

CONCESSIONS MANAGEMENT

OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS,
AND LANDS
OF THE
COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTH CONGRESS
SECOND SESSION
ON
**REFORM IN CONCESSIONS MANAGEMENT IN FEDERAL
AGENCIES**

JULY 18, 1996—WASHINGTON, DC

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CONCESSIONS MANAGEMENT

THURSDAY, JULY 18, 1996

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS, COMMITTEE ON RESOURCES,

Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m. in room 1334, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JAMES V. HANSEN, A U.S. REPRESENTATIVE FROM UTAH; AND CHAIRMAN, SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS

Mr. HANSEN. The committee will come to order. We welcome our witnesses here. We notice on the witness list that Director Kennedy will be our last witness. We always welcome Mr. Kennedy here.

And if I may deviate for just a moment, we will be sending you a copy of Mr. Hodapp's trip report to Yellowstone and also one to Superintendent Mike Finley. We would appreciate it if you would review it and give us your comments on it. We tried to be very objective on our analysis.

It was almost exactly 1 year ago today many of us sat in this same room debating the merits of several concession reform bills which were before this subcommittee. I must congratulate the administration, because with time running out of this session, it appears likely they will succeed in frustrating our efforts to achieve the concession reform this Congress.

Congress did send to the President the most comprehensive concession reform bill ever, a bill which would have wiped out the preferential right of renewal for all NPS concession contracts, a bill which would have opened 5,000 concession contracts among four agencies to competition, a bill which CBO scored as generating an additional \$84 million for the Treasury over the next 7 years. Unfortunately the President vetoed the bill as part of the Balanced Budget Act.

It was a bill which reflected many changes from the version of H.R. 2028 I originally introduced last year. I kept my pledge to work on a constructive basis with any of the affected parties on the legislation, and we have spent an awful long time talking with a lot of people on this issue.

Unfortunately, the administration refused to negotiate with us. They refused to negotiate with us during the reconciliation conference even though we were very close. And after that bill was ve-

toed, Director Kennedy still refused to sit down and attempt to work out our differences on the measure, saying, "I take my lead in this matter from the junior Senator from Utah." And believe me, I have spent a lot of time with the junior Senator from Utah, and I think we are on parallel tracks.

I am not surprised. If we had been able to resolve this issue, it would have removed a few sentences from Secretary Babbitt's stump speech, which he gives regularly on his government-sponsored fishing trips around the country. It is clear that Secretary Babbitt is more interested in speeches and rhetoric than in solving problems.

However, concessions management remains an important topic, and today we turn the committee's attention to the existing program. We find several things of great concern. First of all is the fact that again we find the National Park Service can't account for all of its money. In May of 1992, GAO first raised concerns about tracking of the special NPS concessions fund. The testimony of the administration today, 4 years later, is they are working on a program to track those funds, but just 2 months ago GAO found the Washington office could not account for millions of dollars in concession funds which were going into the parks. GAO found that the information supplied to them by the Washington office was inaccurate at 10 of 14 parks.

This lack of accountability represents a great opportunity for those who want to misrepresent the amount of funding paid to the government by concessionaires for the purpose of attacking them, but it also speaks a lot about the management of the agency. Ironically the NPS wants Congress to give them more authority to retain concession fees when they can't even track the current fees.

Today we will also examine the NPS policy with respect to franchise fee reconsideration. It is well understood that fees paid to the government by NPS concessionaires could be higher, but, as GAO will testify, are depressed in part by lack of competition. However, few people are probably aware of how these fees are changed during the course of a concession contract. While fees are set at the outset of a contract through negotiation, the NPS has adopted a policy of unilaterally dictating new fees at 5-year intervals throughout the duration of the contract. Further, these new fees are for the express purpose of controlling profit.

To their credit, the NPS has recognized the serious flaws in this process—and we compliment them for that—and has engaged a consultant to make recommendations for changes. However, I would hope that by the end of the day, Director Kennedy would agree to set aside this flawed policy until a reasonable new policy can be implemented.

We look forward to the testimony of our witnesses. I don't see anybody from the Minority or the Majority here at this time. We are all very busy. It is going to be a very full day, and I am going to hold everybody to 5 minutes, so if you are in the middle of a sentence, and 5 minutes is up, please stop.

We will start out, panel number one, the people from the GAO, if they would come up. We appreciate your being here. Thanks so much.

As you told me earlier, you can handle that 5-minute restriction I put on you, and we appreciate it. We have a full platter of things to do, and I have another meeting starting in 55 minutes, so I appreciate you being here.

STATEMENT OF VICTOR S. REZENDES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY CLIFF FOWLER AND NED WOODWARD

Mr. REZENDES. Thank you, Mr. Chairman. I do want to introduce the two witnesses here with me. On my right is Cliff Fowler, our assistant director for the park work; and on my left is Ned Woodward, who has been responsible for most of the work that we are going to talk about.

GAO has issued over 30 reports in the last 20 years. Our most recent one talks about the rates of return to the government for concessions at all the Federal agencies. Our previous work as well as this report point to the same thing: The need for reform in concessions.

As you know, why we have concessions in national parks is not to raise money for the Federal Government, but rather to provide enjoyment to the public. However, there is a counterbalancing fact here that we should have a fair return for the Federal Government for the kinds of things that we allow concessioners to do.

This is a big industry. There are over 11,000 concessions in the Federal Government in the civilian agencies, and they are managed by 42 Federal agencies. While that is a lot, the bulk of the agreements rest in the six land management agencies, which comprise over 90 percent of the agreements.

