?				
How frequently will this tactic be reviewed, revised, or updated?				

\*Readers and their customers should prepare a separate check list to evaluate each tactic (avoidance, risk prevention or reduction, or transfer).

## V. Summary

Landholders who allow public access on their land for recreational purposes assume varying degrees of liability exposure, depending upon the types of activities they permit and the precautions they undertake. Wyoming's Recreation Use Act provides broad liability protection to landholders who permit free public access for recreational purposes; however, the statute does not protect agricultural producers seeking to supplement their agricultural income by charging for recreational activities.

Wyoming's Recreation Safety Act protects recreational and sporting activity providers from liability claims tied to inherent risks. Unfortunately, case law interpreting the act has not clearly articulated which risks are inherent and which are the possible result of negligent actions. The Federal District Court has held that such a determination is a question of fact normally to be made by a jury.

Those individuals concerned about potential liability exposures created by providing ranch recreation activities on their farms or ranches should adopt a three-fold strategy to manage their risk: (1) identify and evaluate potential liability risks; (2) develop a strategy to minimize any significant risks; and (3) implement, monitor, review, and update the risk management plan. A variety of tactics exist to minimize risk. Strategies include full or partial avoidance, imposing only selective access fees (to take advantage of Wyoming's Recreation Use Act), purchase of insurance, incorporating the business, requiring guests to sign releases, transferring the recreational business to third parties (guides or outfitters), and developing and implementing a training and maintenance program for the business. Although none of these tactics totally eliminates liability risk, they each can – if properly planned and implemented – lessen the exposure and ensure that ranch recreation activities will enhance and not threaten farm or ranch profitability.

## References cited

1. Afton Electric Company v. Harrison, 49 Wyo. 367, 54 P.2d 540 (1935).
2. Allen v. Slim Pickens Enterprises, 777 P.2d 79 (Wyo. 1989).
3. “Annotation, Liability of owner or bailor of horse for injury by horse to hirer or bailee thereof,” 6 A.L.R. 4th 358 (1981).
4. “Annotation, Effect of Statute Limiting Landowner’s Liability for Personal Injury to Recreational User,” 47 A.L.R. 4th 262 (1986).
5. “Bed & Breakfast/Ranch Recreation Rules,” (Wyoming Department of Health & Social Services, December 3, 1986).
6. Black’s Law Dictionary (6th ed., 1990).
7. Bogen, David S. “The Innkeeper’s Tale: The Legal Development of A Public Calling,” 1996 Utah L. Rev. 51.
8. Bray v. American Property Management Corp., 156 Or.App. 356, 965 P.2d 426 (1998).
9. Brewer v. Roosevelt Motor Lodge, 295 A.2d 647 (1972).
10. Brooks v. Mack, 222 Or. 139, 352 P.2d 474 (1960).
11. Carlsen v. The Wackenhut Corporation, 73 Wash.App. 247, 868 P.2d 882 (1996).
12. Centner, Terrence, “Tort Liability for Sports and Recreational Activities: Expanding Statutory Immunity for Protected Classes and Activities,” 26 J. Legis. 1 (2000).
13. Clarke v. Beckwith, 858 P.2d 293 (Wyo. 1993).
14. Conduct v. Conduct, 664 P.2d 131 (1983).
15. Connes v. Molalla Transport System, 831 P.2d 1316 (Colo. 1992).
16. Cooperman v. David, 23 F.Supp.2d 1315 (D.Wyo. 1998).
17. Cooperman v. David, 214 F.3d 1162 (10th Cir. 2000).
18. Cranston v. Weston County Weed and Pest Board, 826 P.2d 251 (Wyo. 1992).
19. Davis, Michael K., “Note, Landowner Liability Under the Wyoming Recreational Use Statute,” XV Land & Water L. Rev. 649 (1980).
20. Drew v. LeJay’s Sportsmen’s Cafe, Inc., 806 P.2d 301 (Wyo. 1991).
21. Duren v. Kunkel, 814 S.W.2d 935 (Mo. 1991).
22. Flores v. Simmons, 999 P.2d 1310 (Wyo. 2000).
23. Garfield v. United States 297 F. Supp. 891 (W. D. Wis, 1969).
24. Garreans v. Omaha, 216 Neb. 487, 345 N.W.2d 309 (1984).
25. Halpern v. Wheeldon, 890 P.2d 562 (Wyo. 1995).

