

CONCESSIONS REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON

NATIONAL PARKS, FORESTS AND PUBLIC LANDS

OF THE

COMMITTEE ON

NATURAL RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 743

TO AMEND THE NATIONAL PARK SERVICE CONCESSIONS POLICY ACT TO FOSTER COMPETITION AMONG CONCESSIONERS, TO IMPROVE MANAGEMENT OF CONCESSIONS CONSISTENT WITH THE PRESERVATION OF RESOURCES AND THE PURPOSES OF THE NATIONAL PARK SYSTEM, AND FOR OTHER PURPOSES

H.R. 1493

TO REFORM THE CONCESSIONS POLICIES OF THE NATIONAL PARK SERVICE, AND FOR OTHER PURPOSES

H.R. 2146

TO REFORM THE CONCESSIONS POLICIES OF THE NATIONAL PARK SERVICE, AND FOR OTHER PURPOSES

HEARING HELD IN WASHINGTON, DC
OCTOBER 19, 1993

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H.R. 743, TO AMEND THE NATIONAL PARK SERVICE CONCESSIONS POLICY ACT TO FOSTER COMPETITION AMONG CONCESSIONERS, TO IMPROVE MANAGEMENT OF CONCESSIONS CONSISTENT WITH THE PRESERVATION OF RESOURCES AND THE PURPOSES OF THE NATIONAL PARK SYSTEM, AND FOR OTHER PURPOSES

H.R. 1493, TO REFORM THE CONCESSIONS POLICIES OF THE NATIONAL PARK SERVICE, AND FOR OTHER PURPOSES

H.R. 2146, TO REFORM THE CONCESSIONS POLICIES OF THE NATIONAL PARK SERVICE, AND FOR OTHER PURPOSES

TUESDAY, OCTOBER 19, 1993

COMMITTEE ON NATURAL RESOURCES,
SUBCOMMITTEE ON NATIONAL PARKS,
FORESTS AND PUBLIC LANDS,
Washington, DC.

The subcommittee met at 10:05 a.m. in room 1324 of the Longworth House Office Building, Hon. Bruce F. Vento (chairman of the subcommittee) presiding.

STATEMENT OF HON. BRUCE F. VENTO

Chairman VENTO. The Subcommittee on National Parks, Forests and Public Lands will come to order.

As members were advised, we are meeting today to hear three pending measures that would revise existing laws applicable to concession contracts and to provide goods and services to visitors of the National Park System.

The park concession issues are not new to this subcommittee or to Congress.

[Texts of the bills, H.R. 743, H.R. 1493, and H.R. 2146, follow:]

103D CONGRESS
1ST SESSION

H. R. 743

To amend the National Park Service Concessions Policy Act to foster competition among concessioners, to improve management of concessions consistent with the preservation of resources and the purposes of the National Park System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1993

Mr. SYNAR introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the National Park Service Concessions Policy Act to foster competition among concessioners, to improve management of concessions consistent with the preservation of resources and the purposes of the National Park System, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND DEFINITION.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “National Park Revitalization Act”.

6 (b) **DEFINITION.**—As used in this Act, the term “Na-
7 tional Park Service Concessions Policy Act” means the

1 Act entitled "An Act relating to the establishment of con-
2 cession policies in the areas administered by National
3 Park Service and for other purposes" (16 U.S.C. 20-20g).

4 **SEC. 2. CONTRACTS.**

5 (a) **MAXIMUM PERIOD; REQUIREMENTS.**—Section
6 3(a) of the National Park Service Concessions Policy Act
7 (16 U.S.C. 20b(a)) is amended—

8 (1) by inserting "(1)" after "(a)";

9 (2) in paragraph (1) (as designated by para-
10 graph (1) of this subsection), by inserting after the
11 first sentence the following: "Except as provided in
12 paragraph (3), the period of a contract entered into
13 under this Act may not exceed 10 years."; and

14 (3) by adding at the end the following new
15 paragraphs:

16 "(2) Contracts entered into under this Act after the
17 date of enactment of this paragraph shall—

18 "(A) be consistent with the laws relating to the
19 National Park System and the unit concerned;

20 "(B) be implemented in accordance with the
21 purposes of the National Park System and the gen-
22 eral management plan for the unit of the National
23 Park System concerned;

1 “(C) to the maximum extent practicable, con-
2 tain similar terms and conditions in order to facili-
3 tate administration;

4 “(D) to the extent applicable, provide for acqui-
5 sition of the possessory interest of a concessioner in
6 a manner consistent with the objective of section
7 6(c); and

8 “(E) shall be transferable or assignable only
9 upon the consent of the Secretary after reconsider-
10 ation and possible redetermination of the contract
11 terms, including the franchise fee.

12 “(3) The period of a contract may be for a period
13 greater than 10 years if the Secretary finds that a longer
14 period is necessary for the acquisition of possessory inter-
15 est under section 6(c); except that in no event may the
16 period be greater than 15 years.

17 “(4) In entering contracts under this Act, consider-
18 ation of revenue to the United States shall be subordinate
19 to the objectives of protecting and preserving areas admin-
20 istered by the National Park Service and of providing ade-
21 quate and appropriate services for visitors at reasonable
22 rates.”.

23 (b) REPEAL OF OBLIGATION OF UNITED STATES TO
24 COMPENSATE FOR LOSS OF INVESTMENT.—Paragraph
25 (1) of section 3(a) of the National Park Service Conces-

1 sions Policy Act (16 U.S.C. 20b(a)) (as amended by sub-
2 section (a)) is further amended by striking the last sen-
3 tence and inserting the following: "Effective with respect
4 to contracts entered into, renewed, transferred, assigned,
5 or renegotiated under this Act after the date of enactment
6 of this sentence, the United States shall not be obligated
7 to compensate the concessioner for such structures, fix-
8 tures, or improvements."

9 (c) FRANCHISE FEES.—Section 3(d) of the National
10 Park Service Concessions Policy Act (16 U.S.C. 20b(d))
11 is amended to read as follows:

12 "(d) Franchise fees, however stated, shall be based
13 on annual gross receipts from the concession and shall not
14 be less than 22.5 percent of the annual gross receipts from
15 that concession. Provision shall be made for reconsider-
16 ation and possible readjustment of franchise fees at least
17 every 5 years unless the contract period is for a lesser
18 period of time."

19 (d) UTILITY COSTS.—(1) Section 3 of the National
20 Park Service Concessions Policy Act (16 U.S.C. 20b) is
21 amended by adding at the end the following:

22 "(e) The concessioner shall be responsible for all util-
23 ity costs incurred by the concessioner in the operation of
24 the concession under contracts entered into, renewed,

1 transferred, assigned, or renegotiated under this Act after
2 the date of enactment of this subsection.”.

3 (2) Paragraph 4 of the first section of the Act enti-
4 tled “An Act to facilitate the management of the National
5 Park System and miscellaneous areas administered in con-
6 nection with that System, and for other purposes” (16
7 U.S.C. 1b(4)) is amended by striking “concessioners,”.

8 **SEC. 3. REPEAL OF PREFERENTIAL RIGHTS AND**
9 **POSSESSORY INTEREST.**

10 (a) **ADDITIONAL CONTRACTS.**—Section 4 of the Na-
11 tional Park Service Concessions Policy Act (16 U.S.C.
12 20c) is amended by striking “and may grant to such con-
13 cessioner a preferential right to provide such new or addi-
14 tional accommodations, facilities, or services”.

15 (b) **RENEWAL OF CONTRACTS.**—(1) The first sen-
16 tence of section 5 of the National Park Service Conces-
17 sions Policy Act is amended by striking “giving preference
18 in the renewal of contracts or permits and in the negotia-
19 tion of new contracts or permits to the”.

20 (2) Section 5 of the National Park Service Conces-
21 sions Policy Act is amended by adding at the end the fol-
22 lowing: “The Secretary may not give a preference in the
23 renewal of contracts or permits under this Act.”.

24 (c) **POSSESSORY INTERESTS.**—Section 6 of the Na-
25 tional Park Service Concessions Policy Act is amended—

1 (1) by inserting "(a)" after "SEC. 6";

2 (2) by inserting at the end of subsection (a) (as
3 designated by paragraph (1)) the following: "This
4 subsection shall not apply to contracts entered into,
5 renewed, transferred, assigned, or renegotiated after
6 the date of enactment of this sentence."; and

7 (3) by adding at the end the following:

8 "(b) Effective with respect to contracts entered into,
9 renewed, transferred, assigned, or renegotiated under this
10 Act after the date of enactment of this subsection, all
11 right, title, and interest to any structure, fixture, or im-
12 provement acquired or constructed on land owned by the
13 United States within an area administered by the National
14 Park Service shall vest in the United States.

15 "(c) The Secretary shall acquire any possessory inter-
16 est established before the date of enactment of this sub-
17 section relating to any contract subject to subsection (a)
18 with funds made available by section 10(2). Possessory in-
19 terests relating to a concession shall be acquired before
20 the end of the first contract period beginning after the
21 date of enactment of this subsection that relates to that
22 concession.

23 "(d) Except as provided in section 11 of the Act enti-
24 tled 'An Act to establish the National Park Foundation',
25 approved December 18, 1967, the Secretary may not ap-

1 prove the direct or indirect transfer of the possessory in-
2 terest relating to a contract subject to this Act.”.

3 **SEC. 4. AVAILABILITY OF AUDIT INFORMATION.**

4 The first undesignated paragraph of section 9 of the
5 National Park Service Concessions Policy Act (16 U.S.C.
6 20g) is amended by adding at the end the following: “A
7 record of each audit under this section shall be available
8 to the public in a manner that does not reveal trade se-
9 crets and commercial or financial information that is privi-
10 leged or confidential.”.

11 **SEC. 5. USE OF FRANCHISE FEES.**

12 (a) IN GENERAL.—The National Park Service Con-
13 cessions Policy Act is amended by adding at the end the
14 following new section:

15 **“SEC. 10. USE OF FRANCHISE FEES.**

16 “All receipts from franchise fees, however stated, col-
17 lected pursuant to this Act after September 30, 1991,
18 shall be covered into a special account established in the
19 Treasury of the United States. Amounts covered into the
20 account in a fiscal year shall be available without further
21 appropriation after the end of the fiscal year as follows:

22 “(1) 2.5 percent of such receipts shall be avail-
23 able for the purposes of section 3 of the National
24 Park System Visitor Facilities Fund Act.

1 “(2) 77.5 percent of the receipts shall be allo-
2 cated among the units of the National Park System
3 in the same proportion as franchise fees from a unit
4 bears to the total amount collected from all units
5 under this section and shall be for capital and re-
6 source management, interpretation, and conservation
7 needs and acquisition of possessory interest under
8 section 6.

9 “(3) The remaining 20 percent shall be allo-
10 cated among the units of the National Park System
11 on the basis of capital and resource management, in-
12 terpretation, and conservation need as determined by
13 the Director.”.

14 (b) CONFORMING AMENDMENT.—Section 3 of the
15 National Park System Visitor Facilities Fund Act (16
16 U.S.C. 19bb) is amended by striking “all National Park
17 System concession fees, including franchise fees and build-
18 ing user fees,” and inserting “2.5 percent of all National
19 Park System concession franchise fees and all National
20 Park System concession building user fees”.

21 (c) NATIONAL PARK FOUNDATION.—The Act entitled
22 “An Act to establish the National Park Foundation” (16
23 U.S.C. 19e–19n) is amended by adding at the end the
24 following:

1 "SEC. 11. The Foundation is authorized to acquire
2 the possessory interest relating to a concession if that
3 possessory interest, upon acquisition by the Foundation,
4 is transferred to the United States. For the purpose of
5 this section, the term 'possessory interest' has the mean-
6 ing given such term under section 6 of the Act entitled
7 'An Act relating to the establishment of concession policies
8 in the areas administered by National Park Service and
9 for other purposes', approved October 9, 1965."

O

103D CONGRESS
1ST SESSION

H. R. 1493

To reform the concessions policies of the National Park Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1993

Mrs. MEYERS of Kansas introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To reform the concessions policies of the National Park Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Park Service
5 Concessions Policy Reform Act of 1993".

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—In furtherance of the Act of August
8 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
9 4), which directs the Secretary of the Interior to admin-
10 ister areas of the National Park System in accordance

1 with the fundamental purpose of preserving their scenery,
2 wildlife, natural and historic objects, and providing for
3 their enjoyment in a manner that will leave them
4 unimpaired for the enjoyment of future generations, the
5 Congress finds that the preservation of park values re-
6 quires that public accommodations, facilities, and services
7 be limited to those necessary and appropriate to carry out
8 the approved management objectives for each park.

9 (b) POLICY.—It is the policy of the Congress that—

10 (1) public facilities or services shall be provided
11 within a park only when the private sector or other
12 public agencies cannot adequately provide such fa-
13 cilities or services in the vicinity of the park;

14 (2) if the Secretary determines that public fa-
15 cilities or services should be provided within a park,
16 such facilities or services shall be limited to locations
17 and designs consistent with the highest degree of re-
18 source preservation and protection of the aesthetic
19 values of the park;

20 (3) such facilities and services should be award-
21 ed through competitive bid procedures; and

22 (4) such facilities or services should be provided
23 to the public at reasonable rates.

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act, the term—

1 (1) "bid" means the complete proposal for a
2 concessions contract offered by a potential or exist-
3 ing concessioner in response to the minimum re-
4 quirements for the contract established by the Sec-
5 retary;

6 (2) "concessioner" means a private person, cor-
7 poration, or other entity to whom a concessions con-
8 tract has been awarded;

9 (3) "concessions contract" means a contract,
10 including permits, to provide facilities or services, or
11 both, at a park;

12 (4) "facilities" means improvements to real
13 property within parks used to provide accommoda-
14 tions, facilities, or services to park visitors;

15 (5) "park" means a unit of the National Park
16 System; and

17 (6) "Secretary" means the Secretary of the In-
18 terior.

19 **SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

20 The Act of October 9, 1965, Public Law 89-249 (79
21 Stat. 969, 16 U.S.C. 20-20g), entitled "An Act relating
22 to the establishment of concession policies administered in
23 the areas administered by the National Park Service, and
24 for other purposes", is hereby repealed. The repeal of such
25 Act shall not affect the validity of any contract entered

1 into under such Act, but the provisions of this Act shall
2 apply to any such contract except to the extent such provi-
3 sions are inconsistent with the express terms and condi-
4 tions of the contract.

5 **SEC. 5. CONCESSIONS POLICY.**

6 Subject to the findings and policy stated in section
7 2 of this Act, and upon a determination by the Secretary
8 that facilities or services are necessary and appropriate for
9 the accommodation of visitors at a park, the Secretary
10 shall, consistent with the provisions of this Act, laws relat-
11 ing generally to the administration and management of
12 units of the National Park System, and the park's general
13 management plan, authorize private persons, corporations,
14 or other entities to provide and operate such facilities or
15 services as the Secretary deems necessary and appro-
16 priate.

17 **SEC. 6. COMPETITIVE BID PROCEDURES.**

18 (a) IN GENERAL.—Except as provided in subsection
19 (b), and consistent with the provisions of subsection (f),
20 any concessions contract entered into pursuant to this Act
21 shall be awarded only through competitive bid procedures.
22 Within 180 days after the date of enactment of this Act,
23 the Secretary shall promulgate appropriate regulations es-
24 tablishing such procedures.

1 (b) TEMPORARY CONTRACT.—Notwithstanding the
2 provisions of subsection (a), the Secretary may waive com-
3 petitive bid procedures and award a temporary concessions
4 contract in order to avoid interruption of services to the
5 public at a park.

6 (c) PUBLICATION OF CONTRACT REQUIREMENTS.—
7 Prior to soliciting bids for a concessions contract at a
8 park, the Secretary shall publish in the Federal Register
9 the minimum bid requirements for such contract, as set
10 forth in subsection (d). The Secretary shall also publish
11 the terms and conditions of the previous concessions con-
12 tract awarded for such park, and such financial informa-
13 tion of the existing concessioner pertaining directly to the
14 operation of the affected concessions facilities and services
15 during the preceding contract period as the Secretary de-
16 termines is necessary to allow for the submission of com-
17 petitive bids. Any concessions contract entered into pursu-
18 ant to this Act shall provide that the concessioner shall
19 waive any claim of confidentiality with respect to the po-
20 tential disclosure of such information by the Secretary.

21 (d) MINIMUM BID REQUIREMENTS.—(1) No bid shall
22 be considered which fails to meet the minimum require-
23 ments as determined by the Secretary. Such minimum re-
24 quirements shall include, but need not be limited to, the
25 amount of franchise fee, the duration of the contract, and

1 facilities or services required to be provided by the conces-
2 sioner.

3 (2) The Secretary may reject any bid, notwithstand-
4 ing the amount of franchise fee offered, if the Secretary
5 determines that the bidder is not qualified, is likely to pro-
6 vide unsatisfactory service, or that the bid is not respon-
7 sive to the objectives of protecting and preserving park
8 resources and of providing necessary and appropriate fa-
9 cilities or services to the public at reasonable rates.

10 (3) If all bids submitted to the Secretary either fail
11 to meet the minimum bid requirements or are rejected by
12 the Secretary, the Secretary shall establish new minimum
13 bid requirements and reinitiate the competitive bid process
14 pursuant to this section.

15 (e) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
16 retary shall submit any proposed concessions contract with
17 anticipated annual gross receipts in excess of \$1,000,000
18 or a duration of greater than five years to the Committee
19 on Energy and Natural Resources of the United States
20 Senate and the Committee on Natural Resources of the
21 United States House of Representatives.

22 (2) The Secretary shall not ratify any such proposed
23 contract until at least 60 days subsequent to the notifica-
24 tion of both Committees.

1 (f) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)

2 Except as provided in paragraph (2), the Secretary shall
3 not grant a preferential right to a concessioner to renew
4 a concessions contract executed pursuant to this Act.

5 (2)(A) Notwithstanding the provisions of paragraph
6 (1), the Secretary may grant a preferential right of re-
7 newal to a concessioner—

8 (i) for a concessions contract which—

9 (I) authorizes a concessioner to provide
10 outfitting or guide services (including, but not
11 limited to “river running” or other similar serv-
12 ices) within a park; and

13 (II) does not grant the concessioner any
14 interest in any structure, fixture, or improve-
15 ment pursuant to section 11 of this Act; and

16 (ii) where the Secretary determines that the
17 concessioner has operated satisfactorily on all eval-
18 uations conducted during the term of the previous
19 contract; and

20 (iii) where the Secretary determines that the
21 concessioner’s bid for the new contract satisfies the
22 minimum bid requirements established by the Sec-
23 retary.

24 (B) For the purpose of paragraph (2), the term
25 “preferential right of renewal” means that the Secretary

1 may allow a concessioner satisfying the requirements of
2 subparagraph (A) the opportunity to match any higher bid
3 submitted to the Secretary.

4 (g) NO PREFERENTIAL RIGHT TO ADDITIONAL
5 SERVICES.—The Secretary shall not grant a preferential
6 right to a concessioner to provide new or additional serv-
7 ices at a park.

8 **SEC. 7. FRANCHISE FEES.**

9 (a) IN GENERAL.—Franchise fees, however stated,
10 shall be determined competitively from among those bids
11 determined by the Secretary—

12 (1) to have satisfied the minimum bid require-
13 ments established pursuant to section 6(d); and

14 (2) to be responsive to the objectives of protect-
15 ing and preserving park resources and of providing
16 necessary and appropriate facilities or services to the
17 public at reasonable rates.

18 (b) MINIMUM FEE.—Such fee shall not be less than
19 the minimum fee established by the Secretary for each
20 contract. The minimum fee shall provide the concessioner
21 with a reasonable opportunity to realize a profit on the
22 operation as a whole, commensurate with the capital in-
23 vested and the obligations assumed.

24 (c) OBJECTIVES OF FEE.—Consideration of revenue
25 to the United States shall be subordinate to the objectives

1 of protecting and preserving park resources and of provid-
2 ing necessary and appropriate facilities or services to the
3 public at reasonable rates.

4 **SEC. 8. USE OF FRANCHISE FEES.**

5 All receipts collected pursuant to this Act shall be
6 covered into a special account established in the Treasury
7 of the United States. Amounts covered into such account
8 in a fiscal year shall be available for expenditure, subject
9 to appropriation, solely as follows:

10 (1) 50 percent shall be allocated among the
11 units of the National Park System in the same pro-
12 portion as franchise fees collected from a specific
13 unit bears to the total amount covered into the ac-
14 count for each fiscal year, to be used for resource
15 management and protection, maintenance activities,
16 interpretation, and research; and

17 (2) 50 percent shall be allocated among the
18 units of the National Park System on the basis of
19 need, in a manner to be determined by the Sec-
20 retary, to be used for resource management and pro-
21 tection, maintenance activities, interpretation, and
22 research.

1 **SEC. 9. DURATION OF CONTRACT.**

2 (a) **MAXIMUM TERM.**—A concessions contract en-
3 tered into pursuant to this Act shall be awarded for a term
4 not to exceed ten years.

5 (b) **TEMPORARY CONTRACT.**—A temporary conces-
6 sions contract awarded on a noncompetitive basis pursu-
7 ant to section 6(b) of this Act shall be for a term not
8 to exceed two years.

9 **SEC. 10. TRANSFER OF CONTRACT.**

10 (a) **IN GENERAL.**—(1) No concessions contract may
11 be transferred, assigned, sold, or otherwise conveyed by
12 a concessioner without prior written notification to, and
13 approval of the Secretary. The Secretary shall not approve
14 the transfer of a concessions contract to any individual,
15 corporation or other entity if the Secretary determines
16 that such individual, corporation or entity is, or will be,
17 unable to adequately provide the appropriate facilities or
18 services required by the contract.

19 (2) The Secretary shall reject any proposal to trans-
20 fer, assign, sell, or otherwise convey a concessions contract
21 if the Secretary determines that such transfer, assign-
22 ment, sale or conveyance is not consistent with the objec-
23 tives of protecting and preserving park resources, and of
24 providing necessary and appropriate facilities or services
25 to the public at reasonable rates.

1 (b) CONGRESSIONAL NOTIFICATION.—Within 30
2 days after receiving a proposal to transfer, assign, sell,
3 or otherwise convey a concessions contract, the Secretary
4 shall notify the Committee on Energy and Natural Re-
5 sources of the United States Senate and the Committee
6 on Natural Resources of the United States House of Rep-
7 resentatives of such proposal. Approval of such proposal,
8 if granted by the Secretary, shall not take effect until 60
9 days after the date of notification of both Committees.

10 **SEC. 11. PROTECTION OF CONCESSIONER INVESTMENT.**

11 (a) EXISTING STRUCTURES.—(1) A concessioner who
12 before the date of the enactment of this Act has acquired
13 or constructed, or has commenced acquisition or construc-
14 tion of any structure, fixture, or improvement upon land
15 owned by the United States within a park, pursuant to
16 a concessions contract, shall have a possessory interest
17 therein, to the extent provided by such contract.

18 (2) The provisions of this subsection shall not apply
19 to a concessioner whose contract in effect on the date of
20 enactment of this Act does not include recognition of a
21 possessory interest.

22 (3) With respect to a concessions contract entered
23 into on or after the date of enactment of this Act, the
24 provisions of subsection (b) shall apply to any existing
25 structure, fixture, or improvement as defined in paragraph

1 (a)(1), except that the actual original cost of such struc-
2 ture, fixture, or improvement shall be deemed to be the
3 value of the possessory interest as of the termination date
4 of the previous concessions contract.

5 (b) NEW STRUCTURES.—(1) On or after the date of
6 enactment of this Act, a concessioner who constructs or
7 acquires a new, additional, or replacement structure, fix-
8 ture, or improvement upon land owned by the United
9 States within a park, pursuant to a concessions contract,
10 shall have an interest in such structure, fixture, or im-
11 provement equivalent to the actual original cost of acquir-
12 ing or constructing such structure, fixture, or improve-
13 ment, less straight line depreciation over the estimated
14 useful life of the asset according to Generally Accepted
15 Accounting Principles: *Provided*, That in no event shall
16 the estimated useful life of such asset exceed 31.5 years.

17 (2) In the event that the contract expires or is termi-
18 nated prior to the recovery of such costs, the concessioner
19 shall be entitled to receive from the United States or the
20 successor concessioner payment equal to the value of the
21 concessioner's interest in such structure, fixture, or im-
22 provement. A successor concessioner may not revalue the
23 interest in such structure, fixture, or improvement, the
24 method of depreciation, or the estimated useful life of the
25 asset.

1 (3) Such costs shall be accounted for in the schedule
2 of rates and charges established pursuant to section 13
3 of this Act.

4 (4) Title to any such structure, fixture, or improve-
5 ment shall be vested in the United States.

6 (c) **INSURANCE, MAINTENANCE AND REPAIR.**—Noth-
7 ing in this section shall affect the obligation of each con-
8 cessioner to insure, maintain, and repair any structure,
9 fixture, or improvement assigned to such concessioner and
10 to insure that such structure, fixture, or improvement
11 fully complies with applicable safety and health laws and
12 regulations.

13 (d) **PUBLIC REVIEW.**—The construction of any new,
14 additional, or replacement structure, fixture, or improve-
15 ment involving costs of \$1,000,000 or more, provided or
16 financed by a concessioner, upon land owned by the Unit-
17 ed States within a park, shall be authorized only after
18 public review, including an opportunity for public hear-
19 ings, to determine whether such construction is appro-
20 priate and consistent with the purposes of the National
21 Park System, the laws relating generally to the adminis-
22 tration and management of the system, and the park's
23 general management plan. The requirements of this sub-
24 section may be satisfied by the public review and hearings

1 associated with the development of the general manage-
2 ment plan for the park.

3 **SEC. 12. UTILITY COSTS.**

4 (a) **IN GENERAL.**—A concessions contract entered
5 into pursuant to this Act shall provide that the conces-
6 sioner shall be responsible for all utility costs incurred by
7 the concessioner.

8 (b) **CONFORMING AMENDMENT.**—Section 1 of the
9 Act of August 8, 1953 (16 U.S.C. 1b) is amended in para-
10 graph 4 by striking “concessioners,”.

11 **SEC. 13. RATES AND CHARGES TO PUBLIC.**

12 The reasonableness of a concessioner's rates and
13 charges to the public shall, unless otherwise provided in
14 the bid specifications and contract, be judged primarily
15 by comparison with those rates and charges for facilities
16 and services of comparable character under similar condi-
17 tions, with due consideration for length of season, seasonal
18 variance, average percentage of occupancy, accessibility,
19 availability and costs of labor and materials, type of pa-
20 tronage, and other factors deemed significant by the Sec-
21 retary.

22 **SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

23 (a) **REGULATIONS.**—Within 180 days after the date
24 of enactment of this Act, the Secretary shall publish in
25 the Federal Register after an appropriate period for public

1 comment, regulations establishing standards and criteria
2 for evaluating the performance of concessions operating
3 within parks.

4 (b) PERIODIC EVALUATION.—(1) The Secretary shall
5 periodically conduct an evaluation of each concessioner op-
6 erating under a concessions contract pursuant to this Act,
7 as appropriate, to determine whether such concessioner
8 has performed satisfactorily. If the Secretary's perform-
9 ance evaluation results in an unsatisfactory rating of the
10 concessioner's overall operation, the Secretary shall pre-
11 pare an analysis of the minimum requirements necessary
12 for the operation to be rated satisfactory, and shall so no-
13 tify the concessioner in writing.

14 (2) The concessioner shall be responsible for all costs
15 associated with any subsequent evaluations resulting from
16 an unsatisfactory rating.

17 (3) If the Secretary terminates a concessions contract
18 pursuant to this section, the Secretary shall solicit bids
19 for a new contract consistent with the provisions of this
20 Act.

21 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
22 shall notify the Committee on Energy and Natural Re-
23 sources of the United States Senate and the Committee
24 on Natural Resources of the United States House of Rep-

1 representatives of each unsatisfactory rating and of each con-
2 cessions contract terminated pursuant to this section.

3 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

4 (a) **IN GENERAL.**—Each concessioner shall keep such
5 records as the Secretary may prescribe to enable the Sec-
6 retary to determine that all terms of the concessioner's
7 contract have been, and are being faithfully performed,
8 and the Secretary or any of the Secretary's duly author-
9 ized representatives shall, for the purpose of audit and ex-
10 amination, have access to such records and to other books,
11 documents and papers of the concessioner pertinent to the
12 contract and all the terms and conditions thereof as the
13 Secretary deems necessary.

14 (b) **GENERAL ACCOUNTING OFFICE REVIEW.**—The
15 Comptroller General of the United States or any of his
16 or her duly authorized representatives shall, until the expi-
17 ration of five calendar years after the close of the business
18 year for each concessioner or subconcessioner, have access
19 to and the right to examine any pertinent books, docu-
20 ments, papers, and records of the concessioner or
21 subconcessioner related to the contracts or contract in-
22 volved.

1 **SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
2 **MENTS.**

3 The provisions of section 321 of the Act of June 30,
4 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
5 ing of buildings and properties of the United States, shall
6 not apply to contracts awarded by the Secretary pursuant
7 to this Act.

8 **SEC. 17. CONFORMING AMENDMENT.**

9 Subsection (h) of section 2 of the Act of August 21,
10 1935, the Historical Sites, Buildings and Antiquities Act
11 (49 Stat. 666; 16 U.S.C. 462(h)), is amended by striking
12 out the proviso therein.

○

103D CONGRESS
1ST SESSION

H. R. 2146

To reform the concessions policies of the National Park Service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1993

Mr. STEARNS introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To reform the concessions policies of the National Park Service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Park Service
5 Concessions Policy Reform Act of 1993".

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—In furtherance of the Act of August
8 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
9 4), which directs the Secretary of the Interior to admin-
10 ister areas of the National Park System in accordance

1 with the fundamental purpose of preserving their scenery,
2 wildlife, natural and historic objects, and providing for
3 their enjoyment in a manner that will leave them
4 unimpaired for the enjoyment of future generations, the
5 Congress finds that the preservation of park values re-
6 quires that public accommodations, facilities, and services
7 be limited to those necessary and appropriate to carry out
8 the approved management objectives for each park.

9 (b) POLICY.—It is the policy of the Congress that—

10 (1) public facilities or services shall be provided
11 within a park only when the private sector or other
12 public agencies cannot adequately provide such fa-
13 cilities or services in the vicinity of the park;

14 (2) if the Secretary determines that public fa-
15 cilities or services should be provided within a park,
16 such facilities or services shall be limited to locations
17 and designs consistent with the highest degree of re-
18 source preservation and protection of the aesthetic
19 values of the park;

20 (3) such facilities and services should be award-
21 ed through competitive bid procedures; and

22 (4) such facilities or services should be provided
23 to the public at reasonable rates.

24 **SEC. 3. DEFINITIONS.**

25 As used in this Act, the term—

1 (1) "bid" means the complete proposal for a
2 concessions contract offered by a potential or exist-
3 ing concessioner in response to the minimum re-
4 quirements for the contract established by the Sec-
5 retary;

6 (2) "concessioner" means a private person, cor-
7 poration, or other entity to whom a concessions con-
8 tract has been awarded;

9 (3) "concessions contract" means a contract,
10 including permits, to provide facilities or services, or
11 both, at a park;

12 (4) "facilities" means improvements to real
13 property within parks used to provide accommoda-
14 tions, facilities, or services to park visitors;

15 (5) "park" means a unit of the National Park
16 System; and

17 (6) "Secretary" means the Secretary of the In-
18 terior.

19 **SEC. 4. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

20 The Act of October 9, 1965, Public Law 89-249 (79
21 Stat. 969, 16 U.S.C. 20-20g), entitled "An Act relating
22 to the establishment of concession policies administered in
23 the areas administered by the National Park Service, and
24 for other purposes", is hereby repealed. The repeal of such
25 Act shall not affect the validity of any contract entered

1 into under such Act, but the provisions of this Act shall
2 apply to any such contract except to the extent such provi-
3 sions are inconsistent with the express terms and condi-
4 tions of the contract.

5 **SEC. 5. CONCESSIONS POLICY.**

6 Subject to the findings and policy stated in section
7 2 of this Act, and upon a determination by the Secretary
8 that facilities or services are necessary and appropriate for
9 the accommodation of visitors at a park, the Secretary
10 shall, consistent with the provisions of this Act, laws relat-
11 ing generally to the administration and management of
12 units of the National Park System, and the park's general
13 management plan, authorize private persons, corporations,
14 or other entities to provide and operate such facilities or
15 services as the Secretary deems necessary and appro-
16 priate.

17 **SEC. 6. COMPETITIVE BID PROCEDURES.**

18 (a) IN GENERAL.—Except as provided in subsection
19 (b), and consistent with the provisions of subsection (f),
20 any concessions contract entered into pursuant to this Act
21 shall be awarded only through competitive bid procedures.
22 Within 180 days after the date of enactment of this Act,
23 the Secretary shall promulgate appropriate regulations es-
24 tablishing such procedures.

1 (b) TEMPORARY CONTRACT.—Notwithstanding the
2 provisions of subsection (a), the Secretary may waive com-
3 petitive bid procedures and award a temporary concessions
4 contract in order to avoid interruption of services to the
5 public at a park.

6 (c) PUBLICATION OF CONTRACT REQUIREMENTS.—
7 Prior to soliciting bids for a concessions contract at a
8 park, the Secretary shall publish in the Federal Register
9 the minimum bid requirements for such contract, as set
10 forth in subsection (d). The Secretary shall also publish
11 the terms and conditions of the previous concessions con-
12 tract awarded for such park, and such financial informa-
13 tion of the existing concessioner pertaining directly to the
14 operation of the affected concessions facilities and services
15 during the preceding contract period as the Secretary de-
16 termines is necessary to allow for the submission of com-
17 petitive bids. Any concessions contract entered into pursu-
18 ant to this Act shall provide that the concessioner shall
19 waive any claim of confidentiality with respect to the po-
20 tential disclosure of such information by the Secretary.

21 (d) MINIMUM BID REQUIREMENTS.—(1) No bid shall
22 be considered which fails to meet the minimum require-
23 ments as determined by the Secretary. Such minimum re-
24 quirements shall include, but need not be limited to, the
25 amount of franchise fee, the duration of the contract, and

1 facilities or services required to be provided by the conces-
2 sioner.

3 (2) The Secretary may reject any bid, notwithstand-
4 ing the amount of franchise fee offered, if the Secretary
5 determines that the bidder is not qualified, is likely to pro-
6 vide unsatisfactory service, or that the bid is not respon-
7 sive to the objectives of protecting and preserving park
8 resources and of providing necessary and appropriate fa-
9 cilities or services to the public at reasonable rates.

10 (3) If all bids submitted to the Secretary either fail
11 to meet the minimum bid requirements or are rejected by
12 the Secretary, the Secretary shall establish new minimum
13 bid requirements and reinitiate the competitive bid process
14 pursuant to this section.

15 (e) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
16 retary shall submit any proposed concessions contract with
17 anticipated annual gross receipts in excess of \$1,000,000
18 or a duration of greater than five years to the Committee
19 on Energy and Natural Resources of the United States
20 Senate and the Committee on Natural Resources of the
21 United States House of Representatives.

22 (2) The Secretary shall not ratify any such proposed
23 contract until at least 60 days subsequent to the notifica-
24 tion of both Committees.

1 (f) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)

2 Except as provided in paragraph (2), the Secretary shall
3 not grant a preferential right to a concessioner to renew
4 a concessions contract executed pursuant to this Act.

5 (2)(A) Notwithstanding the provisions of paragraph
6 (1), the Secretary may grant a preferential right of re-
7 newal to a concessioner—

8 (i) for a concessions contract which—

9 (I) authorizes a concessioner to provide
10 outfitting or guide services (including, but not
11 limited to “river running” or other similar serv-
12 ices) within a park; and

13 (II) does not grant the concessioner any
14 interest in any structure, fixture, or improve-
15 ment pursuant to section 11 of this Act; and

16 (ii) where the Secretary determines that the
17 concessioner has operated satisfactorily on all eval-
18 uations conducted during the term of the previous
19 contract; and

20 (iii) where the Secretary determines that the
21 concessioner’s bid for the new contract satisfies the
22 minimum bid requirements established by the Sec-
23 retary.

24 (B) For the purpose of paragraph (2), the term
25 “preferential right of renewal” means that the Secretary

1 may allow a concessioner satisfying the requirements of
2 subparagraph (A) the opportunity to match any higher bid
3 submitted to the Secretary.

4 (g) NO PREFERENTIAL RIGHT TO ADDITIONAL
5 SERVICES.—The Secretary shall not grant a preferential
6 right to a concessioner to provide new or additional serv-
7 ices at a park.

8 **SEC. 7. FRANCHISE FEES.**

9 (a) IN GENERAL.—Franchise fees, however stated,
10 shall be determined competitively from among those bids
11 determined by the Secretary—

12 (1) to have satisfied the minimum bid require-
13 ments established pursuant to section 6(d); and

14 (2) to be responsive to the objectives of protect-
15 ing and preserving park resources and of providing
16 necessary and appropriate facilities or services to the
17 public at reasonable rates.

18 (b) MINIMUM FEE.—Such fee shall not be less than
19 the minimum fee established by the Secretary for each
20 contract. The minimum fee shall provide the concessioner
21 with a reasonable opportunity to realize a profit on the
22 operation as a whole, commensurate with the capital in-
23 vested and the obligations assumed.

24 (c) OBJECTIVES OF FEE.—Consideration of revenue
25 to the United States shall be subordinate to the objectives

1 of protecting and preserving park resources and of provid-
2 ing necessary and appropriate facilities or services to the
3 public at reasonable rates.

4 **SEC. 8. USE OF FRANCHISE FEES.**

5 All receipts collected pursuant to this Act shall be
6 covered into a special account established in the Treasury
7 of the United States. Amounts covered into such account
8 in a fiscal year shall be available for expenditure, subject
9 to appropriation, solely as follows:

10 (1) 50 percent shall be allocated among the
11 units of the National Park System in the same pro-
12 portion as franchise fees collected from a specific
13 unit bears to the total amount covered into the ac-
14 count for each fiscal year, to be used for resource
15 management and protection, maintenance activities,
16 interpretation, and research; and

17 (2) 50 percent shall be allocated among the
18 units of the National Park System on the basis of
19 need, in a manner to be determined by the Sec-
20 retary, to be used for resource management and pro-
21 tection, maintenance activities, interpretation, and
22 research.

1 **SEC. 9. DURATION OF CONTRACT.**

2 (a) **MAXIMUM TERM.**—A concessions contract en-
3 tered into pursuant to this Act shall be awarded for a term
4 not to exceed ten years.

5 (b) **TEMPORARY CONTRACT.**—A temporary conces-
6 sions contract awarded on a noncompetitive basis pursu-
7 ant to section 6(b) of this Act shall be for a term not
8 to exceed two years.

9 **SEC. 10. TRANSFER OF CONTRACT.**

10 (a) **IN GENERAL.**—(1) No concessions contract may
11 be transferred, assigned, sold, or otherwise conveyed by
12 a concessioner without prior written notification to, and
13 approval of the Secretary. The Secretary shall not approve
14 the transfer of a concessions contract to any individual,
15 corporation or other entity if the Secretary determines
16 that such individual, corporation or entity is, or will be,
17 unable to adequately provide the appropriate facilities or
18 services required by the contract.

19 (2) The Secretary shall reject any proposal to trans-
20 fer, assign, sell, or otherwise convey a concessions contract
21 if the Secretary determines that such transfer, assign-
22 ment, sale or conveyance is not consistent with the objec-
23 tives of protecting and preserving park resources, and of
24 providing necessary and appropriate facilities or services
25 to the public at reasonable rates.

1 (b) CONGRESSIONAL NOTIFICATION.—Within 30
2 days after receiving a proposal to transfer, assign, sell,
3 or otherwise convey a concessions contract, the Secretary
4 shall notify the Committee on Energy and Natural Re-
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9 days after the date of notification of both Committees.

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13 or constructed, or has commenced acquisition or construc-
14 tion of any structure, fixture, or improvement upon land
15 owned by the United States within a park, pursuant to
16 a concessions contract, shall have a possessory interest
17 therein, to the extent provided by such contract.

18 (2) The provisions of this subsection shall not apply
19 to a concessioner whose contract in effect on the date of
20 enactment of this Act does not include recognition of a
21 possessory interest.

22 (3) With respect to a concessions contract entered
23 into on or after the date of enactment of this Act, the
24 provisions of subsection (b) shall apply to any existing
25 structure, fixture, or improvement as defined in paragraph

1 (a)(1), except that the actual original cost of such struc-
2 ture, fixture, or improvement shall be deemed to be the
3 value of the possessory interest as of the termination date
4 of the previous concessions contract.

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9 States within a park, pursuant to a concessions contract,
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14 useful life of the asset according to Generally Accepted
15 Accounting Principles: *Provided*, That in no event shall
16 the estimated useful life of such asset exceed 31.5 years.

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10 1935, the Historical Sites, Buildings and Antiquities Act
11 (49 Stat. 666; 16 U.S.C. 462(h)), is amended by striking
12 out the proviso therein.

○

Chairman VENTO. Over the years, there have been extensive oversight and legislative hearings concerning national park concessions and the extent to which the specific provisions of law on concession policy, the Concession Policy Act, have shaped the National Park Service concession management policies.