What we found is there is a difference between the rates of return in land management agencies and the other agencies. In the land management agencies, the rate of return is roughly about 3 percent. In the other agencies it is 9 percent.

We identified three basic reasons for this disparity. One was the use of competition in awarding these agreements; two, whether there was preferential right for the existing concessioner to renew the agreement; and the third was whether the agency could retain the majority of the concession fees.

Let me talk first about competition. What we did find is that when competition was used, it more than doubled the fee to the Federal Government. We are talking about without competition, the return to the government averaged about 2 percent; with competition, the return averaged about 5 percent. The interesting thing here is although the land management agencies have the bulk of the concession agreements we looked at for fiscal year 1994, they used competition in less than 10 percent of the cases. The other agencies used competition in over 90 percent of the cases.

Let me now switch to the preferential right of renewal. As you know, this is giving the existing concessioner the right to match or better any other offer that comes in, we found that has a chilling effect in terms of particularly the rates of return and on competition because few firms are willing to come forward and bid and go through the time and effort to make a solicitation when, in fact, the existing contract is probably going to get the bid.

We found that when preferential rights to renew were included in the contract, the government's rate of return was just under 4 percent. When that was not in the agreement, it was about 6.4 percent.

Finally I want to talk about the third piece, which was whether the agency can retain the fees. We found that when agencies are permitted to retain over 50 percent of the fees that they collect, the return to the government is over 3 times higher than agencies that are not permitted to retain this level of fees. That is a powerful incentive for them to police these fees and get more out of them.

Concurrent with that, in terms of allowing agencies to keep fees, this would provide a backdoor financing to these agencies, and it raises questions of congressional oversight as well as how these things are scored under the Budget Enforcement Act. So there are other counterbalancing issues that is going to impact on your flexibility to move money around in the Federal Government.

I want to tie these three points to basically the last point that you mentioned, which was special accounts, which is related to retaining fees.

We found, for example, in the Park Service that there is an increasing trend in the parks for the concessioners to forgo paying fees to the Federal Government and rather use special accounts, which is to turn money into a bank account to use it for construction and various other things related to concession activities within the park.

The Park Service couldn't provide for that kind of money. We found they didn't know how much had been deposited into special accounts throughout the Service. We found when we did a sample, it was \$5 million more than the \$14 million they had accounted for. They are going through a process of trying to track that more accurately. We will be reviewing that as part of other work requested by the Subcommittee. That is it.

Mr. HANSEN. Well, thank you very much. I appreciate that. That was great testimony.

[The statement of Mr. Rezendes may be found at end of hearing.]

Mr. HANSEN. We have been joined by the Ranking Member of the committee Mr. Richardson, and we turn the time to you if you have an opening statement.

STATEMENT OF THE HON. BILL RICHARDSON, A U.S. REPRESENTATIVE FROM NEW MEXICO

Mr. RICHARDSON. Thank you, Mr. Chairman.

Mr. Chairman, I think it is very important that we pass concessions reform. We need to deal with this not just for deficit reasons, but to raise funds for the parks to improve the overall public lands system.

I would hope we get a chance to vote on concessions reform this year. And I guess the basic issue, as I see it, as we look at reform of the concessions system is are we going to have a competitive system, or are we going to have a system that gives competitive advantages to certain concessioners? That is my view.

Mr. Chairman, during the question period I will pose that question to the gentlemen, but thank you.

Mr. HANSEN. I recognize the gentleman right now. If you would want to go ahead and talk to the folks from GAO, you have three very able people there.

Mr. RICHARDSON. Thank you, Mr. Chairman.

I noticed your report. It basically says concessions reform is needed on Federal lands. Mr. Rezendes, I didn't hear your statement, I just walked in. Tell me in a nutshell your conclusion. Is a competitive process better than giving competitive advantages to certain existing concessioners?

Mr. REZENDES. As I said, and that is in my statement, we found that when three factors were considered, competition, eliminating the preferential right to renew, and also when agencies had the authority to retain the majority of the fees that they collect. Those three provide a pretty powerful incentive to increase the rates of return to the Federal Government.

Mr. RICHARDSON. What about the interest, possessory interest?

Mr. REZENDES. We didn't find much impact there. We did do some analysis, I think, with possessory interest included in the agreement. The return to the Federal Government was just under 4 percent, and without it, it was just over 4 percent. So it really wasn't a significant factor in terms of our statistics.

Mr. RICHARDSON. Would you characterize the present concessioners as committed to improving the park system, or are they more money-making operations, more bottom line operations? What is your view of that?

Mr. REZENDES. We have seen a trend of use of special accounts. And that is basically the Park Service foregoing fees to the Treasury and rather retaining money within the parks for renovations, constructions, maintaining the infrastructure there.

If you look at some of the big parks, such as Yellowstone and Yosemite, basically we are foregoing fees totally to the government, and we are relying on special accounts, and that is being plowed back into the park.

Mr. RICHARDSON. Are you familiar with Mrs. Jan Meyers's bill, H.R. 773?

Mr. REZENDES. Yes, sir.

Mr. RICHARDSON. Do you support that bill?

Mr. REZENDES. We have previously testified that H.R. 773 was one of the concessions bills that talks about what we think needs to be done, which is increased competition, eliminating preferential rights, that sort of thing.

Mr. FOWLER. If I could add to that, specifically what we are saying about that bill is that it does a lot of things we would be in favor of in terms of improving competition and getting rid of the preferential rights.

