

APPENDIX E

(Refer to Act 26-118)

FINAL REPORT ON McFAIL'S CAVE, NEW YORK

In accordance with the NSS Board of Governors request, a committee of members studied the legal, physical and liability problems of the Society ownership of McFail's Cave and present the following recommendations for this specific cave. Because the legal conditions might vary in other sections of the country and in other states, it is recommended that individual studies be made of any other sites for purchase.

Legal Opinion

Mr. James Gage of Esperance, New York, submitted the enclosed opinion on the posting of the property, recording of the locations on a surface map, and the filing of the map with the main office of the Society. This has been done and this report will be placed in the minutes of the Society in compliance with his recommendations. In essence, it is his recommendation that we, the Society, consider any non-members who enter the cave without permission as trespassers and we therefore assume no liability for their actions.

Physical Conditions at the Cave Site

McFail's Cave has at least two entrances (see attached map) within the property now in possession of the Society. The entrance now used, Ack's Shack (named after Ernest Ackerly, early member of the Society), is essentially a narrow crevice about ninety feet deep. It is possible, but dangerous, to attempt entrance without a rope or ladder. The main barrier is the one hundred foot belly crawl at the bottom which leads to a low, partially filled stream passage. Further natural obstacles near the entrance of the cave are a key hole crawl and, about 1,300 feet from the entrance, a near siphon which necessitates total submergence in order to continue. The water temperature at that latitude remains 45 to 49 degrees Fahrenheit and so there is serious danger of loss of body heat. Beyond these initial barriers, the cave enlarges to a narrow, sinuous walking passageway (floored with ankle deep water) for several thousand feet more. A series of breakdown rooms connected by low, broad, three foot deep pools necessitates further submersion before reaching the main trunk channel of the cave. The entire length of the cave passage exceeds five miles, but only about two thousand feet lie under lands for which the Society has cave rights.

You can see from the description above that this is neither a novice cave nor one that should be entered without adequate preparation. It is recommended that a suggested list of equipment and procedure be established by the custodial group who will inform the requesting members what to expect and be sure that they understand the problems involved.

Custodians

In order to provide continuing chain of control, it is recommended that the NORTHERN REGIONAL ORGANIZATION (NRO) appoint a committee consisting of at least one member from each of the regional grottos to act as custodians in granting permission to members of the Society who wish to see the cave. This group can not be expected to deal with any but members of the Society. Any non-NSS groups will have to apply to the Board of Governors for permission to enter.

Liability

It is the opinion of the chairman of this committee that the Society not buy liability insurance for this specific cave. Investigation has shown that there is no precedent to govern the rate structure of such a policy, no experience to establish the element of risk. A policy tied to this specific cave would be providing a basis of rate establishment and a pattern for future property acquisitions. It is recommended, however, that the Society consider obtaining a blanket liability policy to cover all Society activities and national field trips. We have never had any insurance at any of our Conventions, board meetings, or regional outings. This could be fashioned after the Nature Conservancy policy which includes the properties and leases held by this organization all over the country. Such a blanket policy is merely an assurance of legal representation. Since we never have had the question come up regarding a suit of negligence in any of our hundred convention field trips, we have never experienced the expense of defending a suit.

Public Relations

It is regrettable that the posting of the McFail's Cave Property has to be such a negative manner. The emphatic wording of the signs will not endear us to other local cave owners. If we are so demonstrative, why shouldn't they be also? This aspect has disturbed the committee; and until the chairman actually took a trip through the cave, there was the feeling that we should attempt to soften the impact of the sign. It is now recommended that the posting be left as it is. This is not a cave to be treated carelessly by in-experienced and ill-equipped people. We consider ourselves (members of the Society) knowledgeable as to the degree of difficulty of the cave and we are aware of the need for protection of the cave as well as the safety of the visitor.

Russell H. Gurnee
Chairman