We have looked at the activities themselves in terms of specific sites such as Ellis Island and the Statue of Liberty concession. We have had extensive hearings on the issue of the Yosemite contract and the sale and transfer of the previous holder of that contract and the extinguishing of possessory interest.

And, there have been a number of significant reports on the subject by the General Accounting Office and by the Interior and Inspector General's Office.

The basic law now governing the subject in the National Park System was enacted nearly 30 years ago. Members who served on the subcommittee in the last Congress will recall that the Bush Administration's view was that some changes in park concession policy were desirable but that there was no need for revisions in the law. I don't share that view. And, I think that most Members of Congress do not share that view.

As a matter of fact, the Department of the Interior under Secretary Lujan did make a number of changes in concession policy and regulations. But there are some changes in policy that under existing law cannot be accomplished through administrative means alone. Those would require a change in law.

And, I think that Secretary Lujan, after working with the regulations, came to appreciate and understand that and supported that. He supported changes in law.

In my opinion, it's time for serious consideration of revisions to the Concessions Policy Act. As I've stated, nearly 30 years have elapsed since the Act was put on the books. And, we are living in a new era.

The national parks, for the most part, are no longer as isolated or remote from developed areas as once was the case. Visitors can more readily obtain goods and services in the vicinity of the parks. So, there is presumably less absolute need for some concession operations within parks.

Also, national park concession contracts are more sought after, so that there is less need to extend special inducements to attract concessioners. And, enhancing competition among would-be concessioners can better serve both park visitors and the taxpayers and can be done in the normal course of business such as with other types of lease arrangements that exist and work in the private sector.

In this era of tight budgets, we also need to seriously look at changes in the way concession receipts are used, especially in view of the backlog of needs throughout the National Park System.

One of the bills before us, by Congressman Synar, would make a number of specific revisions to the Concessions Policy Act. The other two bills would repeal the Concessions Policy Act and replace it with a new statute.

The background material is all before the members and staff, as well as much of the testimony, which I appreciate receiving prior

to the hearing, including your statement, Congressman Synar. So, I would suggest members look at it.

And, I will see if my colleague has an opening statement. Mr. Hansen.

STATEMENT OF HON. JAMES V. HANSEN

Mr. HANSEN. Yes. Thank you, Mr. Chairman. I welcome our two colleagues here and other people who are here.

Mr. Chairman, I would like to thank you for holding this hearing on the topic of concession management in the National Park Service. This is a subject of critical importance to park visitors and one which has been examined in numerous hearings by this subcommittee in the last few years.

The existing law establishes three priority objectives for the concessionaire management program. First, protection of park resources; second, providing quality service to visitors at a reasonable price; and, third, ensuring a reasonable rate of return to the government and opportunity for profit by the concessionaire.

In all these many hearings we have had on this topic, we have yet to receive testimony detailing negative impacts of unauthorized concession activities on park resources or about how visitors are being ripped off for poor quality services. Yet, again we hear this cry for a total rejection of our existing laws and policies, which appear to be working pretty well.

I will agree with those who argue that some of the existing concession contracts, particularly the older ones, don't provide the type of return to the government that we would like to have in hindsight. But, starting with the efforts of former Secretary Lujan, I believe that the National Park Service negotiating process has begun to improve.

I would also note for the record that the contract most often characterized in the past as a sweetheart franchise fee for the Yosemite concession went from a .75 percent fee to a zero franchise under Secretary Babbitt.

I would also agree with those who argue for greater competition at the time of contract renewal. We do need to be careful in how we approach this issue so that we do not take the rights previously provided under existing contracts.

However, I do wonder if the existing program represents the type of balance we want between retention of existing quality operators and adequate competition to get the best deal for the public and the government. I remain skeptical about those who want a complete overall of the existing system.

I am concerned that the cumulative effect of all of the reforms included in these measures will undermine the success we have enjoyed in the existing concession program. I don't understand why the Administration is seeking new legislation before they test out our own regulations.

I note that the Administration's testimony incorrectly recites the basic National Park Service mission as defined in the 1916 National Park Service Organic Act. The same environmental extremists who advocate changing the National Park Service mission from conservation to preservation have also advocated total elimination

of all concession facilities in places such as Zion National Park in the past.

As I represent that area, and have for many years, I know that the American public is opposed to such an approach to park management. And, I think even the majority of the members of this subcommittee will oppose it.

Mr. Chairman, I hope that we can work together on a tune-up of the existing law based on our experience of over nearly 30 years. However, I would say to those who are seeking a complete overall of existing law that they have a lot more work to do to make their case, I believe, before Congress and the committee.

And, thank you, Mr. Chairman.

PANEL CONSISTING OF HON. MIKE SYNAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA, AND CHAIRMAN, SUBCOMMITTEE ON ENVIRONMENT, ENERGY AND NATURAL RESOURCES, COMMITTEE ON GOVERNMENT OPERATIONS; AND HON. JAN MEYERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Chairman VENTO. You are welcome. We are pleased to welcome Congressman Synar and Congresswoman Meyers.

I don't see Cliff Stearns here at this time. Maybe he will submit his testimony or be by a little later.

But, let's proceed. Without objection, the complete statements of members on the subcommittee and witnesses will be made part of the record. Hearing no objection, so ordered.

Mike, why don't you proceed with your statement?

STATEMENT OF HON. MIKE SYNAR

Mr. SYNAR. Thank you, Bruce. I will be very brief.

It's a great opportunity for me to be back before the committee to talk about some reforms I think all of us agree need to be done, which are long overdue. What I am going to offer to you today are reforms that are good for not only the taxpayers but for the environment.

There are two basic truths that are indisputable. One truth is that the Federal Government and the taxpayers of this country are being severely underpaid for the use of their assets in our national parks.

And, truth number 2 is that the Department of the Interior does not have a national or a rational system of managing our park concessions.

You know, as an oversight chairman with jurisdiction over the NPS, I have had many hearings over the years and delivered reports to this Committee. And, would you be shocked to know that, until we asked the GAO to review the National Park Service concessions management, the Park Service did not even have a simple inventory of all the agreements they had with private concessionaires?

I mean, the fact is that the National Park Service is not in charge of their concessions, except on paper. There is no central collection or control of financial information of these private operations.

There is no financial data on at least 97 long-term or short-term concession agreements. And, there are none on the commercial use licenses.

Headquarters doesn't even have a simple inventory of our government-owned facilities. And, because of that, taxpayers are literally losing many millions of dollars because many concessionaires don't pay reasonable or equitable fees for the use of these public lands.

The Park Service Headquarters, very frankly, and their managers have failed to understand that their prime objective and the responsibility they have for managing these concessions operations is to ensure that it's a healthy, safe recreation experience for all people, with a reasonable return to the taxpayers.

Now, the Park Service is going to argue that they cannot afford to obtain financial information from these commercial use licensees or they can't charge the fair market rates for government-owned facilities assigned to concessionaire use or they can't conduct annual reviews. They are dead wrong.

In fact, we really don't have any option at this point. The Park Service has to do a better job.

Now, what are we recommending? Well, four very quick things in very quick summary. One, the franchise fees are way too low. We've got to raise them.

Second, the contracts last too long so that we lose control over them.

Third, the existing contractors have such a sweetheart renewal preference that it's preventing open competition for many of those concessions.

And, finally, these contracts are not charging fair market value rents for use of taxpayers' facilities. And, the cost of administering these concessions is too high.

You know, in the past it seems that some of our Park Service concessionaire administrators are more concerned about the convenience of the concessionaires than they are about the safety and convenience of the visitors. I am hopeful that the committee will take the responsibility to make these necessary amendments to the basic bill so that we can get a handle on this, not only for our taxpayers but for the environment.

[Prepared statement of Mr. Synar follows:]

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H.R. 743, National Parks Revitalization Act.

Statement of REPRESENTATIVE MIKE SYNAR

Chairman, Subcommittee on Environment, Energy and Natural Resources
Before the Subcommittee on National Parks, Forests, and Public Lands,
House Committee on Natural Resources

October 19, 1993

Mr. Chairman, thank you for this opportunity to appear and testify in favor of H.R. 743, National Parks Revitalization Act of 1993, legislation I introduced earlier this year. Enactment of this measure will promote reforms of National Park Concession management that are long overdue, and I am here to strongly urge your swift and positive action on the bill. Enactment of this amendment to the 1965 National Park Concessions Policy Act will be good for both the taxpayers and the environment.

Mr. Chairman, it is increasingly clear that the Federal government is underpaid for the use of taxpayer assets at National Parks. In fact, the Department of the Interior does not have a national — or rational — system for managing park concessions. The GAO estimates that there are more than 1,800 concession arrangements at National Park administered sites, including more than 500 long-term (more than 5 years) concession agreements; 265 short-term (less than 5 years) permits and limited permits; and 1,164 short-term concessioners operating under commercial-use licenses.

But until my Government Operations Subcommittee on Environment Energy and Natural Resources asked the U.S. General Accounting Office (GAO) to review National Park Service concessions management, the Park Service did not even have a simple inventory of its agreements with private concessioners. In fact, GAO's continuing investigation raises for us several important issues standing in the way of professional management of concession activities at National Parks.

Mr. Chairman, as a result of our GAO and Subcommittee investigations, it appears that the headquarters of the National Park Service is not in charge of concessions policy — except on paper. For example, we found that within the Park Service there was no central collection or control of financial information from these private operations. The Park Service had no financial data for at least 97 long-term and short-term concessions

agreements and none at all on commercial use licensees doing business on Federal lands administered by the Park Service. The Park Service headquarters does not even have a simple inventory of the government-owned facilities that are used by private companies for concessions operations.

We found that the taxpayers are losing millions of dollars each year because many concessioners don't pay reasonable and equitable fees or rents for the use of public lands. And finally, we found that state and local governments must sometimes carry out the Federal government's burden of ensuring public health safety standards at concessioner operated facilities on Federal lands.

Mr. Chairman, in each of these instances, the most thorough accounting and report of the nature and extent of concessions arrangements, financial data and building use fees was prepared by GAO during its audit for our Subcommittee -- not by the Park Service, which is charged with managing concessioner activities. This is a disgraceful state of affairs.

Unfortunately, Mr. Chairman, the Park Service headquarters concessions managers fail to understand that a prime objective and responsibility of managing concession operations is to ensure that the concessioners offer a healthy, safe and reasonably priced recreation experience. In fact, the Park Service headquarters has continually failed to meet that responsibility in a consistent way.

For example, the breakdown of central authority in managing recreation concessions is particularly apparent in regard to fair market rental fees. According to the Park Service's own guidelines, the fee for use of government-owned facilities should be based on appraisals of those facilities. However, appraisals are rarely completed and almost never used as the basis for establishing building use fees. In fact, the fee objectives are generally poorly defined, conflicting and wildly inconsistent -- even within the same region of the same agency. Incredibly, the headquarters office of the National Park Service still does not even have a complete inventory of the 1,400 government-owned facilities assigned for concessioner use at our National Parks.

And at the local level, the Park Service has failed to effectively use their most important tool in judging concessioners performance -- the annual overall performance review. For example, annual reviews are not required for all short-term concessioners, and when they are performed, many are not documented. The requirements for overall annual performance evaluations of short-term concessioners differ in the Park Service's case, even with the same agency. For example, outfitters and guides for the Park Service who provide basically the same service operate under three types of agreements -- permits, limited permits or commercial-use licenses. For the 265 Park Service permits and limited permits, annual performance evaluations and price reviews are required. But for the 1,164 short-term concessioners operating under commercial-use licenses, neither annual evaluations nor price reviews are required. That makes no sense at all.

Mr. Chairman, the Park Service contends it cannot afford to obtain financial information from commercial use licensees, charge fair market rates for government-owned facilities assigned for concessioner use, or conduct annual reviews of concessioner performance. That is dead wrong. In fact, we have no real option. The Park Service must do a better job of conducting the people's business. Unfortunately, in the past it has seemed that some Park Service concession administrators are more concerned about the convenience of concessioners than about the safety and convenience of visitors or revenues to the Treasury and the taxpayers.

At a time when many Americans are concerned about the overall performance of concessions operations on Federal land, it is very disturbing to learn that the land managers have taken such a lax attitude toward the health and safety of visitors and toward their obligation to taxpayers. Instead of working hard to assure compliance by every concessioner, the Park Service is busy making up excuses for yet another embarrassing audit finding.

For example, while the Park Service has begun to ask concessioners to increase the return to the taxpayers, it has not dramatically increased franchise fees or rents. Instead, the agency is increasingly relying on non-fee compensation and so-called "set-aside" accounts. But Mr. Chairman, the Park Service has no system for tracking non-fee compensation and there are so many methods of determining concession, building use fees and commercial use licenses among the various Parks reviewed, that a meaningful comparison is almost impossible.

The Park Service is currently collecting inadequate information on the franchise fees paid by concessioners and commercial use licensees, but they need to develop complete data on (1) the number of concession agreements which involve the use of government-owned facilities; (2) the number of facilities used by concessioners; (3) the building use fees paid by concessioners; and (4) the value of the work performed from so-called "set aside" accounts. Currently, that data is a minimum.

Additionally, Mr. Chairman, the Park Service needs to develop specific policies, methodologies and guidelines on how to (1) obtain financial information; (2) best determine commercial use license and building use fees; and (3) establish, administer and track set-aside accounts as well as other contractual arrangements for repair, maintenance and improvements to federally owned facilities used by concessioners.

Thankfully, Secretary of the Interior Bruce Babbitt and Assistant Secretary for Policy Management and Budget, Bonnie Cohen, have already started to fix the problem. But, the taxpayers have already lost millions of dollars, and they deserve better. Professional managers should be careful, alert and vigilant, not lax and apathetic.

Many of these concession arrangements have not been reviewed for years, and many have resulted in the Federal Government and the taxpayers being underpaid by scores of millions of dollars. For example, to the extent reliable data is available, overall gross

concessions receipts by National Park concessioners topped \$570 million in 1990, but less than 3 percent of those gross revenues (\$13.2 million) were returned to Treasury through fees paid to the Government by concessioners.

Unbelievably, complete financial data is available for only 60 percent of the more than 1,500 concession agreements; for the remaining 40 percent, financial data was not required by the agency or, if required, was not submitted by the concessioners. More equitable concession fees, improved collection of financial data from concessioners and contractors, and fair market building use fees for federally owned recreation facilities (discussed below) could result in an increase of over \$200 million per year in Federal revenues – a far more equitable return for the taxpayers.

The National Park Service is not receiving fair market rental value for most of the 1,400 government-owned facilities used by private companies to provide concession services and amenities at more than 100 National Park Service sites, even though Park Service policy requires the Service to receive "fair market value" for use of these facilities. In fact, until GAO obtained and analyzed the data for my Subcommittee, the Park Service did not even have an inventory of the government-owned facilities that are used by private companies for concession operations.

GAO estimates that in 1990 concessioners paid the Park Service just \$1.2 million in building use fees. In 1990, the Interior Department's Inspector General estimated the Park Service was losing more than \$1.4 million each year on rents paid by concession operators at just 11 major Parks and historic areas, by charging only about one-quarter of the actual fair market rental value for government-owned facilities.

The simple truth is that it is time for a change. Concession contracts create monopolies over all goods and services consumed at our National Parks, the crown jewels of this Nation's natural heritage. But, the contracts and the National Park Concessions Policy Act are relics of a time gone by.

Mr. Chairman, the existing law is based on set of assumptions that are no longer valid. It was enacted at a time in our Nation's history when it was deemed necessary to extend extraordinary incentives to businesses to operate in our National Parks. At that time – before the completion of our interstate highway system revolutionized family travel – concessions operations in National Parks were viewed as risky commercial outposts that we sought to coax into providing goods, services and hospitality at remote and scarcely visited locales with a short summer season of operations and activities.

Accordingly, the 1965 National Park Concessions Policy Act created a set of incentives for concessioners, which included low franchise fees, renewal preference for satisfactory performance and the rights to acquire, hold and transfer a possessory interest in structures, fixtures and improvements upon land owned by the United States within areas administered by the National Park Service. This incentive package worked in the beginning;

but over the long run, it has worked too well.

Mr. Chairman, the circumstances at our National Parks have changed dramatically since 1965. Our National Parks are not commercial "outposts." In fact, many parks are teeming with visitors and the short summer season is growing to 10 months or even year-round visitation even in many of the most remote areas. Now, operating a concession at one of our National Parks has become a lucrative enterprise and the taxpayer is being shortchanged.

While the right of preference renewal and the rights associated with possessory interest served the initial purposes of attracting private capital and quality concessions operations to our National Parks, these rights have now become significant -- and almost insurmountable -- impediments to competition.

The leverage created by the National Park Concessions Policy Act's incentive package has made it virtually impossible for others to compete against an existing concessioner at one of our National Parks. At the end of every concessions contract term, the Secretary of the Interior must entertain offers from others for improved concessions services or increased franchise fees, but few submit a bids. Instead, enterprising businesses are dissuaded from submitting proposals because a successful bidder would have to do more than simply prepare the highest and best bid for concessioner services. In fact, a successful bidder would have to pay off the possessory interest of the existing, tenured concessioner and would have to overcome the existing concessioner's renewal preference. Thus, the incentive package has become a nearly perfect barrier to competition for concession opportunities.

The current policy poses other problems, as well. For example, it is good that concession services are provided by the private sector, instead of the government, and no one wants to change that aspect of National Park concession operations. However, it is wrong for concession revenues to be diverted from the National Park System's resource conservation needs at a time when Park budgets are stagnant and Park visitation is soaring.

Mr. Chairman, here is a summary of some of the continuing deficiencies in existing concessions policy, law and regulation: franchise fees for National Park concession contracts are far too low; existing concession contracts have lasted too long; existing contractors have a renewal preference and possessory interest in Park structures and facilities that are preventing open competition; existing contracts do not charge fair market rents for taxpayer-owned facilities; the cost of administering concession contracts are too high; and, contracts allow a concessioner to sell his exclusive use of Park facilities, low concession fees and preference for renewal as intangible assets when the concessioner corporation is sold. Some even argue that concession contracts allow our National Parks to be managed for the benefit of concessioners, rather than for resource conservation.

Unfortunately, the loser in all this is the taxpayer, Mr. Chairman. As documented in reports from the Inspector General of the Department of Interior (OIG), the U.S.

General Accounting Office, the House Committees on Small Business and Government Operations and the National Park Service itself, the existing contract law and regulations are not in the public interest. It is time for reform.

To his credit, former Secretary of the Interior Manuel Lujan initiated a reform campaign to correct some of these deficiencies. But concessioners strongly opposed reforms and the job has not been completed. Now, Congress must take legislative action to complete and perfect the reform effort. The National Parks Revitalization Act will strengthen the Secretary's authority to reform concessions operations, standardize the process of concessions reform, and assure a fair return to the taxpayers.

This reform effort is vitally important since most contracts come up for renewal over the next five years, including several large contracts. Therefore, we need to give the Secretary all the tools necessary to take advantage of this unique window of opportunity to construct a proper balance for concessions operation.

Mr. Chairman, as I have already noted the National Parks Revitalization Act is written as an amendment to the 1965 National Park Concessions Policy Act so as to take advantage of the better aspects of the existing law while making the changes necessary to fit current circumstances.

The National Parks Revitalization Act would increase franchise fees from the present average of 2.5 percent of gross receipts to 22.5 percent of gross receipts. That level of increase was chosen solely because it was consistent with former Secretary Lujan's publicly stated objective for concessions reform. In fact, it might be too low in some instances. For example, that figure is about one-half of the return for private concerns that maintain concession agreements with many of the same companies that operate in our National Parks. For example, the standard at major league ballparks seems to be a return to the owners of about 45 cents on every dollar. In that context, a return to the taxpayers of about one-half of the private market standard seems generous to concessioners.

Our good friend Senator Dale Bumpers has proposed that the 1965 Act be amended to require competitive bidding. I think that could work well, provided that any increased revenues are used to acquire the possessory interest of existing concessioners and to more adequately fund resource management, interpretation and conservation activities from the proceeds of more reasonable franchise fees.

But raising franchise fees by itself will not remedy our National Park concessions problems. Congress must agree to return more of these dollars to the Parks for operation, maintenance, and capital improvements.

Additionally, Mr. Chairman, the National Parks Revitalization Act prescribes maximum terms for concessions contracts, requires concessioners to pay fair market rents and all utilities costs, and phases out the anti-competitive problems presented by the existing

statute's treatment of renewal preference. The National Parks Revitalization Act will allow the National Park Service and the Secretary of Interior to redirect concession operations to be consistent with today's circumstances and budget constraints.

Finally, the National Parks Revitalization Act will resolve the argument that concession contracts allow our National Parks to be managed for benefit of concessioners rather than for resource conservation and the public. Under this measure, all concession contracts must be consistent with the National Park Service Organic Act, the purposes of the act creating the particular unit of the National Park System in question, and its General Management Plan.

Mr. Chairman, I hope that introduction of the National Parks Revitalization Act will help frame this important debate and promote reform. I believe the National Parks Revitalization Act presents a formula that will be good for both the taxpayers and the environment. I urge all my colleagues to join me in supporting this important legislation, and hope the Committee will act quickly in adopting it.

Chairman VENTO. Thank you very much, Congressman Synar. Congresswoman Meyers, we are pleased to welcome you. We have talked about your advocacy of this issue earlier. I am pleased that we are able to finally schedule a hearing this year on this matter.

Please, proceed with your statement, Jan.

STATEMENT OF HON. JAN MEYERS

Ms. MEYERS. Thank you, Mr. Chairman. I appreciate the opportunity to testify before you about my bill, H.R. 1493, which is the same as the Bumpers bill in the Senate.

As the Chairman knows, I have an interest in our national parks. And, this interest was heightened because several people from my district are active in the National Parks and Conservation Association, including the current President, Mr. Gordon Beaham.

I would like to agree initially with Mr. Hansen, incidentally. I think many concessionaires have done very well.

The changes that I am making do attempt to be fairer to the concessionaires. But, they would make substantial changes and try to get a better return for the American people.

This bill would change our policy in regard to concessions in our national parks. The new policies would allow for more competition in bidding for concessions, would mean a fairer return to the American taxpayer, would dedicate more funding to our parks which have a \$2 billion backlog of infrastructure repair, and would provide for a fair disposition of property at the end of the contract.

Specifically, it would allow the National Park Service to set a minimum franchise fee for new contracts. The Congressional Budget Office estimates that H.R. 1493 would result in a \$40 million increase in franchise fees.

Now, after this minimum or floor is established, bidding would be allowed above that minimum. Currently, no bids are received when a contract is being renewed because the current holder can always retain his contract by meeting the low bid.

Consequently, no other prospective bidders are willing to make the effort and go to the expense only to have the current concessionaire meet that bid. Such a process truly stifles bidding. In a recent year, 28 out of 29 contracts open for bid received no bids other than the existing concessionaire.

H.R. 1493 would establish a trust fund funded by franchise fees. Fifty percent would be retained in the specific park unit which collected the franchise fee, and 50 percent would be allocated among all units of the park system based on need.

It's imperative that H.R. 1493 be enacted soon, because 37 contracts have expired which await renewal. And, another 57 will expire in calendar year 1993 and 20 in 1994.

Without action, contracts will be renewed without competition and continue NPS policy of anemic franchise fees, including rewards to concessionaires to build more money making structures. Meanwhile, trails deteriorate, potholes multiply and park infrastructure cannot be maintained while visitors increase.

Many of these same firms operate successful concessions for state parks, airports and other public venues and private markets, winning these contracts on a strictly competitive basis and without

that guaranteed lock on a permanent contract which they have with the National Park Service.

Well, what will the competition created by my bill accomplish for the Park Service? I think it will mirror the recent open competition for the Yosemite National Park concessions contract.

There was no incumbent concessionaire in the running. Six interested parties, six, submitted a bid with the winning bid returning to the Federal Government benefits equivalent to 20 percent of annual gross profits. In contrast, the previous franchise fee, set without competition, was three-fourths of one percent.

We also should change the policy which grants possessory interest in structures to concessionaires. At the end of a contract, either the federal government or a new contractor is forced to buy the structure at its present current cost or fair market value. And, estimates of this value are very high, of course, because the facility is located in a national park.

Under H.R. 1493, structures would be valued at original cost amortized over 31½ years. This is the manner in which other concessions are contracted at the state level, in the private market, and is fair to the American people and to the concessionaire.

Mr. Chairman, because of the "preferential right of renewal" and possessory interest, we do not have open bidding for the concessions in our national parks. Consequently, we receive less than 3 percent of gross receipts from concessionaires. State parks and others in the market receive more than 10 percent.

At one time, these policies were probably necessary. And, now they are folly.

Our national parks are visited by 275 million people annually. And, this number is expected to increase to half a billion by the year 2000.

I hope that this bill will pass this year and allow the National Park Service the resources to better care for our national parks at this time of tremendously increasing visitorship.

I thank you very much, Mr. Chairman.

[Prepared statement of Ms. Meyers follows:]

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30 DISTRICT KANSAS
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Statement of Congresswoman Jan Meyers (R-KS)

in support of H.R. 1493

The National Park Service Concessions Policy Reform Act

October 19, 1993

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As the Chairman knows, I have an interest in our National Parks and this interest was heightened because several people from my district are active in the National Parks and Conservation Association, including the current president Mr. Gordon Beaham.

This bill would change our policy in regard to concessions in our national parks. The new policies would allow for more competition in bidding for concession; would mean a fairer return to the American taxpayer; would dedicate more funding to our parks which have a \$2 billion backlog of infrastructure repair; and would provide for a fair disposition of property at the end of the contract.

Specifically, it would allow the National Park Service to

set a minimum franchise fee for new contracts. Congressional Budget Office estimates that H.R. 1493 would result in a \$40 million increase in franchise fees.

After this floor is established, bidding would be allowed above the minimum. Currently, no bids are received when a contract is being renewed because the current holder can always retain his contract by meeting the low bid. Consequently, no other prospective bidders are willing to make the effort only to have the current concessionaire meet the bid. Such a process stifles bidding. In a recent year, 28 of 29 contracts open for bid received no bids other than the existing concessionaire.

H.R. 1493 would establish a trust fund funded by franchise fees--fifty percent would be retained in the specific park unit which collected the franchise fee and fifty percent would be allocated among all units of the park system based on need.

It is imperative H.R. 1493 be enacted because 37 contracts have expired which await renewal and another 57 will expire in 1993, and 20 in 1994. Without action, contracts will be renewed without competition and continue NPS policy of anemic franchise fees, including rewards to concessioners to build more money making structures. Meanwhile, trails deteriorate, potholes multiply, and park infrastructure cannot be maintained while visitors increase.

Many of these same firms operate successful concessions for state parks, airports, and other public venues, winning these contracts on a strictly competitive basis--and without the guaranteed 'lock' on a permanent contract which they have with the National Park Service.

What will the competition created by my bill accomplish for the Park Service? I think it will mirror the recent open competition for the Yosemite National Park concessions contract. Since no incumbent concessionaire was in the running, six interested parties submitted a bid, with the winning bid returning to the federal government benefits equivalent to twenty percent of annual gross profits! In contrast, the previous franchise fee, set without competition, was three-fourths of one percent.

We also should change the policy which grants possessory interest in structures to concessionaires. At the end of a contract, either the federal government, or a new contractor, is forced to buy the structure at its present current cost, or fair market value. Estimates of this value are very high because the facility is located in a National Park.

Under H.R. 1493, structures would be valued at original cost amortized over 31 and a half years. This is the manner in which other concessions are contracted at the state level, in the private market, and is fair to the American people and to the

concessionaire.

Mr. Chairman, because of "preferential right of renewal" and "possessory interest," we do not have open bidding for the concession in our National Parks. Consequently, we receive less than 3 percent of gross receipts from concessionaires. State parks and others in the market receive more than ten percent.

At one time these policies may have been necessary. Now they are folly. Our National Parks are visited by 275 million people annually, and this number is expected to increase to half a billion by the year 2000.

I hope that this bill will pass this year, and allow the National Park Service the resources to better care for our National Parks at this time of increasing visitorship.

Chairman VENTO. Thank you very much, Jan. Thank you both. I especially want to commend my colleague on our sister committee, the chairman of the Oversight Committee on Environment, Energy, and Natural Resources. Congressman Synar has completed and filled a big amount of work in terms of that effort, in terms of the reports and the constant focus on this and other issues.

I think that he often has been first in addressing these issues on the House side through that process. I appreciate it. It has been very helpful to the authorizing committee.

It's my intention that we move ahead on this as soon as possible. And, I think there is enough consensus now.

There are recommendations coming from the Administration. Obviously, neither of these bills are in the final shape that they have to be.

One of the criticisms of your bill, Mike, is the 22½ percent franchise fee. I know the genesis of that, you state in your testimony, was because Secretary Lujan said that's what it should be.

Do you want to elaborate any further on that?

Mr. SYNAR. Well, first of all, when you compare it to what the usual franchise fee is in the private sector, such as a concession in the Baltimore Orioles Stadium, they pay about 49 cents of every dollar to sell a hot dog or a beer or a Coke. Secretary Lujan thought at least half of that value would be reasonable for the national parks. But, obviously these have to be negotiated on a park-by-park basis.

The reason for 22 cents, beyond that, is that if we take the monies that we will get we will begin to solve the problem that Jan outlined, which is to start buying back some of these possessory interests which we have so that we can get more control of the situation, with the remaining money to be spread out through the system. I don't think 22 percent is unreasonable.

When you look at what the private sector is doing in concession contracts, I think it would be folly, as Jan also said, to continue down the path of thinking that 6 or 7 percent is reasonable.

Chairman VENTO. Well, I think that no Administration wants to see a hard figure on a number like this. They want the flexibility to negotiate.

But, even when we put things like fair market value into a charge to them, they don't do it. I mean, that's one of the concerns. And, so I think that we want to have some predictability that we are going to end up with the type of conclusion that we desire.

I think the other factor that weighs in here is, as you said, there have been a lot of set-asides. That is, there are credits where concessionaires have been asked to pay a smaller franchise fee or amount but nevertheless have been asked to do other improvements that either benefit the park visitor or, in some cases, even benefit the concessionaires, where they have these set-aside agreements because of funding needs for that park that don't come out of the regular operation and maintenance cycle—and then they keep no record of it.

I can agree with you on that completely, because we tried to get information and gave them every opportunity to explain it. And, they have never been able to rationalize where they are at. It's just very frustrating. I think the Park Service's operation and mainte-

nance and assessments process and this no record keeping and set-asides are indicative of the mess that the Park Service has in its operation and maintenance budget. It is a mess.

Mr. SYNAR. You know, it's hard for all of us to make decisions on this, particularly for those of you who are on the legislative committee. We've got 1,800 concession contracts.

Five hundred of them are long term. Two hundred and sixty-five are short term, under five years. And, then the rest of them, the 1,164, are commercial licenses and we don't have any information about them.

How do we know what is right if the Park Service can't even provide us with this basic information?

Chairman VENTO. Well, I think that I understand there is a lot of good will on both the Park Service and the concessionaire side in terms of what's going on here. I think that the lack of records does not serve this process well and leads to a lot of conclusions that may or may not be correct.

For instance, unlike what happens at the ball park and so forth, concessionaires don't charge two bucks a hot dog. And, so obviously the amount of profit—in fact, it's something that is strictly limited and set by the Park Service so that visitors to the Grand Canyon or Yellowstone are paying a rate that is affordable to a family that might be going there which is, I think, not something that is inappropriate.

So, I think those type of factors we want to recognize as being important. But, the question is, while recognizing we have certain objectives with regards to making certain that someone can stay for \$35 a night in the park someplace, at a motel or at a facility, where there are such overnight facilities, how are we certain that there is competition in this process?

Well, obviously having 30-year contracts is a hindrance to that. And, I know that both of you agree—and, Jan, I noticed specifically in your last statement you talk about the right of renewal preference, preferential right of renewal and the possessory interest. And, those I think are two points that have to be addressed.

They are in the law. They can't be changed by regulation.

I think they really have presented an insurmountable hurdle in terms of injecting competition into the process although the intention, I think, in terms of providing them or initiating them was probably good. But, I think today they have outweighed their usefulness. In fact, they are a hindrance to competition.

Jan, do you want to elaborate on that point?

Ms. MEYERS. Well, I think you are absolutely right, Mr. Chairman. And, I would like to say that I haven't studied Mr. Synar's bill in detail, but I think the main difference is that instead of having a 22-percent minimum, which he has, my bill would allow setting a different minimum, a kind of a case-by-case and park-by-park minimum.

And, the National Park Service would be allowed to set different minimums just so that we assure that bidding takes place. The possessory right and the preferential right of renewal have absolutely meant that there literally is no bidding going on.

And, once you break that policy of low bid, I don't think you are doing right by the taxpayer. And, I don't think you are getting the best service that you could.

I am active on the Small Business Committee. And, I am very protective and supportive of small business. And, so I wouldn't want to do anything that was unfair to those business people that have those contracts currently.

But, I do think that we have been locking out an awful lot of business people who simply are not allowed to bid. And, a number of those concessionaires that are locked into a contract in the National Park Service in other areas bid in the fair market system and get along fine.

So, I think we could operate like that and get a much better return for the taxpayer.

Chairman VENTO. I agree. And, I think the one thing that underlies most of this, you have to understand, is whether there was a contract with regards to possessory interest that has to be extinguished in an appropriate manner. Nobody is going to just take away something that exists there.

Ms. MEYERS. No.

Chairman VENTO. But, it is not an easy process in terms of the transition. If we were starting with a clean slate, it would be a different matter here.

But, the committee is faced with, and the policymakers and this Congress are faced with, making a transition in terms of extinguishing the existing possessory interests that exist in these parks. But, for the most part, they represent an absolute barrier to competition, because if you are going to bid on a concession you also have to bid on paying off that possessory interest or reestablishing one of your own, which is a much bigger problem than simply trying to address providing the services on a 10- or 15-year basis at most that would, in fact, amortize over that particular period. And, you would then not have any accrued interest at the conclusion of it.

And, that's a lot easier bid than trying to pick up something which is basically very difficult to estimate the value of because it's in a park. And, it represents considerably more dollars in terms of bidding if you had to go to a bank and obtain that type of financing.

So, again it causes someone that is in place to become really entrenched in that particular position with far less competition unless you are able to deal with it. So, that's what we have to move from where we are today.

So, it isn't just that the 1965 law is a problem, but that problem has been carried forward which limits and conditions the options as we move down the future policy path.

Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman. I appreciate the comments from both of our colleagues.

I have to say that their arguments are very compelling. The four issues that Mr. Synar brought up are probably all very reasonable. The issues that Jan Meyers brought up are reasonable issues.

I have to say that it reminds me of the insurance industry to a certain extent. They used to say about the insurance policy, the big print gives it to you and the little print takes it away.

So, maybe the devil is in the details here. And, we will have to work those out. And, I hope we can work these out cooperatively.

I have to say that our friend from Oklahoma, he always comes in with some very compelling and interesting things whenever he walks in this room and causes me more study than just about anybody in Congress. I imagine I have spent hundreds of hours trying to figure out—I don't know if it's material or not—how all the 48 lower states got their ground.

Many of them got simple fee title. I know those in the West got permits. And, maybe we would have been better with the simple fee title.

But, if I may say so to my friend from Oklahoma, I appreciate the stimulating area you bring in. And, I think what you have said are very compelling arguments.

Now, I guess we have just got to work it out. And, I hope we can work in harmony and try to work out something that is best for everybody concerned.

I think really the bottom line is the individuals who go to our parks. That's the person I am more concerned about.

I know in our state of Utah we have so many national parks. And, I visit them on a regular basis.

And, people enjoy our parks. They really do. They love them to death.

Like at Zion where we have now got such a traffic problem, it's a dead-end park. The only way you go in is turn around and come out again.

I was up in Yellowstone visiting that. And, the horrendous problems they've got of taking care of just the roads are almost insurmountable. I don't know how they are going to do it.

Anyway, not to get into all that. But, I thank you both for coming and hope we can work in harmony to develop something that is best for those who visit our parks and keep a good market economy going.

Thank you, Mr. Chairman.

Chairman VENTO. Yes. Mr. Duncan, we are pleased to see you are present.

Mr. DUNCAN. I would like to commend both Ms. Meyers and Mr. Synar. I think that they are headed in the right direction. And, I think both parties agree that there needs to be some kind of increase in these franchise fees.

Mr. Synar, I noticed recently though that Secretary Babbitt signed a new franchise agreement in the Yosemite Park with a zero percent franchise fee apparently because the company agreed to do other spending in the parks. Would you permit something like that?

Mr. SYNAR. Our bill starts with a premise for debate that we would do a 22.5 percent fee. But, I think Ms. Meyers' and Dale Bumpers' legislation is not something that I would oppose.

I think Jan put it best. A lot of these can be done on a case-by-case basis.

The problem we get into is what Bruce alluded to, which is that we would expect the Park Service to take the responsibility to do it right. But, in fact, history shows they won't do it.

And, so I came at it from the premise that we need to at least set a standard. And, former Secretary Lujan and I, who worked this through the last time, set the 22 percent as a good starting point.

Obviously, offsets and other things have got to be considered. And, let me just say one thing. The less money we receive from these franchise agreements, the less we can have to buy those possessory interests out that gives us control of the concessions.

And, so every dollar we steal from ourselves is one that we can't give back to the concessionaires to get them out of their situation. But, you know, Secretary Babbitt is trying to do it on a case-by-case basis.

I think he realizes franchise fees have got to go up at Yosemite. And, I think he was convinced that the offset was sufficient.

Mr. DUNCAN. I noticed in Ms. Meyers' bill and Congressman Stearns' bill that they have 10-year durations for these franchise fees. Does your bill have anything similar to that?

Mr. SYNAR. It's 10 years and then 15 years to buy back possessory interests.

Ms. MEYERS. I would think that maybe my bill could be amended to allow for 15 years in case of a large investment, but I think 10 years was a good starting point.

Mr. DUNCAN. Well, I will tell you, as I said earlier, I think it's something that we certainly need to take a look at. And, I think we need some kind of increase or better return.

I do agree with the Chairman, though, when he said that we want to make sure that we don't price families out of the national parks. And, certainly I know that both of you feel that same way.

And, so I commend you for the actions that you are taking. And, I thank you for being with us today.

Chairman VENTO. Thank you very much, Jan and Mike. I appreciate your presence this morning and your efforts.

We are pleased to welcome Bonnie Cohen, the Assistant Secretary for Policy, Management and Budget, from the Department of the Interior. She will be presenting the Department's position.

And, Bonnie, I see Mr. Jack Davis is sitting behind you, who is a former Superintendent at Grand Canyon and now is on service here. So, we appreciate if he wants to sit with you and John Reynolds, the Deputy Director of the Park Service. We appreciate their presence this morning.

So, did you have anyone else accompanying you this morning, Ms. Cohen?

Ms. COHEN. That's it so far.

Chairman VENTO. Your statement has been made part of the record. We appreciate having it early so that I and other members could review it.

Please, proceed.

STATEMENT OF BONNIE COHEN, ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JACK DAVIS, FORMER SUPER-INTENDENT OF THE GRAND CANYON, AND JOHN REYNOLDS, DEPUTY DIRECTOR, U.S. NATIONAL PARK SERVICE

Ms. COHEN. Thank you very much, Mr. Chairman and members of the subcommittee. I would also like to say that we appreciate the attention, although sometimes it's painful, that Mr. Synar has devoted to this subject. It has helped us a lot to come to grips with the problems that the Park Service faces.

And, we are also very appreciative of the support that Congresswoman Meyers has shown in her bill for our goals with the Park Service.

We have submitted the testimony ahead. So, I will just excerpt from it.

As you know, the 1965 Act laid the foundation of the National Park Service's current concessions program by recognizing the integral role of concessioners in the furtherance of the missions of the Park Service, "preserving the scenery, wildlife, and natural and historic elements of the parks and providing for their enjoyment in a way that leaves them unimpaired for future generations."

The primary and essential purpose of concessioners, as acknowledged in these bills, is the provision of services to the visitor, not revenue to the Treasury, though the latter is undeniably relevant in these days of constrained budgets and emphasis on securing a fair return for privileges granted. Indeed, the quality of concessions operations often defines the experience of a large percentage of park visitors by providing such requirements as food, lodging and guide services that enable visitors to take full advantage of park resources.

I am here to express the Department of the Interior's strong support for concessions reform, as embodied in H.R. 1493 and H.R. 2146, and our desire to work with you to make new concessions legislation and our new regulatory program even more effective agents of reform.

By way of history, the first concessioners were typically modest, family-owned operations, often there before the parks themselves providing services to a few adventurous visitors. Yosemite National Park, for example, was host to about 5,500 visitors in 1906.

Today, that figure has risen to nearly 4 million, last year overtaking all but two major league baseball teams. Annual visitation for the entire Park System has risen to 275 million people annually and is increasing.

The type of concessionaire has also changed markedly, as we see large corporations and conglomerates emerging as strong contenders for the privilege of doing business in the parks. Clearly, many of the assumptions that guided our approach to the parks 50 years ago must be adjusted to a new reality.

Having evolved in the early years of the Park System, the Concessions Policy Act of 1965 essentially encapsulates a long past state of affairs in which the National Park Service sought to provide generous incentives for businesses to construct and operate hotels, restaurants, gift shops and other services in isolated parks that lacked heavy visitation.

