# Risk Management For Climbing

*DISCLAIMER & WARNING: The following information is provided as a general overview of the ranges of issues related to risk management for climbing on public lands. This includes, but is not limited to, rock and ice climbing, mountaineering and bouldering. The issues and opinions presented here are applicable to private individuals climbing for recreational purposes and are not intended to address issues that arise from commercial guiding, organized events, or group activities. The statutes and acts cited, and information contained herein are all subject to change, and varies according to the state or federal jurisdiction in which the issues arise. This information is not provided as legal advice. Please contact your attorney or risk management office for specific legal advice.*

## Introduction

Risk management, the process of evaluating and limiting exposure to potential liability, is a fundamental concern of land managers and is generally assessed at all levels of public lands management, and for all types of uses. When evaluating recreational activities that are perceived to involve a unusual degree of exposure to risk, risk management can become an issue of heightened concern. Caving, kayaking, mountain biking, canyoneering, and rock climbing are but a few examples of the types of activities that fall under this scrutiny. In an age when outdoor activities have been overly sensationalized by the media, the perception of risk associated with these activities is often overstated and misunderstood. On occasion some agencies consider restricting, or even prohibiting activities like climbing under the false pretense that by doing so, they're reducing their exposure to liability or engaging in effective risk management.

Yet in reality restricting or prohibiting such uses does not necessarily result in reducing exposure to potential liability, as a result of numerous protections afforded under a variety of statutes that limit liability for land managers and landowners. Our nation-wide research found no record of any legal action ever having been filed in this country in which an injured climber sued a landowner or an agency on the basis of premises liability. This is a result of the broad liability limitations that are provided for landowners, land managers, and agencies that permit and provide for recreation opportunities such as climbing. These acts, statutes and provisions include:

- **Governmental Immunity Acts & Governmental Tort Claims Acts**
- **Recreational User Statutes & Landowner Liability Acts**

- **Assumption of Risk Doctrine**
- **Attractive Nuisance Doctrine**
- **State Common Law**

## Governmental Immunity Acts & Governmental Tort Claim Acts

As a general rule, under Governmental Immunity Acts and Governmental Tort Claims Acts, political subdivisions of the government, including federal and state agencies, and their employees are generally protected from liability for acts conducted within the scope of their duties and employment. This is also referred to as sovereign immunity. Willful and wanton acts of public employees are generally not protected under these acts.

## Recreational User Statutes &Land Owner Liability Acts

These laws, which exist in some form in all 50 states, provide public and private landowners with protection from liability when they allow their lands or facilities to be used for a recreational purpose, with the provision that no fee is charged for that use. For example, an agency that charges a climbing entrance or permit fee would likely be held to higher duty of care than one that does not. Recreational User Statues (RUS) do not grant immunity, i.e., provide that the landowner cannot be held liable, rather they 1) limit the duty of care owed by a landowner to recreational users, and 2) limit the total amount of the landowner's liability. The protections afforded under RUS's vary from state-to-state, and therefore we recommend consultation with your agency's legal counsel or risk management department to determine the applicability of these statutes to your public lands.

## Assumption of Risk Doctrine

A person assumes the risk of injury or damage if he voluntarily or unreasonably exposes himself to injury or damage with knowledge or appreciation of the danger and risk involved. This doctrine is fundamental to all forms of outdoor recreation including climbing. Assumption of risk requires knowledge of the danger, and consent to it. As a practical matter assumption of risk has broad applicability to recreational rock climbing and is frequently used as an affirmative defense in recreational sports cases. In other words, someone engaged in an obviously risky activity like rock climbing assumes the risk of injury as a result. The defense is generally effective regardless of whether the theory of recovery is based on negligence, reckless conduct, or strict liability.

## Attractive Nuisance Doctrine

This doctrine imposes liability for landowner negligence resulting in a physical injury to a child (for example, in Colorado this doctrine only applies children under 14 years of age). It was developed to permit recovery when a landowner (1) keeps an artificial (non-natural) condition on his premises which is an attraction or allurement to a child; (2) involves an unreasonable risk of injury and (3) is located in a place where it might be expected that children are likely to congregate. Generally the object that caused the attraction must be unusual and extraordinarily attractive, not an ordinary matter.

Under this doctrine could a climbing area or cliff be construed as an attractive nuisance? Not likely. A case in Kansas City, Missouri (*Bagby v. Kansas City, 92 S.W.2d 142) (MO, 1936*) denied recovery to a boy injured by rockfall while playing on a cliff. The city was held not negligent in failing to post warning signs indicating the danger of climbing. The opinion stated: "the rock cliff itself was notice of danger, more impressive than any warning sign....to hold that the city was negligent in not making the cliff reasonably safe for a children's playground would mean the elimination of the cliff."