Mr. RICHARDSON. In the Meyers bill?

Mr. FOWLER. Yes.

Mr. RICHARDSON. Did you hear that, Mr. Chairman?

Mr. HANSEN. Would you like to repeat that? There are many persons who have claimed that the existence of the possessory interest in and of itself is a barrier to competition. Mr. Richardson was going along that line and got distracted there. What is your conclusion on that?

Mr. REZENDES. We know that the Park Service thinks it does, that it has a chilling effect on competition. That wasn't supported by any of the numbers that we came up with in this April report, which shows basically that the rates of return to the Federal Government when possessory interests were included in the agreements were roughly the same. There wasn't a major difference from our work.

Mr. HANSEN. Your report there has an interesting conclusion in it. It says that in State parks in my State, we have 41 State parks, has a much higher rate of return than the national parks. What is your conclusion on that? Does it come down to that bottom line issue?

Mr. REZENDES. We did look at four States and Canada, and we found that the States' rates of return on the parks range from 11 to 17 percent, and in Canada it was close to 10 percent. Whenever you do an analysis like that, which is always a problem from an evaluation perspective, and finding comparability, the State parks obviously are smaller, smaller infrastructures. They are not quite the same as the national level. But it is interesting to note their rates of returns were higher, and they attributed part of it, at least, to competition, to use of competition in their concession agreements.

Mr. HANSEN. As you know, we sent a letter to you folks on July 15th. We were asking for some additional information. Specifically we would like you to review major concessions contracts, the extent of competition, return to the government, the impact on competition of existing preferential rights.

We are also interested in special accounts. What has been the trend in the use of these accounts? Are these accounts used for projects which address priority needs? And a few other things, which we think would be very important.

Actually the bill that we presented compared to the Meyers bill generated an additional \$84 million for the government. Jan and I have tried to reconcile our differences on that.

I think it is very difficult to ask someone to go to Yellowstone, put up millions of dollars in the Lake Lodge and others and say, oops, you just invested millions and millions of dollars; however, we are going to say to you that we are going to open this contract for competition. We are going to allow Bill Marriott to come in and scoop you out. That doesn't seem fair either, which I think the Meyers bill has a great deficit in when we get into that particular area.

But we all have our differences of opinion, and that is the beauty of our system, as long as we all do it as gentlemen and ladies, as the case may be.

Do you have any further questions for these folks, Mr. Richardson?

Mr. RICHARDSON. No, I don't. Thank you.

Mr. HANSEN. I appreciate your comments and your statement, and we look forward to hearing additionally from you.

Our next group is Mr. Henry Diamond, Attorney at Law; Mr. Dean W. Fischer, Partner, Arthur Andersen; Mr. Robert L. Andrews, Assistant Professor of Management Science, School of Business, Virginia Commonwealth University; and Mr. Bill Chandler,

Director of Conservation Policy with the National Parks and Conservation Association.

Thank you, gentlemen. We appreciate you coming here. Pleasure to have you with us.

Mr. Diamond, we all know the rules here, we turn the time to you, sir.

STATEMENT OF HENRY DIAMOND, ATTORNEY AT LAW

Mr. DIAMOND. Mr. Chairman, good morning. My name is Henry Diamond, a partner in the law firm of Beveridge and Diamond.

I suppose longer than any reasonable person should, I have been involved in concessions issues going back to the Outdoor Recreation Resources Review Commission made up of eight public Members of Congress and chaired by Laurance Rockefeller in 1961, which carried out a study of the concessions industry for that Commission, and which its report, as you may recall, led to many of the provisions of Public Law 89-249.

My basic conclusion is that I have been extremely perplexed by the controversy surrounding the issue of reassessment and reconsideration of fees. I am perplexed for this reason: That over the years there has been a strong cooperative effort between concessioners and the Park Service. They have shared snowplows, and swapped gallons of paint, and fought fires together, and yet we have gotten a situation now where we have a considerable acrimony.

It seems to me to be two reasons that this has developed: One, that the Park Service has been under pressure from a number of sources, including those on the Hill, to raise concession fees. And this is a legitimate public issue, what the level of fees should be. I certainly don't question that they should be reviewed.

The second point is that they have used a very crude tool to assess what the fees should be, and this is our so-called NPS-48. I think others will criticize it in some detail, but let me say a word about it. It is a Park Service guidance. In my view, it uses a wrong comparator. It uses hotels and resorts that really aren't like Park Service concessions. And then the most, I believe, unfortunate part of it, the application of the system, is that the Park Service then drives down the net profit of concessioners to the mean of this average, to the mean of this index. And that produces—it says no concessioner may get more profit than the average person in an unlike index. And that is, I think, the basic problem we are dealing with.

My view of the statute is that the Congress said—and this is important to state—the Congress said that the concessioners shall have a reasonable opportunity for a profit, not an opportunity for a reasonable profit. And there is a big difference there. There is no guarantee of a floor. It is not like a utility. Concessioners are not guaranteed a profit, nor should they be limited, and I think that is the key difference.

Having criticized it, which I do in the paper which I will submit to you, and which I have done over the years, let me make some suggestions as to what could be done. The basic problem is that the current reconsideration system every 5 years creates a system of uncertainty. In recent years we have seen proposed increases three,

four, five times to the existing contract. And to a businessman, that is pernicious. If you don't know what your franchise fee is going to be, and the Park Service, who may be taking 20 percent of your net, says for the next 5 years we are going to take 80, it creates a situation of uncertainty.