I would like to focus the remainder of my testimony on what we consider to be the four most critical elements at issue here. And, those are similar to the ones mentioned by Congressman Synar.

The first is the determination and the use of franchise fees. H.R. 1493 and H.R. 2146 provide that franchise fees be covered into a special account established in the Treasury of the United States and, subject to appropriation, that they be divided equally between those parks that collected the fees and all parks in the system based on needs as determined by the Secretary and for use in resource management and protection, maintenance activities, interpretation and research.

We support this and feel this could be a significant step towards addressing the pressing resource management and operations needs of the National Park System. For these reasons, we also believe that these funds should not be entirely offset by accompanying equivalent cuts in the annual budgets, which is often the case.

We also feel that all consideration provided by the concessioner under National Park Service contracts should be considered a franchise fee pursuant to Sections 7 and 8 of the bills.

We fully support the provision in H.R. 1493 and H.R. 2146 that, in setting franchise fees, consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at a reasonable rate.

In today's environment, however, many franchise fees are too low. In 1991, national park concessions brought in about \$622 million in gross receipts. The average franchise fee, however, was about 2.9 percent.

In comparison, the National Parks and Conservation Association, and others, estimates that the state park franchise fees average about 10 percent of gross.

On the second issue, preferential right of renewal, under the current Concessions Policy Act, franchise fee revenues remain low because an incumbent concessionaire has no incentive to tender a higher bid due to the statutory preferential right of renewal enjoyed by concessioners who need only match any competing bid to renew a contract. Indeed, there is very little incentive for anyone to submit a competing bid.

No sensible potential concessionaire would invest the time and money, estimated to be up to six months of work and \$150,000 for a large concession contract, if this contract had no real chance of being accepted. Between 1985 and 1989, for example, 28 of 29 contracts up for renewal were awarded to the incumbent concessionaire who submitted the only offer for a contract.

Repeal of the preferential right of renewal will open the doors to competition to allow that choice. At the same time, however, we recognize the need in this process to protect the many exemplary, smaller concessionaires who often have special or historic ties to the respective parks and thus bring to their operations an important expertise with respect to park resources and expectations.

And, we would be glad to work with the committee on that.

On possessory interest, H.R. 1493 and H.R. 2146 acknowledge the government's obligation to protect a concessioner's existing investments in physical facilities within the parks to the extent that

they are covered in valid, existing contracts. The bills also stipulate that concessioners' possessory interest in new structures acquired or constructed after the enactment of this Act shall be depreciated over the estimated useful life of that asset, which will not exceed 31½ years.

It further provides that should the contract end before full recovery of the value of that investment, the concessioner may receive from the United States or the successor concessioner payment equal to the value of interest in such fixture, structure or improvement.

Contrary to standard practice in the private sector, the 1965 Act imparts to a concessioner a possessory interest, that is a permanent real property ownership in structures or improvements which the concessioner has built as part of its contract with the National Park Service. In contrast to a standard commercial lease, the concessioners' interest does not end with that contract.

At the end of a contract, the Federal Government or the succeeding concessioner is faced with the purchase of these facilities at their present-day reconstruction cost or fair market value. Estimates of fair market value for these structures in the national park are often very, very high for one reason, the fundamental law of retail management—location, location, location.

We must remember, however, that it is not the concessioner's investment in facilities that makes the concession inherently valuable but rather the attraction of the park itself and the Federal Government's investment in the infrastructure and other things that increase the park's visitation.

The concessioner gets to depreciate its original investment for tax purposes and receives windfall revenue for the sale of concession structures. This practice either results in added expense to the American taxpayers upon termination of a contract or it discourages potential new concessionaires from bidding on a contract when faced with the requirement to buy costly existing facilities from a predecessor.

This is unacceptable and runs counter to the Administration's goal of reinventing government to bring its financial practices more in line with those of successful private enterprise.

As to the term of the contract, the two bills would limit concession contracts to a maximum of 10 years and would further provide that temporary contracts may not exceed 2 years. Shorter term contracts will grant the National Park Service the flexibility it needs to develop a dynamic concessions program that takes account of changing park needs.

Under most circumstances, we agree that 10 years is entirely sufficient and appropriate. There are certain rare circumstances, however, under which 10 years will not suffice in light of the enormous investment required in the contract.

An example is the Yosemite National Park contract, which I am told would not have been feasible with a 10-year length due to the investment requirements. That contract is for 15 years.

We, therefore, believe that the Secretary should be accorded the authority under such circumstances to approve 15-year contracts.

In summary, we believe the concessions reform legislation should encourage competitive proposals that will increase the quality of

service and enhance revenues to the parks, eliminate the preferential right of renewal in new contracts, eliminate possessory interest in new contracts and limit new contract terms to no more than 10 years in most cases.

I would now like to make a few brief comments on H.R. 743 specifically. Several of the provisions in H.R. 743 would, in our view, have a negative impact on the concessions program.

One issue was raised already. The minimum 22.5 percent franchise fee is beyond, we feel, the means of most concessioners.

In addition, the requirements that possessory interest be extinguished over a 15-year term and there would be no protection for future concessioner investment would produce an environment in which very few business people would invest. Therefore, we strongly recommend that the committee consider H.R. 1493 and H.R. 2146 as the measures for enacting concession reform.

We would appreciate the opportunity to work with the committee on any technical issues that may need to be addressed. And, we look forward to further discussions that might improve the bills and would be pleased to work directly with you and your staff to that end.

In addition, we will soon be submitting for your consideration more detailed comments on these bills.

Thank you.

[Prepared statement of Ms. Cohen follows:]

STATEMENT OF BONNIE R. COHEN, ASSISTANT SECRETARY-POLICY, MANAGEMENT AND BUDGET, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS, HOUSE COMMITTEE ON NATURAL RESOURCES, ON H.R. 743, H.R. 1493 AND H.R. 2146, BILLS TO REFORM THE CONCESSIONS POLICY OF THE NATIONAL PARK SERVICE.

October 19, 1993

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to present the views of the Department of the Interior with respect to H.R. 743, H.R. 1493 and H.R. 2146, bills designed to update the concessions policies of the National Park Service as set forth in the 1965 Concessions Policy Act. As you know, the 1965 Act laid the foundation of the National Park Service's current concessions program by recognizing the integral role of concessioners in the furtherance of the mission of the Park Service: "preserving the scenery, wildlife, and natural and historic elements of the parks and providing for their enjoyment in a way that leaves them unimpaired for future generations."

The primary and essential purpose of concessioners, as acknowledged in these bills, is the provision of service to the visitors, not revenue to the Treasury, though the latter is undeniably relevant in these days of constrained budgets and emphasis on securing a fair return for privileges granted. Indeed, the quality of concessions operations often defines the experience of a large percentage of park visitors, by providing such requirements as food, lodging, and guide services that enable visitors to take full advantage of park resources.

It is the position of this Administration that the quality of these and other services could be significantly reinforced through open competition. This is fundamental to our approach to concessions reform and it is also the premise of the bills before you today. I am here, therefore, to express the Department of the Interior's strong support for concessions reform, as embodied in H.R. 1493 and H.R. 2146, and our desire to work with you to make new concessions legislation and our new regulatory program even more effective agents of reform.

By way of history, the first concessioners were typically modest, family-owned operations, often there before the parks themselves providing services to a few adventurous visitors. Yosemite National Park, for example, was host to about 5,500 visitors in 1906. Today, that figure has risen to nearly 4,000,000--last year overtaking all but two major league baseball teams. Annual visitation for the entire park system, meanwhile, has risen to 275 million people. As a result, the National Parks are becoming increasingly "urbanized," with the introduction of the very aspects of our society from which those 275 million seek reprieve: litter, traffic, smog, and even crime.

The type of concessioner has also changed markedly, as we see large corporations and conglomerates emerging as strong contenders for the privilege of doing business in the parks. Clearly, many of the assumptions that guided our approach to the parks fifty years ago

must now be adjusted to a new reality. Reform of the Concessions Policy Act of 1965 is an important place to start to recognize the world-wide popularity and accessibility of our parks.

Having evolved in the early years of the Park System, the Concessions Policy Act of 1965 essentially encapsulates a long-past state of affairs, in which the National Park Service sought to provide generous incentives for businesses to construct and operate hotels, restaurants, gift shops, and other services in isolated parks that lacked heavy visitation. Long-term contracts were the norm and businesses were granted exclusive rights to operate and preference in renewing their contracts. As a result, the concessions contracting process today lacks the competitive vigor that exists elsewhere in our economy. We no longer need a concessions policy focused on luring businesses to the parks. There are already 275 million reasons for aspiring concessioners to compete for the opportunity to serve. It is now time to change our concessions policy to reflect both the resource management challenges facing our parks and the lucrative business opportunities available to concessioners.

Recently, the Department of the Interior took steps in this direction, issuing new regulations concerning concessions operations in the National Park System. These regulations will make the concessions contracting process somewhat more competitive. The Department has also issued new standard contract language to provide, for example, for the amortization of concessioners' possessory

interests. I think you will agree that our approaches are very similar, but that H.R. 1493 and H.R. 2146 with some modifications will bring to fruition our joint efforts to reform the concessions program.

Having said that, I would like to focus the remainder of my testimony on what we consider to be the four most critical elements at issue here. They are discussed in the context of H.R. 1493 and H.R. 2146. I will have comments on H.R. 743 at the end of my statement.

1. Determination and Use of Franchise Fees

H.R. 1493 and H.R. 2146 provide that franchise fees be covered into a special account established in the Treasury of the United States and, subject to appropriation, that they be divided equally between those parks that collected the fees and all parks in the System based on need as determined by the Secretary and for use in resource management and protection, maintenance activities, interpretation, and research. We support this and feel that this could be a significant step toward addressing the pressing resource management and operations needs of the National Park System. For these reasons, we also believe that these funds should not be entirely off-set by accompanying equivalent cuts in the annual budgets. Further, to enhance accountability for concessioner payments to the government, all consideration provided by the concessioner under National Park Service contracts should be considered a franchise fee pursuant to

sections 7 and 8 of the bills.

We fully support the provision in H.R. 1493 and H.R. 2146 that, in setting franchise fees, consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park resources and of providing necessary and appropriate facilities or services to the public at reasonable rates.

At the same time, we concur with many members of Congress that in today's environment, many franchise fees are too low. In 1991, national park concessions brought in about \$622 million in gross receipts. The average franchise fee, however, was 2.9%. In comparison, the National Parks and Conservation Association estimates that state park franchise fees average 10% of gross. The concessions reform legislation pending in the Congress would require the Park Service to set a minimum franchise fee for individual concessions contracts and would require competitive bidding to establish the actual fee paid. However, the legislation also emphasizes that the franchise fee should not be the sole consideration in awarding a contract. The quality of each contract bid must be evaluated for its overall responsiveness to individual park needs. Thus, the best overall offer may be accepted by the Park Service, not just the highest bid.

We believe that a balance can be struck between improving the revenue situation and ensuring that the most qualified bid receives the

contract so that the goals of the parks remain paramount. We fully support this concept and intend to negotiate higher franchise fees in future concession contracts.

2. Preferential Right of Renewal

Under the current Concessions Policy Act, franchise fee revenue remains low because an incumbent concessioner has no incentive to tender a higher bid due to the statutory preferential right of renewal enjoyed by concessioners who need only match any competing bid to renew a contract.

H.R. 1493 and H.R. 2146, with exceptions for guides and river runners, do away with the practice of granting concessioners a preferential right of renewal for successive contracts. The Administration agrees with the intent of this proposed provision, for we think that a preferential right of renewal is not compatible with the goal of introducing true competition to the concessions contracting process. Indeed, it acts to the contrary, discouraging the introduction of potentially more effective and efficient contract proposals. No sensible potential concessioner would invest the time and money (estimated to be up to 6 months of work and \$150,000 for a large concession) required to prepare a proposal that has no real chance of being accepted. Between 1985 and 1989, for example, 28 of 29 contracts up for renewal were awarded to the incumbent

concessioner who submitted the only offer for the contract.

If the Parks are to operate at maximum efficiency, they must have the latitude to choose the concessioners that best suit their needs. Repeal of the preferential right of renewal will open the doors to competition to allow that choice. At the same time, however, we recognize the need in this process to protect the many exemplary, smaller concessioners who often have special or historic ties to their respective parks and thus bring to their operations an important expertise with respect to park resources and expectations.

We believe that such concessioners merit preferential consideration in contract renewal based on a solid performance record and we are willing to work with you to define a level of gross receipts under which the Secretary might maintain the discretion to grant such consideration. We do not agree, however, that this consideration should be applied to specific categories of concessioners, such as guides or river runners, instead of or in addition to a monetary cut-off.

3. Possessory Interest

H.R. 1493 and H.R. 2146 acknowledge the government's obligation to protect a concessioner's existing investments in physical facilities within parks, to the extent they are covered in valid, existing contracts. The bills also stipulate that concessioners' possessory

interest in new structures acquired or constructed after the enactment of this act shall be depreciated "over the estimated useful life of that asset," which shall not exceed 31.5 years. It further provides that, should the contract end before full recovery of the value of that investment, the concessioner may "receive from the United States or the successor concessioner payment equal to the value of...interest in such structure, fixture, or improvement." This provision closely resembles the new regulations we intend to implement.

It is helpful to think of the concessioner's relationship to the park as similar to the arrangement that exists between a retail operator and the owner of a shopping mall. The individual store owners in the mall do not own their space, but lease it from the owner of the mall. The lessees receive no appreciation on their structural improvements, but rather depreciate the costs of their investments over the term of the lease. If a retailer has actually constructed a building into the mall, as is often the case with larger stores, the rental fee is less in order to allow the store owner to fairly amortize the construction cost. Upon termination of a lease, any fixed improvements made by the retailer become the property of the owner of the mall.

Contrary to standard practice in the private sector, the 1965 Act imparts to a concessioner a possessory interest, that is a permanent real property ownership in structures or improvements which the

concessioner has built as part of its contract with the National Park Service. In contrast to a standard commercial lease, the concessioners' interest does not end with the contract. It is permanently owned. At the end of a contract, the Federal government or the succeeding concessioner is faced with the purchase of these facilities at their present-day reconstruction cost (or fair market value). This means that structures built by concessioners appreciate in value over the term of the contract.

For example, a lodge built in 1965 for \$1 million is worth \$2-3 million by 1995. Estimates of fair market value in a National Park are often exorbitant because of the fundamental law of retail management: location, location, location. We must remember, however, that it is not the concessioner's investment in facilities that makes a concession valuable, but rather the attraction of the park itself and the Federal government's investment in infrastructure and other things that increase visitation to the Park area. The concessioner gets to depreciate its original investment for tax purposes and receives "windfall" revenue for the sale of concessions structures.

This practice either results in added expense to the American taxpayers upon termination of a contract or it discourages potential new concessioners from bidding on a contract when faced with the requirement to buy costly existing facilities from a predecessor. This is unacceptable and runs counter to the Clinton Administration's goal of reinventing government to bring its financial practices more

into line with those of successful private enterprise. These concessions policy reform bills would end this questionable practice. They would require that structures or improvements, under new concession contracts, which are built after the new law is enacted and in which a concessioner maintains a possessory interest be valued at their original construction cost and that this cost be amortized over the useful life of the structure up to 31.5 years.

4. Term of Contract

H.R. 1493 and H.R. 2146 would limit concession contracts to a maximum of ten years and would further provide that temporary contracts may not exceed two years. This is in contrast to contracts that, at present, can last as long as 30 years. Shorter-term contracts will grant the National Park Service the flexibility it needs to develop a dynamic concessions program that takes account of changing park needs. The recently-awarded Yosemite concessions contract provides a good illustration of the disadvantages of long-term contracts. The previous contract was awarded in 1963 for a term of 30 years. The franchise fee was set at .75% and could only be raised if the increase was agreeable to the concessioner. Needless to say, it was never raised. Under the conditions of the new contract, awarded to one of six bidders chosen through a competitive bidding process, the total return to the Federal government amounts to 20.5% of annual gross.

Under most circumstances, we agree that ten years is entirely sufficient and appropriate. There are certain, rare circumstances, however, under which ten years will not suffice in light of the enormous investment requirements of the contract. I would draw your attention to the recently considered Yosemite National Park concession contract, which, I am told, would not have been feasible with a ten year length due to its investment requirements. That contract was awarded for 15 years. We believe, therefore, that the Secretary should be accorded the authority under such circumstances, to approve 15 year contracts.

In summary, we believe concession-reform legislation should:

- * encourage competitive proposals that will increase the quality of service and enhance revenues to the parks;
- * eliminate the preferential right of renewal in new contracts;
- * eliminate possessory interest in new contracts; and
- * limit new contract terms to no more than 10 years in most cases.

Now, Mr. Chairman, I would now like to make a few brief comments on H.R. 743 specifically. Several of the provisions in H.R. 743 would, in our view, have a negative impact on the concessions program. The minimum 22.5 percent franchise fee is beyond the means of most concessioners. In addition, the requirements that possessory interest be extinguished over a 15 year term and that there be no

protection for future concessioner investment would produce an environment in which no businessperson would invest. Therefore, we strongly recommend that the Committee consider H.R. 1493 and H.R. 2146 as the measures for enacting concessions reform. Section 4 of H.R. 1493 and H.R. 2146 would repeal the Concessions Policy Act of 1965. While we support this approach, we would appreciate an opportunity to work with the committee on any technical issues that may need to be addressed.

In closing, it is important to remember that the relationship between the National Park Service and its concessioner is a necessary and, under the correct circumstances, healthy public-private partnership. The Park Service needs concessioners to provide services that the Federal government should not and could not effectively provide. Indeed, it is often the quality of concessions operations that helps define the experience of countless Park visitors. The present concessions policy, however, has fostered something that falls far short of a true partnership. The National Park Service can no longer operate under a law that leaves it virtually beholden to its concessioners and unable to assert the primacy of its mission in the shaping of its concessions program.

Mr. Chairman, I think you will agree that we are close to agreeing on this fundamental and long-awaited reform of existing concessions policy in the National Park System. The Secretary is committed to the establishment of a concessions policy that will improve the

ability of the National Park Service to deliver quality services to meet the demands of a rising tide of visitation to the Parks and will rationalize an inadequate and outmoded concessions policy to ensure fair treatment of the taxpayer and the concessioner.

We look forward to further discussions that might improve the bills and would be pleased to work directly with your staff to that end. In addition, we will soon be submitting for your consideration more detailed comments on these bills. We hope this will lead to enactment of a new concessions policy act that is designed to address the realities of today's national parks. Thank you very much.

Chairman VENTO. Thank you, Ms. Cohen. I appreciate the statement that you've made and the effort of the Department to come forth and propose changes in laws.

And, you know, I have sat here and been versed in this for half a dozen years myself. And, so I think I know a little bit about it, probably not as much as I need to know.

But, I can tell you that we are going to move ahead with legislation. And, I hope we can do it quickly.

I know where the problems are. I mean, those that have had the existing contracts are very concerned and nervous about maintaining fair treatment. We want to do that. And, I think you want to do that.

But where we are going to need the help here is to try to give you the type of tools that you need to extinguish the existing possessory interest and move ahead, which is not easy. I think with the Yosemite contract, the major problem was, in fact, in that particular area.

I don't think either of these bills are completely adequate or address enough of the transition issue to give a comfort level to those that are in that particular position and the proper guidance so that we can do it. So, we are going to have to work with those that are impacted and with the members of the committee and the Administration to resolve the concerns.

Ms. Cohen, one of the backup things that I think is predicate here is going to have to be having an adequate information system.

Do you concur with the comments of my colleague and myself, Congressman Synar and myself, about the lack of reliable information and record keeping with regards to the concession contracts and such issues as set-asides that he addressed and that I addressed?

Ms. COHEN. I think we do. And, I think that the Park Service now is in large agreement with these earlier findings.

As a result they have taken steps themselves to improve their information systems. And, in addition, in the 1994 budget we have put in funds to be able to increase that activity, because if we go forward with this legislation it will be even more important to have accurate information.

Chairman VENTO. You know, my view of this—and I don't know if it's shared by yourself or by Mr. Davis and Mr. Reynolds—is that part of this is the tension that goes on between the individual park units and the regional and the national offices in the sense of trying to retain or reclaim dollars that would otherwise go into Washington and not come back out. As has been noted, it's easy to get money to come into Washington; it's hard to get it back out.

And, so it has provided a degree of autonomy and decision making at the local level. I understand that.

But, at the same time, it tends to provide an ad hoc, fly-by-the-seat-of-your-pants functioning in which each superintendent or someone in the regional office is actually making the decisions as to what goes forward.

Do you understand that tension that exists that I'm talking about? Would you agree that that is part of the problem?

Ms. COHEN. That's a real tension. We have seen it quite a bit.

Chairman VENTO. Yes. Well, the concern here—and you addressed it—is that probably everyone that is involved in this, including the concessioners, the Park Service and the Members of Congress who are concerned about parks want to see the benefits from the increased revenues and so forth flow back to be directed to help to supplement, not to supplant, the appropriated dollars that are in the parks.

Ms. COHEN. I think that, as I said, that is a real tension. We've had a number of discussions with the park superintendents who would be directly involved in this and who have the major concessions. And, I think that they are very appreciative of the legislation's focus on getting the money back into the parks.

Chairman VENTO. We can only say that from a policy standpoint. Obviously, in the budgeting process, whether it's the OMB from your side or appropriators and budgeters from our side, some don't always follow the prescriptions that we lay out in legislation. Or they do follow them, but then offset some of the revenue. So, in any case, I think that it does help obviously to move as far as we can go in that direction.

But, we will need help in terms of making the transition and extinguishing the possessory interest and moving forward.

One of the points I noted in your testimony is that you say in one instance that the Synar bill wouldn't provide enough leeway in terms of the length of contracts, that you need more years that would be provided. But, in another instance in the testimony, you say 10 or 15 years should be enough time.

So, which is it? Do you favor 31 years or do you favor 10 or 15 years?

What would be the ideal policy if you were—maybe I misunderstood. And, that's why I'm asking the question.

Ms. COHEN. The 31 years would be the period of time over which they would be allowed to depreciate the investment. But, the actual contract would be, in most instances, 10 years but in special circumstances where the investment is large the Secretary would like the discretion to provide for a 15-year contract.

Chairman VENTO. But, wouldn't the investment then be depreciated then in the 15-year period and not need a 31½-year depreciation schedule?

It seems to me I'm getting two messages is what my problem is. And, I don't know.

Mr. Davis.

Mr. DAVIS. I believe what we would prefer to have is the option for the longer depreciation schedule in case an individual business operation would not support depreciating over the 15- or 10-year period. And, we would, where the business would support such an accelerated depreciation, be most happy to negotiate that kind of a contract.

We merely want the latitude to go longer if the financial analysis drives us in that direction.

Chairman VENTO. The contract doesn't have to be the same term in terms of the depreciation.

Ms. COHEN. Right.

Chairman VENTO. In other words, I think it's also important to note here an important change that has not missed me, and I'm

certain others that know the issue, and that is that you are talking about depreciation, a straight line depreciation, on original cost versus current value or whatever the value is that they now use here, which actually, as you pointed out, grows in value substantially over what the original investments would be. And, that's an important point.

So, I'm looking at that. I think if you only need that 30 years—I mean, I think there may be some problems.

But, here we had Yosemite which had I think almost the largest investment of any park or one of the largest investments of any park in the nation, and that is being extinguished over a 15-year period, is it not?

Mr. DAVIS. Yes, it is.

Chairman VENTO. And, so I am wondering, I don't know that the authority should be out there. It may be that it isn't so much a case of how large the investment is but what the revenue flow is that comes in.

You may have a park that has a low revenue flow, like Voyageurs National Park in northern Minnesota or maybe—I don't know—Zion, but the point is that there you may need a longer time. But, then I guess I wonder whether in those instances there are other ways to deal with that through the Visitor Facility Fund or some other means which would not open up the option, because the problem is that once we establish this in policy for these rare instances, then it very quickly is something that is sought after by all, depending upon a different Administration and different interpretations.

So, Mr. Reynolds.

Mr. REYNOLDS. I think the point here is to try to break the connection between writing off the possessory interest and the length of the contract, not have those two connected together.

Chairman VENTO. Okay.

Mr. REYNOLDS. In some cases, in most cases, we would say a 10-year contract for contractual purposes or for the purposes of the National Park System is fine. A few cases should go to 15 years.

If the possessory interest cannot be paid off because of the combination of flow of money in both directions in 15 years or in 10 years, then the remaining part of that could be worked into the following contract consideration.

Chairman VENTO. Yes. Well, the problem I have, John, and, of course, I am certain that is apparent to everyone, is that the contract could end and it would leave us or somebody else holding the bag to buy out the remaining possessory interest.

What you are doing is you are extinguishing one type of possessory interest and establishing another one here. And, the concern I have is that if we wanted to, we wouldn't need that particular concept in law if, in fact, they were coterminous.

Mr. REYNOLDS. I think we are just talking about cases of existing concession contracts.

Chairman VENTO. Okay. So, I think that that's the important point. And, I did raise that point.

Ms. COHEN. Well, I think that this is part of the transition problem.

Chairman VENTO. Yes. I think maybe there are other ways to deal with this. As I said, where you have a low revenue flow maybe we can set aside some of the franchise fee to go into the Visitor Facility Fund so it can be used by the Park Service only. I mean, the Visitor Facility Fund may be the wrong fund, but there—

Mr. REYNOLDS. I was not correct when I said just existing contracts. It applies to new contracts.

Chairman VENTO. Yes, it's on all. So, anyway, this is something that we don't want to leave ambiguous in terms of the legislation. We appreciate the testimony was prepared on a shorter basis.

On Pages 4 and 5 of your statement, Ms. Cohen, you say that, "all consideration provided by the concessioner under National Park Service contracts should be considered a franchise fee," and under Sections 7 and 8 of H.R. 1493, which relate to the use of the franchise fee receipts.

Do you mean to suggest that we should apply this to the current Yosemite concession contract, which is a special accounts case? In other words, in terms of extinguishing the possessory interest there, they went to a special account.

Ms. COHEN. I think that that's a definitional problem. I think that my point—and I probably should have used better words—is that there be a full and clear accounting at the time that the contract is given for everything that is being provided to the government.

Chairman VENTO. In other words, your point is that the special account is a mechanism for the extinguishing of possessory interest. And, you believe that we ought to redefine that to be a franchise fee, then, I take it, and that there ought to be a full accounting of all of the remuneration being paid to the Park Service directly or indirectly at that time.

Ms. COHEN. Yes.

Chairman VENTO. I think that gets back to the point that I made initially about the accounting process and the tendency for each park to have pursued a different policy with regards to how they receive remuneration, which sometimes comes back as, you know, reflecting a very, very low franchise fee when, in fact, there are other considerations that are provided but have not always been defined and/or no good records kept of them.

One of the points that Mr. Synar made concerned trying to find some commonality between the way all the land management agencies treat concessions. Do you believe that there ought to be a commonality between at least the BLM, the Fish and Wildlife Service and other agencies within the Department of the Interior in terms of the types of concession and awarding of concession contracts?

Ms. COHEN. Well, we are certainly working in that direction. And, it's something that we have begun to look at.

Chairman VENTO. Let me ask Mr. Hansen if he had any questions? I am way beyond my time here.

Mr. HANSEN. Thank you, Mr. Chairman. I, like you, have other things.

I am supposed to be over in the House Armed Services where Secretary Aspin is defending his performance in Somalia. And, they just called me to come over and ask him a few interesting questions, which I—

Chairman VENTO. You should stay here with me.

Mr. HANSEN. Yeah, maybe I should. And, the VA HUD bill is coming up, which I've got to speak on in a few minutes.

But, I would like to ask some questions. And, I don't mean to play a semantics game here with you, Ms. Cohen.

But, I was interested in reading your opening statement here. And, in the first paragraph, you quote from the 1965 Concessions Policy which starts out, "preserving the scenery, wildlife, and natural and historic elements," type of thing.

Actually, it doesn't say that in the law. It says, "conserve" instead of "preserve." And, in the definition section, it says that preserve means through no use and conserve means preservation through wise use.

I hope that wasn't an intentional thing that you put in there.

Ms. COHEN. Not at all.

Mr. HANSEN. And, I assume you agree with the definitions that were conserved through wise use instead of no use. Would that be a correct statement?

Ms. COHEN. Yes.

Mr. HANSEN. Thank you. If I may ask you, your testimony indicates that you believe the existing average franchise fee of 2.9 percent is too low.

Yet, Secretary Babbitt just signed a contract, the new Yosemite contract, with a franchise fee of zero percent. Does this really indicate you are concerned about the amount of return to the government?

Ms. COHEN. I tried to address that in the previous answer—it is a definitional problem.

We feel that the return to the government should be completely documented and accounted for. In the Yosemite case, it's our computations that the return to the government is approximately 20 percent. But, it is not in the form of a traditional franchise fee.

Mr. HANSEN. I have in front of me the National Park Service concession statistics of 1992 and 1991, Attachment A. I don't know if you are familiar with these or not.

But, the annual receipts were \$618 million. The annual franchise fee was \$18.1 million, which is where we get the 2.9 percent, which is 2.9 percent of that.

And, we have annual taxes on top of that at \$10.2 million. We have annual special accountant fees of \$9.1 million.

We have annual improvement additions, you estimated, at \$39.9 million. You have a rate add-on of \$3.3 million. So, the annual return to the parks, to the government, is \$80.6 million or 13 percent.

Which one of these do we feel strong about, the 2.9 percent, which is one part of it, or the 13 percent, which is the aggregate?

Mr. DAVIS. Mr. Hansen, the document you are quoting from is one that we have corrected. And, there are some elements within that statement that are not returned to the United States in the traditional sense of calculating the concessioner's return.

The taxes are paid as a matter of routine business. And, we do not consider those as part of the return to the National Park Service for the right of doing the business.

Mr. HANSEN. Excuse me. But, the concessionaire has to pay it regardless of what arm of the government gets it is the issue, isn't it?

I mean, this guy, as a businessman, has to pay it out.

Mr. DAVIS. Yes, sir, he certainly does. But, any businessman anyplace is in the process of paying taxes.

And, that is an expense that we consider in determining what the return to the United States should be otherwise in the term of the traditional franchise fee or the extinguishment of possessory interest in other donations, or not donations but other contributions to the estate of our operation. Similarly, the amount as a concessioner passthrough is not something that is paid by the concessioner but rather by the user of the concessioner's facilities.

And, so some of those figures are not correct in that statement, which we did correct. And, I am sorry that I did not bring that with me today. So, I can't articulate exactly.

But, we will be pleased to provide that.

Mr. HANSEN. I would appreciate that. Of course, it's really the park user who pays the franchise fee.

I mean, if you really get right down to it, he's the guy that pays it. That's just like the famous gas tax increase in the Clinton budget.

I mean, who is going to pay that? The guy who goes to the gas pump. Texaco and Standard aren't paying it.

Of course, if he's not in business, he's not paying any taxes. And, that's one of the concerns we have.

Let me just follow up on that second question which the Chairman got in, which is kind of an intriguing question here, about possessory interests. And, you have stated that possessory interest is a barrier to competition.

However, in the recent Yosemite contract bid process, a half dozen operators made offers on a contract with the largest possessory interest balance of any contract in the country. In fact, only 11 concessionaires have possessory interest of book value greater than \$3 million. And, over 100 operators have no possessory interests.

What evidence can you present to this committee which supports your contention that possessory interest is a barrier to competition in light of the idea that the vast majority have none?

Ms. COHEN. We think the combination of possessory interest and preferential right are barriers to people bidding on the contract. Our evidence for that would be the 28 out of 29 of the last contracts where no one else bid.

And, if I could say something on the 2.9 percent franchise fee and on the passing on of the franchise fee, the goal which we support in this legislation continues to be the protection of the park resources and the visitors' experience. The Park Service contract policy, which would continue under this, requires that services be provided to the visitor based on the prevailing charges for comparable services in the area.

We don't view this as an opportunity to invite people who are bidding on these contracts to charge the maximum amount possible because they have a unique location and then return the maximum

amount possible to the government. That would not be how this would operate.

Mr. HANSEN. Mr. Chairman, I have one more question.

Chairman VENTO. Take your time.

Mr. HANSEN. Your testimony substantially endorses H.R. 1493 and 2146 which, in my opinion, represent a complete rewrite of existing concession laws and policies. In fact, you find existing law leaves the National Park Service "virtually beholden to its concessioners and unable to assert the primacy of its mission."

In other words, you believe there are severe problems with the existing law. I would really appreciate it, and sincerely appreciate it, if you could provide the subcommittee a few examples where the existing law has failed in its two primary objectives of resource protection or serving visitors by causing adverse impacts to park resource values through unauthorized activities or by not providing appropriate visitor services at reasonable prices.

If you would give us some examples of that, it would surely be helpful.

Ms. COHEN. We would be glad to. Do you want an example right now or would you like us to provide additional documentation?

Mr. HANSEN. Well, I know we are all on a very tight time schedule, you folks as well as we are. If it's okay with the Chairman, if you would provide us some of those maybe in written form, I would really appreciate it if I could have those.

Ms. COHEN. We would be pleased to.

Mr. HANSEN. In my opening remarks, I stated what I read in the law as the objectives of the National Park Service. Now, the old saying is, "If it ain't broke, don't fix it." And, maybe it's some fine tuning.

I just wonder if these are going too far. And, I hope you keep an open mind as we get into this and determine what is the correct thing to do in this instance.

And, I would appreciate it very much if the Park Service could supply us with information, because we are only as good as the information we get.

Ms. COHEN. We would be glad to supply you with as much information as you want and certainly the examples that you asked for. I think I would like to say that we look forward to working with the committee.

We feel that the transition period will be difficult. And, we are more than willing to work with you and others on the committee, as well as the concessioners, to come up with legislation that does its best to meet everybody's objectives.

We find ourselves, as you can see in the 1994 budget, in the position where, because of the backlogs and the tight resources, we are going forward asking for additional fees for visitors to the parks. And, we feel at the same time for those visitors we have to be arguing for a competitive process for the concessionaires.

Mr. HANSEN. If it's all right with you, I will ask the staffers to send you the questions in written form that I've asked. And, then you can make sure that you've got the right question and you can give us the answers, if you would, please. I would appreciate it.

Thank you, Mr. Chairman.

Chairman VENTO. I know the gentleman has to leave. And, I appreciate that.

But, I hope he will take with him the testimony from witnesses that are about to appear, because I think they point out in no uncertain terms, at least the testimony that was provided, some of the problems that exist.

Now, Yosemite, of course, is atypical in terms of what is taking place here. One of the aspects of not describing that as a franchise fee and putting it into a special account obviously was to provide for the extinguishing of that possessory interest in a timely manner.

It's beyond the 10 years. It's 15 years, largely negotiated by the former Administration with some refinements, some significant refinements, by Secretary Babbitt.

But, the point is that particular instance is an example of the transition problem: If we were to take and treat that as a definitional problem in terms of franchise fee, then you run into the distribution of the franchise fee on the new formula which then would delay the extinguishing of the possessory interest. So it's this sort of problem that you get into in terms of trying to work out.

Now, the Forest Service, as far as I know, doesn't provide any possessory interest. The BLM doesn't provide any possessory interest. The Fish and Wildlife Service doesn't provide it.

Are there any other agencies that you are aware of that use this? I mean, this law is absolutely unique to the Park Service.

Mr. Reynolds, is that correct?

Mr. REYNOLDS. That's correct.

Chairman VENTO. And, so I think in making the transition, the idea is that in the private marketplace we are going to hear that they are able to extinguish whatever investments they make over the life of the contract. That would be the ideal, would it not?

Mr. Reynolds.

Mr. REYNOLDS. Well, I think what we are saying is that in some cases that might not be possible. And, so to be able to extinguish it over the life of more than one contract without having to have the contract be as long as the possessory interest is as important as extinguishing the possessory interest.

That would allow the National Park Service to—

Chairman VENTO. It would still remain a barrier to—in a sense though I think there is a question here of whether or not the existence of some sort of undepreciated asset, I should call it, I hope not a possessory interest but an undepreciated asset, some portion of undepreciated asset would represent a decision made.

I think it's imperative to understand here that, of course, the Park Service has concurred and does approve of any type of construction or investment that is made that qualifies as an undepreciated asset. Is that correct?

Mr. REYNOLDS. We do approve of all construction.

Chairman VENTO. Yes. Who is the central authority for that today? Is it the superintendents, who have done this historically? And what is the status today?

Mr. REYNOLDS. The authority is delegated to the regional directors.

Chairman VENTO. To the regional directors?

Mr. REYNOLDS. Yes.

Chairman VENTO. And, is the guidance there effective? I think it's something to pay attention to.

Mr. Davis knows. He went through it at Grand Canyon.

Mr. Davis.

Mr. REYNOLDS. I may be corrected here.

Chairman VENTO. Okay. Mr. Davis.

Mr. DAVIS. The superintendent and the regional director play a very vital role in negotiating terms of new contracts and the conditions of them. However, any contract with the gross income of over \$100,000 must come before the appropriate committees, yours included, Mr. Chairman, in the Congress and are reviewed and approved in the Washington office.

And, after that, then subsequently the authority is granted to the regional director to finalize.

Chairman VENTO. There has been some contention, too, that sometimes the concession activities have not followed general management plans. Of course, there are the overall plans for the park units, as you know. And, of course, they can be amended. They can be modified.

But, I guess the problem is that trying to get a handle on major assets that would be depreciated over a period of years today would be in the possessory interest category and needs to be dealt with effectively, too. But, I guess that there should be approval for any activities that go on.

So, this is not something that those that have the possessory interest have been able to do unilaterally. That's my point.

The Park Service, at least at the superintendent and regional office, have had some input, if not at the Washington office. And, co-incidentally, you have reported to Congress, I guess, on some of the approvals.

There are now outstanding a significant number of contracts today. I've stated that correctly, have I, Mr. Davis?

Mr. DAVIS. There are, indeed, a large number of outstanding contracts.

Chairman VENTO. But, I've summarized the condition with regards to the possessory interest or undepreciated asset—

Mr. DAVIS. There are a good many concession contracts in existence today in which the concessioner has a possessory interest that is, at this point, undetermined but would be determined by the conditions of their contract as being the replacement cost minus depreciation not to exceed fair market value. And, that formula is terribly confusing and it is a very uncertain figure, therefore, that represents that concessioner's possessory interest.

Chairman VENTO. And what is being implied in these—if I may interrupt—what is being implied in the policy initiative here is to have straight-line depreciation based on original cost so that you would have—there would be no contention about trying to get an appraisal of the value of something such as in a park, which is not impossible I guess but it is extremely difficult.

Mr. DAVIS. You are correct, Mr. Chairman. And, it is the intention of our current policy and the proposed legislation that under all new contracts that possessory interest figure will be determined

at the beginning of a contract and then go on to a straight line depreciation.

Chairman VENTO. The problem today is trying to come to some reconciliation based on the existing law and the rights of the various concessioners. And again, in the transition.

And, that really is going to be up to you all to negotiate at the end.

Mr. DAVIS. That's right.

Chairman VENTO. I could do it, but I don't have the time. So, I am going to rely on you to do that, you know. [Laughter.]

Mr. DAVIS. That will be our job. And, it will undoubtedly be a point of much debate.

Chairman VENTO. It surely will. But, I think it has to be done.

I think it's the intention to do it in any case from a rules and regulations standpoint and, I think, trying to legislate in this area while not taking away the flexibility you need.

I wanted you to proceed, Mr. Davis, with the discussion of what we are facing in terms of contracts, concession contracts, that are in abeyance based on regulation, based on perhaps change in law. They have been in abeyance. They have not been signed.

So, can you give us a profile of what the problem is?

Mr. DAVIS. Well, I will give you a brief one. Secretary Lujan placed a moratorium on the issuance of new contracts at the time he began his concession reform efforts.

And, until our new regulations and standard contract language were approved, the contract language in 1993, January of 1993, that prohibition against basically new contracts stood. Today, as a result of that, we have a backlog of approximately 85 contracts that either have or will expire by the end of 1993.

We are beginning to move those now. And, you will see more progress along those lines. And, we are moving them under the guidance presently contained in the standard contract language and the new regulations.

Chairman VENTO. So, what is that doing in terms of possessory interest? Is the goal to extinguish the possessory interest or does it not address it?

Mr. DAVIS. No. The goal will be to extinguish the possessory interest through the new contract on the straight-line depreciation.

And, we had the Yosemite case. The other contracts that we have been dealing with I don't believe contained large amounts of possessory interest.

We have not dealt with—

Chairman VENTO. The larger ones are the ones that are most contentious, I guess, in terms of establishing a value and coming to agreement with regards to those that have such rights, property rights.

Is that correct, Mr. Davis?

Mr. DAVIS. Yes. There will be an effort to come to agreement on those rights it will be difficult to establish.

And, this whole issue is one in which there will be litigation and has been litigation started.

Chairman VENTO. I understand. But obviously your experience in dealing with it would be helpful, I think, and as I said, during this transition stage which these bills really don't address.

The other issue which we need to raise with you—and I know that we have other witnesses—is the issue of whether or not there should be some differential in terms of preferential right of renewal. One of the bills, or several of the bills, have language that provide for guides to receive preferential right of renewal in this instance.