## State Common Law

Underlying the analysis of a landowner's potential liability for climbing-related injuries is the common law (as opposed to law created by statute or agency rulemaking) concept of negligence. Generally, negligence exists where a person (in this case a land manager) owes a recognized duty of care to take reasonable precautions to prevent or alleviate unreasonable risks of harm to other persons and fails to do so. However, an important exception to a landowner's duty to reasonably guard or warn others of harm is the common law idea that no duty to guard or warn exists where the risk is an "open and obvious natural condition." The primary reason for this exception is that a land user is as capable as the owner (land manager) of recognizing and appreciating the risk of injury presented by an "open and obvious" danger, and because it is "natural," the owner does not bear responsibility for its creation. A textbook example of an "open and obvious natural condition" is a cliff. In the case, *Roten v. United States*, the court concluded that the U.S. Forest Service had not breached its standard of care by not placing warning signs near a cliff and noted that "the court believes….that those coming to a recreation area featuring rugged, natural terrain as its main attraction are best guarded and protected by the obvious imposing dangers of the cliffs they come to see." The "open and obvious natural condition" of cliffs means that, in nearly every situation, landowners and land managers will not appreciably increase their liability merely by allowing climbing.

# The Effect of these Laws on Recreational Rock Climbing on Public Lands

## Climbing: A Welcome and Historic use on our Public Lands

Rock climbing, ice climbing, bouldering and mountaineering are practiced almost universally on our nation's diverse public lands. Throughout our National Park system, as administered by the National Park Service, climbing is considered a "welcome and historical use." In parks like Yosemite, Joshua Tree, and Rocky Mountain climbing has been a popular pursuit for more than half a century. While the NPS supports and encourages climbing, it also recognizes that "climbing poses personal risk to the participants, and that climbers bear the sole responsibility for their own safety while pursuing the activity. Any greater involvement by land managers in climber safety changes the liability position" (City of Rocks National Reserve, NPS, Climbing Management Plan, March 1998).

Climbing is also a welcome and historical use on other agency lands including hundreds of sites managed by the US Forest Service, Bureau of Land Management, US Fish & Wildlife Service, and Army Corp of Engineers. At the state and regional level, climbing is equally

popular. State parks in New Hampshire, New York, Pennsylvania, West Virginia, North Carolina, Wisconsin, Colorado, South Dakota, Utah, Washington and California, to name but a few, offer a variety of rock climbing opportunities.

Climbing is also practiced and encouraged on open space lands, whether managed by local government, or by non-profit organizations. For example, the Shawangunks of New York, one of the nations' most renowned climbing sites, is owned and managed by the Mohonk Preserve as part of a 7,000 acre nature preserve. The Nature Conservancy owns climbing sites in Utah and Connecticut. In Colorado, the Access Fund owns and manages the Golden Cliffs Preserve, an open space preserve that offers hiking and climbing, in additional to several other climbing areas.

## Conclusions about Exposure to Liability

The combined affect of Government Immunity Acts, Recreational User Statutes, and the Assumption of Risk and Attractive Nuisance Doctrines has created an atmosphere in this country where landowners, land managers, and agencies can and should encourage important and historical uses of our public lands like rock climbing, without the fear of being exposed to frivolous liability lawsuits. We recommend that you consult with local legal counsel regarding any specific concerns about the legal issues presented in this discussion, or any others.

# Additional Risk Management Issues & Strategies

## Climber Safety

Safe climbing practices are fundamental to fostering and sustaining responsible enjoyment of our public lands. Both the manufacturers of climbing equipment, and the climbing community continually focus on developing new methods and technology to improve safety. Making more durable ropes, building stronger and longer-lasting safety anchors, and designing more effective climber education programs are but a few of the areas where safety has been enhanced in recent years. We encourage land managers to promote the highest safety standards possible, but acknowledge that this must be carefully approached in order to limit the potential liability of the landowner, land manager or agency.

While supporting safe climbing practices through educational programs like "Climb Smart" are not likely to increase exposure to liability, specifying the type of equipment climbers can use, or implementing certification programs that attempt to "qualify" climbers, undoubtedly will increase such exposure. It should never be the intent of land managers or a climbing management program, to judge or physically control safety as it relates to rock climbing, climbing equipment, or the conditions present on climbing routes.

## Public Safety

On occasion climbing takes place in areas where other park users can observe, or at times even interact directly with climbers. In certain cases this can potentially affect public safety. For example, in Yosemite, where popular climbing areas are located directly above roads or trails, management measures have been taken to reduce the risk of rockfall to the public. In

contrast, at Devils Tower National Monument, the loop trail that circles the tower is a popular spot from which visitors can observe climbers. In this case the trail is far enough back from the base of the tower to not place visitors at risk of rockfall.