My suggestions for improving it, which are expanded in the paper which I am submitting, say, one, I encourage the competition that the Park Service is espousing. At the outset let's have intense competition and make a large part of that competition the franchise fee. Very often other factors come into it other than the fee, but put all the assumptions on the table when you compete for that franchise fee. By that I mean, say, if we are going to allow so much overhead, put it in the perspective; or if we are only going to allow certain officers' salary, put that in. If you are only going to allow such return, which I think is a bad idea, but if that is the Park Service's view, then that has got to be in perspective.

Having had the certainty, then, I have a number of suggestions for toning down the changes later. One, get away from Dun & Bradstreet. Two, use something like adjustable rate mortgage with limits. Say that the fee is not going to go up more than 1 percent or 2, whatever the number is. Three, give more certainty and more role to the local park people who know better what is going on. And four, make sure that the Dun & Bradstreet Index is revised if you are going to use it.

In closing, let me say that all of this speaks no criticism of Park Service personnel. As everyone knows, they are dedicated, and the concessions people are as dedicated as anybody. It bespeaks a rather harsh criticism, however, of this system, which I think can be improved and will produce better results, more certainty for business, and importantly for our public purpose, better service for the public. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you Mr. Diamond.

Mr. HANSEN. Mr. Fischer?

**STATEMENT OF DEAN W. FISCHER, PARTNER, ARTHUR
ANDERSEN LLP**

Mr. FISCHER. Good morning. Glad to be here. My name is Dean Fischer. I am a partner in the Chicago office of Arthur Andersen. I have been with Arthur Andersen for about 19 years now. I work in a variety of our practices within our firm. Most relevant to this hearing is my work in our Business Consultant practice where we work with our clients to improve their business processes and help them reengineer their businesses—just in the ordinary course of improvement of their operations on a day-to-day basis.

My engagement with the National Park Service began some time around January of this year, and we were really given a charter of two things, two primary purposes. One was to identify opportunities to improve and simplify the franchise fee determination process. And second was to improve and simplify the Annual Financial Reporting process that takes place as part of this exercise.

The constraints that we were given was to work within the existing law; not to come up with ideas for specific legislative reform, but to work within the current legislative constraints to improve the process.

We focused again on the franchise fee calculation, the reconsideration process, and how the AFRs, annual financial reports, are being used.

We met with many people internally within the Park Service, all the way from the headquarters operation in Washington, the operations in Denver, some of the field areas, and we went out to eight, nine individual parks. We also had a session where we brought a sampling of some of the concessioners in to listen to their concerns—listen to their ideas for improvement and so on.

Let me just very quickly highlight. We have a report that will be coming out that is in a draft form now and will probably be out within 30 days, 45 days or so.

One of the things what I would like to do is just touch on the major recommendations that we are making with respect to the franchise fee calculation and NPS-48. For those of you who have worked through the calculation, it is very complicated, it has a fair amount of subjectivity in it, and it is not very well understood by many people, even those in the parks and some of the concessioners themselves.

What we tried to focus on was ways to simplify this exercise, make the process more objective, make the calculation more objective, get more input from park and field personnel in the process, and to address one of the biggest issues that the concessioners have, which is to reduce the uncertainty that comes about at reconsideration time.

In the area of franchise fee determinations in the process, we are recommending a new process flow which we think will add more accountability and will make the process go quicker and smoother from both the Park Service standpoint and the concessioner's standpoint.

With respect to the Annual Financial Reports, the Park Service has a very rich data base that has been accumulated over many, many years of concessioner results of operations and financial data. We think that the Park Service can better utilize some of that information, not only to better manage the concession operations, but for using those in the time of negotiation with the concessioners.

Lastly, we think, as I think many do, that the preferential rate of renewal, the possessory interest, and just the general uncertainty with respect to reconsideration does have a significant—or has impact on competition.

Our report, as I mentioned earlier, will hopefully be coming out within the next 35, 45 days, and it covers a number of other issues, but those are the primary things I wanted to cover this morning.

Mr. HANSEN. You will send up a copy as soon as it is hot off the press, right?

Mr. FISCHER. Absolutely.

[The statement of Mr. Fischer may be found at end of hearing.]

Mr. HANSEN. Mr. Andrews?

**STATEMENT OF ROBERT L. ANDREWS, ASSISTANT PROFESSOR
OF MANAGEMENT SCIENCE, SCHOOL OF BUSINESS, VIR-
GINIA COMMONWEALTH UNIVERSITY**

Mr. ANDREWS. Good morning. I am primarily a statistician, and the remarks I am going to make are going to be related to statis-

tical aspects of NPS-48. Some of those things have already been talked about very briefly.

My testimony will refer to particularly one. I wanted to use Fort Sumter tours and the fee analysis that was done of them to illustrate, I think, some shortcomings of the NPS-48.

I want to ask a couple of questions. One question: Is it appropriate to control profitability of concessioners by the National Park Service in adjusting the franchise fees? The particular procedure gets a distribution, a set of peers that will establish a distribution of profitability. Then look at a particular concessioner, and if they are above the value that is the middle, then they are adjusted completely back to the middle. That is the procedure that is used.

In effect, what this does is that it taxes anybody that is above the middle 100 percent of their profitability. And the result to the concessioner is that you have no reason to be anything other than mediocre. You want to be in the middle because if you are above the middle, you are going to be taxed in your renegotiation and moved back to the middle so that there is no reason to excel in any way, shape or form. And I question whether this is what we want to do in terms of a policy that would tax people at 100 percent of their profitability above some value.