And Secretary Cohen, your testimony on this is not, I don't think, clear but suggests that for certain contracts this ought to be, or could be or should be, considered—I can't remember exactly the language you used. I could find it.

It's on Page 7, where you discuss this in your testimony, I will just quote, "We believe that such concessioners merit preferential consideration in contract renewal based on a solid performance record and we are willing to work with you to define a level of gross receipts under which the Secretary might maintain the discretion to grant such consideration."

This sounds like a small operator exemption. We've had that suggested in a number of different areas—this is apparently a thread of views that runs through the Clinton Administration in terms of small operator exemptions.

But, our past experience with that has not always been good—it has been one in which it becomes expanded to the point of maybe having an impact over the overall preferential right of renewal issue. And, so I wanted to say, did you have any further comments on that?

Ms. COHEN. Our inclination was to have no exemptions. And, in discussing this with people who have been in the parks for a long time, who have a lot of experience in this area, they feel that in some instances there may be small concessionaires who really were there before the parks were founded, whose families have been there for generations, and who are an important part of the visitors' experience.

So, we would be willing to consider an exemption for small concessionaires.

Chairman VENTO. You have suggested that you do not favor, I think, the four criteria lined up—you know, they are all "ands" I notice in the legislation that Congressman Meyers and others have. I guess it's the Bumpers bill that says an exemption for guides.

Now there are a couple of things about this that are less bothersome in the sense that you are not, with the guides, tied up with a lot of possessory interest or capital investment. It is obviously a service that is provided and I don't know what risks we would run in terms of that.

Of course, the preferential right of renewal also has been extended, I guess, in many instances to the first opportunity to offer extended services, too, hasn't it, under existing law?

Mr. REYNOLDS. Right.

Chairman VENTO. It isn't just the preferential right of renewal. It was if you add a service; that is, something that has been missing here.

Ms. COHEN. Yes.

Chairman VENTO. And, I think that is very key, because not only does it affect the existing contract but it has a way of growing with the market that might exist. And, when you have 275 million visi-

tors, you may be selling more hamburgers or more trips on the river.

So, in any case, I understand that the guides, I think, do have a different category, a different status here that we might want to address. I know that Senator Bumpers has done so. Congresswoman Meyers has done so.

And, so I have not formed a conclusion on that. But, I think it's less of a problem, because if you don't have a possessory interest and you don't have the type of investment that goes on here and they are shorter-term contracts, I think that's another point where they would be maybe a shorter-term contract.

There ought to be some characteristics of that that we could identify that would not mean that this would be exploited into a major loophole. And, maybe the right of renewal would not necessarily deal with the expansion of the service, as an example.

Ms. COHEN. Well, we would be glad to work with you on that to come up with characteristics.

Chairman VENTO. Yes, a minimum dollar amount, as an example, of what they do.

The other aspect here on some of these services that I note are provided—and it's very confusing. The Park Service is being criticized for essentially characterizing the same service under three or four different types of permits and franchise fees that has been raised.

And there is no commonality—not that everything has to be the same between the BLM or the other land management agencies or even the Forest Service. But, have you had, or do you have, any departmental or interagency discussions about trying to provide some standard treatment in terms of such franchise fees or payments?

Mr. Davis.

Mr. DAVIS. There was an effort about a year and a half ago for all land managing agencies to review together their concession management policies. And, from that review, there have been no earthshaking decisions relative to conformity but an encouragement of other people to look very carefully at how the National Park Service had been conducting much of its business.

And, there are within each agency different circumstances that dictate their operation. And, they are quite different, one from another.

But, there undoubtedly is room for more uniformity in approach.

Chairman VENTO. I never saw such a good idea as these interdepartmental groups that are going to come up with a common policy, or anything that works as badly in practice. You know, the reality, I think, is that it takes an extraordinary leadership to really make these interdepartmental things become something that works.

I mean, I've seen it in more than just the Department of Agriculture and Interior or even the interagency activities. You can speak to that yourself.

Secretary Cohen, you sit in a key place to try to force those things to work and to reach out. But, there's a lot of pride and a lot of turf consciousness in the process, as has been noted.

Why the Park Service needs three or four different categories of concessions treatment is another question. That really, I think, provides more confusion and less coherent direction, all with good intentions.

I don't question the intentions, because fundamentally I believe the organization and the people in it are professionals and share a real commitment in terms of public service and some of the things that I value highest in my own frame of reference. But, good intentions are not enough in many instances.

So, unless you had any further comments, Secretary Cohen, I am going to move on to the other witnesses. But, we do need and will expect this to be brought to a conclusion and we ought not to torture everyone for the next year on it.

So, we will submit questions and ask consent, as Congressman Hansen has already sought, for others to submit questions in writing, as other members may chose to do so as well. So, I will establish that as consent granted without objection, so that we can have them answered for the record. And, hopefully you will receive them in a timely manner and answer them in a timely manner so that we can move ahead.

But, more importantly, we need the informal help of Mr. Davis and Mr. Reynolds and yourself in order to advance this issue forward in the near term. So, thank you very much.

Ms. COHEN. I think we all look forward to working with you. Mr. Reynolds would just like to say something.

Chairman VENTO. Yes.

Mr. REYNOLDS. Mr. Chairman, I would just like to recognize Jack Davis. Yesterday, Jack announced his retirement from the National Park Service.

He is one of the most respected and intelligent members of the National Park Service as both a manager and a staff member of the Director of the Park Service. And, I would just like you to know that we are going to miss him very, very greatly.

Chairman VENTO. Well, I shall miss him, too. I regret to learn of that.

I hope that this hearing had nothing to do with that decision, Jack. [Laughter.]

Chairman VENTO. But, I would hope that you will be available to assist. I know that you have put a couple of years into it.

And, I've very much enjoyed you on the scene as superintendent at Grand Canyon some years ago when I visited. And, I congratulate you and wish you well in your future endeavors.

You have done a great job and, I think, reflect well on the National Park Service. And, I and other Americans really maybe don't always understand, but they would appreciate if they could see through my eyes what I've seen in terms of the work you've done.

We very much appreciate it, Jack. Thank you.

Mr. DAVIS. Thank you.

Chairman VENTO. Thank you all.

Mr. DAVIS. Mr. Chairman, the reason is 42 years and nothing else. [Laughter.]

Chairman VENTO. I hear you. I hear you. Congratulations, Jack.

PANEL CONSISTING OF WILLIAM J. CHANDLER, DIRECTOR OF CONSERVATION, NATIONAL PARKS AND CONSERVATION ASSOCIATION; JOSEPH K. FASSLER, CHAIRMAN, BOARD OF GLACIER PARK, INC., ON BEHALF OF THE NATIONAL PARK HOSPITALITY ASSOCIATION; AND DAVID BROWN, EXECUTIVE DIRECTOR, AMERICA OUTDOORS

Chairman VENTO. We are pleased to welcome the first panel of witnesses this morning: William Chandler, who is the National Parks and Conservation Association spokesperson; Joe Fassler of the National Parks Hospitality Association; and, Mr. David Brown, America Outdoors.

Gentlemen, thank you for your patience this morning. I know that listening to the members ask the questions, I could see you moving in your chairs wanting to contribute, at least, with body language that which you couldn't articulate.

So, we have your statements before us. And, they are made part of the record by my previous request.

Mr. Chandler, if you can read the relevant portions or summarize your statement, it would be helpful to me this morning. Please, proceed. Welcome.

STATEMENT OF WILLIAM J. CHANDLER

Mr. CHANDLER. Thank you, Mr. Chairman. I would like to submit my statement for the record.

I would also like to submit for the record a statement of a member of our Board of Trustees, who is a banker and who addresses the issue of possessory interest which is being debated by the committee.

Chairman VENTO. Without objection, that will be added to the record. We have also received a statement from Roger Mann at Host Marriott that will be added to the record. He is a senior director of business development and talks about the issue of possessory interest.

[The statements follow:]



National Parks and Conservation Association



STATEMENT OF

**ANTONIO F. MARQUEZ
MEMBER OF THE BOARD
NATIONAL PARKS AND CONSERVATION ASSOCIATION**

**SUBMITTED TO THE
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS**

**ON H.R. 1493
A BILL TO REFORM THE CONCESSION POLICIES
OF THE NATIONAL PARK SERVICE**

OCTOBER 19, 1993

Mr. Chairman and members of the subcommittee, my name is Antonio Marquez. I am Vice President in charge of the Commercial/Residential Real Estate Division of Riggs Bank, here in Washington. I am also a member of the Board of Directors for the National Parks and Conservation Association (NPCA), a nonprofit citizens' organization dedicated to the protection and enhancement of the National Park System. It is in my capacity as an NPCA board member that I make this statement in support of H.R. 1493, legislation to reform the concessions policy of the National Park Service (NPS).

Specifically, I would like to address the issue of "Possessory Interest." Although I speak as a board member of NPCA, and share the Association's view that national park concessioners are important partners in the park experience, professionally I believe that the concept of "Possessory Interest" represents an unwarranted subsidy to the concessions industry that cannot be justified.

As a banker, I tend to view additional collateral in support of any loan as good. As a private citizen and a taxpayer, however, I have trouble justifying the economic rationale for the payment of the so-called "Possessory Interest" at market value. As a bank vice president in commercial real estate, I can only remark that national park concessioners have negotiated for themselves a sweet deal, apparently at taxpayers expense.

I hope that through NPCA's testimony we are clear about our organization's belief in free enterprise, incentives, and profit. I see no incompatibility between the concessioners right to profit and the need for reform in order to create a competitive and equitable concessions process.

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Antonio F. Marquez
 October 19, 1993
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I would like to address two points, (1) How "Possessory Interest" is bad business for the Park Service, and (2) What the real collateral value of "Possessory Interest" is in a commercial loan underwriting decision.

Here is the "Possessory Interest" deal as I see it. Assume I am a business person who operates a concession, and that I make a decision to proceed with a capital improvement. I utilize the improved facility to generate cash flow. I have the ability to depreciate the asset for tax planning purposes. At the end of the contract, I get market value -- instead of book value -- for the asset I leave behind.

The concessioner's position is analogous to a leaseholder in a tenant-landlord transaction. The asset or improvement is depreciated to maximize tax planning, and when the tenant leaves, the landlord pays the tenant the market value of the improvements. Not a bad deal, if you can get it. The problem is that the Park Service is the landlord, the concessioners are the tenants, and the taxpayer is footing the bill.

NPCA does not contend that the concessioner should walk away with nothing, but rather that payment of market rather than depreciated book value is neither appropriate nor justified.

Concessioners may argue that without the "Possessory Interest" capital improvements at national parks might never be made. If the facility or improvement does not make economic sense based on the economic benefit (cashflow) to be derived by the concessioner, why should the taxpayers provide a subsidy to concessioners to make non-economic improvements which prove to be bad business for the National Park Service?

The concessions industry has argued that without "Possessory Interest" concessioners would be unable to obtain bank financing. I find it hard to believe that "Possessory Interest" represents more than just one of the various loan underwriting criteria utilized by a loan officer in assessing a potential loan transaction to a concessioner. The borrower's capacity is assessed in a variety of ways. Issues such as personal guaranties, the basic cash flow of the transaction, ability of the firm to complete its asset conversion cycle, business reputation, as well as collateral value, all impact the underwriting decision.

Were I sitting in a loan committee and the sole lending rationale for proceeding with a loan to a concessioner rested on the fact that an assigned possessory interest served as the back stop to repay the loan, I would not be swayed to proceed on that basis alone. Many factors need to be assessed and collateral value is just one.

Now, lets say I am sitting on the loan committee and the various appropriate underwriting criteria are evaluated and found to be satisfactory. A question arises as to whether or not the risk to the lender of a loan to a concessioner gets worse just because, instead of market

Antonio F. Marquez
October 19, 1993
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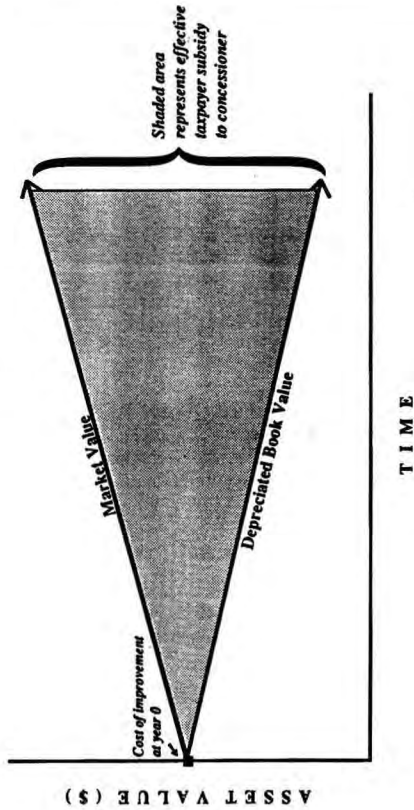
value, the borrower receives depreciated book value of the asset at the end of the loan period. If the loan has been properly structured with loan-to-asset value parameters that are acceptable on day one, as that loan amortizes, the fact that the underlying asset is being depreciated should not prevent a committee from approving a loan to a borrower that otherwise meets the basic loan underwriting criteria.

My point is that loan underwriting is a dynamic process of assessing and mitigating potential risks to repayment. Stating that without "Possessory Interest," loans would not be available is too simple an assertion.

If a loan were made on a leasehold improvement and repayment relied solely on liquidation of the collateral at market value, in my estimation, the loan rests on weak underwriting. Concessioners provide a service within our national parks. The concessioners ability to make a profit, i.e., generate cashflow, from providing the service is the primary factor the lender will look at in evaluating a loan to a concessioner. A lender will be careful not to confuse lending rationales. A service business needs to generate cash flow from the delivery of the service. The value of the leaseholds would probably be a tertiary concern in assessing repayment capacity.

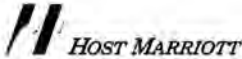
I thank the subcommittee for allowing my views to be entered into the record and encourage efforts to reform the national park concessions process.

Effective Taxpayer Subsidy of
Structures, Fixtures, and Improvements
Built by Private Concessioners on Federal Parkland



Under the Concessions Policy Act of 1965, the concessioner:

- capitalizes the improvement
- uses the asset to generate cash flow in the business
- depreciates the asset for tax planning purposes
- at contract termination, receives market value of the asset instead of book value



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Roger E. Mann
Senior Director
Business Development

October 15, 1993

The Honorable Bruce Vento
Chairman, Subcommittee on National Parks
Forests and Public Lands,
812 O'Neil
Washington, DC 20515

Dear Congressman Vento:

Last year, on behalf of the Marriott Corporation, now Host Marriott Corporation, I testified in support of concessions legislative reforms that would make the national park concessions program more competitive and less costly for the taxpayer. Congress did not act, and the issue is currently before the House Subcommittee on National Parks, Forests and Public Lands.

Although Host Marriott would be interested in competing for certain national park concessions, there is little incentive for us to do so because of the preferential right given by statute to incumbent concessionaires to renew their contracts. In short, present law shuts the door to open, fair competition. Until that provision is eliminated by Congress, it is unlikely that we will go to the expense of preparing contract proposals for concessions in national parks.

Host Marriott Corporation still supports changes in the 1965 law which would make the park concessions program more compatible with existing standards in the in the concessions industry. In this regard, I have attached a statement for submission for the hearing on HR1493. I would appreciate your consideration of our comments when the bill is marked up.

If I can provide further information or other assistance, please call me.

Sincerely,

Roger E. Mann

STATEMENT OF
ROGER MANN
SENIOR DIRECTOR OF BUSINESS DEVELOPMENT
HOST MARRIOTT CORPORATION
WASHINGTON, D.C.

SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
UNITED STATES HOUSE OF REPRESENTATIVES
OCTOBER 1993

HEARINGS ON THE NATIONAL PARK SERVICE
CONCESSIONS POLICY REFORM ACT OF 1993
HR1493

Mr. Chairman and members of the Subcommittee, my name is Roger Mann. I am Senior Director of Business Development for Host Marriott Corporation, formerly the Marriott Corporation.

Marriott is the nation's leading hospitality company. We operate more hotel facilities and rooms than any company in the country. Marriott is also the nation's leader in providing food service to colleges and universities, hospitals, and office buildings. Additionally, Marriott is the leading concessionaire in U.S. airports and toll road plazas as well as a concessionaire in California and New York state parks.

Host Marriott Corporation supports the Concessions Policy Reform Bill, HR1493, and believes its treatment of both preferential right of renewal and possessory interest are fair to existing and potential concessionaires. These reforms will increase competition for contracts and lead to greater revenue to the government and higher quality service to park visitors.

Host Marriott is well qualified, by its broad range of experience, to be a National Park concessionaire for provision of lodging, food service, and merchandise sales, but current policy excludes us. In 1991, we were invited to a pre-bid meeting for the Yellowstone National Park contract. We did not attend because of the National Park Service concessions policy of "preferential right of renewal". Under this policy, if Host Marriott, or any company other than the incumbent, submitted the high bid on the Yellowstone contract, the incumbent concessionaire would have been able to renew the contract by merely matching that bid. This policy eliminates any reasonable opportunity in National Parks for well qualified new concessionaires, such as Host Marriott Corporation.

For Yellowstone in 1991, only the incumbent bothered to bid, and didn't have to worry about bidding high. Why should any other company have gone to the expense of preparing and submitting a bid, if it had no real chance of winning? Obviously, without competition the government did not maximize its revenues for Yellowstone. And without competition, visitors are deprived of the quality and service levels which competition brings. In 1981, when there was competition for the Yellowstone contract, eight companies bid.

We would like to see genuine competition for National Park Service concession contracts. Competition exists for concession awards for airports, colleges and universities, hospitals and toll roads. This competition maximizes both revenues to the authorities and service to the public. We are sure that open competition for National Park contracts would increase concessions revenues to the government, and improve quality and customer service.

Host Marriott would bid for National Park concessions contracts without preferential right of renewal. We do it many times each year in airports, state parks, colleges, toll roads and other venues. Quality concessionaires want to maintain their reputations. They will perform well in order to get their contracts renewed and win new ones on a competitive basis. To the best of my knowledge, preferential right of renewal does not exist elsewhere in the concessions industry and many public authorities mandate fair and open competition by statute.

Another National Park Service concessions policy which we find unusual is the concept of possessory interest. This allows a concessionaire to write up to replacement value minus depreciation, any investment it has made in Park buildings, and be paid that windfall by the National Park Service if it should leave that Park, even as a result of unsatisfactory performance. In the universe of concessions outside of National Parks, investments are typically amortized over the length of the contract so, at expiration, the concessionaire's asset has been completely written off. In case the concessionaire should lose the use of the asset before the end of the contract, or the authority requests additional mid-term improvements, or the contract is terminated prematurely, the remaining net book value, that is, the unamortized portion of the asset, is generally repaid to the concessionaire by the authority, often funded by the concessionaire's successor. If the incumbent concessionaire does not win the new contract, the physical property reverts to the authority.

The concept of possessory interest is not necessary in National Parks. It is a burdensome liability for American taxpayers. The phasing out of all possessory interest in National Parks will not discourage quality operators from coming forward to bid on contracts.

Some National Park concessionaires have stated that capital investment in National Parks cannot be funded without possessory interest to secure loans. If this were true, how do many of these same concessionaires and others fund their multi-million dollar investments in environments where there is no possessory interest such as airports, state parks, stadiums and arenas?

The answer is that most of these venues have existing visitation and sales histories. Cash flows can be projected with reasonable enough accuracy to satisfy many lenders. These capital investments are generally secured in the contract with net book value protection. That means that if the contract should be terminated early, the unamortized book value of the investment would be refunded. The lender is protected. As a general rule, contracts of up to 10 years should be sufficient to amortize investments in National Park concessions.

Though Host Marriott Corporation supports the Concessions Policy Reform Bill, we believe several minor alterations would make the legislation even more effective.

We recommend the word "proposal" be used instead of "bid". Though Section 3 does state that "bid" means "the complete proposal," in the concessions industry a "bid" usually means a financial offering while a "proposal" speaks to concept and quality of operations as well as finance. In a "proposal", finance is just one of several criteria being evaluated. We understand this to be the intent of the Concessions Reform Bill.

Section 6 states that contracts will be awarded through competitive process. It does not state clearly what criteria will be evaluated. We would recommend language stating that competitors will be evaluated not only on the proposed franchise fee payments, but also on investment, quality, service and harmony with the park's mission. The highest percentage franchise fee does not necessarily lead to the highest revenue to the government or enhanced park visitor satisfaction. Increased quality with a lower franchise fee can lead to higher sales and, therefore, more revenue to the government.

Section 11, Subsection (d) requires public review and possibly hearings for all construction projects of \$1,000,000 or more. We agree that development within park boundaries needs to be carefully controlled, but any dollar figure used as a ceiling could easily become outmoded. It could potentially lead the Park Service and the concessionaire to underinvest in a project requiring expedition in order to avoid public review and hearings. Though we would favor deleting Subsection (d), an alternative approach would be to call for a public review for new or replacement construction which exceeds a specific size. For example, this review could be triggered for construction of over 5,000 square feet.

Mr. Chairman and members of the subcommittee, I applaud your efforts in attempting to improve National Park concessions policies. I can assure you that the introduction of competition into National Park concessions contracts will encourage qualified companies to come forward and will result in better quality and service for the park visitor, and enhanced revenue for the government.

Chairman VENTO. Please, proceed with your statement, Mr. Chandler.

Mr. CHANDLER. Thank you. I am sorry that the Congressman from Utah had to leave early. I think he raised a couple of interesting questions, which I would like to address at the outset.

Chairman VENTO. His staff is here. And, they take good notes.

Mr. CHANDLER. Okay. With regard to the impact of the visitor, you know, the question was raised, what impact will these bills have on the park visitor.

And, I think it's safe to say, Mr. Chairman, that the legislation posed by Congresswoman Meyers and Mr. Stearns does not take anything away from the park visitor. In fact, there will be no change except over the long term.

What are we going to get out of this? What we think we are going to get is responsiveness, more responsiveness, by the concessions industry.

And, over the long haul, we believe that if you have to compete for contracts periodically, quality of goods and services is going to increase. And, that's an axiom of our free market system. And, we don't see any reason why it shouldn't be applicable in the National Park System like it is everywhere else in this country.

Second of all, the gentleman from Utah raised the question about whether or not there was any evidence that the current concession system has hurt park resources. And, he asked the Park Service to provide some examples of that.

One of the examples that has come to light during my tenure at the National Parks and Conservation Association is the Yosemite situation where it has been repeatedly told to me by numerous individuals that one reason the general management plan at Yosemite was not executed was because of resistance by the incumbent concessionaire. You will recall, Mr. Chairman, that that plan was put into place in 1980 and it called for a reduction of certain lodging units and some restaurants. And, it was trying to decrease the commercialization and the overcrowding in Yosemite Valley.

That plan has yet to get off the ground. And, it's only going to get off the ground now because the concessionaire has gone.

We have a new concessionaire. We have a new lease on life.

And, the Park Service is going to hold Delaware North Corporation to executing that plan. So, the message here, Mr. Chairman, is that it's very important for the Park Service to be able to change the concessionaire periodically, within a 5- to 15-year period.

Otherwise, they become like barnacles on a ship. And, they never want to leave. And, they never want to change.

And, if there's one thing that we all know, we live in a changing world where businesses have to change everyday to satisfy their clients. And, that is no different in the National Park System than anywhere else in our country.

Fundamentally, Mr. Chairman, we believe that the concessions issue is a financial management issue. And, I have submitted to you, Mr. Chairman, a chart which looks like this. And, you have it up there.

And, it basically shows some of the research that we have put together to show how concessions operate everywhere else in the

United States except in the National Park System. And, there are some commonalities here, Mr. Chairman.

If you will look at all of these different examples, whether they are big parks or little state parks, whether they are airports or universities, whether it's the Smithsonian Institution or any other setting where a retail operator is brought in as a concessioner, you will find some very interesting things going on. Number one, these contracts are short term, 5 to 10 years.

They have no possessory interest in anything that they build, either in terms of structures or improvements at the end of their contract. They are also paying much higher fees than the National Park Service is now receiving.

I think, if you look at all of these comparative examples, Mr. Chairman, you have to conclude that the reason the Park Service is getting 2.9 percent return on \$618 million worth of gross is one simple fact. And, that is that there is no competition for these contracts.

We believe it's imperative that competition be brought into the system. We also believe that it's imperative that the unnecessary possessory interest that is being doled out right now to the concessioners be terminated. It is, in fact, no longer necessary to secure concessioners in the National Park System.

Now, you are going to hear a lot from the concessions industry this morning, Mr. Chairman, about how they can't make money in the national parks without having low fees, how they can't do business in the national parks without having 15-, 20-, 30-year contracts, how they can't get a loan from a bank, Mr. Chairman, because that bank won't give them a loan to execute their business unless they have a possessory interest which is, in effect, a guaranteed loan for the U.S. government to a privileged class of businessmen.

And, when they come up, Mr. Chairman, to tell you all this, I would like you to ask them three questions. Number one. Why are you afraid to compete for contracts inside national parks when you are competing for them everywhere else outside national parks and you give the landlord a much better return?

The second question I would like you to ask the concessions industry is the following. If being a park concessioner gives you such a low return on your money and is such a hardship, why are you still doing business there and why is it that 10 operators now own 52 national park concessions?

We have a phenomenon, Mr. Chairman, of concessions conglomerates in the national parks. And, in looking at that situation, I can only conclude that business must be very good in the National Park System, because big operators like ARA are buying up more and more of these concessions.

ARA, Mr. Chairman, incidentally, competes for concessions everywhere else outside the National Park System. They are a \$4 billion company. Clearly, they could compete for concessions inside the National Park System as well.

The third question I would like you to ask of the concessions industry, Mr. Chairman, is this. If no bank will give a park concessioner a loan without possessory interest, as defined under current law, how come these same concessioners or concessioners in similar

situations, both large and small, are able to finance their concessions operations at locations outside the park?

Again, you have on this table, Mr. Chairman, a list of situations where concessioners are doing business with their landlords with no possessory interest. Clearly, something is amiss here when somebody tells you they can't do business in a national park unless they have a possessory interest as defined under current law.

I will conclude my remarks, Mr. Chairman, with the request that we do feel that action is needed this Congress by both the House and the Senate. As someone pointed out, it may have been yourself, Mr. Chairman, over half of the 195 concessions contracts now in existence will be expired or have expired by 1994.

And, if all those contracts go out the door with low terms and so forth, we are in for another 10-, 15- or 20-year period of bad financial deals for the Federal Government. It's a financial management issue.

We think that something can be done that will be fair to the concessioners. Reform is not going to hurt the park visitor.

And, we urge the committee to move forward. Thank you, Mr. Chairman.

[Prepared statement and charts of Mr. Chandler follow:]



National Parks and Conservation Association



TESTIMONY PRESENTED BY

**WILLIAM J. CHANDLER
DIRECTOR OF CONSERVATION
NATIONAL PARKS AND CONSERVATION ASSOCIATION**

BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS HOUSE COMMITTEE ON NATURAL RESOURCES

**ON H.R. 743, H.R. 1493, AND H.R. 2146
BILLS TO REFORM THE CONCESSIONS POLICIES
OF THE NATIONAL PARK SERVICE**

OCTOBER 19, 1993

Mr. Chairman and members of the subcommittee, my name is William J. Chandler. I am Director of Conservation for the National Parks and Conservation Association (NPCA), a nonprofit citizens' organization dedicated to the protection and enhancement of the National Park System. On behalf of our Association's 350,000 members, I am pleased to testify in support of legislation to reform the concessions policy of the National Park Service (NPS).

Action to correct the fiscal and managerial abuses occurring under the concessions system is long overdue. These abuses have been documented by the Grace Commission, the General Accounting Office, the Inspector General of the Department of the Interior, and witnesses before several congressional committees.

The concessions issue is fundamentally a financial management issue. Like the best-run corporations, government agencies must become more efficient. They must eliminate unnecessary costs, and secure fair payments, user fees and rents for publicly-owned assets. Reinventing government is an imperative of the 1990's. And concessions management is a good place to start.

NPCA supports the provision of concessions services which the Secretary of the Interior deems necessary and appropriate for park visitors. We also strongly support the provision of visitor services in the parks by private enterprise.

However, we believe that concessioners should pay a fair fee to their landlord, the federal government, for the privilege of operating exclusive business franchises in the parks. That's not happening now because key provisions of the 1965 concessions law are outmoded and inconsistent with the principles of free enterprise.

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H.R. 743, H.R. 1493, and H.R. 2146 all contain laudable provisions that would bring competition to park concessions and eliminate unnecessary subsidies. Overall, we believe H.R. 1493 and H.R. 2146 contain the best mix of reform provisions needed to restructure the concessions program.

Changed Conditions

While generous incentives once may have been necessary to lure concessions operators to the parks, times have changed since 1965. Most parks are no longer remote outposts with unpredictable visitation, and a high level of business risk. With annual visitation approaching a third of a billion visitors, our parks now provide attractive business opportunities for small and large businesses alike. If this were not true, how else do you explain the phenomenon of concessions conglomerates in the parks? In 1991, 52 concessions were owned by 10 operators. ARA Services -- a \$4 billion Fortune 500 company -- operates 13 of the most lucrative national park concessions.

A Privileged Class

Unfortunately, our concessions policies have not changed with the times. Today, the incentives of the 1965 law have evolved into *subsidies* that are clearly unnecessary to secure able concessioners in our parks. In the universe of concessions, only in the National Park System do we find a privileged class of business operators that

- ◆ operates as a government-created monopoly that is allowed to charge market prices (or higher) for goods and services that are sold to a steady supply of captive consumers
- ◆ has a perpetual right to renew contracts without competition
- ◆ is provided a prime business location paid for and maintained by the landlord
- ◆ is guaranteed payments at inflated (appreciated) prices for buildings, fixtures, or improvements constructed on the landlord's property when a concession is sold or terminated
- ◆ may transfer (sell) a concession contract at anytime to another party, or to its government landlord -- the buyer of last resort and effective guarantor of the assets.

In sum, incumbent concessioners have a financial stranglehold on the parks, and hold all the cards in negotiating contract renewals with the National Park Service (NPS). That stranglehold is made clear by the chart attached to my testimony. It shows that while

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concessioners grossed \$618 million in the parks in 1991, just 2.9 percent of that amount — \$18 million — came back to the government in the form of franchise fees. (See attached chart)

(Concessioners at some parks also contribute a portion of their revenues to capital improvement or maintenance funds that are expended at the park level. According to NPS, about \$9 million was paid into these accounts in 1991. This sum should not be considered as equivalent to franchise fee revenue. Some monies in these funds are recycled into concessions operations and may even be spent on structures, fixtures, and improvements that earn the concessioner a compensable possessory interest.)

Concessions Outside National Parks

While NPS receives on average 2.9 percent of a concessioner's gross receipts as franchise fees, concessioners at other locations are paying much higher fees to their landlords. Some examples:

- (1) Niagara Falls State Park, New York
 - ◆ 10-year contract, competitively bid
 - ◆ No right to renew the contract
 - ◆ Fee of 4 percent of gross sales below \$2 million and 20 percent above \$2 million
 - ◆ Investment of \$2 million with no possessory interest
- (2) Bear Lake State Park, Utah
 - ◆ 5-year contract for marina, competitively bid
 - ◆ No right to renew the contract
 - ◆ Fee of 8 percent of gross
 - ◆ No possessory interest
- (3) Hearst San Simon State Historical Monument, California
 - ◆ 10-year contract, competitively bid
 - ◆ No right to renew the contract
 - ◆ Fee of 26 percent of gross food and beverage sales, and 51 percent of gift shop sales
 - ◆ Investment of \$3.5 million with no possessory interest
- (4) Smithsonian Air and Space Museum
 - ◆ Maximum 10-year contract for cafeteria (4 years, plus 3 two-year options to renew), competitively bid
 - ◆ No right to renew the contract
 - ◆ Minimum fee of 15 percent, plus 2 percent for equipment replacement

The reason concessions fees are higher in other situations is simple: competition for contracts that are bid every 5 to 10 years. To increase national park concessions fees, the 1965 law must be amended to require open competition for contracts, and to eliminate preferential renewal rights for incumbent concessioners. Competition is the standard in all other concessions venues. It should be the standard as well in our national parks.

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The absence of mega-concessioners like ARA Services and TW Services at public hearings such as these is telling. I believe the reason these corporate giants do not show up is because they might be asked to explain how they are able to operate concessions *outside* national parks without the generous terms they claim they need for concessions *inside* national parks.

The Yosemite contract awarded this year is illustrative of what competition can do to generate a fair fee to the landlord. According to NPS, the winning bid of Delaware North will return financial benefits to the government equal to approximately 21 percent of the annual gross (\$86 million in 1991). Contrast that with the fee of 0.75 percent received previously, and the value of open competition is crystal clear.

Competitive Schizophrenia

The 1965 law is especially unfair to those business operators who wish to compete for renewing contracts. The Concessions Policy Act of 1965 has a bad case of "competitive schizophrenia." Although one provision of the law encourages the Secretary of the Interior to bring private businesses into the parks, other provisions -- especially preferential right and possessory interest -- act in concert to bar non-incumbent businessmen and women from competing for concessions contracts. For example, the Inspector General for the Department of the Interior examined 29 contract renewals and found that 28 were won by the incumbent concessioner who submitted the only offer.

As Marriott official, Roger Mann, testified before the Senate Energy and Natural Resources Committee in 1992, sweetheart contracts that shield incumbent concessioners from competition are *not necessary to secure top-flight concessioners at our national parks*:

We [the Marriott Corporation] would like to see genuine competition for National Park Service concession contracts. Competition exists for concession awards for airports, colleges and universities, hospitals, and toll roads. This competition maximizes both revenues to the authorities and service to the public. We are sure that open competition for National Park contracts would increase concessions revenues to the government, and improve quality and customer service.

Marriott would bid for National Park concessions contracts without preferential right of renewal. We do it many times each year in airports, state parks, colleges, toll roads and other venues. Quality concessionaires want to maintain their reputations. They will perform well in order to get their contracts renewed and win new ones on a competitive basis. To the best of my knowledge, preferential right of renewal does not exist elsewhere in the concessions industry and many public authorities mandate fair and open competition by statute.

Outmoded Concept of Possessory Interest

Mr. Mann also noted the irrelevance of the concept of possessory interest, and its burden on the taxpayer:

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Another National Park Service concessions policy which we find unusual is the concept of possessory interest. This allows a concessionaire to write up to replacement value minus depreciation, any investment it has made in Park buildings, and be paid that windfall by the National Park Service if it should leave that Park, even as a result of unsatisfactory performance. In the universe of concessions outside of National Parks, investments are typically amortized over the length of the contract so, at expiration, the concessionaire's asset has been completely written off. In case the concessionaire should lose the use of the asset before the end of the contract, or the authority requests additional mid-term improvements, or the contract is terminated prematurely, the remaining net book value, that is, the unamortized portion of the asset, is generally repaid to the concessionaire by the authority, often funded by the concessionaire's successor. If the incumbent concessionaire does not win the new contract, the physical property reverts to the authority.

The concept of possessory interest is not necessary in National Parks. It is a burdensome liability for American taxpayers. The phasing out of all possessory interest in National Parks will not discourage quality operators from coming forward to bid on contracts.

Some National Park concessionaires have stated that capital investment in National Parks cannot be funded without possessory interest to secure loans. If this were true, how do many of these same concessionaires and others fund their multi-million dollar investments in environments where there is no possessory interest such as airports, state parks, stadiums and arenas?

The answer is that most of these venues have existing visitation and sales histories. Cash flows can be projected with reasonable enough accuracy to satisfy many lenders. These capital investments are generally secured in the contract with net book value protection. That means that if the contract should be terminated early the unamortized book value of the investment would be refunded. The lender is protected. As a general rule, contracts of 10 years should be sufficient to amortize investments in National Park concessions.

Under the 1965 law, the federal government is currently liable for hundreds of millions of dollars worth of possessory interests accumulated by incumbent concessioners. Although this liability grows each year, the National Park Service does not even keep track of the government's total liability.

The concept of possessory interest is an anachronism that should be eliminated from the management of park concessions. The cost of concessioner-built structures should be amortized over a fixed period (not to exceed 31.5 years). Should a concessioner sell or be terminated, he or she should be entitled to receive the remaining, unamortized portion of the building's cost and no more. This approach, which is common in the concessions industry, provides adequate financial protection for the concessioner's investment, as well as sufficient collateral for loan purposes.

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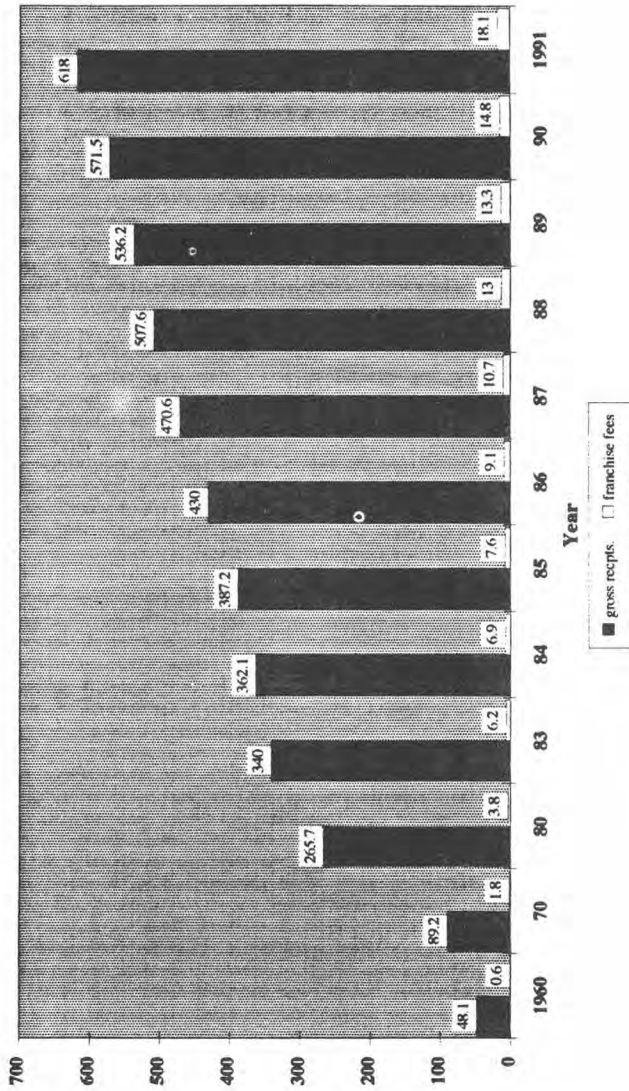
Expiring Contracts Require Action

Timely action on concessions reform is critical. According to data supplied by the NPS, 37 concessions contracts already have expired and await renewal; another 57 will expire in 1993, and 20 in 1994. (See attached chart.)

If Congress doesn't act this year, the federal government could be locked into another round of contracts with below-average franchise fees, and escalating possessory interest liability for more than half of all concessions operations now under contract.

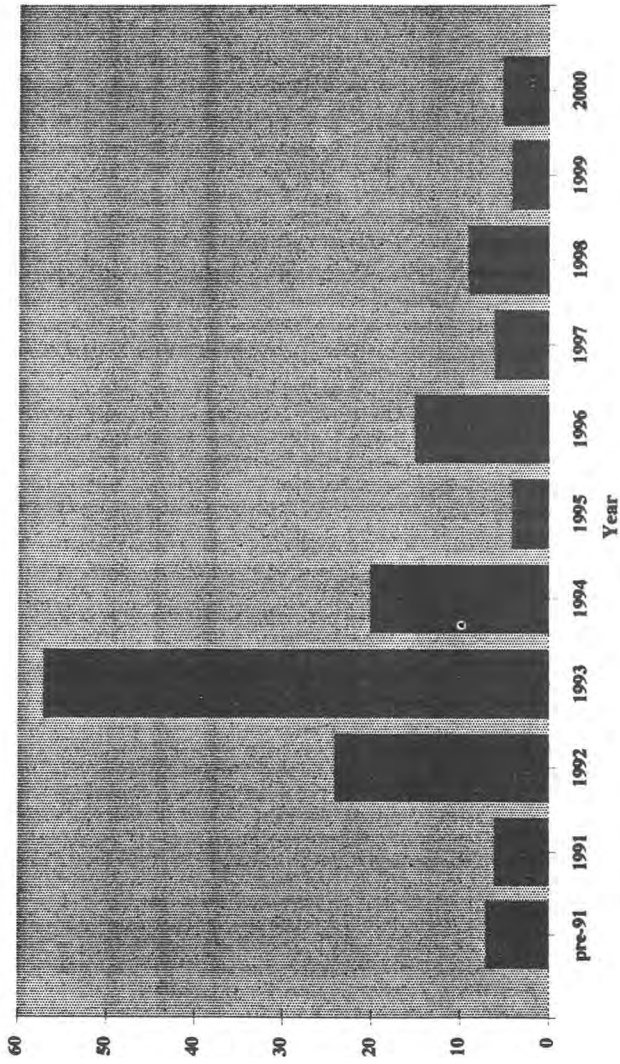
To conclude, I urge the committee -- Republicans and Democrats alike -- to stop the waste, and report out H.R. 1493 and H.R. 2146. The reforms proposed in those bills fairly balance the relationship between the government and the concessioners, and ultimately will produce more revenue for park programs.