26. Hansen, Cathy & Steve Duerr, "Recreational Injuries & Inherent Risks: Wyoming's Recreation Safety Act, 28 Land & Water L. Rev. 149 (1993).
27. Hansen-Stamp, Catherine, "Recreational Injuries and Inherent Risks: Wyoming's Recreational Safety Act—An Update," 33 Land & Water L. Rev. 249 (1998).
28. *Holland v. Weyher/Livey Constructors, Inc.*, 651 F. Supp. 409 (D. Wyo. 1987).
29. Jacobs, James J.; David T. Taylor; Alan Schroeder; & Edward Bradley, "Part II, Risk Management Strategies and Ranch Recreation Activities," (Unpublished Final Report, Department of Agricultural Economics, University of Wyoming, nd).
30. *John Q. Hammons Inc. v. Poletis*, 954 P.2d 1353 (Wyo. 1998).
31. *Kesner v. Trenton*, 158 W.Va. 997, 216 S.E.2d 880 (1975).
32. *Langiulli v. Bumble Bee Seafood*, 159 Misc.2d 450, 604 N.Y.S.2d 1020 (1993).
33. *Lee v. GNLV Corp.*, 22 P.3d 209 (Nev. 2001).
34. *Liossis v. Cavalry Riding Academy Co.*, 86 Ohio App. 334, 87 N.E.2d 266 (1949).
35. *Madsen v. Wyoming River Trips, Inc.*, 31 F. Supp.2d 1321 (D. Wyo. 1999).
36. McLean, Matthew F., "Casenote, Torts-Duties of Owners' And Occupiers of Land: The Impact of the Wyoming Supreme Court's Decision to Abolish a Portion of the Common Law Status Classification, *Clarke v. Bechwith*, 858 P.2d 293 (Wyo. 1993)," 29 Land & Water L. Rev. 299 (1994).
37. *Mane v. Coats*, 941 P.2d 120 (Alaska 1997).
38. Matthews, Stephen F. & Michael Mowrer, "Farmers' Liability for their Animals," (Department of Agricultural Economics, University of Missouri-Columbia, Agricultural Publication G453, October 1, 1993) <http://muextension.missouri.edu/xplor/agguides/agecon/g00453.htm>.
39. *Mexicali Rose v. Superior Court*, 1 Cal.4th 617, 822 P.2d 1292, 4 Cal.Rptr.2d 145 (1992).
40. *Milligan v. Big Valley Corporation*, 754 P.2d 1063 (Wyo. 1988).
41. *Morell v. Peekskill Ranch, Inc.*, 104 A.D.2d 492, 479 N.Y.S.2d 241 (1984).
42. *Nadjarian v. Desert Palace*, 111 Nev. 763, 895 P.2d 1291 (1995).
43. *N.H. v. Prebyterian Church (U.S.A.)*, 998 P.2d 592 (Okl. 1999).
44. *Newberry v. Bd. of County Comm'rs*, 919 P.2d 141 (Wyo. 1996).
45. *Orr Ditch & Water Co. v. Justice Court of Reno Tp.*, 64 Nev. 138, 178 P.2d 558 (1947).
46. *Paulson v. Andicoechea*, 926 P.2d 955 (Wyo. 1996).
47. Powell, J.; S.R. Bahr; and K. Green, "Ranch Recreation Consumer Survey of Nonresidents at the 1986 Cheyenne Frontier Days," (Wyoming Cooperative Extension Service Bulletin, MP-54, 1987).