Second question that I raise, if the government wants to control profitability, then is this policy and procedure as it is currently outlined and put into practice by NPS-48, is it fair?

They use right now standard industrial classification codes to identify the peer group, rather than data bases that they may have. Some very serious questionability about that. Also, the people that report just are self-reporting. There is no information about the people that don't report, which can lead to very misleading situations. These are statistical data that are turned in that is a sample. In statistics we understand that there are variability associated with those things with sample values. No consideration given to that, which is a violation of any statistical procedure where you consider standard errors of what is being done.

The values that are reported by concessioners, I talked about Fort Sumter tours, their equity was changed by 47 percent, and this was self-reported. However, the things that are self-reported data to use the standards are not adjusted in any way, shape or form. We get comparing apples and oranges; we take adjusted data and compare it with unadjusted data in terms of those standards.

For example, these results that come out, the particular standard of Fort Sumter tours was held up against—was something that approximately a third of the companies there were operating at a loss. This was the standard that the National Park Service was holding up to them to say—and I question whether that is a realistic expectation that you are going to expect a third of your concessioners to operate at a loss.

There seems to be some internal inconsistency in terms of the way the NPS guidelines are. The state is that the review of the concessioner's results will consist of a search for overstated or understated expenses and for evidence of good or poor management. The financial fee analysis that I saw from Fort Sumter tours certainly adjusted values, but no search for good or poor management. No encouragement at all for somebody to do well. As I said, there

is 100 percent taxation of profitability among—above a particular level. Also there is no focus on quality of service at all.

The documents states, the consideration of revenue to the United States shall be subordinate to protecting the park areas and services. And there is no consideration of that at all. And I think that those are serious problems with the NPS—48.

Thank you, sir.

Mr. HANSEN. Thank you Dr. Andrews.

[The statement of Mr. Andrews may be found at end of hearing.]

Mr. HANSEN. If you folks notice, there are two lights just going on. That means we have a few minutes to get over and vote. Regardless of what I say or anybody else says, we are controlled by the clock and controlled by what goes on on the Floor.

Mr. Chandler, if you wouldn't mind, and the rest of you wouldn't mind, we will stand in recess while we run over and vote, and we will be right back. We are in recess. Thank you.

[Recess.]

Mr. HANSEN. The committee will come to order.

Mr. Bill Chandler, good to see you again, sir.

STATEMENT OF BILL CHANDLER, DIRECTOR OF CONSERVATION POLICY, NATIONAL PARKS AND CONSERVATION ASSOCIATION

Mr. CHANDLER. Thank you, Mr. Chairman. I appreciate the opportunity to present the views of the National Parks and Conservation Association.

In examining the GAO report, Mr. Chairman, what I draw from the report is the following: The National Park Service is virtually crippled in its ability to effectively manage concessions in a businesslike manner because of an obsolete law that gives almost every conceivable advantage to incumbent concessioners. The law guarantees lower than expected returns to the taxpayer. Nonetheless, we believe that the Park Service has striven mightily to do the best it can under this system and to raise fees, which it is doing. It is making progress, but not the kind of progress that I think both our association and you would like to see.

Now, with regard to the issue of fights over concessions fees, there have, in fact, been relatively few of these. The idea that the Park Service is driving concessioners out of business or not letting them make enough profits is, I don't think, supported by the facts.

We have had a handful of fee cases arbitrated in recent years, and we have had one challenged recently by a concessioner who did not follow the administrative process. Mr. Chairman, I don't think we would even have these disputes if we had a concessions bidding process that would let the market help determine the fees for a fixed period of time. In other words, we can get rid of all of this controversy if we just structure the right kind of system.

Now, I know, Mr. Chairman, that you have agreed that preferential right needs to be repealed, but we still have not convinced you yet that possessory interest is not helpful or necessary to get the kinds of concessions we need in the parks.

The Park Service and Arthur Andersen have identified possessory interest as a hindrance to fair competition. Common sense tells us this is so. For example, Mr. Chairman, if I am a busi-

nessman and I have to come to the table in a bidding process with an incumbent concessioner, and the first thing I have to do is pull out \$5 million out of my wallet to buy out the possessory interest of the incumbent concessioner, I immediately have a millstone tied around my neck in the bidding process. And we don't think that is fair, and we don't think it gets the kind of aggressive up and coming concessioners that periodically need to be brought into the parks, if and when necessary, to provide the services needed.

GAO notes that four States and Canada, which it uses for comparative purposes, do not even allow possessory interest. What they do, Mr. Chairman, is that they structure the deal so that concessioners have enough time to make a profit and to amortize their investments. This is what contracting is all about: Flexibility to structure a deal that works in each individual circumstance.

Our conclusion, Mr. Chairman, is that the only way to fix concessions management in the Park Service is to pass a reform bill that adheres as nearly to market mechanisms and market practices as possible. The National Park Service and the national parks are no longer the isolated kingdoms in the middle of nowhere that they once were in 1965. Concessioners in those parks can compete, and they can compete under the same kinds of practices that they are competing under elsewhere outside the parks.

What we do need, Mr. Chairman, is action in the Congress on a bill. It is our view that the differences between your bill and the Meyers bill can, in fact, be worked out either in committee or on the Floor.

But we are dangerously close to having no bill at all. Should that happen, the parks and the American people will be the losers. Thus, my plea today, Mr. Chairman, is for you to use your power to keep a bill moving, and we look forward to working with you in a constructive way to do that.