National Park Concessioners' Gross Receipts & Franchise Fees, 1960-1991
(million dollars)



Source: National Parks and Conservation Association (NPCA)
Prepared from data provided by the National Park Service, Concessions Division.
Figures for 1991 are preliminary.

NPS Concessions Contracts Due for Renewal or Expiration, 1987-2000
(number of contracts)



Source: National Parks and Conservation Association (NPCA)
Prepared from data provided by the National Park Service

State Parks

Across the nation, state park concessioners demonstrate that concessioners in national parks are milking the federal government and the taxpayer.

Average National Park Concessioner

- Visitation: Varies from 100,000 to 10 million
- Average contracts range from 10 to 30 years
- Fees average 2.9%, many as low as 0.75%
- Has a statutory right of preference to renew the contract in perpetuity, eliminating competition
- Holds a possessory interest entitling it to all appreciation in structures and capital improvements it builds on parklands

Compared to:

Cove Palisades Park, OR

- Visitation: 618,000
- One concessioner awarded 3-year contract on competitive bid; no preferential right of renewal
- Fee: 20% of gross on boat slip rentals
10% on all other services
- No possessory interest

Pymatuning State Park, PA

- Visitation: 3.8 million
- Two concessioners operating camp stores and refreshments; both on 10-year competitive contract; no preferential right of renewal
- Fee: camp store pays flat \$9,000, plus 5% of gross; refreshments pay flat \$44,000, plus 5% of gross
- No possessory interest

Bear Lake State Park, UT

(Bear Lake Marina)

- Visitation: 29,000
- One concessioner awarded 5-year contract for operation of marina on competitive bid; no preferential right of renewal
- Fee: 8% of gross receipts
- No possessory interest

Niagara Falls State Park, NY

- Visitation: 10 million
- One concessioner awarded 10-year competitive contract; no preferential right of renewal
- Fee: 4% of gross for sales below \$2 million; 20% of gross above \$2 million
- Invested \$2 million in structures as part of contract
- No possessory interest

Garner State Park, TX

- Visitation: 412,000
- One concessioner, 5-year contract
- Fee (sliding scale): 15.8%
- No possessory interest

Airports

Concessioners operating in the nation's airports uniformly demonstrate that national park concessioners are milking the federal government and the taxpayer.

Average National Park Concessioner

- Visitation: Varies from 100,000 to 10 million
- Average contracts range from 10 to 30 years
- Fees average 2.9%, many as low as 0.75%
- Has a statutory right of preference to renew the contract in perpetuity, eliminating competition
- Holds a possessory interest entitling it to all appreciation in structures and capital improvements it builds on parklands

Compared to:

Portland International, OR

- 3.6 million enplaned passengers
- Multiple concessioners; contracts never exceed 8 years; all competitively bid; no preferential right of renewal
- Fee: restaurants, 10-17% of gross
gift shops, 10-16% of gross
newsstands, 13-25% of gross
- No possessory interest

Jackson International, MS

- 784,000 enplaned passengers
- Multiple concessioners; contract length varies from 3 to 10 years, depending on type of operation; all competitively bid; no preferential right of renewal
- Fee: restaurants, 14% of gross
- No possessory interest

Anchorage International, AK

- 1.8 million enplaned passengers
- Multiple concessioners; contract length varies from 4 to 15 years, depending on type of operation; all competitively bid; no preferential right of renewal
- Fee: restaurants, 10-15% of gross
gift shop, 13-18% of gross
newsstand, 10% of gross
- No possessory interest

Salt Lake City International, UT

- 12.5 million enplaned passengers
- Multiple concessioners; contracts never exceed 5 years; all competitively bid; no preferential right of renewal
- Fee: restaurants, 10% of gross
gift shops/newsstands, 18% of gross
- No possessory interest

Casper Airport, WY

- 73,000 enplaned passengers
- Multiple concessioners; maximum contract length - 3 years; all competitively bid
- Fee: restaurants, 7-15% of gross
other types, 10% of gross
- No possessory interest

Miscellaneous Concessions

At facilities from military bases to state fairgrounds, concessioners outside the park system demonstrate that national park concessioners are milking the federal government and the taxpayer.

Average National Park Concessioner

- Visitation: Varies from 100,000 to 10 million
- Average contracts range from 10 to 30 years
- Fees average 2.9%, many as low as 0.75%
- Has a statutory right of preference to renew the contract in perpetuity, eliminating competition
- Holds a possessory interest entitling it to all appreciation in structures and capital improvements it builds on parklands

Compared to:

Pennsylvania State Capitol Building

- Restaurant concessioner provides breakfast and lunch on a 1-year competitively bid contract
- Fee: 12.5% of gross
- No possessory interest

Hill Air Force Base, UT

- Base population: 16,500
- Flower shop concession awarded 5-year contract on competitive bid; no preferential right of renewal
- Fee: 14.9% of gross
- No possessory interest

Japanese Tea Garden, Golden Gate Park, San Francisco, CA

- Visitation: 600,000
- Single food, beverage, and gift shop concessioner awarded 10-year contract on competitive bid; no preferential right of renewal
- Fee: gift shop, 38.5% of gross
food, beverage, 38.5% of gross
- Required to provide \$15,000 in capital improvements per year in years 1-5 and \$35,000 per year in years 6-10
- No possessory interest

Albuquerque State Fairgrounds

- Visitation: 1.4 million
- Small vendor-concessioners bid for 6-month contracts; no preferential right of renewal
- Fee: 25% of gross
- No possessory interest

Museums and Stadiums

Concessioners operating in these municipal and state structures demonstrate that national park concessioners are milking the federal government and the taxpayer.

Average National Park Concessioner

- Visitation: Varies from 100,000 to 10 million
- Average contracts range from 10 to 30 years
- Fees average 2.99%, many as low as 0.75%
- Has a statutory right of preference to renew the contract in perpetuity, eliminating competition
- Holds a possessory interest entitling it to all appreciation in structures and capital improvements it builds on parklands

Compared to:

Jackson Memorial Stadium, MS

- Visitation: 142,000
- One concessioner, multiple operations, awarded 4-year contract on competitive bid; no preferential right of renewal
- Fee: 36% of gross receipts
- Contract requires \$125,000 in improvements during contract period; no possessory interest

Hearst San Simeon State Historical Monument, CA

- Visitation: 800,000
- One concessioner, multiple operations, 10-year contract competitively bid
- Fee: 26% of gross food and beverage sales
51% of gross gift shop sales
- Concessioner paid \$3.5 million to construct visitor center; no possessory interest

NM Museum of Natural History

- Visitation: 350,000
- Restaurant concessioner awarded 3-year competitive contract
- Fee: 7% of gross receipts in year 1, increasing to 10% by year 3
- No possessory interest

Air and Space Museum, Smithsonian Institution

- Visitation: 8 million
- Cafeteria concession holds 4-year contract, with three 2-year renewal options based on performance. Rebid competitively after 10 years.
- Fee: minimum of 15% of gross required, but bid amount higher
additional 2% of gross deposited in equipment replacement revolving fund
- No possessory interest

Meadowlands Sports Complex, NJ

- Visitation: 5 to 6 million
- One concessioner, multiple operations awarded 15-year contract with renewal option; no preferential right after option
- Fee: food and beverage, 40-45%
merchandise, 55-65%
incidentals, 5%
- No possessory interest

Chairman VENTO. Thank you, Mr. Chandler. I am pleased to welcome Mr. Joe Fassler of the National Parks Hospitality Association. Welcome, Joe.

STATEMENT OF JOSEPH K. FASSLER

Mr. FASSLER. Mr. Chairman, before I read my text, I would like to answer a couple of questions that Mr. Synar, Ms. Meyers and Mr. Chandler discussed here earlier today.

They give you an exhibit and they try to compare the national parks with state parks, stadiums and arenas. And, they say that in state parks and in arenas we don't have possessory interest.

They are correct. We don't need possessory interest in those kind of venues.

In those kind of venues, the pricing is three to four times higher than what we are allowed to do in a national park. The return on equities are three or four times higher.

In those type of venues, there is no regulation as there are in the national parks. The national parks regulate price, service, seasonality. No matter what it is that we put in a national park, it's a regulated environment by the National Park Service.

When you work in a free environment, which is outside the national parks, we don't need possessory interest because we build equity. In a national park, you gain no title to anything you make investments in. Our only equity is possessory interest.

I just wanted to respond to those questions. And, now I will address your Subcommittee and yourself.

I, first of all, thank you for the opportunity to appear before you today regarding H.R. 743, H.R. 1493 and H.R. 2146. I am Joe Fassler, president and chief operating officer of Restaura, Inc., which is a wholly owned subsidiary of the Dial Corporation and its parent company of Glacier Park, Inc. I am also chairman of the board of Glacier Park, Inc.

We have been the owners of Glacier Park, Inc. since 1981. And, I am here today representing the National Park Hospitality Association. And, they were formerly known as the Conference of National Park Concessioners.

These bills propose many major changes to the present NPS concessions system. And, I would like to address some of the concerns over these changes.

Since this hearing addresses three different bills, certain comments will be directed only to provisions of H.R. 1493 and H.R. 2146, which happen to be identical bills. Other comments will be directed towards H.R. 743, which varies in its provisions from the other bills.

Our first comment. H.R. 1493 and H.R. 2146 would alter the focus on necessary and appropriate visitor services. The present law directs the National Park Service to determine what are necessary and appropriate visitor services in each park.

H.R. 1493 and H.R. 2146 would reverse that policy by providing that visitor services would only be provided in a park when the private sector or other public agencies could not adequately serve the visitor in the vicinity of the park. The focus would be on facilities available outside the park rather than accommodating visitor needs when the visitors are in the park.

The role of the National Park Service is twofold. To protect the resources of the park and to provide for the use and enjoyment of those areas for the visiting public. Therefore, the focus must be on what services should be provided in the park and not what may be available at some distant point outside the park.

The second concern. All these bills would require a competitive bidding process with emphasis on commercialization and competitiveness. Franchise fees are presently set under guidelines in the law upon consideration of probable value of the privileges granted after considering the type of operation, the capital investments and other factors.

H.R. 1493 and H.R. 2146 propose to award contracts to the highest bidder regardless of those other factors. The present law says, "revenue to the government is secondary to preserving the resource and serving the visitor at reasonable rates."

H.R. 743 would mandate a minimum fee of 22.5 percent of gross revenues. A rigid statutory directive of this magnitude would make it impossible for concessioners to sustain their businesses and result in record business failures and bankruptcies.

One of the arguments for competitive bidding has been that the return to the government will increase. It has been alleged that the return presently is approximately 3 percent of the gross receipts.

This is absolutely not true, as is shown by figures compiled by the National Park Service which are attached to my statement as Attachment A. That report shows that for 1991, the gross receipts from concessions was \$618 million and the total return to the government from all categories was \$80.6 million. And, that equates to 13 percent.

The return to the concessioner, on the other side, was \$34.7 million or 5.6 percent, much lower than the average for the hospitality industry as a whole.

Glacier Park's return on investment is only 6 percent. And, that's after 12 years of operating in the park. Our return on sales was 4 percent last year. And, that was our best year in 12.

Franchise fees should be a consideration but only after one considers the capital invested, the return on investment, return on sales and most important, the return to the visitors with reasonable rates and services. As a point of reference, I operate one of Burger King's largest franchises. Our franchise fee is 4 percent, which is the average franchise fee in most fast food restaurants.

In the commercial environment, as the owner of those Burger King's, I set my own prices. I set my level of services. I approve my hours of operation.

How could the government expect the park concessionaire to pay more in the franchise fee than is common in the commercial environment when, in fact, the government regulates our prices, regulates our services and, most importantly, limits our ability to grow revenues?

The third concern. All these bills will abolish possessory interest as security for the private investment. Now, at a time when the federal government has less money to invest in park facilities, these bills propose to abolish possessory interest as security for the private sector.

That surely will discourage further private investments in park facilities and move the entire burden to the federal budget. This is a mistake when the private investments have worked so well and saved millions of taxpayer dollars over the years.

Glacier Park has invested over \$18 million in Glacier National Park hotels and visitor facilities, while we believe the government has invested approximately \$1 million during this same 12-year period in the same facilities. If we were only able to depreciate our investments instead of building equity, as is common with business investments outside the national park, we would never have made investments inside Glacier National Park nor would any wise business person.

H.R. 743 would not only abolish possessory interest in all future contracts but would direct the Secretary to acquire all outstanding possessory interest from future concessions' revenue. This bill also specifically states that the United States does not need to compensate a concessionaire for the loss of an investment.

This policy is unwise and totally unfair to those investing in United States facilities in national parks.

The fourth concern, H.R. 1493 and H.R. 2146 would remove an effective incentive for satisfactory performance by severely limiting the preference in renewal. The preference in renewal is not a guarantee and still requires public notice of the contract and consideration given to all competing responses prior to exercising any preference rights.

It does assure a first right of refusal for a satisfactory incumbent to meet or improve on any competing proposal. That allows the National Park Service to retain the continued good services of a satisfactory performer but at the same time increase the requirements for the next contract term.

If we, at Glacier Park, were not concerned about preference in renewal, I am sure we would not be investing over 10 percent a year more in additional capital and maintenance than our contract requires us to do. We do that because we want to be considered a good concessionaire and gain the opportunity for preference. And, the government, therefore, gains this additional value for this preference incentive.

While H.R. 1493 and H.R. 2146 would grant this right to river outfitters and guides, if they had no possessory interest and were rated as satisfactory operators, H.R. 743 would abolish that right completely. The irony of this approach is that the reason for the right to encourage continuity of service is more important where the concessioner is delivering substantial services of various types rather than a single-service function. The continuity of service is important in each case but more so when the delivery of services is more complex.

Our last concern, H.R. 1493 and H.R. 2146 would limit contracts to not more than 10 years, allowing no flexibility. The present law wisely allows the National Park Service latitude in determining the proper term for concession contracts up to a maximum after considering all the contract requirements such as investments and the nature of the contract.

Under H.R. 1493 and H.R. 2146, no contract, despite possible heavy investment requirements, could be written for more than 10

years. With the present requirement of franchise fee reviews every 5 years, the maximum term of 10 years is too short to impose on every contract situation.

Some contracts, of course, by their nature could be shorter in terms. But, the flexibility is needed.

H.R. 743 would also limit contracts to not more than 10 years and does allow the Secretary to extend the term but only if he determines that more time is needed to acquire possessory interest.

To summarize, the present concession system in our national parks is a product of many years of effort through trial and error and through an almost endless number of Executive Department and congressional reviews of the system. The conclusion has always been that the partnership between the private sector and the National Park Service is unique and valuable and should be supported.

Now, we come again to another review of the system. I don't believe anyone disagrees that the system has produced good results and is valuable to the future of the parks. The disagreement seems to be over whether the system should be altered and in what ways.

The need for the basic features of the National Park Concessions Policy Act, discussed above, are as valid today as when the Act was signed into law in 1965. The present law is a good illustration of a balance between contractual incentives and responsibilities which are incorporated into the present system.

Franchise fees, based on the statutory guidelines, giving recognition to the statutory policy that revenue to the government should be secondary to preserving the resources and serving the visitors at reasonable rates and yielding a fair return to the government can be obtained under the present system without change. Incentives to invest in park facilities are granted now through the security of possessory interest, which is valued realistically so that it does not exceed market value.

So, the definition of possessory interest is market value. That's the bottom line of possessory interest.

Superior performance is encouraged by the incentive of a preference in renewal conditioned on ratings as a satisfactory concessioner. Terms of the contract should be left to the necessary flexibility of the requirements of the contract and not locked into a 10-year maximum.

The three bills before the subcommittee in this hearing are not carefully crafted amendments to the present system which would improve it. Instead, they are filled with radical departures from the strong building blocks of a public/private partnership which have produced good results for all concerned.

With so many things that don't work well in the government, it is ironic that such a strong focus has been placed on the National Park Service concessions contracts, which have worked to the benefit of the national parks, the visiting public and the concessionaires.

These bills, if passed, would accomplish what the extremists for years have tried to do. And, that is to prevent the American public access to, and enjoyment of, the national parks.

These bills, if passed, will kill the goose that laid the golden egg for the government. Improvements can be made under the present

system without destroying the foundation of the system which has worked well.

I would be pleased to answer any questions you may have or any members of your Subcommittee.

[Prepared statement of Mr. Fassler follows:]

STATEMENT BY
JOSEPH K. FASSLER
NATIONAL PARK HOSPITALITY ASSOCIATION

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES

HEARING ON H.R. 743, H.R. 1493 AND H.R. 2196

OCTOBER 19, 1993

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to appear before you today regarding H.R. 743, H.R. 1493 and H.R. 2196. I am Joe Fassler, President and Chief Operating Officer of Restaura, Inc. a wholly owned subsidiary of the Dial Corporation and parent company of Glacier Park Inc. I am also Chairman of the Board of Glacier Park, Inc. We have been the owners of Glacier Park, Inc. since 1981. I am representing the National Park Hospitality Association, formerly known as the Conference of National Park Concessioners.

These bills propose many major changes to the present NPS concessions system and I will address some of our concerns over those changes:

Since this hearing addresses three different bills certain comments will be directed to the provisions of H.R. 1493 and H.R. 2196, which are identical. Other comments will be directed toward H.R. 743 which varies in its provision from the other bills.

1. H.R. 1493 and H.R. 2196 would alter the focus on "necessary and appropriate" visitor services. The present law directs the National Park Service to determine what are "necessary and appropriate" visitor services in each park. H.R. 1493 and H.R. 2196 would reverse that policy by providing that visitor services would only be provided in a park when the private sector or other public agencies could not adequately serve the visitors in the "vicinity of the park area". The focus would be on facilities available outside the park, rather than accommodating visitor needs when the visitors are in the park.

The role of the National Park Service is two-fold: To protect the resources of the park areas and to provide for the use and enjoyment of those areas for the visiting public. Therefore, the focus must be on what services should be provided in the park, not what may be available at some distant point outside the park boundaries.

2. All of these bills would require a competitive bidding process, with emphasis on commercialization and competitiveness.

Franchise fees are presently set under guidelines in the law upon consideration of the probable value of the privileges granted, after considering the type of operation, capital investments and other factors. H.R. 1493 and H.R. 2196 propose to award contracts to the highest bidder regardless of those other factors. The present law says "revenue to the government is secondary to preserving the resource and serving the visitors at reasonable rates."

H.R. 743 would mandate as a minimum fee the amount of 22.5% of gross revenues. A rigid statutory directive of this magnitude would make it impossible for concessioners to sustain their businesses and result in record business failures and bankruptcies.

One of the arguments for competitive bidding has been that the return to the government will increase. It has been alleged that the return presently is approximately 3% of gross receipts. This is not true, as is shown by figures compiled by the National Park Service which are attached to my statement as Attachment A. As that report shows for 1991 the gross receipts from concessions was \$618 million and the total return to the government from all

categories was \$80.6 million or 13%. The return to the concessioner was \$34.7 million or 5.6%, much lower than the average for the hospitality industry as a whole. Glacier Park, Inc.'s return on investment is only 6%, and that's after 12 years of operating in the Park. Our return on sales was 4% last year which was our best year in 12. Franchise fees should be a consideration but only after one considers the capital invested, return on investment, return on sales, and most important the return to the visitors with reasonable rates and services. As a point of reference: I operate as one of Burger King Corporation's largest franchisees. Our franchise fee is 4% which is the average franchise fee in most fast food restaurants. In the commercial environment, as the owner, I set my own prices, I set my level of service, and I approve my hours of operations. How could the government expect the park concessioners to pay more in franchise fees than is common in the commercial environment, when in fact the government regulates our prices, our services and limits our ability to grow revenues.

3. All of these bills would abolish possessory interest as security for private investments. Now, at a time when the federal government has even less money to invest in park facilities, these bills propose to abolish possessory interest as security for private-sector investments. That will surely discourage further private investment in park facilities and move the entire burden to the federal budget. This is a foolish mistake when the private investments have worked well and saved million of taxpayers' dollars over the years.

Glacier Park, Inc. has invested over \$18 million in Glacier National Park hotels and visitor facilities, while we believe the government has invested approximately \$1 million during this 12 year period in the same facilities. If we were only able to depreciate our investments, instead of building equity as is common with business investments, we would never have made investments inside Glacier National Park, nor would any wise business person.

H.R. 743 would not only abolish possessory interest in all future contracts, but would direct the Secretary to acquire all outstanding possessory interest from future concessions revenue. The bill also specifically states that the U.S. does not need to compensate a concessioner for the loss of investment. This policy is unwise and totally unfair to those investing in facilities.

4. H.R. 1493 and H.R. 2196 would remove an effective incentive for satisfactory performance by severely limiting the preference in renewal. The preference in renewal is not a guarantee and still requires public notice of the contract and consideration given to all competing responses, prior to exercising any preference rights. It does assure a first right of refusal for a satisfactory incumbent to meet or improve on any competing proposals. That allows the National Park Service to retain the continued good service of a satisfactory performer but at the same time increase the requirements for the next contract term. If we at Glacier Park, Inc. were not concerned about preference in renewal, I'm sure we would not be investing over 10% a year more in additional capital and maintenance than our contract requires us to do. We do that because we want to be considered a very good

concessioner and gain the opportunity for preference and the government gains this additional value for the preference incentive.

While H.R. 1493 and H.R. 2196 would grant this right to river outfitters and guides, if they had no possessory interest and were rated as satisfactory operators, H.R. 743 would abolish the right completely. The irony of this approach is that the reason for the right - to encourage continuity of service - is more important where the concessioner is delivering substantial services of various types rather than a single service function. The continuity of service is important in each case but even more so when the delivery of services is more complex.

5. H.R. 1493 and H.R. 2196 would limit contracts to not more than 10 years, allowing no flexibility. The present law wisely allows the National Park Service latitude in determining the proper term for concessions contracts up to a maximum, after considering all contract requirements such as investments and the nature of the concessions. Under H.R. 1493 and H.R. 2196 no contract, despite possible heavy investment requirements, could be written for more than 10 years. With the present requirement of franchise fee reviews every 5 years, the maximum term of 10 years is too short to impose on every contract situation. Some contracts, of course, by their nature, could be shorter terms but the flexibility is needed.

H.R. 743 would also limit contracts to not more than 10 years and does allow the Secretary to extend the term but only if he determines that more time is needed to acquire the possessory interest.

Summary and Conclusion

The present concession system in our National Parks is the product of many years of effort through trial and error and through an almost endless number of Executive Department and Congressional reviews of the system. The conclusion has always been that the partnership between the private sector and the National Park Service is unique and valuable and should be supported.

Now we come again to another review of the system. No one disagrees that the system has produced good results and is valuable to the future of the parks. The disagreement seems to be over whether the system should be altered and in what ways, if so.

The need for the basic features of the National Park Concessions Policy Act discussed above are as valid today as when the Act was signed into law in 1965. The present law is a good illustration of a balance between contractual incentives and responsibilities which are incorporated into the present system. Franchise fees, based on the statutory guidelines, giving recognition to the statutory policy that revenue to the government should be secondary to preserving the resources and serving the visitors at reasonable rates, and yielding a fair return to the government, can be obtained under the present system without change. Incentives to invest in park facilities are granted now through the security of possessory interest, valued realistically so that it does not exceed fair market value. Superior performance is encouraged by the incentive of a preference in renewal conditioned on ratings as a satisfactory concessioner. Terms of the contract should be left to the necessary flexibility of the

requirements of the contract, not locked into a 10 year maximum.

The three bills before the Subcommittee in this hearing are not carefully crafted amendments to the present system which would improve it. Instead they are filled with radical departures from the strong building blocks of a public-private partnership which have produced good results for all concerned.

With so many things that don't work well in the government, it is ironic that such a strong focus has been placed on National Park Service concessions contracts, which have worked to the benefit of our National Parks, the visiting public and the concessioners. These bills, if passed, would accomplish what the extremists for years have tried to do, and that is to prevent the American public access to, and enjoyment of, the National Parks. **THESE BILLS, IF PASSED, WILL KILL THE GOOSE THAT LAID THE GOLDEN EGG FOR THE GOVERNMENT.** Improvements can be made under the present system without destroying the foundation of a system which has worked well.

I would be pleased to answer any questions you may have, Mr. Chairman, or from Members of the Subcommittee.

National Park Service Concessions Statistics

	<u>1992</u>
Park with Concessioners	132
Number of Concessioners - Contracts	195
Permits	465
Total	660
Number of Commercial Use Licenses	1,781
Peak Employment	25,827
	<u>1991</u>
Annual Receipts	\$618 million
<u>Return to Government</u>	
Annual Franchise Fee	18.1 million
Annual Taxes	10.2 million
Annual Special Account Fees	9.1 million
NPCI - .3 million	
Yellowstone - 6.6 million	
Others - 2.2 million	
Annual Improvement Additions (Estimate)	39.9 million
Rate Add-on (No Possessory Interest)	3.3 million
Glen Canyon - 2.3 million	
Yosemite - 1.0 million	
Annual Return to Parks or Governmental	<u>\$80.6 million</u> (13.0%)
<u>Return to Concessioner</u>	
Net Income	\$34.7 million (5.6%)

Prepared as of March 30, 1993

Chairman VENTO. Thank you, Mr. Fassler. And, finally on this panel, Mr. Brown.

Mr. Brown, we have included your statement and the attachment in the record. I notice that you have a long statement. You can feel free to summarize it if you choose.

STATEMENT OF DAVID BROWN

Mr. BROWN. Thank you, Mr. Chairman. I intend to summarize my statement.

I am David Brown, executive director of America Outdoors. America Outdoors is the North American trade association of professional outfitters and guides.

Our 300 members provide outdoor recreation experiences to the outfitted public in such activities as whitewater rafting, canoeing, hiking, fishing and horse packing. Professional outfitters and guides provide access into wild, remote areas for those people who lack the skills, equipment or time to prepare themselves for such a trip.

For the privilege of operating on federal and public lands, outfitters pay fees to the Treasury, which we believe represent a fair return to the government. Outfitters also provide many uncompensated services to the public and to federal land management agencies.

As this subcommittee has identified, federal managers in the field are finding it harder and harder to find the dollars to provide essential day-to-day visitor services, let alone manage and protect the resource base. The outfitters' voluntary contributions of experience, labor and materials toward meeting that shortfall has become increasingly important.

Our people receive no payment or reduction in fees for maintenance and clean up on trails, roads, camps and beaches. And, some of those are actually required by their contracts and permits.

Our guides participate in search and rescue missions and provide medical aid to other boaters and hikers they might encounter. Assistance to law enforcement agencies and leadership roles in organizing the community around resource management needs is common.

As the agencies evolve toward ecosystem management, our people are playing bigger voluntary roles in resource assessment and monitoring.

Additionally, outfitters are required to carry sufficient liability insurance on their operations to ensure the government as well against claims arising out of any trip incidents on federal property.

Outfitters and guides have much in common with other outdoor recreation services. A distinguishing feature for most of our members, however, is their lack of real estate within parks and national forests.

Our impact on the resource base and the regulations needed to direct our operations are vastly different. And, of course, we have minimal use of public facilities.

The warehouses, office space and occasional retail operations which support outfitter services are built outside the boundaries of federal and public lands, most frequently to be found within small rural communities. As such, outfitter businesses commonly provide

the economic core which attracts tourism to these towns and away from areas experiencing high user impacts within the national parks.

Competition for customers is also a distinguishing characteristic of outfitter operation. At every park service unit, a number of companies vie for the same market. There are no monopolies in river rafting or other type of outfitter concessions.

In the Grand Canyon, 19 separate outfitter concessions provide services to the public. We think the outfitters measure their lives in much the same way the outfitted public measure their experiences on trips.

We fervently hope that this subcommittee shares those values, which is to say it should not be the goal of this subcommittee to maximize revenues from national parks or from other places on the public lands which offer a quality recreation experience. We think it should be our common goal of this subcommittee to provide in equal measure for the protection of these natural resources and for their enjoyment by the American public.

Now, we find the USDA Forest Service has best met that challenge in their administration of outfitter and guide permits. As its mission has begun to diversify, a real emphasis has been placed on the training of its recreation and land staff to meet the needs of sustainable commercial uses of forest resources, including recreation.

The agency's permitting system works for us. And, under it we have achieved a solid record of satisfied customer service.

Furthermore, the General Accounting Office seems to feel that the USDA Forest Service fee schedule for guides and outfitters is capturing a fair return to the government.

Drawing from a decade of experience as that outfitter and guide policy has evolved, I would like to make some specific recommendations about the concessioner legislation introduced in the U.S. House of Representatives. America Outdoors is choosing to address the provisions of H.R. 1493 and H.R. 2146, identical bills introduced by Representative Meyers of Kansas and Stearns of Florida. They are companion bills to the Senate legislation, which we've closely addressed over the past two years.

Certain issues raised by provisions of the legislation relate to the fundamental needs of the outfitting industry. And, there has been some comment about the bills providing preferential right of renewal to outfitters and guides.

We don't think the bill quite does that. So, we recommend changing "may" to "shall" with respect to granting a preferential right of renewal to outfitters.

We also think it's important to modify and preserve the principle that preference in contract renewal is earned only by outfitters who have operated satisfactorily during the term of the previous contract.

We believe the fee bidding requirements should be changed to provide a standardized fee based on fair market value for outfitters providing similar services at the same approximate location or resource within a national park. And, that's important because there are a number of outfitters providing the same service and competing for a customer base.

Preferential right of renewal is the single most important regulatory feature of a successful outfitter and guide policy. Providing existing satisfactory permittees with a clear preference in the renewal of their contracts is essential to protecting the public's access to quality recreation services.

If competitive bidding is implemented, resource stewardship and quality service will become subordinate to the fee returned to the government. The business principle involved here is very simple.

Most of these are very short-term contracts, 5 years in length. The longest I know of is 7 years.

And, there is no incentive to invest in the latter part of the contract to replace boats, trucks, buses, life jackets, horses, saddles or to construct new warehouses or barn facilities outside the park when you feel like you are going to have to bid for your contract. As the concessioner comes closer to the year in which his permit expires, there is that loss of incentive to continue investing if there is no preference.

We also believe that a standardized fee for similar services is important. If multiple contracts are to be awarded to provide the same or similar outfitting services—river running, horse packing, canoe livery operations, et cetera—at the same approximate resource or location within a park, the Secretary should be required to establish an identical franchise fee for all such contracts based on fair market value.

And, again that's because typically there are a dozen or more outfitters competing at any given recreation site.

The standardized fee which GAO recommends will provide a level playing field for outfitter and guide competitors and will continue to focus their competitive efforts toward customer service.

We understand the need to standardize agency administration of permits. An examination of concessioner management by the General Accounting Office has demonstrated that there is little consistency between the Park Service policies and the management of outfitter operations by the Forest Service and the Bureau of Land Management.

And, each of these agencies, of course, have their strength and weaknesses. But, if we had to choose a model from which to build a consistent national interagency outfitter and guide policy, it would be the outfitter and guide policy by the Forest Service. BLM is already tracking that policy in its regulations.

America Outdoors hopes to continue a recreation policy which offers quality outfitter services to the public at affordable prices and at a reasonable profit. We think we have achieved that balance in the outfitter and guide business. And, we hope to make a convincing case as the subcommittee's deliberations continue.

Thank you, Mr. Chairman, for the opportunity to testify.

[Prepared statement of Mr. Brown and attachment follow:]



The national voice of the outfitting industry.

STATEMENT OF

DAVID BROWN
EXECUTIVE DIRECTOR
AMERICA OUTDOORS

before the

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

Testimony on

H.R. 743, the National Park Revitalization Act

and

H.R. 1493 and H.R. 2146, the National Park Service
Concessions Policy Reform Act of 1993

WASHINGTON, D.C.
OCTOBER 19, 1993

Mr. Chairman, I am David Brown, executive director of America Outdoors.

AO is the North American trade association of professional outfitters and guides. Our 300 member companies provide outdoor recreation services to the outfitted public in such activities as whitewater rafting, canoeing, hiking, fishing, and horse packing. Professional outfitters and guides provide access into wild, remote areas for those people who lack the skills, equipment or time to prepare themselves for such a trip. Our guides are responsible for the health and safety of these visitors. Outfitters provide their guests with other amenities as well: great campfire cooking, environmental educational, and memorable experiences in spectacular and often challenging settings.

For the privilege of operating on federal and public lands, outfitters pay fees to the Treasury which we believe represent a fair return to the government.

Outfitters also provide many noncompensated services to the public and to federal land management agencies. As this subcommittee has identified, federal managers in the field are finding it harder and harder to find the dollars to provide essential day-to-day visitor services, let alone manage and protect the resource base.

The outfitters' voluntary contributions of experience, labor and materials toward meeting that shortfall has become increasingly important. Our people receive no payment or reduction in fees for maintenance and clean-up on trails, roads, camps and beaches. Our guides participate in search and rescue missions and provide medical aid to other boaters and hikers they might encounter. Assistance to law enforcement agencies and leadership roles in organizing the community around resource management needs is common. As the agencies evolve toward ecosystem management, our people are playing bigger voluntary roles in resource assessment and monitoring.

Additionally, outfitters are required to carry sufficient liability insurance on their own operations to insure the government as well against claims arising out of any trip incidents on federal property.

The real rewards to an outfitter or guide are not in most instances measured in money. The average profit in an outfitting company is four percent. Most are paying a fee (to USFS and BLM) which is three percent of gross. In essence, they're "splitting" their profits with the Treasury.

The reward is in the lifestyle -- raising families in small, close-knit rural communities and living at close proximity to rivers and trails and wild areas.

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Outfitters and guides have much in common with other outdoor recreation services. A distinguishing feature for most AO members, however, is their lack of real estate within Parks and National Forests. Our impact on the resource base and the regulations needed to direct our operations are vastly different. The warehouses, office space and occasional retail operations which support outfitter services are built outside the boundaries of federal and public lands, most frequently to be found within small rural communities. As such, outfitter businesses commonly provide the economic core which attracts tourism to these towns and away from areas experiencing high user impacts within the National Parks.

We think outfitters measure their lives in much the same way the outfitted public measure their experiences on a trip. America Outdoors fervently hopes that this subcommittee shares those values, which is to say: it should not be the goal of this subcommittee to maximize revenues from National Parks or from any other places on the public lands which offer a quality recreation experience. We think it should be our common goal with this subcommittee to provide in equal measure for the protection of these natural resources and for their enjoyment by the American public.

Our camping, cooking, and the means and methods of travel through wild areas, have come to depend upon low impact equipment and leave no trace practices. The outfitting industry is required to take responsibility for carrying out its own trash and human waste. We voluntarily collect the litter of less thoughtful (and apparently less regulated) members of the nonoutfitted public.

Our guides are trained to educate guests about their impact on the wildlife, vegetation, water quality, and other site features which they will pass through. This job as interpreters of natural areas is as politically important as it is practical.

In Oregon alone in the '93 season, guides and packers will have spent over one million days -- quality time -- with visitors who are interested in Ancient Forest issues, in restoration of salmon habitat, in management of upland game species, in Oregon's pioneer history, and in merely naming the wildflowers.

Those customers are our "messengers" back to you, the Congress, that good conservation is good business when you're in our business. More money is needed in the field, and it's needed for things that aren't very flashy: operations and maintenance.

Page Three

We ask, too, that federal managers educate themselves about the practical and reasonable needs of small businesses operating on federal and public lands. In order to continue to provide safe, enjoyable outdoor experiences to the outfitted public, our businesses require economic stability. Without some level of economic stability no business can continue to support staff training, maintenance of equipment, capital investment, and a reasonable return to the owner.

We find it is the USDA Forest Service which has best met that challenge. As its mission has begun to diversify, a real emphasis has been placed on the training of its recreation and lands staffs to meet the needs of sustainable commercial uses of forest resources, including recreation. That agency's permitting system works for us, and under it we've achieved a solid record of satisfied customer service.

Furthermore, the General Accounting Office seems to feel that the USDA Forest Service fee schedule for outfitters and guides is capturing a fair return to the government.

Drawing from a decade of experience as that Outfitter and Guide Policy has evolved, I'd like to make specific recommendations about the concessioner legislation introduced in the U.S. House of Representatives.

America Outdoors is chosing to address the provisions of H.R. 1493 and H.R. 2146, identical bills introduced by Representative Meyers of and Stearns of Florida. They are companion bills to Senate legislation which we've closely addressed over the past two years.

Certain issues raised by provisions of the legislation relate to fundamental needs of the outfitting industry:

- * Change "may" to "shall" with respect to granting a Preferential Right of Renewal to outfitters;
- * Modify and preserve the principle that Preference in contract renewal is earned only by outfitters who have "operated satisfactorily during the term of the previous contract";
- * Change the Fee Bidding requirements to provide a standardized fee based on fair market value for outfitters providing similar services at the same approximate location or resource within a National Park unit.

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Preferential Right of Renewal

Preferential Right of Renewal is the single most important regulatory feature of a successful Outfitter and Guide Policy. Providing existing satisfactory permittees with a clear preference in the renewal of their contracts is essential to protecting the public's access to quality recreation services. If competitive bidding is implemented, resource stewardship and quality service will become subordinate to fee return to the government.

The business principle involved is very simple. In each year of operation there is a need to replace boats, trucks, buses, life jackets, horses, saddles, or to construct new warehouse or barn facilities outside the Park. As the concessioner comes closer to the year in which his permit expires, there is less incentive to continue investing if there is no Preference. Better to "wear it out" than to be left holding used equipment if Park management decides to experiment in the selection of a new recreation service provider. Until now outfitters have operated in the faith that with satisfactory service, they can earn renewal.

The NPS Concessions Management Manual (NPS-48) contains comprehensive procedures and systems for concessioner review. Concessioners are presently evaluated and rated several times each year, and then presented with a composite annual rating. The system identifies performance shortfalls and sets priorities and schedules for correcting deficiencies. That system provides both the incentive and the mechanism to correct deficiencies as they are noted. Poor safety procedures and a bad service record can't simply accumulate over the term of the permit, nor can the concessioner simply ignore the problem without risking loss of Preference, if not immediate termination of the permit.

From the customer's standpoint "Preference" is part of the guarantee that experienced companies continue to be available to guide them through wild and remote areas. The business of guiding relatively unskilled people through wilderness, difficult rapids, and the cliff trails of the Grand Canyon is not the same as providing beds, meals, souvenirs and suntan lotion to tourists.

Standardized Fee For Similar Services

If multiple contracts are to be awarded to provide the same or similar outfitting services (e.g., river running, horse packing, canoe livery, etc.) at the same approximate resource or location within a Park, the Secretary should be required to establish an identical franchise fee for all such contracts, based on fair market value.

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Because typically a dozen or more outfitters compete at any given recreation site, the business is both price and service competitive. The standardized fee which AO recommends will provide a level playing field for outfitter/guide competitors and continue to focus their competitive efforts toward customer service.

Customers needn't in the future be wary of selecting an outfitter who bid a high fee, but compensates by cutting corners on safety or services in order to remain price competitive.

Standardize Agency Administration As Well

Examination of concessioner management by the General Accounting Office has demonstrated that there is little consistency between Park Service policies and the management of outfitter operations by USDA Forest Service and the Bureau of Land Management. These differences become even more apparent from real life experience.

It is not uncommon for an outfitted group to begin under the jurisdiction of one agency and end the trip in the domain of another. Consistency in equipment requirements, trip operations and paperwork back at the office would be a welcome outcome from congressional attention to concessioner reform.

Each of the federal agencies have their strengths and weaknesses in the management of recreation users. If outfitters had to chose a model upon which to built a consistent national interagency outfitter and guide policy, it would be the Outfitter and Guide Policy used by USDA Forest Service. It is already tracked by BLM regulations and policies.

The outfitting industry knows that it can constantly improve all aspects of its operations as well. We have feared throughout this debate about concessioner policy that the primary goal for some has been to raise revenue, at whatever cost to the public. From a handful of others, we've heard a shrill call to lock out all but day use in the National Park System. Both are wrong.

Outfitter services are essential if the government is to succeed in keeping wild lands open to the public. And outfitters are good at what they do. With the support of this subcommittee, they'll continue to provide memorable days in the lives of millions of people.

America Outdoors hopes to continue a recreation policy which offers quality outfitter services to the public at affordable prices and a reasonable profit. We think we've achieved that balance in the outfitter and guide business, and we hope to make a convincing case as the subcommittee's deliberations continue.

Thank you, Mr. Chairman, for the opportunity to testify today.

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Attachments for Subcommittee File

The Impacts of Proposed Franchise Fee Increases for Outfitter
Permittees and Concessioners (submitted 1992 to Office of
Management and Budget)
America Outdoors 1993 Outfitter Directory

**The Impacts of Proposed Franchise Fee
Increases for Outfitter Permittees and Concessioners**

**Submitted to Mr. David Gibbons, Office of Management and Budget
by David L. Brown, Executive Director, America Outdoors**

Overview

The Department of Interior is proposing to alter the franchise fee for concessioners and permittees operating within National Parks and on other public lands. Fee increases ranging as high as 22% of gross revenue have been suggested. The proposals have not adequately considered the impacts of fee increases on demand and access by the outfitted public, on the viability of the concessioner's business, and on outfitters' investments in facilities and services to the public. With the country mired deeply in what some have described as the worst recession since the depression, these proposed fee increases will have devastating impacts on outfitter businesses and rural economies in many areas and states that depend on income and tax revenue from outfitters and their customers. America Outdoors believes that fee increases for outfitter concessioners are inappropriate at this time.

