

## 20. RESOURCES FOR MANAGEMENT OF RISK AND LIABILITY

### Scope of This Section

This section presents the responsibilities of reserve management personnel for use of resource personnel within the University to manage risk and liability arising from operation of NRS reserves. Those resources and their areas of specialization are described. This section cannot provide a complete reference to University policies concerning risk and liability. For such advice, please consult the resource personnel referenced below.

### Concept of Managing Risk and Liability

In the normal course of the operation of the University of California, as with any enterprise, it is exposed to risks (i.e., potential for loss) with human and financial consequences. Such risks include direct losses of University property whether caused by some person or solely by natural forces. The University may also suffer indirect loss because of its liability (i.e., legal obligation to pay) for loss or harm sustained by another person or entity.

It is impossible to eliminate such risks completely while continuing to perform the mission of the University. The consequences of risk, however, can be mitigated by taking action in the following areas:

Prevention – minimizing the likelihood or severity of a harmful event in practical terms through prudent planning and operation

Prudent business practice – making use of insurance, contractual agreements, and fiscal planning to control in advance the financial impact of losses which do occur

Legal remedies – where necessary, to defend or pursue legally disputed claims.

### Responsibilities of NRS Administrators and Managers

Administrators and managers in charge of NRS reserves have the first-line responsibility of managing the University's risk and liability arising from operation of the reserves. Their responsibility is primarily in the area of prevention because they are in the best position to effect prudent day-to-day operations. Their next duty is to consult in a timely fashion the professional resources within the University that provide technical expertise and have the responsibility for structuring the organizational setting for managing risk and liability. Following is a description of these resources and the areas of risk and liability management in which they specialize.

### Environmental Health and Safety

Although each campus has organized this function differently, the campus Environmental Health and Safety offices provide technical advice on managing the practical aspects of safe operation and on meeting applicable workplace safety standards. Environmental Health and Safety focuses on the prevention aspect of managing risk.

## Risk Management and Insurance

Each campus has designated a Risk Manager who functions as a campus clearinghouse for linking the front-line manager with appropriate resources for dealing with risk and liability. The campus Risk Manager is usually experienced in all three areas of managing risk and liability — prevention, business, and law — but is probably most familiar with the relevant business practices and policies. NRS managers should consult their Risk Managers for advice on the following areas:

1. Need for Environmental Health and Safety services
2. Business policy aspects of risk management and insurance, including but not limited to:
  - facilities inventory requirements for complying with University insurance programs
  - need for special insurance policies or endorsements
  - providing certificates of insurance when requested by parties outside the University
  - filing claims which may be covered by University insurance programs
  - involvement of University legal counsel

It is especially important for reserve management personnel to inform the Campus Police and Risk Manager as soon as possible when there has been a loss in connection with a reserve, including loss or damage of property or personal injury

whether sustained by the University or another party. The Risk Manager will advise on filing claims or other actions appropriate to the particular situation.

Risk Managers provide liaison between the campuses, including NRS reserve operations, and the Office of Risk Management in the Office of the President. At the Systemwide level, Risk Management is responsible for establishing the University's business policies and practices by which it mitigates the consequences of exposure to risk. The Office of Risk Management administers the University's self-insurance program (described below) and negotiates insurance policies with commercial insurance carriers. Claims under either self-insurance or commercial insurance are handled by the Office of Risk Management with the assistance of campus Risk Managers.

#### University's Self-Insurance Program

The University's General Liability, Automobile Liability and Employment Practices Liability Self-Insurance Program is designed to provide coverage for certain tort liabilities of the University arising from its operations. The program is funded by each campus and medical center. This Program does not provide insurance, but instead provides for pooled self-insurance. This program (including its coverages) is described in detail in Business and Finance Bulletin 75, and can be viewed at <http://www.ucop.edu/ucophome/policies/bfb/bus75toc.html>.

### Office of the General Counsel of The Regents

Under the direction of the General Counsel, a staff of approximately 41 attorneys handles legal matters for the University. Each campus is assigned one attorney as the principal contact for legal services needed by the campus. The contact attorney draws on other staff attorneys for their specialized knowledge, as needed. An attorney may be assigned primary responsibility for Systemwide NRS matters, or attorneys may be assigned based on the nature of a project (i.e., real property transactions would be assigned to counsels with such expertise). If the campus Risk Manager recommends contacting a member of the General Counsel's staff concerning an NRS-related risk or liability problem, the inquiry should go first to the attorney assigned to the campus, with a copy of correspondence to the attorney assigned to Systemwide NRS, if any, and the NRS Director.

In addition to counsels based in the Office of the General Counsel at UCOP, the General Counsel staff also includes "resident" campus counsels at the Berkeley, Davis, Irvine, San Diego, San Francisco, and Los Angeles campuses, the national laboratories, and at some medical centers.

Although General Counsel staff provide advice on law and official University policy affecting risk and liability, the important areas of prevention and business judgment are the responsibility of the front-line administrators and managers in consultation with representatives of the Office of Risk Management. Sound management of risk and liability is primarily a matter of making prudent business decisions and is not automatically determined by existing law and policy.

In cases of disputed liability claims, the General Counsel staff take primary responsibility for defending the University or pressing its claims.

#### Legal Agreements Affecting Liability

Where risk cannot be further reduced by preventive measures, it is sometimes appropriate to specify who bears the liability (the obligation to pay for a potential loss) by means of legally binding agreements. In the absence of such agreements, liability is assigned according to the situation as interpreted by the current body of applicable legislation, case law, and administrative regulations. Legal agreements may be advisable either to clarify in advance who would bear the liability for certain losses or to shift the liability from where it would fall in the absence of the specific agreement. (Note, however, that legal agreements are not unlimited in their power to shift liability. Existing law invalidates certain attempts to shift liability as contrary to sound public policy.)

In most cases, the purpose of legal agreements affecting liability would be to reduce the liability of the University. Examples include commercial liability insurance policies with the University as beneficiary, waivers by others of their potential right to recover damages from the University (see Section 22, NRS Waiver Guidelines), and indemnity agreements by which others agree to pay for losses incurred by the University. In certain situations, the University may agree to assume greater liability in order to achieve some desired effect. The most common example relevant to the NRS is where the University agrees to indemnify a private

landowner, as a condition of being granted certain use rights, for losses that might occur in connection with the University's use of that property.

#### Coordination of Legal Agreements

In many instances, particularly where a relatively simple but formal license or agreement is needed to allow third parties to use a reserve (e.g., grazing license, film license), the campus business administrator can directly assist the Reserve manager or director in drafting the document, having it approved, and executed. Notice of such on-going negotiations should be provided to the Systemwide office. There may be some Systemwide input on these kinds of working drafts, particularly where a campus administrator is not very familiar with issues unique to the NRS or that particular reserve. Copies of fully executed agreements that are overseen by the campus should be forwarded to the Systemwide office.

There may be other circumstances where it will be advisable for Systemwide staff to assume the *primary* responsibility for negotiating and drafting an agreement with a third party, in close consultation with the reserve manager, campus business officer, and such other campus and UCOP administrators as may be appropriate. For example, where the other party (private or public) has an established relationship or has already negotiated a previous agreement with Systemwide staff, that party may prefer to continue to work with the Systemwide office. Other scenarios may include projects that will require close consultation with a number of UCOP administrators, such as people from Real Estate Services Group and University counsel. Finally, projects involving multiple campuses should be overseen by Systemwide staff.