Thank you, Mr. Chairman.

Mr. HANSEN. Thank you very much, Mr. Chandler.

[The statement of Mr. Chandler may be found at end of hearing.]

Mr. HANSEN. I appreciate the very informative testimony from all four witnesses.

There are some big problems, we know. Mr. Chandler just talked about the two bills. Keep in mind there are 28 legislative days left, and the ballgame ends, and we are just like a football game. The time comes up, and that is all they wrote, and we adjourn sine die, which means "without day," and we are done.

I agree with your statement, Mr. Chandler. We would really like to sit down and work on these things. Jan Meyers is an extremely good person, and there is some awfully good stuff in her bill. We can't go back and cross every T and dot every I and look every semicolon over. It has to come down to these are the major differences, one, two, three. If we solve those, we put this on a fast track. We can't solve it, I hate to say it, because I agree with what you said, and I agree with what others have said. It would be a loss for the Park Service. And the Park Service does need some of these things in order to get things going.

You have all commented on the uncertainty associated with franchise fee. Reconsideration is provided currently by the National

Park Service. Do you all agree that concessioners would be willing to pay a higher fee if there was less uncertainty?

Mr. Diamond?

Mr. DIAMOND. I think it would vary, Mr. Chairman, with circumstances, where the business is profitable and where the renewal looks like a good thing, and many would be. Some who are on the margin clearly would not, but that certainty issue is a very, very important factor which I think most concessioners would be able and willing to pay a little premium for; not all of them.

Mr. HANSEN. Anybody else want to comment on that?

Mr. Fischer?

Mr. FISCHER. Yes. In fact, this was one of the issues that we covered in our meeting when we had some of the concessioners in while we were doing our project. In fact, a number of them affirmatively stated that they would, in fact, be willing to pay more if there was certainty. That reconsideration uncertainty is a huge uncertainty to them. And they did indicate the willingness to pay more for some certainty.

Mr. HANSEN. Anybody else want to take a shot at that?

Mr. CHANDLER. Mr. Chairman, if I could add a point. We would agree that certainty is the businessman's best friend, and the businesswoman's. And we think that we can understand how the reconsideration period would cause problems. I think there are other ways to structure these kinds of deals, though, that the Park Service needs to get into.

For example, they could say, you know, if your gross exceeds \$1 million, you pay such and such a fee; if it exceeds \$3 million during the course of the contract, you pay another fee. That approach builds in certainty, but it is also building in higher franchise fees up front if necessary.

Mr. HANSEN. I know as I listen to you all speak and hear the well-thought-out ideas, some of them have to take the big dose of reality of what can we get through and what is going to really happen. But I have tried as a Member of this Committee for 16 years to go to as many parks as I can, and I have gone to an awful lot of parks, and every time I go to the parks, someone shows me an illustration.

When I was in Yellowstone last year, I was over at the Lake Lodge, and Steve Tedder, Steve was showing me—Steve has been around a long time and really a savvy guy when it comes to parks, and he tries to be very fair. I find that basically with both concessioners and with our park people. They are dedicated, good Americans. Steve was showing me Lake Lodge, and he said this is what it costs us to do it. Man, we are not talking a small amount of money. We are talking big, big bucks. Well Lake Lodge, you know, was built before probably any of us in this room were born. And as an old developer 100 years ago, I wouldn't want to say that I was the one to put the uneven floors in, but there is a certain nice thing about it. It has a certain thing that grabs you. This is great history to go in here on this uneven floor and the way it is done. It is a lovely building, just like the Old Faithful Lodge. I can't remember the figure, but it was a lot of dollars.

Now, how do we tell—that was then. TW Services, who has taken it over since then, how do we tell these guys, you don't have

any right if this comes up for grabs next week or a year from now, you don't have any possessory interest in it? I can see some arguments, Mr. Chandler. Anybody want to take a whack at that?

Mr. CHANDLER. I will take a whack at it, Mr. Chairman. We are not saying that they shouldn't maintain any value to be compensated for if they lose the contract. We are just saying it ought not to be appreciating at replacement or reconstruction cost value like it does now. And, in fact, I know this sounds strange, Mr. Chairman, and the way you present the example, everyone understands and probably believes it is strange, but, in fact, these same concessioners are bidding on other contracts outside the parks with no possessory interest. And what makes it possible for them to do that is the various pieces of the deal that are put together. The fee, the length of the contract, the amount of capital, the pricing, all of those things have to be feathered to fit together to make their overall profit margin come out for them over the life of the contract.

That is the way the system is working in the market now, Mr. Chairman, and that is what I think we have to approach in your fee bill—excuse me, your reform bill.

Mr. HANSEN. I would almost like to see that down—I agree with some of the things you are saying, but I would almost like to see it down to nuts and bolts. So, OK, they don't pay a franchise fee. We now charge them a franchise fee. Who is going to come up with the up front money?

You know, I think about Mr. Kennedy. He has a real problem. If something happens in one of his parks, he has to come up with some bucks in a hurry. Say you burn down the lodge at the North Rim of the Grand Canyon. Wow! I mean, you are talking millions of dollars. And he doesn't have the money. The Treasury doesn't have the money. He doesn't get it from us. So what is he going to do, just stand there and be a frustrated guy? So somehow we return to the concessionaire and say, "OK, you do it," instead of saying take it out of the fees.

I am not trying to pose any problems because everybody's heart is in the right place. It is just, how do we get to this thing?