This paper will provide an overview of the market for outfitted trips and information about other factors that will assist decision makers in assessing the existing fee structure and the impacts of proposed increases. Since the time for preparation of this report was limited, no new data was gathered. It is based on available studies and reports and is related strictly to impacts on the outfitted public and their private-sector service providers.

Existing fees

The following description of fees is related to outfitter concessions where facilities are located outside the Park but where a portion or all of the service to the public is provided within Park boundaries. Outfitters provide guided services within park boundaries but have facilities, warehouses, and reservation systems outside Park boundaries.

Franchise fees for outfitter concessioners operating within National Park Service units vary according to the amount of time or service provided in the Park unit or, in some cases, by the type of use. For example, outfitters operating wholly within Dinosaur National Monument pay three percent (3%) of gross revenue. These outfitters operate under five year permits. Outfitters operating in Canyonlands National Park spend about 40% of their time in the Park and pay \$6.00 per person.

Outfitters operating on the Colorado River through the Grand Canyon pay six percent (6%) of gross revenue for motor-powered trips and 2.25% of gross revenue for oar-powered trips. Since 60% of customers take motor-powered trips, most use is subject to six percent (6%) of gross. Outfitters operating at Grand Canyon are also required to collect entrance fees. Concession contracts for outfitters operating on the Colorado River through the Grand Canyon are issued for ten year terms, subject to annual evaluation.

Forest Service and Bureau of Land Management fees are equal to three (3%) of gross revenue for five year contracts.

Nonfee compensation

Outfitters provide a number of services to visitors and to the Park units that further compensates the government for the right to do business on public lands. Outfitters are required to buy liability insurance to cover guests, for example, with specified limits of liability. In addition a number of additional services are provided including interpretation, clean-up, search and rescue, road maintenance and information.

Why fees should not be increased.

1. Significantly higher fees will reduce or eliminate participation by middle and lower income Americans, especially during these tough economic times.

River users are a diverse socioeconomic group. The notion that the outfitted public is so wealthy that demand will withstand any level of fee increase is not supported by the available data. Indeed, significant fee increases will eliminate opportunities for middle income families and for those with less discretionary income.

The socioeconomic profile of participants varies from river to river, depending on travel costs, time required, and the nature of the experience. Nationwide, more participants take day-trips than long wilderness river trips. Day trips are lower in cost and are likely to be more popular with lower income users.

For example, approximately 18,000 individuals run the Colorado River through the Grand Canyon with outfitters each year (See Colorado River Commercial Use Statistics, See appendix, page 1) compared to 149,000 annual visits to the Arkansas in Colorado. Seven of the ten most popular western river trips are day trips (Top Ten Western Rivers, 1989, See appendix page 2). Virtually all of the use on the top ten whitewater rivers in eastern U.S. consists of day trips by individuals (See appendix, page 2).

There is clear and convincing evidence from the PARVS study (U.S. Forest Service from presentation at Confluence 91, Orlando, Florida, 1991, See appendix, pages 3 and 4) that the vast majority of river users are from statistical groups that are highly sensitive to increased fees and prices. The PARVS study surveyed users of four separate river units in the East. 34% had incomes of less than \$25,000 annually. 42% made between \$25,000 and \$50,000 annually. (66% had incomes under \$50,000). Families from these groups who may save for a once-a-year river trip will look for less expensive alternatives or better recreational values if they are faced with significant fee increases.

Even demand for trips generally considered to be "high end" would be adversely impacted by fee increases. The customer profile provided by one Grand Canyon outfitter revealed that over 50% of those taking a trip had a total family income of under \$55,000. Many within this group would be sensitive to price increases.

Lower income individuals, students, and groups on fixed incomes also participate in the longer western trips. For example, 20% of the students of the Colorado Outward Bound School (COBC), are unable to pay for their trip and are funded from a "scholarship fund". COBC also runs regular trips for individuals over 60 through their "Elderhostel program", a growing segment of the outfitted public. Programs for students are common. One outfitter on the Colorado River through the Grand Canyon runs trips for the disabled that requires increased staffing and much higher overhead. These kinds of programs will be among the first eliminated by increased fees and reduced profit margins.

The shock effect created by a significant fee increase during a prolonged recession is a formula for disaster. Demand for river trips is not inelastic. Given the extent of involvement by middle income families in outfitted river recreation, dramatic fee increases would drastically reduce demand. Unfair discrimination of this group will occur if fees are based on the financial resources of the most affluent customers for outfitter services.

2. Demand for river trips is a function of value and is influenced by competition from other activities.

Since most users are from middle income groups, it is clear that the impacts of the recession will influence the travel decisions of many prospects for river trips. "Down-sizing" and "discounting" are new strategies implemented by business to survive difficult economic times. Increasing fees during this period is contrary to these strategies and, therefore, to sound business practices. Middle income participants will be encouraged to consider other recreation opportunities.

Demand from more affluent travelers may also be impacted, since there is competition for the discretionary travel dollar from other activities. Approximately 50 percent of one Grand Canyon outfitter's clients had recently taken a foreign vacation, according to their market survey. If the value of a western river trips is diminished by fee increases, those who can afford to travel may choose trips to Mexico, the Caribbean, or the Bahamas as an alternative. Other recreational pursuits may also become more attractive if river trips lose their value.

3. Current fees are appropriate given the nature of outfitter concessions. Outfitter concessioners assume risks and add value to Parks in ways that hospitality concessions do not.

Unlike concessioners providing hospitality services from facilities inside Parks, outfitters absorb all the risks and costs for capitalizing business assets (complete with Off-Park lodges in larger operations) since they do not use Park facilities. They must promote their services while enduring the cash crunch of a seasonal operation and surviving the effects of drought and flood. Most outfitters invested in their businesses and struggled for years to build demand and enhance their off-park assets.

Outfitters provide highly specialized and skilled services that are acquired through years of devotion to their profession and to specific river resources. They must learn to recognize and compensate for the risks presented by ever-changing weather conditions, treacherous rapids, medical emergencies and evacuations in wilderness settings. It is this high level of specialized service along with the quality of the hospitality extended to their guests that has driven demand for river trips. Certainly the natural settings have value. But there would be no value in a river trip without the safety and professionalism that allows inexperienced visitors to enjoy the roaring rapids of the Grand Canyon's inaccessible gorge. Creating this opportunity for the public is not a function of the permit or contract provided by the government. It is a function of the outfitter's skill and professionalism. In this sense outfitters add value to the Park system by assuming all the risks for providing the general public with benign access to otherwise inviolable areas. These characteristics distinguish outfitters from concessioners who provide hospitality services or sell gifts and receive more benefit from their location and passive activity within the Parks.

For these reasons requiring outfitters to pay three percent (3%) of gross revenues for a five year permit or contract is appropriate compensation to the government. Most operations in the Grand Canyon are already paying six percent

(6%) of gross revenue for ten year contracts. Operations using only a portion of Park lands for their activities should continue to pay less.

4. The Park Service has no rational basis for evaluating or justifying fee increases under current management practices.

In most Park units prices charged for river trips and similar services are subject to approval by Park officials. On the other hand franchise fees may be raised at will by the agency. Even if conditions permitted an increase in fees, there is no assurance that the increase could be passed on to the customer given current approval requirements of the agency. This one-sided, arbitrary aspect of determining fees makes any proposal for fee increases unacceptable because outfitter's margins may be eliminated or reversed. It leaves the impression that the only justification necessary for increased fees is the government's own need for revenue. It permits the Service to discriminate against certain types of participants. What will preclude NPS or any federal agency from implementing additional fee increases in subsequent years?

While outfitter profit margins may vary, a 1987 study of Idaho outfitters and guides reveals that industry's net income was 4.5% of gross revenue for that season (Industry Report on the 1983-84 through 1986-87 Idaho Outfitting Seasons, JML2 Consulting, November 20, 1987, See Appendix, page 5). Outfitters should not be expected to absorb fee increases with those profit margins.

Without a reasonable method for justifying increased fees or a reasonable expectation that those increases can be passed on to the consumer without eliminating certain segments of the market, fees should not be raised arbitrarily.

5. The outfitting industry is one rural economic develop strategy that is succeeding.

Rural economic development is an important, valid strategy currently promoted throughout the federal government. Whitewater outfitters and other backcountry guides are already successful in attracting visitors and their tourist revenues from urban areas to rural locations. The Idaho study previously cited found that "excluding payments to State and Federal agencies, 75% of all revenues collected from clients remain in the Idaho economy." (Industry Report, JML2 Consulting, See appendix, page 6). The outfitting industry was responsible for 841 full time job equivalents in 1987 (Ibid, appendix, page 8) and contributed an aggregate of \$45.4 million to the economy during the 1986-1987 season. (Ibid, appendix page 7).

Transferring money from local economies to the federal government by increasing federal fees is contrary to rural development strategies, especially when those fees threaten the stability of the industry. The Idaho study concluded that outfitters are already paying 10% of revenues for user fees, licenses and taxes, most of which left the State (Ibid, see appendix page 6). The aggregate fee burden of outfitters from various layers of government is already reducing capital investment and the viability of the industry in many other areas. Agencies should point to the outfitting industry as an example of a successful rural development program that doesn't require federal subsidies and consider the impacts of fee increases on rural economies.

Conclusions

1. Outfitters and backcountry guides do not have possessory interests and are unlike hospitality services with facilities inside Parks. Therefore, outfitter concessions should not be subject to the same fee requirements as hospitality services in National Parks. Fees for outfitters should be directly related to the amount of time utilizing Park property and or facilities. Fee reductions should be proportional to the amount of time spent outside Park boundaries.
2. Current fees are appropriate given the terms of the contracts and permits and should not be arbitrarily increased to solve the federal budget crisis.
3. The shock of significant fee increases during these difficult economic times, coupled with fees from other levels of government, would create severe disruptions in demand. Middle income families, individuals on fixed incomes and those from lower income groups would lose recreation opportunities now available to them through outfitters. More affluent customers may chose another activity or vacation.

Appendix**GRAND CANYON NATIONAL PARK
COLORADO RIVER COMMERCIAL USE STATISTICS****05/01/91 THRU 09/30/91**

TOTAL # OF TRIPS	653
TOTAL PASSENGERS LEAVING LEES FERRY	12974
TOTAL PASSENGERS JOINING TRIPS	5499
TOTAL COMMERCIAL PASSENGERS	18473

TOTAL USER DAY ALLOCATION	106156
TOTAL COMMERCIAL USER DAYS	106183
PERCENTAGE OF ALLOCATED USE	100.03%

TOTAL # MOTORIZED BOATS	814
TOTAL # OAR BOATS	635
TOTAL # DORIES	56
TOTAL # PADDLE BOATS	79
TOTAL # KAYAKS	115

AVERAGE PASSENGER TRIP LENGTH	5.7
AVERAGE # PASSENGERS/TRIP	28.3

TOTAL # CREW	2874
AVERAGE # CREW/TRIP	4.4
AVERAGE # PASSENGERS/CREW	6.4
AVERAGE TRIP LENGTH TO DIAMOND	8.2

TOP TEN WESTERN RIVERS - 1989

	<u>Comm. Use</u>	<u>Monastorium</u>	<u>#_Outfitters</u>
1. Arkansas	149,000	no	72
2. Rogue	95,000	yes	44
3. S. Fk, American	80,000	yes	38
4. Snake, Wyoming	76,000	yes	8
5. Snake, Tetons	62,290	yes	13
6. Deschutes	33,775	no	140
7. Middle Fk, Salmon	33,430	yes	28
8. Snake, Hells Can.	22,070	yes	34
9. Mdl Fk, American	20,000	yes	42
10. Colorado (GC)	18,000	yes	20

TOP TEN EASTERN RIVERS- 1989

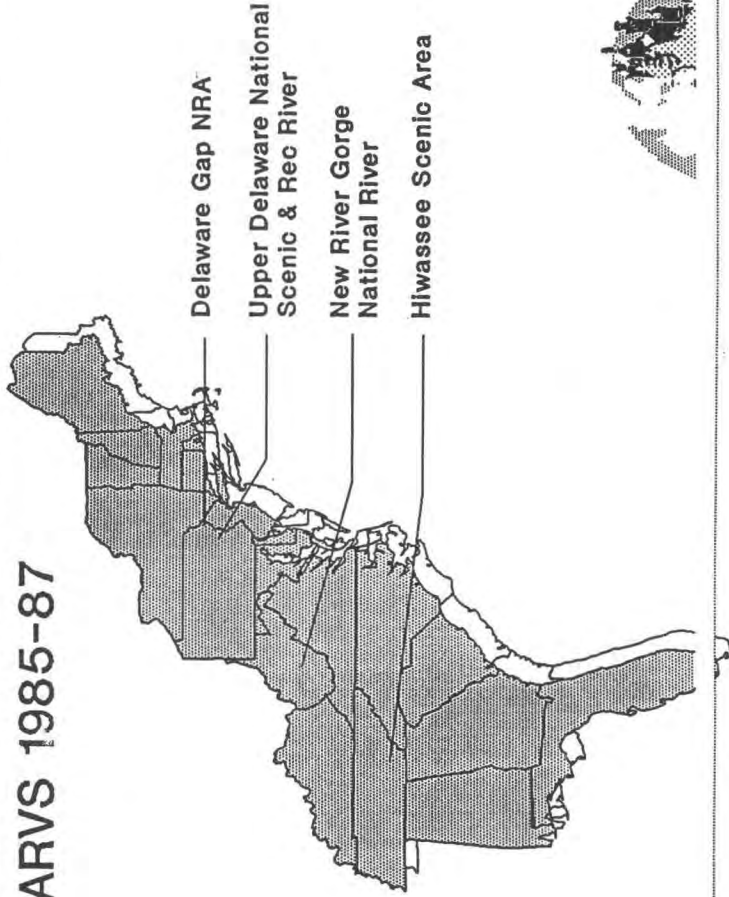
	<u>Comm. Use</u>	<u>Monastorium</u>	<u>#_Outfitters</u>
1. Nantahala	139,670	yes	15
2. Ocoee	122,876	yes	24
3. New River	85,000	yes	24
4. Youghiogheny	74,189	yes	4
5. Lehigh	58,132	yes	4
6. Chattooga	50,000	yes	3
7. Ottova	50,000	no	4
8. Gauley	35,000	yes	25
9. Kenebec	30,000	yes	13
10. Penobscott	18,000	yes	10

her rivers not researched but likely to have high use:
 per Colorado, Westwater, Cataract, Grand Canyon, Rio Grande (Taos Box), Rio
 Grande (Big Bend NP), Green, Yampa, Chama, San Juan.

mpiled for the Colorado River Outfitters Assoc. by Joe Greiner, Wilderness
 are Rafting. 1990.

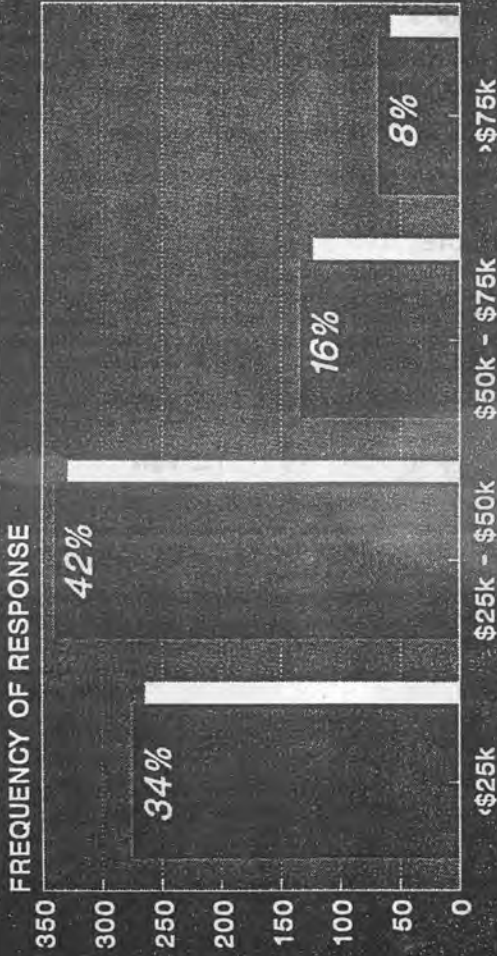
Survey Locations

PARVS 1985-87



Whitewater Recreationists

INCOME PROFILE



N = 814

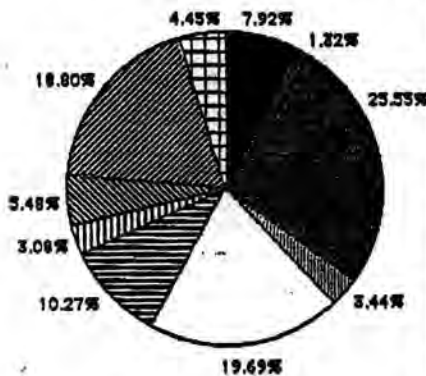
Source: PARVS 1985-87



Expenditures Made by Outfitters

Outfitters make a variety of expenditures with the revenues they collect from their clients. Excluding payments to State and Federal agencies, an estimated 75 percent of all revenues collected from clients remain in the Idaho economy. Refer to Chart 3 for a representation of outfitter net income and expenditures resulting from activities conducted during the 1986-87 season.

CHART 3
OUTFITTER NET INCOME AND EXPENDITURES FROM ACTIVITIES
CONDUCTED DURING THE 1986-87 OUTFITTING SEASON



Expenditure Category	Expenditures	Percent of Total
Outside Services	\$1,245,686	7.92%
User Fees	\$ 207,303	1.32%
Equipment	\$4,017,689	25.53%
State & Federal Taxes	\$ 541,279	3.44%
Wages	\$3,096,592	19.69%
Client/Guide Feed	\$1,614,961	10.27%
Animal Feed	\$ 483,912	3.08%
Advertising	\$ 861,094	3.48%
Other	\$2,957,021	18.80%
Net Income	\$ 699,383	4.45%
TOTALS	\$13,724,920	100.00%

Direct Expenditures

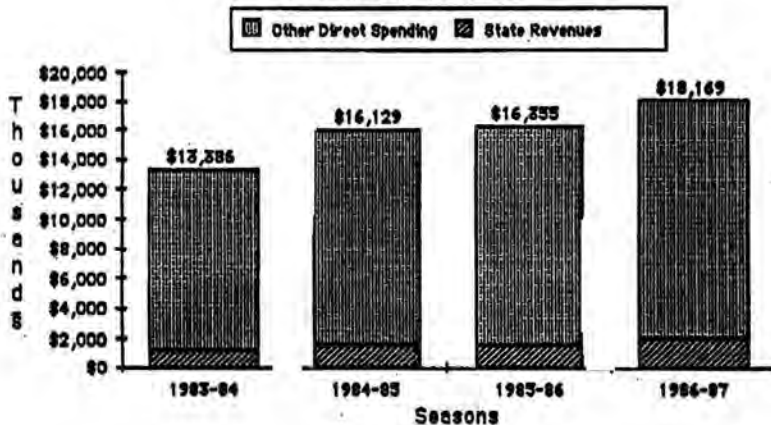
Of the \$21,955,790 in gross expenditures generated from activities conducted during the 1986-87 season (see Table 2), an estimated \$3,786,382 flowed out of the state in the form of outfitter expenditures and non-resident employee savings. The remaining \$18,169,408 stayed within the state in the form of direct spending by clients, outfitters and their employees. Refer to Table 3 for a breakdown of direct spending from the 1986-87 season classified by activity category. For simplicity, client expenditures for fishing licenses have been grouped into the Boating activity category.

TABLE 3
DIRECT SPENDING WITHIN THE STATE FROM ACTIVITIES
CONDUCTED DURING THE 1986-87 OUTFITTING SEASON

<u>Activity Category</u>	<u>Direct Spending</u>
Boating	\$8,753,590
Hunting	7,468,128
Recreation	<u>1,947,690</u>
TOTAL	\$18,169,408

Of the direct spending depicted above about ten percent, or \$2,146,719, in state revenue was collected in the form of taxes, user fees, and licenses. Refer to Chart 4 for a graphic representation of estimated direct spending within Idaho from the 1983-84 through the 1986-87 seasons.

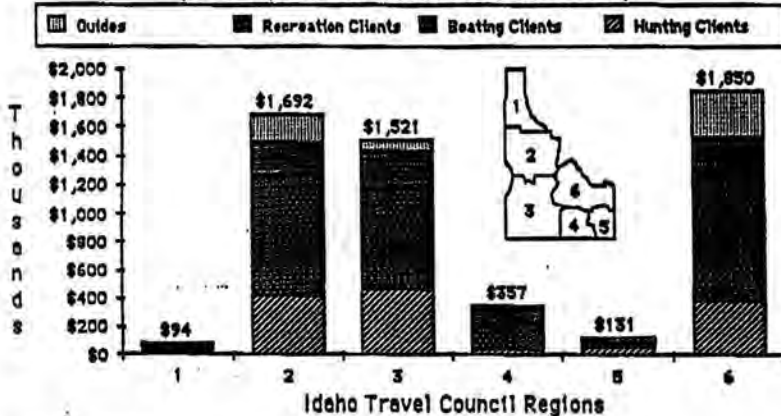
CHART 4
DIRECT SPENDING IN IDAHO: 1983-84 SEASON THROUGH
THE 1986-87 SEASON



Regional Distribution of Expenditures

Idaho Travel Council regions are used to describe regional spending characteristics of guides and clients for tourist type expenditures (lodging, restaurants, supplies, etc.). Refer to Chart 5 for a graphic representation of these expenditures (client fees and expenditures for licenses have been excluded). Refer to the appendix for a description of each region.

CHART 5
REGIONAL DISTRIBUTION OF EXPENDITURES: GUIDES AND CLIENTS
(CLIENT FEES AND LICENSES NOT INCLUDED)



Financial Impacts from the Outfitting Industry

To estimate the aggregate financial impact of outfitting and guiding on the Idaho economy, secondary economic impacts within Idaho must be calculated. These secondary impacts are the additional economic activity that is stimulated by direct spending within the state. To quantify these secondary impacts a gross revenue multiplier of 2.5 is appropriate. Application of the gross revenue multiplier to 1986-87 estimated direct in-state spending of \$18,169,408 yields an estimated aggregate financial impact of \$45,423,520 within Idaho for that season. In other words, direct spending during the 1986-87 season stimulated an estimated \$27,254,112 in additional economic activity within the state. Refer to Table 5 for a breakdown of the aggregate financial impacts generated by activities conducted within each activity category during the 1986-87 season.

Secondary Employment Attributable to the Industry

Due to the significant economic activity generated by outfitting and guiding, there is indirect employment attributable to the industry. This indirect employment is the additional employment created in other establishments in response to the secondary effects generated from the industry. The estimated indirect employment attributable to the 1986-87 outfitting season was approximately 841 full time jobs. Taking into account the seasonal nature of outfitting, the 841 full time jobs would be roughly equivalent to 3,300 seasonal jobs. This value represents an 11 percent increase over the previous season.

Indirect employment attributable
to the 1986-87 outfitting season: 841 full time jobs
or
3,300 seasonal jobs

Value of the Outfitting Industry to the Idaho Economy

To measure the current value of the outfitting industry to the Idaho economy, expected future financial impacts must be estimated. The estimated future financial impacts are in turn discounted to reflect a preference for impacts that occur in the near term over impacts that occur in the distant future. A discount rate (or interest rate) reflects this preference. The present value method of discounting future cash flows incorporates this logic and is the appropriate method for estimating current value.¹

Simply stated, the value of the outfitting industry to the Idaho economy is equal to the industry's future economic influences discounted to the present using an appropriate discount rate. For the analysis, a 15 year time horizon and a 12 percent discount rate (the historical rate of return for securities in the stock market) have been selected. Applying these parameters to a constant payment of \$45.4 million (the estimated aggregate financial impact from the 1986-87 outfitting season) the present value of future impacts is \$309.2 million. If the average growth rate of financial impacts on the Idaho economy (10.5 percent) is considered in the calculation, the value to the Idaho economy from the outfitting and guiding industry could exceed \$600 million dollars over the next fifteen year period.

¹For more information on the present value method, refer to:
J.W. Petty, A.J. Keown, D.F. Scott, Jr., Basic Financial Management
(Prentice Hall: Englewood Cliffs), pg. 241

Chairman VENTO. Thank you for your statement. Thank you for summarizing the attached material.

And, as I noted, I did raise that question with the Assistant Secretary in terms of how we can pursue this in terms of the matter that is before us.

Mr. Fassler, as you know, I am familiar with, some of the points you make and can argue it either half full or half empty here at this point.

But, the point is that the argument being made is that possessory interests or some sort of recognition of encouraging investment is necessary because of the price controls that exist within the Park Service.

Is that—

Mr. FASSLER. No. That's not my comment.

Chairman VENTO. Okay.

Mr. FASSLER. My comment is when you compare the national park concession contracts with stadium contracts—and I operate stadium contracts and I operate school contracts and I operate in that arena, based on that exhibit—our pricing to the public are three to four times what we are allowed to charge in a national park.

Chairman VENTO. Okay.

Mr. FASSLER. And, that's the way it should be, because that—

Chairman VENTO. But, I mean that was the point, that the pricing or the controls are—okay, so please proceed. I don't want to—

Mr. FASSLER. Okay. The issue of possessory interest has to do with equity.

When you make investments in the national park, you gain zero equity without possessory interest. What bank is going to lend anybody money to make an investment in the national park without one or two elements, either collateral—and, since most of these concessionaires are small business people, they don't have the kind of resources that my company would have because it's a major Fortune 500 company.

These companies, these small businesses, have to go to their local bank and either give collateral or give possessory interest, which replaces collateral. And, what that does to the banker, it assures the banker that they are going to get their money back because this property at the termination will bring back fair market value, which is the definition of possessory interest.

The definition of possessory interest is replacement cost less depreciation. But, the key and operative word here is "not to exceed fair market value." So, that's what the banker gets as collateral.

All I was saying is when you deal with the private sector inside stadiums, I don't need—I built my own equity. I am building an arena. I am building a good service or whatever the concession might be.

And, I can sell it at any time for good will, because I own equity in it. I own zero equity when I am dealing with the national parks.

Chairman VENTO. I think that the expression here of the Congress is that they are going to look to extinguish possessory interest. That's my own view of where we are going.

That's the message I am getting from the Senate. That's the message I'm getting from my colleagues on the committee here.

I'm trying to suggest that they want in this process more competition. And, there are a lot of reasons that apparently it doesn't exist now.

I am certain that you would not agree with some of the suggestions made, that possessory interest and/or right of preferential refusal are the sum total of why there isn't competition, I take it, Mr. Fassler. How can you get competition in the system where there seems to be an absence of it today?

Mr. FASSLER. Okay. I believe that there is competition in the system, maybe not as much as you would like it to be.

Mr. Chandler asked the general question—and I can't answer for the concessionaires—but one of his questions was why aren't we going after other parks.

My answer from my company is because the experience we have in the one that we have, which is Glacier, has shown us to have very little returns on our investment, a very highly regulated industry. I am better off taking my shareholders' money and putting that investment outside the park where I can build equity, where I could have a much better opportunity to get a fairer return on my investment.

That's the answer for my company. Now, why don't other companies compete? I don't know that they don't.

You just had the Yosemite contract. I think there were three or four companies that went after that. I'm not sure exactly how many.

I personally did not. Some other major corporations did not because of the condition of that contract.

The requirements of that contract made it difficult for you to get a fair return. At least, that was my judgment.

Chairman VENTO. No, I understand. We've got a statement here that we entered in the record from an officer from Marriott Corporation who said that they will not compete because of those particular factors.

And, I've got a statement here from Richard Hill. He is going to testify. And, he's going to say much the same thing.

We've got the statement attached from the banker. And, there is a banker that is going to testify later to say, maybe something different. I haven't read that testimony, because I didn't receive it.

But, I think the banker that is a Board member of the National Parks and Conservation Association is saying that the possessory interest and the right of first refusal are not necessary. So, I mean, there is a difference of opinion here about this.

And, I'm just suggesting to you that a number want more competition and they are saying these are the reasons they are not getting it.

Mr. FASSLER. Mr. Chairman, I am familiar with Roger Mann's comment. And, I know Dick Marriott very well.

I would ask them why didn't they bid on Yosemite. There was all the requirements that Secretary Lujan put out which eliminated all these factors that we are talking about today in order to get greater competition, so he said.

And, yet the Marriott Corporation didn't even bid on Yosemite. So, I don't know where they are coming from.

Chairman VENTO. Yeah. Yosemite had the problem—I mean, we have the problem—I think most of them are looking at it from a blank-slate standpoint where you don't have the purchase agreement, that requirement, which was, of course, one of the highest of any of the parks I guess.

I don't know if it's higher than Yellowstone. We own everything at Yellowstone I guess now. So—

Mr. CHANDLER. Mr. Chairman, if I could address the Marriott situation, I know a little bit about it.

Chairman VENTO. Sure.

Mr. CHANDLER. Their attorneys tell me that the major reason they didn't get into that was because it was the toxic substances liability, that they did not want to sign a blank check. They did not know what they were getting into.

But, I really can't speak for them. I would rather address the price controls issue that Mr. Fassler raises as such a tremendous hurdle to his corporation being able to successfully operate in a park.

And, Joe, I'm sure ARA Services would love to buy you out and operate Glacier if you would put it on the block for them. And, maybe you could talk to them about that.

But, with regard to price controls, Mr. Chairman, the concessioner in a park can charge market prices for everything they sell in the park. Now, what does that mean?

That means that the Park Service supposedly does a price survey all around that area to find out what a fair price is for a bed, for a hot dog, for a horse ride. And, they are allowing the concessioner to charge market prices.

And, in some cases, they allow them to have a higher price, because the cost of getting goods to the park may add a transportation cost. So, we don't understand what the problem is.

They can charge market prices. They can raise their prices.

They come in with price increases every year because of inflation. The Park Service approves it.

And, we frankly don't understand what the problem is, Mr. Chairman.

Chairman VENTO. Mr. Fassler will tell you what it is.

Mr. CHANDLER. Okay. [Laughter.]

Mr. FASSLER. First of all, to make the record straight, pricing is done on a comparability study. And, that's the immediate area of the park.

And, all rates around the park and in the park are reasonably low in order to meet the government requirement that rates to the visitor are reasonable and secondary to the income that they could receive through franchise fees and other investments.

When you talk about market value in arenas or state parks, you are comparing yourself to other arenas, other state parks where the pricing, as I said, is three to four times higher. So, you are comparing apples with lemons when you compare those two factors.

Chairman VENTO. No \$2.00 hot dogs in the parks, right?

Mr. FASSLER. In one particular stadium that we have, which is the Phoenix Suns, the Phoenix American West Arena, a hot dog is \$4.00. Beer is \$4.00.

To equate that to Glacier National Park, I can't quote exactly, but a hot dog is probably a buck and a quarter, maybe \$1.50 at most. And, beer might be the same \$1.25. That's a three times difference.

Chairman VENTO. And, if the committee voted on that, we would vote for that price. [Laughter.]

Mr. FASSLER. Well, that's right. Which price would you vote on, the big one or the small one?

Chairman VENTO. Well, if we didn't, we would hear about it, let me tell you. So, in any case, I think there is a goal here in terms of the comparability.

But, very often, where parks are located, Mr. Chandler, they are also in less expensive areas. They aren't located in Minneapolis or St. Paul often. They are located in more remote areas. And, in some of these areas, you may pay more.

I was fascinated, Mr. Fassler, by your comments, about the fact that you had a Burger King. Don't they have some standards of service in terms of the type of products and so forth?

Mr. FASSLER. They have minimum levels.

Chairman VENTO. Pillsbury does keep you a little bit under control.

Mr. FASSLER. Pillsbury doesn't own it anymore.

Chairman VENTO. Oh, they are out of it? Oh, okay.

Mr. FASSLER. An England company owns it now.

Chairman VENTO. I'm aware of that. I just was going with the Minneapolis derivative here.

Mr. FASSLER. They do not tell us the pricing. They do not tell us the hours of service. There are some minimum levels that you have to live with.

Chairman VENTO. There are some regulatory things. There are some standards that you have to deal with.

Mr. FASSLER. That much compared to what you are talking about when you are dealing with the National Park System.

Mr. CHANDLER. Mr. Chairman, I guess my point is that if pricing is such a hardship in the national parks, you know, why did six people come up and bid for the Yosemite contract? They knew all the terms and conditions of being a tenant there.

But, yet some of these corporations were willing to put in a bid. They think they could make money.

You know, maybe they are more efficient than the Dial Corporation. Maybe they are not.

But, they at least felt like they could operate effectively and make a reasonable return on their money.

Mr. FASSLER. Or maybe they don't know what they are getting into.

Mr. CHANDLER. Well, we will see. [Laughter.]

Chairman VENTO. Well, time will tell that. But I think Yosemite is atypical. I think all of us would agree that it's fairly atypical.

There are some parks that are atypical in the system where they have a significant visitor incidence. And, that helps, of course, lessen the risk.

What do you think, Mr. Chandler, about the specific provisions of exemption that are in H.R. 1493 and H.R. 2146? The Bumpers

bill has an exemption for the services provided by the outfitters basically with some guidelines.

Is there a difference here that we ought to distinguish between the type of guide service and some of the other activities?

Mr. CHANDLER. Mr. Chairman, I've gone back and forth on this. I'm not an expert in all the intricacies of being in the guiding business.

I fundamentally believe that small businesses and large businesses compete everywhere else in this country. And, there is no reason that small businesses and large businesses can't compete against their respective competitors in the National Park System.

I think the point made by the river rafters is that they are basically in an allocated system already. They have five or six river rafters operating on the same river.

And, they have basically been allocated the number of river days that they can get from the Park Service and so forth and so on. And, they allege that they are already competing against one another for services.

And, I think that that would be the key point that you would have to look at in determining whether or not an exemption is specifically required for them.

Chairman VENTO. Mr. Brown, do you think that this ought to be a condition in this particular exemption that dealt with the dollar amount, the incident or the value of the activity as well as some of the other factors that are indicated?

Mr. BROWN. I think the dollar amount is a less favorable way to do it than the category of type of service and where their facilities are located. Most outfitters are required to capitalize facilities outside the park.

And, that's the reason that I think preference is, you know, desirable there. They don't have facilities inside the park buildings from which they operate.

I think the bill, as you've indicated, attempts to extinguish possessory interest. And, I think if you apply those terms, those same terms, to outfitters and guides you will extinguish the investment and facilities outside the park.

So that I believe again the location and the lack of possessory interest and the fact that there is already competition is more important than the size of their gross revenues.

Chairman VENTO. So, they are saying, "Well, we really have an investment here which is dependent upon the good performance and renewal," which is not recognized. Actually, you've made the investment outside the park. You've got bank loans without possessory interest.

Is that right?

Mr. BROWN. That's correct.

Chairman VENTO. And, so I think the point is that that again points up to the fact that it is possible. But, if we are using a range in terms of revenue raised, do you actually report to the Park Service or to the land management agency, the Forest Service, whoever it is, what your gross revenues are?

Mr. BROWN. They certainly can audit the books of the outfitters. And, they do have that capability.

Outfitters, in general, pay somewhere between 3 percent to 7 percent of gross on their gross revenues.

I would like to say that the reason the investment has occurred, though, has been because of preference. And, you know, I'm not an expert on the possessory interest issue.

Chairman VENTO. Do you have to actually bid in this process? How long are these contracts generally that we are talking about?

Mr. BROWN. Generally for 5 years. And, the case is that, as in other concessions, the availability is published and the existing, satisfactory concessioner has the option to meet the terms offered by a higher bidder.

Chairman VENTO. So, once it's bid, you are offered the opportunity to actually meet or exceed that particular bid; is that—

Mr. BROWN. That's correct.

Chairman VENTO. I guess the concern is if somebody is going to go through the process of doing due diligence, examining all of the information, it costs some money to bid and then to not receive the bid, that might discourage them from doing so.

Mr. BROWN. Well, that's possible. But, you know, I don't really think it's in the best interest of the public and the National Park Service to have turnover for the sake of turnover.

I think if you've got a satisfactory concessioner who is providing good service to the public and a reasonable return to the government, then I think you would want to retain that concessioner. I think the Park Service would find itself with more problems than they really would like to take on if they were turning over concessioners every 5 years.

I think, as Mr. Fassler has indicated, the complexities of keeping up with the rules and regulations for concession contracts requires 2 or 3 years of study alone. And, so that I think the public and, of course, the stewardship of the resource would suffer.

Chairman VENTO. Mr. Fassler, there has been some discussion about having differential policies based on service, guide service based on size. Do you have any comments about that, that maybe you should be expected to jump over bigger hurdles or deal with different problems than the small guy based on the type of guide service issue here?

Mr. FASSLER. What I stated was I thought it was ironic that the bills, the Bumpers bill and the Meyers bill, where they talk about just giving preferential right to a single operator, I don't say they shouldn't have it. I'm saying the ironic part is when you take a major concessionaire who handles a lot of services, varying types of service, they also should have preference of renewal because of the added value the government gets.

The government gets added value by being a good, satisfactory concessionaire. I cited an example.

We spend 10 percent more than our contract requires us to do every year, because I want to be considered a good concessionaire because I want preference of renewal. I'm paying for it by adding that much more in capital.

Why am I paying more capital? I want preference.

Two. The government is not appropriating enough money to Glacier National Park, so we are trying to do it. We are considered a

good concessionaire because of it. That's added value to the government.

Especially if you take the last 3 or 4 years of a contract, when there is 3 or 4 years left on a contract, or 2 years left on a contract, if you know you don't have some incentive to get that contract again, right, why would anybody do anything but milk the operation? And, that's, in fact, what happened at Glacier National Park before we bought the contract and got in there.

That's exactly the problem with Glacier National Park. That's, in fact, the same problem that you had at Yellowstone when General Host was there.

That's why the government went out and spent \$20 million plus to buy that contract. And, they are still spending the money because in the contract that the government has with TW Services, it's the government that is responsible for the capital and the maintenance.

And, that's where that 22 percent originally came in from Lujan. He looked at a contract that the government was funding and looked at a 22 percent versus the normal concession contracts where the concessionaire is funding the investments.

But, that was—

Chairman VENTO. I understand that particular issue. And that's a decision that has to be made.

One of the problems is that I don't think that anyone has been well served by the fact that there have been these set-asides and these dollars expended on an individual basis, on a park-by-park basis almost, with poor records kept of what goes on, not even good records really. And it's difficult to keep a value of what is a fair market value, for instance, or a current fair market value with regards to possessory interest.

Mr. Chandler.

Mr. CHANDLER. Mr. Chairman, the incentive to perform is called "what's in your contract." And, if you don't perform what's in your contract, you should be terminated as a concessioner, as a tenant or anybody in that kind of a situation.

That's the way it works in the business sector. You will hear from some other witnesses who deal with that kind of situation every day.

But, this idea that you have to give a perpetual, preferential right to a concessioner so that he will do good in the last 2 or 3 years of his contract is ludicrous. He is promising, when he signs that contract for 10 years, that he is going to meet certain Park Service standards, conditions and limitations.

And, he is going to map out his business plan to do that and to make a profit. And, the idea that we have to give these guys a preferential right to perpetually renew their contract just to get them to not let their buildings run down at the last 2 or 3 years of the contract is something that is, I think, absolutely crazy.

And, the Park Service, if they start doing that, they ought to—

Mr. FASSLER. I said they are exceeding their contract requirements.

Chairman VENTO. I think the reality is that these problems have occurred. And, the reality is that we have to be realistic in terms

of understanding what the degree of regulation and the ability of regulation of the Park Service is and has been.

I think that if we go this path, everyone is going to have to understand that there is going to have to be a more aggressive role of the Park Service in order to ensure the compliance with the contracts as opposed to some of the past patterns. I think Mr. Fassler makes a good point in terms of avoiding the types of pitfalls that have occurred in Glacier and/or Yosemite where you had these very large contracts and where there was not proper maintenance.

But, we all know that that's a symptom of not having Park Service personnel or others that are more closely monitoring what is taking place. And, we have to be realistic in terms of policy change recognizing what needs to be put in place in terms of resources to deal with that.

That's a factor and that's a point scored for what has happened. That, incidentally, happened under the existing formula.

Much of that happened during the 1965 to 1993 sequence here. So, it isn't exactly a cure for the problem.

Well, it would be a lot easier if you would all agree for me. But, you all have your points. I think you've made your points.

I think, though, that the issue is there are going to be some changes. I want to work to make certain that it's done in a fair way.

I don't think everyone is going to agree necessarily on the final product. But, at least we want to be able to avoid the most egregious problems with the legislation so that it works.

It's clear to me that Senator Bumpers, myself, the Administration, the will of the Congress is to move forward on these particular questions and try to resolve them. So, I hope to have cooperation even though there isn't agreement on the policy path.

Thank you, gentlemen. Thank you very much.