Due to widely varying circumstances and conditions there are no steadfast rules one could easily apply to public safety concerns. Instead a case-by-case evaluation should be made prior to determining the best approach for addressing public safety concerns. In our experience most can be amicably resolved while continuing to provide for climbing opportunities.

Here are a few examples of some typical public safety scenarios:

**Example A**
A popular hiking trail runs adjacent to the base of a climbing cliff. Land managers are concerned that hikers could be injured by rock fall. **Potential Solution** : realign trail far enough back from cliff to provide reduced risk of rockfall. In addition to reducing the likelihood of rock fall reaching the trail, this will also serve to segregate differing use patterns, thus eliminating potential user conflicts.

**Example B**
A spur trail leading from a popular hiking trail provides direct access to a climbing site. The spur is steep and potentially dangerous for the average hiker, and since it only provides access for technical climbing the land manager wants to discourage use by hikers. **Potential Solution:** install signage at start of spur stating: This is not a through trail - technical climbing access only. Proceed at your own risk!

**Example C**
Climbing takes place on a popular park overlook. A potential public safety matter exists: local land managers are concerned that overlook visitors may be attracted to stray dangerously close to the edge of the cliff by the presence of the climbers. **Potential Solution:** have climbers install lowering anchors (aka top anchors) at the top of each route in order to eliminate the need for climbers to "top-out" on the routes. Such anchors should be positioned far enough below the top edge of the cliff as to not be visible from the top of the overlook, hence visitors will not be aware that climbing is taking place and therefore less-prone to stray near the edge of the cliff.

## Fixed Safety Anchors

Fixed safety anchors including bolts, pitons and other in-situ gear, are a critical component for safe climbing. In addition, when used as top anchors they often provide environmental benefits by reducing cliff top impacts that result from foot traffic on the delicate soils near the edge of the cliff. Fixed safety anchors have historically been installed and maintained by climbers. This has served an important role in limiting potential liability for landowners, land managers, and agencies.

Over the past decade an increasing number of land managers have become involved in the management of climbing. One of the most challenging issues has been how to deal with fixed anchors, since from a risk management perspective they pose a unique challenge. As a general rule, the placement and maintenance of fixed anchors should be undertaken by climbers and climber stewardship groups, and not by the land management agency. This approach will keep land managers as far removed from potential legal liability issues as

possible, and is therefore a crucial risk management consideration. The fundamental issue is that the more you regulate, the more likely you are to create legal obligations and duties. Therefore, the less an agency regulates fixed anchors, the less potential liability they will be exposed to.

There are a handful of cases where agencies have chosen to be involved, at least to a limited degree, in the management of fixed anchors. Usually the respective agencies have worked in close collaboration with the local community to insure that placement and maintenance of the anchors remains the sole responsibility of climbers, thereby limiting both the agencies' responsibility and potential liability. Existing statutes also indicate that land managers can further limit their liability by not becoming involved in decisions of when and where fixed anchors should be placed. Climbers and climber organizations have the expertise to install and maintain these anchors, and thus it is appropriate that climbers should provide this valuable community service.

# Enhancing Risk Management Through Creative Means

## Warning Signage

Generally, it is appropriate to enhance risk management through the use of signage targeted at warning climbers and other recreationists of dangerous conditions, such as the presence of a cliff area. Such signage can also be used to officially post disclaimers like "Warning – Climb At Your Own Risk." However, Common Law and Recreational Use Statutes & Landowner Liability Acts, limit the duty of care owed by a landowner to recreational users, and generally state the landowner has no responsibility to give warning of a dangerous condition (such as a cliff) or activity (such as climbing). As a result, land managers are not required to post such signage.

Below is a sample warning sign that could be posted at the bottom and or top of a cliff area. Lettering should be in a highly visible color that contrasts with a light background color, and the text should be visible from a reasonable distance.

### *Sample Warning Signage*

**WARNING - CLIMB AT YOUR OWN RISK**

Obtain proper training and guidance before climbing.

**YOU ALONE ARE RESPONSIBLE FOR YOUR SAFETY.**

Rock and Ice Climbing and associated activities (such as

Rappelling) are inherently dangerous

## SUBSTANTIAL RISK OF INJURY AND DEATH EXIST!

Permission to climb here is conditioned upon your assumption of all risk of injury to person and property. Climbing risks include, but are not limited to: falling; collisions with both manmade and natural objects; falling rocks, ice and other debris; failure of equipment or anchors; adverse weather; human error; slippery surfaces; negligence of other users.

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