As I have stumbled through these parks and talked to people and talked to superintendents and the workers and others, not everybody goes to look at the Grand Canyon and not everyone goes to look at Yellowstone.

I stayed up there with my wife and two kids in Yellowstone and just did kind of a really poor analysis, a statistical analysis, of why were people there, and I just said, "Pardon me, I work on park issues." I didn't tell them I was Chairman of the Subcommittee or anything. "But I would really like to know, what do you look for when you come to Yellowstone?" This infinitesimal amount came to see the hot spots and the geysers. Most of them came to see the Old Faithful Lodge.

One guy said to me, he said, "I loved standing in this lodge." He said, "Look at the architecture of this place and the heads." And other people—the second one said to me, "The animals." A lot of them just say, "I just love the area, the beautiful landscape, the green carpet, the trees and all these things."

So, you know, it is kind of, beauty is in the eye of the beholder. So you look at it and say, if a lot of these folks come to these places because they like Old Lake Lodge, the Old Faithful Lodge, they like this lodge on the North Rim of the Grand Canyon, they like those things as much as they do, what many of us say, I like to stand and be inspired as I look at one of these Seven Wonders of the World looking over the Grand Canyon.

I have told you folks many times, I have spent hundreds of hours in the Grand Canyon and I have gone to every point. I have hiked it a dozen times. I have flown an airplane down the middle of it. I rafted the river three times. I love the area.

I think sometimes we get tunnel vision on some of these things, saying, well, everybody likes to come for Old Faithful and nobody wants to stay in those things that the concessionaires take pretty good care of. I sometimes get confused on that.

I have to say I was, frankly, amazed last Tuesday when former Senator Gaylord Nelson testified in front of this committee. He kind of went on a tangent, and he was quoting a man who said—an old, old statement—we should never let automobiles in the parks. And then Mr. Nelson, former Senator Nelson, said—and he was absolutely right—“Wow! 370 miles of roads that Mr. Kennedy happens to have in Yellowstone Park, 42 miles from Jacob’s Lake to the North Rim of the Grand Canyon. How are we going to do that?” In other words, he was saying let’s make it a wilderness area.

If I must say, one of the things that disturbs me about my good friend Jan’s bill, I don’t know if you folks—if she has changed it or not—is, if something burned down, you couldn’t replace it except outside the park. Then we, in effect, lose one of the great reasons that people come to the area.

So we are trying to work some of these things out. And that was an issue. If you go back and see, in the 103rd Congress, if you go back and look at the Floor debate, that was one of the big issues.

I have already broken my own rule, but I don’t have any choice with votes coming on.

Let’s see. Let me thank all of you. We do have some additional questions from the Minority and some of our folks. If we send those for you to answer, could we get a written response? Would that be all right?

Mr. DIAMOND. Yes.

Mr. HANSEN. We appreciate. Your testimony was excellent.

Mr. Chandler, I didn’t mean to hold you up.

Mr. CHANDLER. No problem, Mr. Chairman.

Mr. HANSEN. I don’t control these votes around here.

Mr. HANSEN. I will now excuse you folks and turn to Mr. Roger Kennedy, Director of the National Park Service.

I heard Mr. Kennedy referred to as the ping-pong ball between Bruce Babbitt and the Senate and the House committees yesterday. I thought, I surely don’t want the gentleman who works so hard and who tries so diligently—and I compliment him for working as hard as he does—in having to put up with the harangue he gets up here and the harangue he gets down in his own department.

I admire you. You put up with a lot.

STATEMENT OF ROGER KENNEDY, DIRECTOR, NATIONAL PARK SERVICE, ACCOMPANIED BY ROBERT K. YEAROUT, CHIEF, CONCESSIONS DIVISION, NATIONAL PARK SERVICE

Mr. KENNEDY. Thank you, Mr. Chairman.

I don't know exactly what to do here. I would like to file my statement.

I have got two things I think I need to do. First of all, I really want to underline what you have just been talking about. In my view, if this could not come out of my time, I would like to do this. It is real important.

Our problem here is making it more likely that there will be long-term investment in the rehabilitation of facilities in parks, many of them having historic qualities, that need at least a couple of hundred million dollars pumped into them now, that will require much more focused attention as to why a prudent investor would make those investments. Now, we are going to have to help them with that.

Very little of the discussion of the day is going to turn around that question: How do you enhance the probability that there will be a reasonable rate of return for an investor who puts a lot of money into the rehabilitation of structures in which service is provided to the public? Big subject. You are right, I think, that is where the emphasis belongs.

Mr. HANSEN. Well, you are right. That is one of the big frustrations this committee has faced my entire time on it. I think somehow, whether it is the Jan Meyers' bill, the Hansen bill, somewhere that has got to be worked out.

Mr. KENNEDY. Yes. I think that sort of starting out—whatever happens in this session, we have to go back to work on that question, addressing the fundamentals of the investment realities here and with—I have been spending a lot of time with the CEOs of major concessioners, trying to understand this myself, and let's get back to work on it whatever happens this session, please.

Mr. HANSEN. While you are on that and before you start your testimony, what do you think about the idea? Can we work out a concession bill in 29 days?

Mr. KENNEDY. Yes. You always have the hope. My personal view is that the major differences here lie with the preferential right of renewal.

Mr. HANSEN. Absolutely.

Mr. KENNEDY. And the difference is not great, I believe. The point process that is in your bill we don't like, as you know.

Mr. HANSEN. Sure. I understand.