PANEL CONSISTING OF J. RICHARD HILL, FOUNDING PARTNER, HILL RETAIL PROPERTY SERVICES, AND PRESIDENT, HILL PARTNERS, INC., CHARLOTTE, NC; DON ROUSH, FORMER CHIEF OF CONCESSIONS (RETIRED), NATIONAL CAPITAL REGION, NATIONAL PARK SERVICE; MARY E. AMES, PRESIDENT, WRIGHT BROTHERS AIR SERVICE, INC., SOUTHEAST AVIATION GROUP, INC., KILL DEVIL HILLS, NC; AND BOB GERSACK, PRESIDENT, FIRST NATIONAL PARK BANK OF LIVINGSTON, MT

Chairman VENTO. The final witnesses this afternoon are Richard Hill with Hill Partners, Charlotte, North Carolina; Don Roush, Former Chief of Concessions, National Capital Region, National Park Service; Ms. Mary Ames, the Wright Brothers Air Service, Kill Devil Hills, North Carolina; and Bob Gersack of the First Bank of Livingston, Montana.

Thank you all for your patience. You would think with just a single person asking questions that things would go a little quicker. I have your statements before me, and I appreciate receiving some of them yesterday so that I could review them.

But, if you care to, if you would or could, summarize them each, it would help facilitate moving forward with the hearing. We are

going to probably be interrupted for some votes at some point here in the next 15 minutes.

Mr. Hill, please proceed with your statement this afternoon.

STATEMENT OF J. RICHARD HILL

Mr. HILL. Mr. Chairman, the majority of the arguments against concession reform are based on extreme exceptions to the norm in commercial real estate. I strongly suggest that these issues can, and will, be put to rest with open, competitive bidding as outlined in the concessions reform proposal before you.

Simply stated, the only way to know what the market can really pay is through competitive bidding. In order to achieve this, the concessions policy must be flexible to accommodate the unique situation of each park and the required services by the visitor, not the concessionaire.

With the above comments as a reference, I would like to address two strategic but underlying themes concerning the proposed reform Act and simply compare them to my experience.

In my business, there is nothing comparable to possessory interest. The merchants which we attract to our projects do not require a possessory interest to secure a loan nor would we ever give them one.

Likewise, it reflects a gross misunderstanding of the facts to generalize that concessions operations in the parks cannot obtain financing without possessory interest. If this were the case, the only seasonal business operating in conditions similar to our parks would be in the national parks.

In reality, there are far more merchants operating the same type of business outside of the parks as tenants even on a seasonable basis without possessory interest. In essence, good business sense will justify investment from normal cash flow without possessory interest.

I work continuously with retailers who must finance their improvements. Ultimately, their loans are underwritten by the borrower's ability to repay the loan from the operations of its business.

In the current real estate market, this will usually result in a loan's payoff within a 5- to 15-year period, not 20 to 30 years. This is sufficient time in which to amortize the required investment for the vast majority of concessions likewise.

Additional loan security in commercial real estate is provided by tenant equity and then collateral on the furnishings, fixtures and equipment and, finally, corporate or personal guarantees when required.

The new law proposes a recapture of concessionaires' cost, less depreciation, in the event that a contract expires prior to the recovery of that cost. This is still considerably better than the private real estate market where merchants simply amortize their investments over the guaranteed lease term.

My next point concerns preferential rights. In my business, I have never granted a preferential right of first refusal even to a small business owner.

Rights of first refusal in commercial real estate only accrue to the benefit of the tenant. It is our responsibility to consider the interests of a much broader group than the individual merchant.

Likewise, in the national parks, the government must consider the interest of the park visitor and the taxpayer. The concessionaires in the park have a captive market. More active competition in the contract cycle will help ensure that the visitor and federal taxpayer are being best served.

The price controls are not restrictive in comparison to the free market. I've heard continuously about the controls of the price within the national parks. In the real world, today's consumer is very price conscious. They will not pay more.

However, once a concessionaire obtains a contract in a national park, it has a monopoly and one I believe is an implied exclusive. Once again, when contracts are due for renewal, they should be subject to rigorous competition by qualified bidders.

In closing, profitability cannot be guaranteed through legislation. A concessionaire must offer its products or services at a price that the visitor will accept, which will hopefully include all costs and a fair profit.

My experience indicates that the present system may survive at the expense of taxpayers and to the exclusive benefit of existing concessionaires. Our national parks and the visitors require the best possible service, which can only be achieved through free and open competitive bidding as outlined in the legislation before you. Thank you.

[Prepared statement of Mr. Hill follows:]

STATEMENT OF J. RICHARD HILL
FOUNDING PARTNER
HILL RETAIL PROPERTY SERVICES

AND

PRESIDENT
HILL PARTNERS, INC.
CHARLOTTE, NORTH CAROLINA

ON

H.R. 1493

THE NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1993

OCTOBER 19, 1993

THE NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT OF 1993

TUESDAY, OCTOBER 19, 1993

Mr. Chairman and distinguished members of the Subcommittee, I am J. Richard Hill, Founding Partner of Hill Retail Property Services, and President of Hill Partners, Inc. I have eighteen years experience in managing, leasing and operating multi-tenant shopping facilities and retail complexes. In this capacity, I have personally leased space to numerous small, independent merchants and large national credit merchants. Many of these leases have been in locations which are highly seasonal in nature. The types of merchants attracted to my projects include cinemas, cafe/restaurants, gift shops, supermarkets and apparel specialty stores. I have completed lease transactions totaling in excess of 1,000,000 square feet of space with merchants from most retail categories.

I am here today speaking from a landlord's perspective. Currently, in that regard, my company manages eighteen retail properties totalling approximately 4,000,000 square feet of space, in seven states. Additionally, Hill Retail Property Services, which is an equal partnership between GE Investments and Hill Partners, Inc., is conducting strategic planning for retail marketplaces in Seattle, Houston, Dallas, Chicago, Atlanta, and Ft. Lauderdale.

Collectively, between these companies, our current projects range from the retail portion of the Northwestern Atrium, Chicago's primary commuter rail terminal, to Jackson Brewery, a six level festival retail center in the French Quarter on New Orleans. Additionally, we are providing research and planning services concerning spectator, sponsor, and community activities for the 1996 Olympics in Atlanta.

Overview

Extensive debate has been directed towards what concession businesses require to make a reasonable profit in our National Parks. The majority of arguments against concessions reform are based on extreme exceptions to the norm in commercial real estate. I strongly suggest that these issues can and will be put to rest with open, competitive bidding as outlined in the concessions reform proposal before you. Simply stated, the only way to know what the market can really pay is through competitive bidding by qualified bidders.

The emphasis in H.R. 1493, the Concessions Policy Reform Act, is on the requirements of the park and visitor in context of the park experience. In order to achieve this, the concessions policy must be sufficiently flexible to accommodate the unique situation of each park and services required by the visitor, not each concessionaire. With the above comments as a reference, I would like to address several strategic, but underlying, themes concerning the proposed Reform Act and simply compare them to my experience.

Possessory Interest

The arguments in favor of possessory interest include requirements to obtain financing for improvements, to serve as an incentive for a concessionaire to maintain its facility during the later period of an agreement, and provide additional incentive to compensate for lower profits as a result of certain conditions unique to the park or its particular operation. My response is as follows:

- ◆ In my business, there is nothing comparable to possessory interest. The retailers which we attract to our projects do not require anything like possessory interest to secure a loan. Likewise, it reflects a gross misunderstanding of the facts to generalize that concessions operations in the parks cannot obtain financing without possessory interest. If this were the case, the only seasonal business operating in conditions similar to our parks would be those in our national parks, with possessory interest. In reality, there are far more restaurants and retailers operating the same type of business outside the parks, as tenants on a seasonal basis, without possessory interest. In essence, good business sense will justify investment from normal profits without possessory interests.
- ◆ I work continuously with retailers who must finance their improvements. Ultimately, their loans are underwritten by the borrower's ability to repay the loan from the operation of its business. In the current real estate market, this will usually result in a loan's payoff within a ten to fifteen year period, not twenty or thirty years, as suggested by others. This is sufficient time in which to amortize the required investment for a park concession.

Additional loan security is provided by tenant equity, then collateral on the furnishings, fixtures and equipment and, finally, corporate or personal guaranties.

The new law proposes a recapture of concessionaires' cost, less depreciation, in the event that a contract expires prior to recovery of such cost. This is still considerably better than in the private real estate market, where merchants simply amortize their investment over the guaranteed lease term.

Preferential Rights

My next point concerns a preferential right to provide new or additional services and, essentially, a right of first refusal on renewals. I understand and appreciate the concerns of a small independent operator who has built his or her business and derives his or her sole livelihood from the business. My response is as follows:

- ◆ In my business, I have never granted a preferential right of first refusal, even to the small business owner. It is our responsibility to consider the interests of a much broader group than the individual merchant. Similarly, in the national parks, the government must consider interests of the park visitor. The concessionaires in the parks operate in a captive market. More active competition with each contract cycle will help ensure that the visitor and federal taxpayer are being best served.
- ◆ The price controls are not restrictive in comparison to the free market, which has its own competitive price controls, and do not prevent substantial profits. Once a concessionaire obtains a contract in a national park, it has a monopoly

guaranteeing that business has a highly advantageous position. Minimally, once contracts are due for renewal, they should be subject to rigorous competition by qualified bidders.

In closing, profitability cannot be guaranteed through legislation. The concessionaire must offer its product or service at a price that visitors will accept, which, hopefully, will include all costs, i.e., cost of goods sold, labor, utilities, concession fees and amortization of capital costs.

My experience indicates that the present system may survive at the expense of taxpayers and to the exclusive benefit of concessionaires. Our national parks and the visitors require the best possible services, which can only be achieved through free and open competitive bidding as outlined in the legislation before you.

Chairman VENTO. Thank you very much, Mr. Hill. Mr. Roush.

STATEMENT OF DON ROUSH

Mr. ROUSH. Mr. Chairman and members of the subcommittee, my name is Don Roush. I recently retired from the National Park Service after 30 years of service, 25 of which was working in the concessions management program.

I am here in the interest of preserving a program which has succeeded in developing administrative programs that are the best in the Federal Government. Namely, these are the rate approval program and the annual inspection and evaluation program.

These programs are crucial to the overall management of concession operations. I mention these because both may be at risk if current legislative proposals become a reality.

I would also like the record to show that I am here on my own time and at my own expense. For 25 years, I have witnessed the evolution and development of a concession program based on the concepts and philosophies contained in the Concessions Policy Act of 1965.

This evolution has occurred because of a positive relationship between government and the private enterprise. The point I would like to emphasize is that the National Park Service has a good concessions program.

It can and it should be made better. Current-day issues and controversies are not the result of bad legislation but rather other administrative and managerial issues.

In the last three years, I have also witnessed efforts to eliminate potential liabilities to the government. I have witnessed the effort to substantially increase franchise fees. And, I have witnessed the effort to eliminate or redefine the right of renewal so as to create competition.

Relative to competition, it is apparently felt that by eliminating sound value compensation that, too, will promote competition. The proposed legislative initiatives in H.R. 1493, H.R. 2146 and H.R. 743 will not create positive competitive forces.

It will not improve the quality of services to our visitors. It will be counterproductive, I do believe, by creating additional work loads, adding to the time required to process and negotiate contracts.

I fully believe these legislative proposals will create consequences unimagined to date.

For your consideration, I would like to speak generally to each of these issues mentioned above in a way that will demonstrate that by isolating these individual issues from the total picture will have far reaching consequences. There are better ways to improve the program and achieve better service to visitors without creating additional bureaucracies, without extending the time to execute contracts and without added cost to the taxpayer. New legislation I fully do not believe is the answer.

Regarding each of these issues, a few brief comments. Eliminating sound value compensation is a non-issue. The so-called potential liability is a paper liability only for the most part.

While it may be a non-issue to the government, it is critical to an investor. A cause-and-effect analysis should be completed on this matter, considering all the other proposals at the same time.

Increasing franchise fees is one that must stand alone on a case-by-case basis. The emphasis for this, unfortunately, is based on isolated examples of contracts executed 30 years ago—very large operations, et cetera.

Franchise fees can and should be increased in many cases. I think there is no question.

The primary purpose of the park must not be compromised in favor of increased revenues. Revenue must remain as a secondary consideration.

Regarding the third point. The NPS existing policy of 15 years with the option of 20 years with the Director's approval seems to be serving everyone's needs very nicely.

If I might digress just a minute with regard to franchise fees. I find it very difficult to accept the fact that today the National Park Service is reducing revenues to the government in favor of paying off a so-called potential liability, 95 percent of which never has to be paid off, maybe 99 percent never has to be paid off.

But, nevertheless, we are reducing revenues to the government for that purpose.

With regard to the fourth issue regarding competition for new contracts, creating competition just because it's the American way may not serve the unique responsibilities of the National Park Service to preserve park values. Whatever direction the concessions program takes in the future, it is imperative that new policy directions or legislative changes be synchronized with the whole.

I am referring to the possibility that rates to the public will increase to meet the visitor needs of private enterprise to recover investments over a shorter period of time. Comparability may be at risk in those situations.

The inspection and evaluation program will need to be altered to account for some operators enjoying a right of renewal while others do not. The proposals in H.R. 1493, H.R. 2146 and H.R. 743 will place the NPS in an untenable position as to why some operators enjoy a right of renewal and others do not.

As a matter of fact, I feel this is rather diametrically opposed to where the National Park Service should be proceeding, as many of these operators have no investment within park areas. This will no doubt create a different set of procedures and legal considerations to be articulated in more guidelines.

The franchise fee system will no doubt require change. How do industry standards relate to operations restricted to short-term contracts or short-term 10-year contracts? How are franchise fees established when a competitor can buy in cheap and offer more fees at the expense of the existing concession?

This will require a great deal of analysis and no doubt cause contract controversies.

Appraisals will be required to establish the amount of sound value associated with the existing operation. When a competitor prevails on a contract renewal, the NPS will be controlling, to a large degree, the sale price.

Will this drive the parties under the table to make a separate deal? The NPS will have destroyed a willing buyer/willing seller relationship and will no doubt be an active participant in the transition.

These and other questions will require review and resolution. Several existing and successful programs are effected by the new legislative proposals.

In closing, Mr. Chairman, I very much appreciate your concerns to improve the program. However, it is my strong belief that new legislation is not the answer.

There are better ways to improve the program and achieve many of the efficiencies that we all seek. I must be frank, and at the risk of sounding like an alarmist, I am going to say it anyway, but I see paralysis by analysis and controversy if the new legislative proposals go as they are presented.

That concludes my oral summary. And, additional comments are included for the record as Attachments A and B.

Thank you very much.

[Prepared statement and attachments of Mr. Roush follow:]

STATEMENT BY

DON ROUSH

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES

HEARING ON H.R. 743, H.R. 1493 AND H.R. 2196

OCTOBER 19, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Don Roush. I recently retired from the National Park Service with thirty years of service, twenty-five of which was working in the concessions management program. I am here in the interest of preserving a program which has succeeded in developing administrative programs which are the best in the Federal Government. Namely these are the rate approval program and the annual inspection and evaluation program. These programs are crucial to the overall management of concession operations. I mention these programs because both may be at risk if current legislative proposals become a reality. I would also like the record to show that I am here on my own time and at my own expense. For twenty-five years I have witnessed the evolution and development of a concession program based on the concepts and philosophies contained in the Concession Policy Act of 1965. This evolution has occurred because of a positive relationship between government and private enterprise. The point I would like to emphasize is that the NPS has a good concession program. It can and should be made better. Current day issues and controversies are not the result of bad legislation (PL 89-249) but rather other administrative and managerial issues.

In the last three years I have also witnessed efforts to:

1. Eliminate "potential" liabilities to the government by removing the sound value compensation from all contracts as well as Public Law 89-249;
2. Substantially increased franchise fees;
3. Reduce the term of all contracts to ten years, and
4. Eliminate or redefine the right of renewal so as to create

competition. Relative to competition, it is apparently felt that by eliminating sound value compensation that, too, will promote competition. The proposed legislative initiatives H.R. 1493, H.R. 2196, H.R. 743 will not create positive competitive forces, will not improve the quality of services to our visitors, will be counter productive by creating additional workloads and adding to the time required to process and negotiate contracts. I fully believe these legislative proposals will create consequences unimagined to date.

For your consideration I would like to speak generally to each of the issues mentioned above in a way that will demonstrate that by isolating these individual issues from the total picture will have far reaching consequences. There are better ways to improve the program and achieve better service to visitors without creating additional bureaucracies, without extending the time to execute contracts, and without added cost to the taxpayer. New legislation is not the answer.

Regarding each of the four issues mentioned above, I would highlight my comments as follows:

1. Eliminating sound value compensation will be counter productive to improving visitor services. Eliminating sound value compensation will preclude many small operators from securing needed financing and securing contracts.

Eliminating sound value compensation is a non issue today. The so called potential liability is a paper liability only. While it is a non issue to the government, it is critical to an investor. A cause and effect analysis should be completed.

2. Increasing franchise fees is one that must stand alone on a case by case basis. The emphasis for this effort is unfortunately based on isolated examples of contracts negotiated thirty years ago. Franchise fees can and should be increased in many cases. The primary purpose of the park should not be compromised in favor of increased revenues. Revenue must remain as a secondary consideration in the negotiation of contracts.

3. Limiting the term of contract to ten years will not be adequate in many cases. The NPS existing policy of fifteen years with the option of twenty years with the Director's approval seems to serve everyone's needs.

4. Creating competition for new contracts will not necessarily improve visitor services. Creating competition just because it is the American way may not serve the unique responsibilities of the NPS to preserve park values.

Whatever direction the concessions program takes in the future it is imperative that new policy directions or legislative changes be synchronized with the whole. I am referring to the possibility that rates to the public will increase to meet the needs of private enterprise to recover investments over a shorter period of time. Comparability may be at risk in those situations. The inspection and evaluation program will need to be altered to account for some operators enjoying a right of renewal while other do not. The proposals in H.R. 1493, H.R. 2196 and H.R. 2196 will place the NPS in an untenable position as to why some operators enjoy a right of renewal and others do not. This will no doubt create a different set of procedural and legal

considerations to be articulated in more guidelines. The franchise fee system will no doubt require change. How do industry standards relate to operations restricted to short term ten year contracts? How are franchise fees established when a competitor can buy in "cheap" and offer more fees at the expense of the existing concession? This will require a great deal of analysis and no doubt cause contract controversies. Appraisals will be required to establish the amount of sound value associated with the existing operation. If a competitor prevails on a contract renewal the NPS will be controlling to a large degree the sale price. Will this drive the parties under the table to make a separate deal? The NPS will have destroyed a willing buyer/willing seller relationship and will no doubt be an active participant in the transition. These and other questions will require review and resolution. Several programs are effected by the new legislative proposals.

In closing, Mr. Chairman, I appreciate your concerns to improve the program. However, it is my strong belief that new legislation is not the answer. There are better way to improve the program and achieve many of the efficiencies you seek. I must be frank and say that I can see paralysis by analysis and controversy which will bring the program to a standstill.

That concludes my oral summary and additional comments are included for the record as Attachment A.

ATTACHMENT A

Issue One: Eliminate Sound Value as a Potential Liability to the Government

If I were John Doe citizen on the street, I could fully understand why this appears to be desirable. Who can argue against reducing even a "potential" liability to the taxpayer. This is more like a "red herring" issue designed to throw the opposition off track. It is a paper liability only. It is a meaningless issue to the government, but it is critical to a concessioner because it provides the only means for the small business man to secure capital and maintain an incentive for doing a good job. It is of such importance that a cause and effect analysis should be made.

With but one exception, the NPS has never paid sound value compensation to a concessioner. In that one exception, which is always held up as a glaring example as to why this is a bad provision, the NPS did pay approximately 20 million dollars as sound value to rid itself of a bad operator and then secure a successor operator. That occurred because the operator was milking the operation, money was not being reinvested in facilities, and the NPS lacked the ability, at that time, to determine the operator unsatisfactory and in default, and thereby reduce the government liability to a very low figure in that case. That type of problem has been solved with new contract provisions and would not occur today. The question remains, why is it being proposed to eliminate sound value compensation? Is it to create competition? If so, I submit that more competition for a ten year contract will not result in improved services to our visitors. The private entrepreneur in the real world is competing on a day to day basis as to price and quality of services delivered. This type of competition does not exist in a National Park, nor can we manufacture it through policy, regulation, or legislation.

Eliminating the sound value compensation may (or may not) create more offers on a contract by contract basis. Preventing a business man from realizing a sound value compensation flies in the face of real competition and provides no incentive to stay for the long haul. Once the competition is over for a short term contract the race begins against the clock to secure a return on the money invested. The private investor, mom and pop, the sole proprietorship, the partnership, or the corporation must do whatever it takes to recover its investment and earn a profit. This scenario assumes that the private investor can secure the needed financing to purchase the operation and make needed improvements. If the effort to eliminate sound value compensation is successful, the only alternative is to find competitors with deep pockets. Small operators rarely have deep pockets. The NPS concessioners are predominately small operators and securing the needed capital for improvements will not be possible.

On three occasions since 1990, I sat with bank officials and concessioners who needed to secure financing. The bank officials flatly said that without sound value compensation the loans would not be made. In late 1992, with the economy as it was, financing was not available to the concessioner even with sound value compensation. That is precisely the reason why Public Law 89-249 has that provision in it. It was recognized 28 years ago that private enterprise must have a mortgageable interest in order to obtain loans and that protection against unreasonable taking was essential.

Why is this a "red herring" issue. In reality the government will never have to pay off on a sound value basis. Since the late 70's concession contracts have contained language whereby if an operator defaults, book value compensation will be just compensation. Also concession contracts contain the provision that if services are discontinued due to resource protection issue, etc., book value will be just compensation. Concession contracts also contain the provision that if services are to continue the successor pays the existing concessioner the fair value compensation. There are no other anticipated events where the government would have to pay. Thus, it is a non issue to the government and critical to the operator.

The impact which lack of financing can have on visitor services is no small matter. Trying to finance long-term projects on a cash flow basis is simply not feasible in most cases, especially for small operators. Large corporate concessioner may or may not be in any better position. When one considers that there are 679 concession authorizations (195 contracts and 484 permits) with gross annual receipts of \$625 million and that literally a dozen business entities constitute over half of the gross receipts, it becomes obvious that policy changes directed toward big business may be terminal to small operators and create unintended consequences. If small businesses are categorized as \$3 million or less, 643 authorizations out of the total 679 service wide would be classified as such.

Most business opportunities in a national park area are substantially different from the real private entrepreneurial world. Many constraints weigh heavily on the concessioner's opportunity for profit and investments on park land. The primary constraints are: extraordinary precautions must be taken to protect the resource and visitor; only those services that are "necessary and appropriate" will be provided; the concessioner does not have a free hand to maximize profits; title to all facilities on park land rests with the Government; business operations may be terminated for convenience or other reasons; safety standards and visitor safeguards must be maintained under park situations; and rates to the public must be comparable to those found outside the park boundary. In addition, the concessioner must assure that at least minimal services are provided during the off season and is responsible for all

maintenance, repair, and capital improvements to Government assigned facilities that may be used. Also concessioners must insure the facilities for the full replacement costs, absorb all utility costs, and absorb extraordinary planning and design costs.

Because of these constraints, the NPS must equalize its program to provide incentives for private investment and to enhance a positive relationship between Government and business. The cumulative effect of proposed legislative changes will have dramatic effect on future relationships with private business. It will eliminate incentives for investment, for maintaining facilities, for reasonable rates to the public and for the small operator to enjoy the fruits of his or her labor.

The ability of the NPS to attract private investment has remained rather stable since the passage of PL 89-249. (This was not the case prior to that time). Every decade or so the general economy has gone through different cycles brought on by fluctuating interest rates, increased labor costs, etc. It is fair to say that visitor services in park areas has been minimally affected by these swings in the economy and it is due to consistent contracting policies that have not inhibited investment. To remove the concessioners ability to provide security for financing improvements is taking a large step in the wrong direction.

All things being equal the concession program is essentially built on comparability (rates to the public). Taking away the ability to finance long term investment, coupled with short term contracts and a high turnover of operators may render the comparability program inoperative. Short term and short sighted policies will not serve our visitors well in the next century.

Issue Two: Substantially Increased Franchise Fees

It would be pointless to argue the amount of franchise fees that should be charged concessioners. Each contract must stand on its own merits in terms of revenue, investment, profits, and other considerations. So long as the consideration of revenue to the government is subordinate to the objectives of protecting and preserving the park area and providing adequate and appropriate services for visitors at reasonable rates, the statutory guidelines are met.

Issue Three: Reduce the Term of all Contracts to Ten Years

The NPS must be allowed some flexibility to determine the length of contracts based on the investment required and other obligations. Limiting the term of contract to ten years will be inadequate where major improvement programs are required. Once a contract has been negotiated and executed it is the

concessioners' responsibility to submit preliminary design and concepts to the NPS for approval, and eventually submitting final construction drawings for approval before construction can begin. (as another related issue it is at this stage that a financial institution can make a determination on the terms of a loan.) The NPS approval process from design to construction will consume at least one year, often two years, and sometimes longer. Considering another year for construction the concessioner is left with six to eight years in which to reap the benefits of its investment. Added to this situation is the NPS contract renewal process which will no doubt require more time due to other matters related to the elimination of sound value provision. At best, process must begin one year prior to expiration and in most cases will require two years. With no right of renewal the concessioners' future is in question during the last two years of a contract. Using the example given above a ten year contract has produced five or six good years before it has to contemplate the future; continue with adequate maintenance, maintain quality of services or begin to cut corners and leave at the end of the contract. Often unnoticed is the matter of concessioners being able to hire and maintain a quality staff. The lack of security and continuity causes a high degree of turnover and more operational problems at the park level.

Neither term of contract, nor the ability to secure financing and long term commitments, nor franchise fees, nor continuity of operations (right of renewal) can be reviewed exclusive of other constraints associated with operations on park lands. Neither short term contracts nor competition for short term contracts will improve visitor services. There are better ways to improve the program. Any new legislation must permit the NPS sufficient flexibility to make sound professional judgements on each potential business opportunity. The current policy of fifteen years but not to exceed twenty seems to be serving everyone's needs.

Issue Four: Eliminate or Redefine Right of Renewal so as to Create Competition

Creating competition, because it is the American way is one thing, but establishing additional constraints beyond those already in place for concessioners compounds the problems encountered to attract private investment. The inability to receive sound value compensation for the blood, sweat and tears that go into a business operation, a limited time to operate, and an uncertain future adds to the constraints already placed on concession operations in park areas.

While we may be able to say that we are doing the American thing and competing our contracts, it is my strong feeling and conviction that the mission of the NPS will not be better served. The NPS has a unique mission to fulfill. The preservation of park values and the need to manage park areas to meet these objectives outweigh the benefits of creating competitive contract procedures.

ATTACHMENT B

Observations:

The concession program lacks definition, purpose and direction. The program has not been described as to how the system works and how one program interacts with all the others. Few people understand it. Certainly the average citizen does not. Directors and Secretaries who come and go on a short term basis have not understood it. The program has not been articulated on paper in a way that is understandable. The supporting evidence that the program lacks definition, purpose and direction is the fact that individual programs have been reviewed and are being proposed for revision without understanding or evaluating the cause and effect on the "whole". As evidence I submit the following:

1. Contracts are not being crafted to suit individual parks. (resource issues, necessary and appropriate services, and local or regional impacts)
2. Confusion abounds as to how to calculate building use fees and its relationship to the gross receipts percentage fee.
3. New standard contract language was formalized on January 7, 1993 limiting compensation to a concession at the book value level.
4. Legislative proposals are now being considered to limit the term of contracts to ten years.
5. Legislative proposals are now being considered to eliminate right of renewal for some concession operations but retain it for others.
6. New regulations were issued stating that any goodwill or other intangible asset associated with the sale or transfer of a concession operation is an asset that belongs to the government.
7. The new regulations mentioned above redescribe how the right of renewal will be applied.
8. The matter of organizational authority to execute contracts is a critical issue that must be resolved.

While the above actions were being pursued, certain other "non-apple pie" issues were identified but ignored. The report issued by the Secretary's Task Force on March 1, 1990 stated:

"Continued close cooperation and an effective working relationship with concessioners is essential to the successful operation of the parks for public benefit."

"Any policy measures adopted by the National Park Service must take careful account of their impact on concession operations."

"Possessory interest, accordingly, places on the Government a possible burden of payment that on occasion has been realized."
(NOTE: only Yellowstone)

"Compensation for possessory interest should be set at a level no higher than necessary to attract investment capital."

"The Task Force finds that there is a complex interrelationship among the elements of the concession system. Concession contracts for Park Service units involve *** the following key provisions:

Contract length
Preferential right of renewal
Possessory Interest
Contract transfer provisions"

"They also are a major factor in the security of investment and the financial incentives to maintain the properties of the concessioner. Changes in one provision of the contract interact with and can effect the workings of other provisions."

"The use of book value compensation for possessory interest has potential implications for other terms and provisions of concessioner contracts. The Task Force believes that a detailed financial analysis should be conducted on this issue. The analysis should consider the feasibility of book value and whether and to what degree increased contract length, lower franchise fees, lower investment commitments, higher visitor prices and charges and/or other factors might have to be adjusted to make available a fair rate of return on investment equity to the concessioner signing a new contract."

Unfortunately, and for whatever reason, the NPS has pursued the popular money issues that are more saleable on the "street" i.e. franchise fees are too low and revenues to the government should be increased, eliminate potential liabilities, reduce term of contract. The Secretary's Task Force report clearly recognize the need for a cause and effect analysis before implementing these crucial issues.

Program Improvements:

There are several actions which could be pursued by the NPS to improve the program and achieve the objectives of increased competition, increased franchise fees and improve the quality of services to visitors where needed.

1. Improve the standards for satisfactory performance. The NPS has developed and implemented over the last several years good performance standards. I would refer to it as pricing and evaluation 101. Those standards and/or their

implementation could be improved or elevated to pricing and evaluation 404 to better insure quality services and improved performance by concessioners where needed.

2. Use different contract procedures for those operations which have no investment within the park boundary, except for those transportation services where access to park areas must be assured. Those types of authorizations would have no right of renewal, are competed on an equal basis, no compensation of any kind, no sale or transfer for any reason, term is for five years only, and may be terminated at any time for unsatisfactory service or failing to meet the terms and conditions, etc.
3. In the interest of removing even the "potential" liability to the Government sound value compensation could be made applicable only for the purpose of providing security for the financing of park improvements. The sound value compensation provision could be written into contracts in such a way that when the loan has been satisfied, the sound value compensation by the government becomes inoperative and book value kicks in. Sound value by a successor operator would still be valid.

As can be seen from the above the program can be improved to meet several objectives without throwing the baby out with the bath water.

These actions would improve the quality of services to the public, would increase competition, would eliminate right of renewal where not needed, would increase franchise fees, and reduce even the potential liabilities to the government.

Chairman VENTO. Thank you, Mr. Roush. We have Mary Ames, who is with the Wright Brothers Air Service.

Mary, welcome. And, please proceed with your statement.

STATEMENT OF MARY E. AMES

Ms. AMES. Thank you. Good afternoon to you, Chairman Vento, and to your distinguished colleague.

You are to be commended not only for keeping the light of democracy burning but also for your endurance.

My name is Mary Ames. I have for 16 years been the principal owner and operator of various small businesses that serve vacationers at the beaches in North Carolina and Florida.

I am also a pilot. And, I began one of these businesses, Wright Brothers Air Service, 12 years ago in response to a prospectus from the National Park Service for an air tour concession at the Wright Brothers National Monument.

This afternoon, I will be recounting some experiences in trying unsuccessfully to compete for that concession. It was a long and frustrating effort that has convinced me of the need to completely overhaul the Concessions Policy Act of 1965 beginning, and most importantly, with elimination of the concept of preferential right of contract renewal.

I think my testimony will serve as the kind of evidence Mr. Hansen is speaking—I'm sorry he's not still here—about, that visitors are not necessarily getting the level of services they deserve in the national parks.

The Wright Brothers National Monument is located in the seaside town where I make my home. It's a modest but beautiful park which commemorates that world-changing moment when the first airplane left the ground with somebody on it.

Regardless of the propriety of sightseeing flights at other national parks—I know that's a separate issue—here at Wright Brothers National Monument, people want to fly, many for the very first time, because doing so conveys the significance of the Wright Brothers achievement in a way that nothing else can.

I've been a fan of the national park since childhood. My parents, of course, convinced me that they owned a little piece of each one.

And, so when the flight concession opportunity arose, I was very fired up by the idea of sharing my interest in aviation and its remarkable origins with visitors, particularly children and first-time adult fliers. I prepared the lengthy application required, complete with letters of recommendation from people whose support I thought would count, for example, a former general manager of concessions in the Shenandoah National Park and the Secretary of Finance for the Commonwealth of Virginia.

In what I considered at that time a bizarre set of circumstances, but what I now know just to be the predictable result of the flawed system that we now have, my company's proposal was nosed out by another applicant who runs the concession to this day. Here are the details relevant to your consideration of legislative policy.

The chosen concessioner had been flying for at least two years from an airstrip within the park, despite repeated written notices from the Park Service that this was illegal. One of his pilots had gone off the runway and crashed into a tree two years before.

Just recently, before the concession was let, his company had been cited for, and found in violation of, the federal law against commercial operations in parks. I expected those documented events to rule out that particular applicant or at least to work against him.

Instead, they worked in his favor, incredibly enough, making him the top choice out of a field of four candidates. I just had to get to the bottom of that and know why.

So, I requested and obtained a copy of the official evaluation. It was just a one-page document, that's all.

On it, my company's proposal and that of the successful applicant had tied in a system of numerical rankings. We had been docked for lack of prior experience, he for deficiency in managerial ability.

And, a category labeled "safety" had been deleted because the evaluation team didn't feel they had sufficient information. The decisive factor in breaking the tie, according to this evaluation report that I obtained was, and I quote, "The experience of the chosen applicant in previously operating a sightseeing flight service similar to the one we proposed."

Well, gentlemen, overlooking the fact that it was the other way around and actually the Park Service had at its disposal after what was already going on, it's hard to miss the point here that our company proposal was penalized twice in the evaluation because we had not been in the business of air tours at that park. So, there I had it.

The choice of who would fly these tours was based not on the quality of service or the level of safety the concessioner was likely to provide or even on his ability to manage a business, but it was based on the fact of prior experience in the park again, though it was in violation of federal law and marred by a crash serious enough to warrant an FAA investigation.

Incidentally, the fee attached to this privilege was \$500, which turned out to be .6 percent, six-tenths of one percent, of his gross revenues.

Until recently, the rest of my encounters with the Park Service have been replays of this early event. I won't go into the details. They are in my written testimony.

But, to briefly summarize, I didn't give up on getting the concession at this point. After the initial rebuff, I went into the air tour business full blast in order to establish not only that record of experience that was so important to the Park administrators but to establish a superior record.

This was in anticipation of competing one year later when the concessioner's temporary permit expired. Operating from the County airport, a half hour drive away, my company did establish a totally incident-free and complaint-free record, while the concessioner's record continued to include complaints about unsafe operations and maintenance in violation—lack of maintenance really in violation of Federal Air regulations.

Among the few of these reports that made it to the Superintendent's desk in writing, two were from private pilots recounting near misses in flight due to the tour pilot's common practice of flying non-standard traffic patterns and one was a report from the Park Service's own pilot who, during a flight check, had found a tour

plane in operation 20 hours beyond the 100-hour required maintenance inspection.

All of these violations are considered very serious by pilots. And, the 20-hour violation of the normal inspection requirement is not at all normal or acceptable in the industry.

Nevertheless, the Park Superintendent judged the concessioner's performance satisfactory and advertised his intent to renew the permit, this time for a longer period. He sent me excerpts from administrative rules that made it absolutely clear that it was futile for me to compete even if I had a better proposal to offer.

At that point, I was completely discouraged. I gave up on the idea of the concession.

I continued in business. I paid far more to the County than he paid to the U.S. government as a percentage of receipts.

I charged less for my services. I was really hoping to give people a better alternative and giving the Park Service time to change their ways of operating.

Last year, I noticed that the permit period had reverted back to one year. It was up to four years long.

I inquired of the Park Superintendent, and he told me this wasn't because they were able to make changes in the administrative rules but because concession policy reform legislation was in the Senate. It was not until then, I have to admit to you, that I read the full 1965 Act.

And, in it, I saw the policies that had led the Superintendent and his staff to make and then later, of course, justify the entire series of administrative decisions I had considered so abhorrent.

I commend those of you who are here today who understand that the legislation must be promptly and thoroughly changed. I feel sorry for you, because the effort is going to be very tremendous. The details of it are going to be difficult.

But, if it is not changed, concessioners and the Park administrators will continue to be tempted to use the tools of preferential right and possessory interest to hit below the belt, knock out healthy competition and defend park concessioners from all the normal market pressures that cause businesses to improve their services to the public.

[Prepared statement of Ms. Ames follows:]

STATEMENT OF MARY E. AMES

PRESIDENT, WRIGHT BROTHERS AIR SERVICE, INC.,
SOUTHEAST AVIATION GROUP, INC.,
KILL DEVIL HILLS, NC

on
H.R. 1493, NATIONAL PARK SERVICE CONCESSIONS POLICY REFORM ACT
and
H.R. 743, NATIONAL PARK REVITALIZATION ACT

before the
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS
of the
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 19, 1993

-- PAGE 1 --

Chairman Vento and distinguished members of the Subcommittee, good morning. My name is Mary Ames. My intent, in the brief period allotted, is to illuminate how thoroughly the provisions of the Concessions Policy Act of 1965 prevent small businesses like mine, as well as larger ones, from providing superior service to National Park visitors and a fair return on the public investment in the Park system. I hope to reward your attention with sound suggestions, based on real experience, for consolidating the proposed reform legislation before you today into an effective statement of policy.

For 16 years, I have been the owner and operator of various small businesses that serve vacationers along the beaches of North Carolina in summer and Florida in winter. One of these provides air transportation to and from the Outer Banks of North Carolina and sightseeing flights along the historic Cape Hatteras National Seashore.

I live two miles from the spot where the Wright brothers flew the first airplane 90 years ago. There, the Park Service maintains the Wright Brothers National Monument, a modest but lovely site to commemorate that world-changing event. Through a concessioner, the Park offers air sightseeing flights of the type my company conducts from the County airport, a half-hour drive distant. Regardless of the desirability of air tours at other National Parks, flights from this site serve to interpret the Park, particularly since many of the visitors are first-time flyers.

Twelve years ago, after I had become a pilot and acquired an airplane, the Park Superintendent advertised the new flight concession. My enthusiasm for aviation and a life-long admiration for the National Park system combined to make this an exciting opportunity. So I prepared the lengthy proposal required and obtained letters of recommendation from people whose support I thought would count, like a former general manager of concessions in Shenandoah National Park and the Secretary of Finance for the Commonwealth of Virginia.

In what I considered, then, a bizarre set of circumstances, but what I know, now, to be the predictable result of a seriously flawed system, my company's proposal was edged out by another applicant who runs the concession to this day.

Here are the details relevant to the questions of policy before you today: The chosen concessioner had been flying paying customers, for at least two years, from an airstrip within the Park, despite written notice from the Park Service that this activity was illegal. One of his pilots had gone off the runway and into a tree two years before. His company had recently been cited for, and found in violation of, the federal law against commercial operations in National Parks. Those facts, which I thought would surely work against this applicant, helped him instead, making him the top choice out of a field of four.

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Surprised by this outcome, I obtained a copy of the official evaluation. On it, my company's proposal and that of the successful applicant had tied in a system of numerical ratings by a group of local Park administrators. We were docked for lack of "flight operations experience" and they, for deficiency in "managerial ability." A category labeled "safety" had been deleted from the evaluation due to "lack of information." To break the tie (at this point, remember, our proposal had already been penalized, for lack of prior experience with air tours) the evaluation report said "the group considered the experience of [the chosen applicant] in previously operating a sightseeing flight service similar to the one we proposed as an important factor..."

In fact, it was the decisive factor: this record of prior experience in the Park, gained in violation of federal law and marred by a crash serious enough to require an FAA investigation.

The entire process seemed to me so improper, unfair, and harmful to the public welfare that I sought legal advice. I was counselled not to challenge the Park Service decision, for risk of interfering with a contract. I was advised to make another attempt, if I chose, at the time of permit renewal. This course seemed practical since the permit was a one-year, temporary arrangement. I knew our company could outperform the concessioner on every item of importance to the Park administrators. I went full-bore into the air tour business and established an incident-free, complaint-free record.

At renewal time, documents supplied to me by the Park superintendent suggested that, despite a legally mandated bid process, in actual practice the current concessioner's permit would have to be renewed unless he were declared "unsatisfactory." During the year, my company had received complaints about the operation at the Wright Brothers strip. (This was probably due to our listing in the phone book under the trademarked name, Wright Brothers Air Tours.) Most of these complaints were from private pilots who claimed their safety had been jeopardized by tour pilots flying non-standard flight patterns. I thought the poor operating practices evidenced by these complaints might well result in an unsatisfactory rating.

I, therefore, requested and obtained a copy of the concession evaluation. Attached to it were two written complaints of the type we had received in far greater volume by phone and two Park Service letters urging the concessioner to comply with the terms of his contract. Also attached was a report by the Park Service pilot of a site check during which he had discovered a tour plane being operated in violation of the maintenance requirements of Federal Air Regulations. This aircraft had been run 20 hours beyond its normal 100-hour inspection time, a serious infraction not at all normal or acceptable in the industry.