48. Prosser and Keeton on Torts (5th ed., 1984).
49. Restatement (Second) of Torts (1965).
50. Rottman, Susan. J., and Jeff Powell, "Bed & Breakfast Operations and Management Guidelines," (Wyoming Cooperative Extension Service Miscellaneous Publications, MP— \_\_, 1990).
51. Salt River Valley Water Users' Association v. Superior Court, 178 Ariz. 70, 870 P.2d 1166 (1994).
52. Schutkowski v. Carey, 725 P.2d 1057 (Wyo. 1986).
53. Schutz, W. "Limiting Liability When Private Land is Used for Outdoor Recreation," (B. 591, Agricultural Experiment Station, University of Wyoming, May 1973).
54. Selby v. Conquistador Apartments, 990 P.2d 491 (Wyo. 1999).
55. Smith v. United States, 386 F. Supp. 1076 (D. Wyo., 1974), affm'd, 546 F. 2d 872 (10th Cir., 1976).
56. Stedman v. Spiros, 23 Ill.App.2d 69, 161 N.E.2d 590 (1952).
57. Street v. Darwin Ranch, Inc., 75 F.Supp.2d 1296 (D.Wyo. 1999).
58. "Structure and Financial Characteristics of U.S. Farms: 2001 Family Farm Report" (Agriculture Information Bulletin No. 768, Robert A Hoppe, editor, Resource Economics Division, Economics Research Service, U.S. Department of Agriculture, May 2001).
59. Taylor, David T., James J. Jacobs, & Karl Wunderlich, "Survey of Recreational Activities of Wyoming Farms and Ranches: Preliminary Results," (Agricultural Economics Department, College of Agriculture, University of Wyoming, September 1987).
60. Thunder Hawk v. Union Pacific Railroad Company, 844 P.2d 1045 (Wyo. 1992).
61. Thunder Hawk v. Union Pacific Railroad Company, 891 P.2d 773 (Wyo. 1995).
62. Weber v. Springville City, 725 P.2d 1360 (Utah 1986).
63. Woodward, Kristin K., "Note, Owners and Occupiers of Land Now Owe Those Lawfully on their Premises a Duty of Reasonable Care Under Heins v. Webster County, 250 Neb. 750, 552 N.W.2d 51 (1996)," 76 Neb. L.Rev. 184 (1997).
64. World Diamond, Inc. v. Hyatt Corporation, 121 Ohio App.3d 297, 699 N.E.2d 980 (1997).
65. Wyoming Agricultural Statistics Service, "Wyoming Farm and Ranch Supplemental Income Survey 2000" (Wyoming Business Council, Agribusiness Division, 2000).
66. Wyoming Department of Agriculture, "Wyoming Food Safety Rule" (September 29, 2000) (<http://www.wyagric.state.wy.us>).
67. Yalowizer v. Husky Oil Co., 629 P.2d 465 (Wyo. 1981).

## **Appendix A: Wyoming Cooperative Extension Service's bulletins on alternative agricultural enterprises**

- Beetle, Alan A. & Kendall L. Johnson, "Sagebrush in Wyoming" (Wyoming Cooperative Extension Service, B-779, R1996).
- Brewer, Michael J., "Honey Bee" (Wyoming Cooperative Extension Service, B-1013.6, 1995).
- Cook, Jim, "Practices to Speed Vegetable Growth in Wyoming's Climate" (Wyoming Cooperative Extension Service, B-684.6, 1986).
- Foulke, Thomas, Steven J. Torok, Tex Taylor, & Edward Bradley, "Enterprise Budget: Bison Cow-calf" (Wyoming Cooperative Extension Service, B-1092, 2001).
- Hill, Oliver C., "Packing and Outfitting Manual" (Wyoming Cooperative Extension Service, B-636R, nd).
- Jacobs, James J., David T. Taylor, Karl Wunderlich, & Carl Olson, "Hunting Enterprises on Wyoming Ranches: Costs and Returns" (Wyoming Cooperative Extension Service, B-939, 1990).
- Lewis, Andrea M. & Joe Hiller, "Waterborne Disease Alert for Campers" (Wyoming Cooperative Extension Service, B-1000, 1994).
- Olson, Rich & Andrea M. Lewis, "Building and Locating Backyard Birdhouses" (Wyoming Cooperative Extension Service, B-995, 1994).
- Olson, Rich, "Constructing Wetlands in the Intermountain West: Guidelines for Land Resource Managers" (Wyoming Cooperative Extension Service, B-1078, 1999).
- Olson, Rich, "Cover: Its Importance to Wyoming's Wildlife" (Wyoming Cooperative Extension Service, B-967, 1992).
- Olson, Rich, "Developing Wetlands to Benefit Wildlife and Livestock" (Wyoming Cooperative Extension Service, B-938, 1990).
- Olson, Rich & Shelley Douthit, "The Hummingbird, Attracting and Enjoying Wyoming's Most Fascinating Bird" (Wyoming Cooperative Extension Service, B-986, 1994).
- Olson, Rich & Andrea M. Lewis, "Landscaping Guidelines to Attract Wildlife" (Wyoming Cooperative Extension Service, B-1001, 1994).
- Olson, Rich, "Mule Deer Habitat Requirements and Management in Wyoming" (Wyoming Cooperative Extension Service, B-965, 1992).
- Olson, Rich, "White Tailed Deer Habitat Requirements and Management" (Wyoming Cooperative Extension Service, B-964, 1992).
- Olson, Rich, "Winter Big Game Feeding: An Undesirable Wildlife Management Practice" (Wyoming Cooperative Extension Service, B-1003, 1994).
- Rottman, Susan J. & Jeff Powell, "Town & Country Bed and Breakfast" (Wyoming Cooperative Extension Service, B-933, 1990).
- Taylor, David T. & Robert R. Fletcher, "The Economic Impact of the Wyoming Outfitter Industry" (Wyoming Cooperative Extension Service, B-959, 1991).



## Appendix B: Wyoming Recreation Use Act

### s 34-19-101 Definitions.

- (a) As used in this act:
- (i) "Land" means land, including state land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty;
  - (ii) "Owner" means the possessor of a fee interest, a tenant, lessee, including a lessee of state lands, occupant or person in control of the premises;
  - (iii) "Recreational purpose" includes, but is not limited to, any one (1) or more of the following: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports and viewing or enjoying historical, archaeological, scenic or scientific sites;
  - (iv) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land;
  - (v) "This act" means W.S. 34-19-101 through 34-19-106.

### s 34-19-102 Landowner's duty of care or duty to give warnings.

Except as specifically recognized by or provided in W.S. 34-19-105, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for recreational purposes.

### s 34-19-103 Limitations on landowner's liability.

- (a) Except as specifically recognized by or provided in W.S. 34-19-105, an owner of land who either directly or indirectly invites or permits without charge any person to use the land for recreational purposes or a lessee of state lands does not thereby:
- (i) Extend any assurance that the premises are safe for any purpose;
  - (ii) Confer upon the person using the land the legal status of an invitee or licensee to whom a duty of care is owed;
  - (iii) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of the person using the land.

### s 34-19-104 Application to land leased to state or political subdivision thereof.

Unless otherwise agreed in writing W.S. 34-19-102 and 34-19-103 shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision of this state for recreational purposes.

### s 34-19-105 When landowner's liability not limited.

- (a) Nothing in this act limits in any way any liability which otherwise exists:
- (i) For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;
  - (ii) For injury suffered in any case where the owner of land charges the persons who enter or go on the land for recreational purposes, except that in the case of land leased to the state or a subdivision of this state, any consideration received by the owner for the lease shall not be deemed a charge within the meaning of this section.

### s 34-19-106 Duty of care, not created; duty of care of persons using land.

- (a) Nothing in this act shall be construed to:
- (i) Create a duty of care or ground of liability for injury to persons or property;
  - (ii) Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this act to exercise care in his use of the land and in his activities on the land, or from the legal consequences of failure to employ such care.

## Appendix C: Wyoming Recreation Safety Act

s 1-1-121 Recreation Safety Act; short title.

This act shall be known and may be cited as the “Recreation Safety Act.”

s 1-1-122 Definitions.

a) As used in this act:

(i) “Inherent risk” with regard to any sport or recreational opportunity means those dangers or conditions which are characteristic of, intrinsic to, or an integral part of any sport or recreational opportunity;

(ii) “Provider” means any person or governmental entity which for profit or otherwise, offers or conducts a sport or recreational opportunity. This act does not apply to a cause of action based upon the design or manufacture of sport or recreational equipment or products or safety equipment used incidental to or required by the sport or recreational opportunity;

(iii) “Sport or recreational opportunity” means commonly understood sporting activities including baseball, softball, football, soccer, basketball, swimming, hockey, dude ranching, nordic or alpine skiing, mountain climbing, river floating, hunting, fishing, back country trips, horseback riding and any other equine activity, snowmobiling and similar recreational opportunities;

(iv) “Equine activity” means:

- (A) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines;
- (B) Any of the equine disciplines;
- (C) Equine training or teaching activities, or both;
- (D) Boarding equines;
- (E) Riding, inspecting or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;
- (F) Rides, trips, hunts or other equine activities of any type however informal or impromptu;
- (G) Day use rental riding, riding associated with a dude ranch or riding associated with outfitted pack trips; and
- (H) Placing or replacing horseshoes on an equine.

(v) Repealed by Laws 1996, ch. 78, s 2.

(vi) “This act” means W.S. 1-1-121 through 1-1-123.

s 1-1-123 Assumption of risk.

(a) Any person who takes part in any sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity, whether those risks are known or unknown, and is legally responsible for any and all damage, injury or death to himself or other persons or property that results from the inherent risks in that sport or recreational opportunity.

(b) A provider of any sport or recreational opportunity is not required to eliminate, alter or control the inherent risks within the particular sport or recreational opportunity.

(c) Actions based upon negligence of the provider wherein the damage, injury or death is not the result of an inherent risk of the sport or recreational opportunity shall be preserved pursuant to W.S. 1-1-109.