The Park superintendent nevertheless did not consider any of these problems serious. He noted that the concessioner had willingly

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remedied all discrepancies brought to his attention. He rated the concession operation satisfactory. As far as I could determine, the rating system was very simple and entirely subjective. The concessioner was assigned a rating of "four" on a scale of five and the permit was renewed for a period of five years.

That's when I gave up trying to compete for the concession. I decided to continue the tour service at the County airport to give people a safer alternative, a longer flight for their money, and hoping to give the Park Service enough time to change its ways.

Last year, the permit period reverted to one year. I met with the superintendent and concession specialist to see if this signaled a new approach. They said no administrative change had been made but contract renewals were "on hold" because concession policy reform legislation was being considered in the Senate. It was not until then that I read the 1965 Act and discovered in it the policies that had encouraged and, in the case of the preferential right of contract renewal, had mandated the whole series of administrative decisions I considered so wrong.

The crux of the problem is that nowhere in the law is the Park Service required to seek concessioners who will serve the public best; NPS is required only to keep existing concessioners in business, even if their performance is inferior to that of a competitor. Add to that the inflated "purchase price" a concessioner's possessory interest creates, and just about all normal market forces that typically create improvement in service businesses are eliminated from the concessions in our Parks.

This one-two combination -- preferential right and possessory interest -- constitutes more than a slap in the public face. It produces a knock-out punch, delivered below the belt. These dual protections allow tenants on public lands to control their own rents, keeping them artificially low and robbing the public treasury. They encourage substandard service to Park visitors, to whom the Parks really belong. And these policies reinforce the view, already widely held among business people and all who work in this land, that the government doesn't have to operate by the principles of free enterprise the rest of us follow, and still believe in, for the simple reason that they work so well.

I commend you for your recognition that the existing legislation must be promptly and thoroughly changed. May I suggest that legislation, embodying the following concepts, would introduce positive market forces into National Park concessions while protecting superior concessioners from being pushed out by wealthier competitors:

- o Eliminate the concept of preferential right and replace it with a process for soliciting and reviewing competitive proposals in which money is excluded from consideration. Require that the evaluation of proposals carefully weighs every aspect of visitor services to be provided but that the Park Service refrain from

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specifying the minutia of concession management, such as the type of soap to be used in Park lodgings.

o Require that all payments from a concessioner be established at each Park prior to the renewal of each contract or permit, but do not establish the amounts of franchise fees or rents legislatively. Franchise fees should be a percentage of gross revenues and a separate, and significantly lower, amount than rents figured as a percentage of gross. Rents should be based on comparable rents outside the Park, adjusted, if necessary, for the greater desirability of the Park location.

o Eliminate the concept of possessory interest. Replace it with a valuation of assets based on cost less depreciation, with a reasonable depreciation period assigned to the assets as they would be on Federal tax returns. Instead of acquiring expensive possessory interests directly, require new concessioners to purchase assets at their "cost less depreciation" value and have the government pay the difference, if any, between this and the value of the possessory interest. In cases with no change in concessioner, the government could pay the difference to the existing concessioner and allow the concessioner to retain an interest figured the new way. At the end of the established depreciation period, each asset would revert to the government and no concessioner, existing or future, would retain an interest. Concessioners thereafter would negotiate long-term leases of the government-owned assets.

o Mandate a system by which Park visitors evaluate the services they receive and are provided an easy method for sending these evaluations directly to the Park administrator in charge of overseeing the concessioner.

I sincerely appreciate the opportunity to share my views with you this morning.

Chairman VENTO. Thank you, Ms. Ames.

Ms. AMES. You are welcome.

Chairman VENTO. And, finally on this panel, Mr. Bob Gersack of the First Bank, Livingston, Montana.

Mr. Gersack.

STATEMENT OF BOB GERSACK

Mr. GERSACK. Thank you. Mr. Chairman, I am Bob Gersack, president, First National Park Bank of Livingston, Montana.

I have been in banking for the last 30 years. During my career in banking, I have been personally involved in the bank's lending functions, as a loan officer and as a senior loan portfolio manager.

I appreciate this opportunity to appear before you today to express some of the feelings I have as a banker who has been closely acquainted with the financing of concessioner's investments in facilities in a national park.

Our bank is located in Livingston, Montana. And, we have a branch facility located in Gardiner, Montana.

As you may know, when people first started visiting our oldest national park, they would depart from Livingston to Gardiner, a journey of only 50 miles to the first established entrance to Yellowstone National Park. We know the park trade very well, because for the last 100 plus years we have provided some form of banking services to a majority of the businesses operating in Yellowstone.

As you may also know, visitations at Yellowstone Park are in the top 20 among all our national parks. Because of this, and for many other reasons, the financial needs of the concessioners within the park are many, such as loans for general operations and capital improvements required and/or approved by the National Park Service.

Our bank became associated with Hamilton Stores, Inc., one of the major concessioners in Yellowstone, decades ago. We have served as a major source of financing for both their operational and capital improvement needs for many years.

We know that businesses in the park are seasonal and are subject to many changes in weather, which is sometimes very adverse in our part of the country, and that they are closely regulated in many ways by the National Park Service. We are, and always have been, interested in the regulations and laws that govern our borrowing customers.

Of major concern to any lending institution is the nature of the customer's ability to repay a loan. Also of primary concern is the nature of the collateral available to secure the requested loan.

Financial institutions do provide unsecured borrowings to credit-worthy companies, usually on a very short term basis for general operating or inventory purchases. However, prudent lending practices require longer term loans, such as capital improvement loans, be secured by pledgeable assets.

In the case of park concessioners who conduct their businesses in national parks on land wholly owned by the Federal Government and/or in facilities which the title is held by the Federal Government, although improved and maintained by concessioner's money, there is little, if any, of the usual type of collateral pledgeable under these circumstances. Therefore, we have learned to carefully evaluate and understand the statutory grant of possessory interest

to the concessioners to secure their loans in needed or required facilities.

And, so as we have studied this concept, which is unknown to any other kind of business transaction, we have been assured that it offered a very important security for those investments in government properties. Without the possessory interest granted to concessioners, it would be impossible for our bank, and I believe any other bank, to grant such loans.

We recently concluded a loan with Hamilton Stores, Inc. for some required and some approved capital improvements within the park. In the process of granting the loan, we required reassurances from them regarding the continuation and the reliability of their possessory interest rights granted under their contract, because without that provision remaining in their contract they did not have the ability to pledge their possessory interest.

And, companies such as Hamilton Stores would have to be in a position to provide personal assets in order to borrow for required or approved in-park improvements. To me, this appears to be unfair, especially to the small or privately held concessioner company who must be willing and able to pledge their own personal assets in order to acquire funds to make improvements to government owned property.

As I read the proposed legislation, it appears to me that, if passed, it would extinguish possessory interest or not grant it to new concessioner's contracts or amortize it through the life of the contract with an existing concessioner, or change the valuation process of possessory interest. Thereby, in my opinion, this would jeopardize the ability of most concessioners to borrow money to meet required and/or approved expenditures.

The laws being proposed to redefine possessory interest are going to destroy the very purpose for which it was originally included within the contracts, thus eliminating it as security for the financing of investments in park facilities.

For all of these reasons, I would ask you, Mr. Chairman, and members of the subcommittee, not to alter this very important aspect of the concessions policy, because it does continue to serve a very important need in the financing of improvements in park facilities. Our Federal Government does not appear to be able to carry much more, if any, financial burden at this time.

Why then should we shift this responsibility in our parks to the federal budget when the private sector can and will continue to handle this satisfactorily? It makes sense to stay with what works. And, I trust that you will do so.

Thank you for the opportunity to share my views.

[Prepared statement of Mr. Gersack follows:]

STATEMENT BY
BOB GERSACK, PRESIDENT
FIRST NATIONAL PARK BANK OF LIVINGSTON MONTANA

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
COMMITTEE ON NATURAL RESOURCES

HEARING ON H.R. 743, H.R. 1493 AND H.R. 2196

OCTOBER 19, 1993

Mr. Chairman and Members of the Subcommittee:

I am Bob Gersack, President, First National Park Bank, of Livingston, Montana. I have been in banking for the last thirty years. During my career in banking, I have been personally involved in the banks's lending functions, as a loan officer and as a senior loan portfolio manager. I appreciate this opportunity to appear before you today to express some of the feelings I have as a banker who has been closely acquainted with the financing of concessioner's investments in facilities in a National Park.

Our bank is located in Livingston Montana and we have a branch facility located in Gardiner Montana. As you may know, when people first started visiting our oldest National Park, they would depart from Livingston to Gardiner, a journey of only fifty miles to the first established entrance to Yellowstone National Park. We know the Park trade very well, because for the last one hundred plus years we have provided some form of banking services to a majority of the businesses operating in Yellowstone. As you may also know, visitations at Yellowstone Park are in the top twenty among all of our National Parks. Because of this and for many other reasons the financial needs of the concessioners within the Park are many, such as loans for general operations and capital improvements required and or approved by the National Park Service.

Our bank became associated with Hamilton Stores, Inc., one of the major concessioners in Yellowstone decades ago. We have served as a major source of financing for both their operational and capital improvement needs for many years. We know that businesses in the Park are seasonal and are subject to the many changes in

weather, which is sometimes very adverse in our part of the country, and that they are closely regulated in many ways by the National Park Service. We are and always have been very interested in the regulations and laws that govern our borrowing customers.

Of major concern to any lending institution is the nature of the customer's ability to repay a loan. Also of primary concern is the nature of the collateral available to secure the requested loan. Financial institutions do provide unsecured borrowings to credit worthy companies, usually on a very short term basis for general operating or inventory purchases. However, prudent lending practices require longer term loans such as capital improvement loans be secured by pledgable assets. In the case of Park concessioners who conduct their businesses in National Parks, on land wholly owned by the federal government and or in facilities which the title is held by the federal government, although improved and maintained by concessioner's money, there is little if any of the usual type of collateral pledgable under these circumstances. Therefore, we have learned to carefully evaluate and understand the statutory grant of "possessory interest" to the concessioners to secure their investments (loans) in needed or required facilities. As we have studied this concept, (which is unknown to any other kind of business transaction) we have been assured that it offered a very important security for these investments (loans) in government properties. Without the "possessory interest" granted to concessioners, it would be impossible for our bank, and I believe any other bank to grant such loans.

We recently concluded a loan with Hamilton Stores, Inc. for some required and some approved capital improvements within the Park. In the process of granting the loan we required reassurances from them regarding the continuation and the reliability of their "possessory interest" rights granted under their contract. Because without that provision remaining in their contract, they do not have the ability to pledge their "possessory interest" companies such as Hamilton Stores would have to be in a position to provide personal assets in order to borrow for required or approved "in Park" improvements. To me this appears to be unfair especially to the small or privately held concessioner company who must be willing and able to pledge their own personal assets in order to acquire funds to make improvements to government owned property.

As I read the proposed legislation it appears to me that if passed it would extinguish "possessory interest" or not grant it to new concessioner's contracts or amortize it through the life of the contract with an existing concessioner, or change the valuation process of "possessory interest". Thereby, in my opinion, this would jeopardize the ability of most concessioners to borrow money to meet required and or approved expenditures. The laws being proposed to redefine "possessory interest" are going to destroy the very purpose for which it was originally included within the contracts, thus eliminating it as security for the financing of investments in Park facilities.

For all of these reasons, and many others, I would ask you, Mr. Chairman, and Members of the Subcommittee, not to alter this very important aspect of concessions policy because it does

continue to serve a very important need in the financing of improvements in park facilities. Our federal government does not appear able to carry much more, if any, financial burden at this time. Why then should we shift this responsibility in our parks to the federal budget when the private sector can and will continue to handle this satisfactorily? It makes sense to stay with what works and I trust that you will do so.

Thank you for this opportunity to share my views with you. I would be pleased to answer any questions you may have.

Chairman VENTO. Thank you. We have got a disagreement between Mr. Gersack and Mr. Hill.

Mr. Hill is suggesting that the normal course of business is, you go into a shopping mall and you lease a space and you get a lease for 10 years and you have a certain amount of inventory, a certain amount of capital that you operate, and you go to the bank and you get a loan; and, that if you put improvements or fixtures or anything into that particular property—you may even build a building—at the termination of the lease it becomes the possession of whoever owns the land, whoever is the proprietor of the shopping center. It's a normal course of business, the normal way to do it.

Ms. AMES. Mr. Chairman, I can address that from my experience. I was required by the Airport Authority at the County Airport where I fly to build a building as part of my lease. I built it.

I was able to borrow the money from the bank, because I had a good record in business. I have to put up my personal assets as collateral and my good name for every loan I take out.

Chairman VENTO. You don't have any possessory interest in it, so it becomes—

Ms. AMES. Not any. The building reverts to the County after the lease expires.

Chairman VENTO. Did you have to go to a bank to get this loan or did you have the cash?

Ms. AMES. No, a bank.

Chairman VENTO. Who is that banker? I guess Mr. Gersack—

Ms. AMES. I will share that with you later on. [Laughter.]

Chairman VENTO. It wasn't Mr. Gersack. Well, Mr. Gersack, my other role in life is to work on the Banking Committee.

I don't know if it's, you know, because of my trespasses earlier in life or why I am on the Banking Committee, but I suppose you can only have so much interest, so I really—[Laughter.]

But, anyway I've been there. And, of course, I'm well aware that any banker wants to get as much collateral and certainty as they can in terms of making a loan.

And, maybe you would like to reflect on that a little further at this time. Did you want to say something at this point?

Mr. GERSACK. You mean from the standpoint of available collateral? I do appreciate your position on the Banking Committee. [Laughter.]

Chairman VENTO. Sometimes I expect you do, yes.

Mr. GERSACK. We do hear the term "regulatory burden" at times. And, I certainly hope that you will strive to remove some of that.

As far as the difference of opinion between where we loan on a secured basis inside the park and loan on a secured basis outside of the park, the comments from the previous gentleman, yes, you can loan within the park on an unsecured basis. But, to loan within the park on a secured basis, there must be that right to be able to take some attachment, to take some security.

And, possessory interest is what is available there. I don't think it's comparable to lending to a merchant who is putting a business into a mall. You have certainly other avenues that you can pursue in that area.

Chairman VENTO. But, isn't the fundamental issue here the amount of capital that the individual borrower puts up to determine whether or not they are creditworthy or not?

Isn't that the fundamental issue? You've got some problems in terms of being able to take a security against a property on land you don't own, and maybe they wouldn't perform within the 10- or 15-year lease.

But, isn't the fundamental issue here one in terms of saying, "You need the amount of down payment or the amount of collateral that's there?"

Mr. GERSACK. You know, as I stated, I think the primary issue, of course, is the establishment of the ability to repay. The second is naturally, of course, what is the security.

And, I think prudent banking, as you would know from the Banking Committee, we have to have security. And, that is the primary security in most cases.

Chairman VENTO. Of course, the security could be whoever is the successor to the lease in terms of extinguishing whatever depreciation would occur, because I guess you are concerned about whether there is a 10- or 15-year lease on a piece of property or a loan payment that that would be extinguishable, that that person would—that somebody else, the successor, would, in fact, then need to pay back that particular loan.

Mr. GERSACK. It would be a source of funds from that asset.

Chairman VENTO. That's right. You would have to have a flow of revenue stream.

Mr. Roush, I appreciate your coming forward on your own to share with us the experiences and insights that you've gained in your professional career at this time. I note that you feel many of the problems are administrative—that they are not legislative problems.

But, I think part of the picture is that when you listen to the experience that Mary Ames has had here with regards to preferential right of renewal and some of the indices, how would you characterize that?

Mr. ROUSH. I very much appreciate the question. And, I would like to respond to her.

And, I feel very apologetic that she ran into that kind of a circumstance. And, that's very unfortunate.

I've heard throughout the morning about the quality of services to our visitors. And, if what she has said is accurate, obviously the quality wasn't there.

And, assuming that she had it, something went awry in the selection process. And, that should not occur.

I don't believe that legislation will cure that. Our next system, if there is a next one, will only be as good as the people who administer it and the kind of procedures that we establish.

Chairman VENTO. So, you fundamentally think that some of this is a misinterpretation of preferential right of renewal?

Mr. ROUSH. Misinterpretation?

Chairman VENTO. Or mis-administration of it.

Mr. ROUSH. Mis-administration, yes, assuming the facts are as stated. You know, that's unfortunate.

Chairman VENTO. I think there are a lot of positives that obviously have come up. One of the other problems you pointed out to me and I thought of this, too, is that the reduced revenues to the government, you know, for a liability that would never have to be paid off, but the other problem with this because of the sound value and the current value basis of properties constructed, as Secretary Cohen had indicated, is pretty much, as realtors say, location in big letters.

And trying to develop a value or an appraised value of that is very difficult, first of all. And, secondly, that those, as they invest more and more, accumulate in terms of this so-called sound value.

And, it can very quickly escalate into something that is going to be a phenomenal amount of dollars. In fact, I'm certain some in the concessions, some that have possessory interest, would argue even today that it's a phenomenal amount.

But doesn't that really constitute a problem? I don't know if it was anticipated in terms of the 1965 Act? I wasn't here.

Mr. ROUSH. You know, I'm not really sure what the problem is. There is a possibility out there on the horizon somewhere, some time, that the government may have to pay off on a fair market value basis. I don't know what that circumstance might be.

Contracts state now that if we want to discontinue the operation, the compensation is book value. If we want to terminate for resource issues, et cetera, it's book value. If the concessionaire defaults on his contract, the compensation is book value.

Chairman VENTO. So, you think that that is a safeguard or remedy for book value, what they actually invested rather than sound value; is that correct?

Mr. ROUSH. Yes. And, if it's going to continue, it's not the government that is going to pay it. It's going to be a successor.

Chairman VENTO. Well, that's one of the problems, isn't it, that somebody has a \$100 million investment in a park and you are bidding and you then have to actually bid on utilization and payment, or whatever the revenue stream is, in terms of that particular property? You may have to pick up not just a bid on a contract where you've got outstanding working capital of \$3 million or \$4 million, but you also have to get into dealing with a \$100 million problem here on which the interest today might be 6, 7, 8 or 10 percent.

Mr. ROUSH. Well, yes, that's certainly true. You have to deal with the fair market value of that property.

Chairman VENTO. Yes.

Mr. ROUSH. And, competition out in the real world has dealt with that very nicely. It hasn't inhibited them at all.

So, I have a hard time understanding the real problem.

Chairman VENTO. Well, I mean, the real problem is that you would have to obviously have the fixtures but you may have some that are there that—arriving at the appraisal value is something else again—it isn't certainly book value at that particular point. You are not just dealing with what you are going to invest; you are dealing with a hypothetical in terms of value.

If it isn't a real problem, then there shouldn't be objection to removing it from the law. You know, if you have the remedies in terms of book value, as you suggest. How many instances are there

where the Park Service has, in fact, extinguished it on the basis of book value?

Glacier is about the only one I can think of.

Mr. ROUSH. On a book value basis?

Chairman VENTO. Yes.

Mr. ROUSH. I am not familiar. I know there has just been one on a fair market basis, sound value, if you will.

Chairman VENTO. Well, there has been one on sound market, yes. But, then that isn't exactly the point.

So, in other words, it's a remedy that has not been applied, as is the case. So, it's a remedy that has not been effective.

And, we have repeated testimony that this, combined with the preferential right of renewal, is a significant barrier. So, I appreciate the good faith effort in terms of explaining this.

And, these are some questions that I have thought through. And, I appreciate seeing them coming from someone that has no interest, in essence, in this particular process, which is helpful.

Mr. Roush.

Mr. ROUSH. If I might just add a comment. You know, here again today as we sit here and I hear again about the Yosemite of the world, what are we going to do with—I want to say “my,” but it's no longer “my.” But, the Park Service has got any number of small operators out there that, you know, gross a half a million dollars. And, that's very small money today.

And, he needs to spend a half a million dollars on his operation. Where is he going to get it?

I will say to you that it has been my experience he will not get financing. I have had experiences in the last two years of sitting with bank officials and convincing and coaxing and explaining.

And, we have a bankable contract today—we know that—with a sound value kind of provision in it. And, I can tell you of late, in the last few months, of course, from banks it's very hard to get loans.

And, even one that had sound value compensation in it, in the last few months the bank would not loan them money. That's not their main play at the moment.

But, nevertheless we know we have a bankable contract. And, I don't know how the small operator is going to survive. Out of the 670 or so concession operators, I think appropriately—if one considered \$3 million and less as small business, I think about 640 of them would qualify as small business.

But, I think SBA considers anything less than \$6 million. But, anyway—

Chairman VENTO. Well, let's ask Mr. Hill. How is a small operator going to survive in this system if he doesn't have sound value?

Mr. HILL. Well, let me make—

Chairman VENTO. And, you don't have it in any other business entity. I mean, this is something invented for the Park Service which, of course—I say you have no financial interest, Mr. Roush, but obviously after working on this a long time you have a professional interest.

Mr. HILL. I will make two statements. Number one, it is a fact of life that a very high percentage of small, independent entrepreneurial businesses will be out of business by the year 2000.

And, there's all sorts of statistics out there. Dunn & Bradstreet says that maybe half of all existing retailers will be out of business.

We personally think that there is going to be a larger drop off than that in the next coming years. So, I don't think our national parks should be——

Chairman VENTO. Are you trying to make me feel comfortable? [Laughter.]

Mr. HILL. What I am saying——

Chairman VENTO. No, no. I understand what you are saying.

Mr. HILL. All right. So, that's one point. The second point——

Chairman VENTO. That is to say that there is a normal evolution in terms of small businesses and new businesses have a big failure rate, is really what you are trying to say, isn't it?

Mr. HILL. Well, I am also saying that in addition to the evolution, retail distribution is seeking its most efficient channel. And, that is more and more being done by larger corporations today.

Chairman VENTO. Okay.

Mr. HILL. And, you are not going to change that. No one is going to change that.

In terms of within commercial real estate, the only liens or security interest that bankers are ever able to get into a landlord's property would be some sort of security interest on to the fixtures, furniture and equipment, what we call the FF&E. I certainly think that if fixtures and equipment are movable, it should be addressed as personal property and the concessionaires should, in fact, be able to take that back home with them at the end of the contract.

So, bankers should have some sort of a security interest in that. But, that should be totally separate of any major leaseholder improvement that remains permanently affixed to the property.

Chairman VENTO. Yes. I'm certain that from a standpoint of the evolution of the size of enterprise in America that probably there is a theme here. It isn't a very popular one, so not many of us probably would dare repeat it if we wanted to get elected.

But, I suppose the fact is that in some retail operations and in some other segments of business that there is a tendency for larger institutions, larger retail outlets, larger banks, as a matter of fact——

Mr. HILL. But, don't misunderstand me. Because of that major drop off, there is a very intense effort on the part of landlords today to get the small businesses into their shopping centers, to find out who are going to be the surviving merchants and make sure you get them.

So, we are working more closer with smaller merchants than we have ever worked, because we need them to fill up the space across the country. You have to have them.

But, every problem that I'm hearing, there is a solution that has been worked through in commercial real estate.

Chairman VENTO. In other words, maintaining this environment with these sort of indices and so forth really is, in your view, Mr. Hill, a departure from what some of the forces are that exist and work in other types of market activities; is that correct?

Mr. HILL. I'm not sure what you mean by indices. Can you——

Chairman VENTO. Well, the different preferences, the different requirements, the different criteria that are injected into this proc-

ess don't exist in other instances and tend to cause some aberrations.

If you didn't have possessory interest in this instance and the sound value provisions, you wouldn't have some of the dilemma that we have today. I mean, at the time, I guess it was perceived as needed to remedy something.

But, nevertheless, there were investments that occurred prior to it. But it has obviously been a mixed bag.

Well, anyway, the truth is today we are going to have a vote. And, we've got to get it moving along.

And, Mary Ames mentioned that I had a long hearing. This is an easy hearing for us in terms of length. [Laughter.]

Ms. AMES. Mr. Vento—

Chairman VENTO. Yes.

Ms. AMES [continuing]. Could I—

Chairman VENTO. I intend to ask the Park Service to respond to your testimony, incidentally, in writing. And, yes, Mary, you can add.

Ms. AMES [continuing]. Respond to Mr. Hill's comment?

Chairman VENTO. Yes.

Ms. AMES. I think when the preferential right of renewal is removed, it needs to be replaced with a system that is not based on money. I believe Mr. Synar's bill has that concept in it, that money would be excluded as a consideration.

I agree completely with that, because the considerations for the bidding process should be the visitor services. Money matters should be fixed ahead of time.

The Park Service at each park should be able to say, "The franchise fee here needs to be 5 percent and the rents here need to be 12 percent of gross revenues." They need to fix the rents and fees, and then let the bidding concentrate on what services will be provided.

Chairman VENTO. Well, I think that that is right. I think today that there are so many different reference points in bidding that it makes for a really subjective assessment of what actually constitutes a successful bid and what does not.

You had that experience because of the preferential right of renewal. You found, for instance, that they were giving experience for somebody that had been flying and had been doing something illegally.

Apparently, one criterion in that case was that you got the full sensation of flight including accidents. [Laughter.]

Ms. AMES. A ground loop at the end. [Laughter.]

Chairman VENTO. Mr. Roush.

Mr. ROUSH. If I may just quickly—and I think that goes along with simply the idea that legislation is not always the problem. And, I think she has pointed that up very well.

With regard to franchise fees, we can solve those problems but we should not say, "This is going to be a minimum franchise fee across the board." They have got to stand on their own merit on a case-by-case basis.

Chairman VENTO. Well, I took that to mean that the Park Service should endeavor, from the standpoint of policy, to try and provide for an objective bidding, with these other things being equal.

You have to be FAA qualified. I think that the explanation here and the issue that Ms. Ames is raising is a very good one, because it talks about safety and a whole host of factors that become very important and that the Park Service is faced with.

It's easy to talk about this in the rarefied area of the committee room when you don't have to worry about the airplane and the pilot and everybody else, but it becomes a very complicated service that is being delivered. It isn't just cut and dried.

Mr. HILL. Mr. Chairman—

Chairman VENTO. Yes.

Mr. HILL [continuing]. I think there is quite a few small, subtle issues across the board that are being missed. And, I encourage you and the rest of your committee to have some extensive conversations.

I would second what Mary says. We seldom ever select a retailer restaurateur for a shopping center based on somebody bidding the highest rent. We generally tell them, "This is the rent," and then we select the best operator.

And, I believe that that should, in fact, work itself into this system somehow, that the Park Service needs to determine what is an acceptable rent based on a specific user, a specific concessionaire's economics. Set that rate and then perhaps fix it as a fixed minimum rate.

And, then have some sort of a percent override based on outstanding performance. And, that would let them share in the success.

But, it really would allow them to focus on the best operators in lieu of being focused on the highest bidder.

Chairman VENTO. I think the issue here is that the Park Service has attempted to shape the market according to its own recipe in terms of sound value, in terms of preferential right. And, lo and behold, then you come back and say, "Hey, there isn't any competition."

Well, is that a big surprise if we think we are going to shape the market, you know, by virtue of what the Park Service does in terms of concessioners, not the Forest Service, not the BLM? Of course, they don't have the investment.

I think it really is ludicrous to think that the Park Service somehow could shape the market. Now, if we don't like the way that the rest of the world works in terms of the free enterprise system in America, I suppose that's something we can address.

But, I don't know that we should do it through the National Park Service concession contract procedures. That's really where the problem is.

You have got to go out here and say, "This is the way it works in terms of banking."

Mr. HILL. The only danger that I see out there is someone arbitrarily saying that it should be x percent. How do they know what that percent should be?

Chairman VENTO. No, no. I think that that was picked up because it was a number that Secretary Lujan identified at Yellowstone as a number.

And as the opponents or others today have raised, that's based on the fact that the Park Service is taking care of the utilities and

they are taking care of many of the other expenses that are, in fact, not the norm in many of the concession contracts across the country. You simply can't take this number and multiply it by 22 percent or set that in law.

So, I think though that the question here is to try to shape as near as we can the activities of concession contracts to deal with the type of market that exists rather than, in essence, try to reverse it and say, "We can shape the market the way we want it." We can't do that.

I mean, even though the intentions were good and the work that was done on it was generally appropriate, I think there are all kinds of problems in terms of record keeping, in terms of making the judgments. It involves a sort of anomaly that Mary Ames has pointed out here just with regards to one issue, not even dragging in some of the others in terms of possessory interest and other factors that exist.

We haven't talked much about the idea of just extending service, when there is an opportunity for extension of service that the concessionaire that is in that particular position does receive a preference with regards to that. And, that again tends to push out something—the competition that might exist there.

Now, a shopping center is set up on a different basis obviously, a different purpose in terms of serving people. But, there are some common touchstones that we can use here that I think will serve the Park Service.

And, we are not going to be involved in the micro-management of this. That's for certain.

The question that Mr. Roush has is that it isn't just legislation. I understand that.

But, sometimes to reinvigorate, you have to legislate. Sometimes you have to do that in order to get things moving.

And, I think that in order to resolve this, if we just leave things out there on a rule and regulation basis running along, we may end up with more uncertainty than certainty. So, I don't think that we want to throw the baby out with the bath water here. That's for sure.

Mr. ROUSH. Yes, sir.

Chairman VENTO. Mr. Roush.

Mr. ROUSH. I very much appreciate that. And, you know, there is an awful lot that is involved in a park setting with a concessioner.

And, I will be very, very frank with you. When I had a good concessionaire, I had no desire to change.

Do you know why? I will tell you very frankly. The time it takes to orientate, the time it takes to train is not a short time process. You know, that's long term.

It takes a year—you know, a sizable operation, to get the employees up-to-speed on what our park programs are, how they are supposed to react. Be it motor vehicle accidents and how you are going to treat the lost and found box or, you know, you just don't go out and spray the azaleas with DDT because we've got an IPM program that dictates things. And, there are many, many programs that they have to comply with.

And, so it's no small matter to educate and train a new operator. And, so, you know, that's in the park.

Chairman VENTO. I hear you. No, I understand. We are not operating a burger franchise.

Well, I think that the key, as my staff is commenting, is to try to find the way of providing renewed competition and taking continuity into account and those factors. We don't want to simply change this on the basis of a few cents one way or the other.

Mr. ROUSH. Ten year contracts, if I can say, will not do the job in most cases. And, this has nothing to do with investment and payback.

Where you've got a building program, you know, the Park Service they have their own approval process. And, this process is no short-term matter.

This process can take a year. It can take two years. And, it has taken three years and more just for the approval of a structure, if you will.

And, so once you've got it approved and you've got another year for construction, you've got about six years left on your contract. And, then, of course, you are going to have to start two years before it expires.

So, in many, many cases, 10 year contracts are just not going to be adequate. And, small operators need long-term contracts as well as—

Chairman VENTO. Some of that is being decided by the rules and regulations process in terms of when you have a 10 year, how you extend it, when you extend it. Small contracts, especially in terms of where there is a limited visitorship or an opportunity to serve clients, are key. I understand that.

Well, you've all been helpful, although you don't agree. As I said to the last panel, it's making my job difficult.

So, the record is there. If you want to submit any more materials for the record, it will be open for 10 days.

And, with that said, the meeting stands adjourned. Thank you.
[Whereupon, the hearing is adjourned at 1:22 p.m., Tuesday, October 19, 1993.]

APPENDIX

OCTOBER 19, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

GEORGE MILLER, CALIFORNIA, CHAIRMAN
PHILIP R. SHAFER, INDIANA
STANLEY J. HANSEN, MASSACHUSETTS
ALBERT J. WADSWORTH, PENNSYLVANIA
RICK W. RABALAIS, WEST VIRGINIA
BRUCE E. VENTO, WISCONSIN
PAT WILLIAMS, MONTANA
RON W. LUDWIG, VIRGIN ISLANDS
SAM GLENN, CONNECTICUT
RICHARD W. LINDMAN, CALIFORNIA
BILL RICHARDSON, NEW MEXICO
PETER A. DIAZ, OREGON
BO FA, PALERMO, ARIZONA
TIM JOHNSON, SOUTH DAKOTA
LARRY LAROCHE, OHIO
HUB. ABERNETHY, NEVADA
CALVIN M. BOOLEY, CALIFORNIA
CARLOS RODRIGUEZ, PUERTO RICO
KARAR BRUSH, ARIZONA
LARRY BRUSH, UTAH
NATHAN DEAN, GEORGIA
MURRAY E. SHOFER, NEW YORK
ROBERT A. UNDERWOOD, GUAM
SAM FAIR, CALIFORNIA
LARRY BRUSH, UTAH
PATRY C. BROWN, HAWAII
THOMAS A. BARKLEY, KENTUCKY
THOMAS H. BARNETT, WISCONSIN

U.S. House of Representatives Committee on Natural Resources Washington, DC 20515-6201

DON YOUNG, ALASKA
RANKING REPUBLICAN MEMBER
JAMES V. HANSEN, UTAH
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JOHN F. BOGGS, CALIFORNIA
WAYNE ALARIO, COLORADO
RICHARD H. BAKER, LOUISIANA
KEVIN CALVERT, CALIFORNIA
SCOTT MOWBRAY, COLORADO
RICHARD W. PEARCE, CALIFORNIA
ANTHONY DICKY, ARIZONA

JOHN LAWRENCE
STAFF DIRECTOR
MICHAEL MILLER
GENERAL COUNSEL
DANIEL VAL EIR
REPUBLICAN STAFF DIRECTOR

October 25, 1993

Roger Kennedy, Director
National Park Service
Department of the Interior
Washington, DC 20240

Dear Director Kennedy:

As you may know, on October 19 the Subcommittee on National Parks, Forests, and Public Lands held a hearing on several pending bills that would revise current law applicable to the award and management of contracts for concessions in units of the National Park System.

One of the witnesses at that hearing was Ms. Mary E. Ames, President of an air services company based in Kill Devil Hills, North Carolina. I am enclosing a copy of her prepared testimony.

The testimony indicates that Ms. Ames was an unsuccessful applicant for a contract to provide flight services at the Wright Brothers National Monument, but that the contract was instead awarded to another applicant who allegedly was known to the National Park Service to be operating illegally and that had operated unsafely.

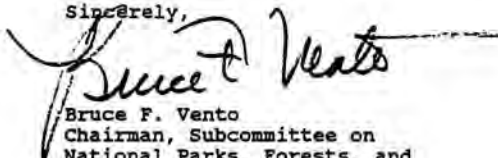
Ms. Ames cited this history as evidence of the need to change the requirements of current law related to concessioners' preferential rights of renewal. However, her testimony obviously also raises questions about the adequacy of the National Park Service's implementation of the current law.

I would appreciate it if you would arrange for a review of the events described in Ms. Ames's testimony. I would like to know whether her account is accurate and, if so, whether it indicates shortcomings in National Park Service procedures that have been or should be corrected.

Director Roger Kennedy
Page 2

I look forward to timely receipt of a report concerning the results of this review.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bruce F. Vento", with a horizontal line extending to the right.

Bruce F. Vento
Chairman, Subcommittee on
National Parks, Forests, and
Public Lands

BFV:tm

Enclosure



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D.C. 20013-7127



C3823(202)

DEC 8 1993

Honorable Bruce F. Vento
Chairman, Subcommittee on National
Parks, Forests, and Public Lands
House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

We are pleased to respond to your letter of October 25, 1993, and provide you with a review of the background and events involving the selection of Kitty Hawk Aero Tours, Inc., as the concessioner authorized to provide air sightseeing tours from the First Flight Airstrip, Wright Brothers National Monument. We also appreciate the opportunity to offer our comments on the testimony given by Ms. Mary E. Ames in hearings before your subcommittee on October 19.

While some of the documents prior to 1978 have been destroyed, records involving Kitty Hawk Aero Tours and Ms. Ames appear complete since that time. Consistent with Ms. Ames' testimony, our records indicate that she and her associate, Mr. John R. Stubbings of Wright Brothers Air Service, did in fact submit an offer to conduct the sightseeing air tours from First Flight Airstrip in response to a solicitation issued March 1, 1982. Of the four offers submitted, the National Park Service (NPS) evaluation team assigned the same rating scores to Kitty Hawk Aero Tours' offer and the Ames and Stubbings proposal. Again, as Ms. Ames indicated, the determining factor used in awarding the concession permit to Kitty Hawk Aero Tours was operating experience.

The record indicates that Mr. Jay Mankedick, President of Kitty Hawk Aero Tours, had been conducting commercial sightseeing air tours of the Outer Banks for some 6 years out of the Dare County Airport. Conversely, Ms. Ames had only recently obtained her pilot's license. Comparatively, we suggest that the flight operating experience factor was heavily in favor of the selected applicant. While the Ames/Stubbings offer was rated higher on management capability, flight experience was a higher priority.

Ms. Ames suggested that Kitty Hawk Aero Tours gained superior flight operating experience by illegally operating from this site. Undoubtedly, Mr. Mankedick did use the First Flight Airstrip prior to 1978, as did other air taxi and sightseeing operators; however, the record indicates that it was not until 1981 that the NPS first advised him that his activities were in violation of Federal regulations.

The record shows that Mr. Mankedick met with the superintendent and requested a permit to use the airstrip on September 29, 1978. He was told that this type of service was not necessary and no permit would be issued. Similar requests were made on June 3, 1980, and again on April 15, 1981. At the third meeting, Mr. Mankedick was advised that his operations were in violation of Federal regulations and that continued disregard would result in the issuance of a citation. This was confirmed by letter of April 22, 1981, the first written notification of the situation. On June 9, 1981, an employee of Kitty Hawk Aero Tours, David Shafer, was cited by a national park ranger for violation of the regulation. At that point, Mr. Shafer indicated that

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Mr. Mankedick wanted the citation so the matter could be resolved by the courts. The case was heard on November 19, 1981, by the U.S. Magistrate who entered a judgement of guilty, and suggested that the NPS could or should "work something out."

This suggestion prompted the NPS to review the situation, and resulted in a reversal of the previous position that air sightseeing services were necessary. As we indicated previously, Mr. Mankedick and other operators had been using the site for some time. A prospectus was issued and Kitty Hawk Aero Tours was selected.

With regard to the unsafe operations, we cannot confirm or deny Ms. Ames' statement that one of the Kitty Hawk Aero Tours planes had "gone off the runway and into a tree 2 years before." We were able to document her statement regarding an overdue 100-hour inspection of one of the Kitty Hawk Aero Tours aircraft. On June 13, 1982, the NPS pilot made an inspection which indicated a 20-hour deficiency, at which time the entire operation was ordered closed. The next day, June 14, 1982, a follow-up inspection found that the discrepancy had been corrected and operations were resumed.

Ms. Ames refers to two letters in which the NPS urged the concessioner to comply with the terms of his contract. The superintendent, by letter of August 27, 1982, advised Mr. Mankedick to take immediate steps to prevent incidents such as described in a complaint entered by a Mr. Paul Shaver. In that instance, we are advised that Mr. Shaver later apologized to Mr. Mankedick and admitted that his complaint was not valid. We were advised by Mr. Stubbings of a second complaint which had been filed by the Chief of Police, Kill Devil Hills, regarding low flying aircraft. After attempting to verify the complaint with the FAA in Raleigh, we were advised that the incident in no way involved the Kitty Hawk Aero Tours operation, and in fact the plane was identified as being from New Jersey.

Finally, Ms. Ames indicated that she gave up trying to compete for the concession upon learning that Kitty Hawk Aero Tours had received a rating of four out of a possible five on its evaluation report, and would, therefore, be entitled to a preference for a renewal or new authorization. While the preference may have been the determining factor, we note that Ms. Ames' letter of January 27, 1982, to the superintendent suggests that another factor may have also been significant. In her letter she questioned a provision specifying the applicability of Section 135 of the Federal Aviation Regulations as to whether the individual pilots and aircraft, or the permit holder had to have a section 135 operator certificate. She indicated that the reply would be the basis for deciding whether to pursue the concession authorization or to channel their energies elsewhere.

In summary, we would like to emphasize that the concession operations conducted by Kitty Hawk Aero Tours has been operated in a very satisfactory manner since the first permit was awarded in 1982. Since that time, the NPS has not received a single complaint from a patron regarding the services provided. There have been some complaints from former pilots who were fired for not following instructions, some general complaints regarding aircraft noise, and the violation of FAA regulations regarding the 20-hour overrun for inspection. While we agree with Ms. Ames that the latter is a serious matter, we also consider the prompt action taken by Kitty Hawk Aero Tours to comply with the regulations to be acceptable and indicative of the concerns for the public and cooperative efforts shown by Kitty Hawk Aero Tours.

As a final matter, we assure you that neither the superintendent, nor the concessions management specialist told Ms. Ames, or any other party that there was no need to submit a proposal for this or any other concession opportunity

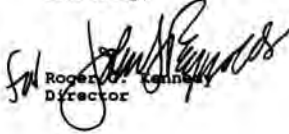
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in response to a public notice for a renewal. While in the process of renewing any concession authorization, NPS officials are repeatedly reminded to disclose the provisions of Public Law 89-249 along with explaining the procedures followed for all concession contract and permit renewals and new authorizations.

Again, we appreciate your personal interest in this matter and your continued support for the NPS.

Sincerely,


Roger W. Kennedy
Director

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