Mr. KENNEDY. But if we could get honest competition at the outset, as Mr. Diamond suggests, then from that a whole lot of things can proceed. And if that can cover most of the money—I don't think we need to worry about the number of contracts so much as we do the amount of money that is engaged here. If we can get past that point, I can't see any reason why we couldn't get an agreed bill. You know and I know that we spent a lot of time talking about this.

My remark about Senator Bennett simply was that it seemed to me he was a good businessman who had his head around this. Therefore, I do have faith that this can be worked out. I always—

Mr. HANSEN. Roger, he is also a good Mormon.

Mr. KENNEDY. That is true, too.

Mr. HANSEN. You know out of that he has repented from his sins?

Mr. KENNEDY. So have I, and so have you, Mr. Hansen, almost daily, and we have got plenty of reasons.

Mr. HANSEN. OK. He told me he repented from many of those things and he can now see the side of truth and righteousness.

Having said that, and seriously, I agree with what you say, but it has got to come down to the point, if people—all these folks have a very realistic interest, and I don't play that down a bit, everyone who is here and others, but they have got to realize that the clock is ticking.

Mr. KENNEDY. Yes.

Mr. HANSEN. They have got to realize, if we want to be picayune and we want to cross every T and dot every I and, "I can't compromise and have it my way," forget this thing. I have got a full platter of bills to work on, and we are willing to do it if everyone else is. If not, we are going to say, "Manana."

Mr. KENNEDY. OK. I hope we get a bill that has competition that is real going in. Beyond that, there are many other details about which one can bicker, but that is essentially it. Do you have competition or don't you? And does it stay in the parks?

Of course, this being an oversight hearing, I am going to try to respond to things that I don't think should be undone on the record.

Mr. HANSEN. Yes.

Mr. KENNEDY. First, does the Park Service have decent books? Of course it does. It always has. My predecessors left with me some troubles in the accounting. We have gotten them fixed. The inspector general has said we have got them fixed. We will have a clean audit. I would just as soon hear no more about, the Park Service doesn't have good books. It does. It essentially did. What we inherited we have fixed, and the inspector general agrees.

Second, there is no testimony before this committee indicating that we can't account for these famous special accounts. That is not the problem. The problem is, how do you state in categories what is in them? Every buck is accounted for. I just want to be sure that is on the table.

Third, I simply—you don't have time for me to respond to Professor Andrews in detail, but I have to say, sir, that we have got to be able to respond in detail to that testimony. It is full of misstatement and error.

Now, let's just move on, if I may, quickly to just a couple of matters of information. This is not contesting. I am simply trying to get some information on the table.

The public needs to know, I suppose—and we both want them to—where the money goes from these special accounts. It is significant that they do things that we all want to have happen and they do things at the local park level. For instance, at Blue Ridge they go for gas tank rehabilitation; at Gateway they go for parking facilities; they go for rehabilitation of food service; they go for sewage treatment; they go for docking sites. This stuff isn't just sort of disappearing into the air. That is the point; it stays in the park.

It needs to be properly accounted for. It needs to be expended with professional skill at the local level by people who know what they are doing. Yosemite, hotel boiler system, replace the food service and merchandise facilities. This money gets spent at the local level, it doesn't float back to the general treasury for other purposes.

We think it is very important to sustain that process, much as the reasons that we agree on together thoroughly, which is why fees ought to stay in the parks; very much the same process.

I think, Mr. Chairman, I ought to stand back for questions because you are in a hole on time. So far as I can tell, we and the GAO are together on nearly everything here. We find their report very heartening. They think we are doing fine.

Oh, yes, just one other set of numbers, if I can get them in very rapidly. We are doing pretty darn well on getting the backlog in concessions contracts done. There were 525 contracts expiring prior to January 1st, 1997. We have renewed 112 of them. We have got the backlog down to 311. We will give you greater detail on that.

We are marching ahead with a rehabilitated and reinvigorated concessions process to get the work done within the confines of the current wall. We are just—we are doing pretty well. We are proud of these folks, and Mr. Yearout on my left runs a good operation.

I think that is as much as you probably want to hear from me on direct, sir, and maybe more.

[The statement of Mr. Kennedy may be found at end of hearing.]

Mr. HANSEN. Thank you very much.

Mr. Vento.

Mr. VENTO. Well, Mr. Chairman, I just arrived. I just wanted to stop by and express my interest. I guess the purpose of hearings at this late date is that there is still some life left in the opportunity or possibility to work on this.

Mr. HANSEN. It is up to you.

Mr. VENTO. It is up to me?

Mr. HANSEN. If you want to push its head under the water with its nose only that far above, you certainly have the prerogative and the wherewithal to do it.

Mr. VENTO. Certainly, Mr. Chairman, there has been bipartisan support in the last session of Congress. I hope that and I understand your interest in playing a role in that. I would, you know, certainly want to try to cooperate with you within the parameters of what is workable for the Park Service. You know, I don't want to go through a recitation of what I know. You all know what I know about this.

I think the problems have been obvious. They have been initiated by the former Secretary of Interior, Manuel Lujan, and have been picked up in this vein by Director Kennedy. And I am optimistic. I see some of the court case results are ahead and we are aware of. And the backlog, obviously, that you spoke to is initiated or a result of holding up because they are waiting for Congress in one respect to come forth with a new contract and a new law. But that has not served.

You know, I think there is a lot of flexibility within the law. We don't—some of the preferential right of renewal or other services are touchy issues. There is a host of services that are offered that

are not going to lend themselves to competition because they simply are a matter of trying to arbitrate a service in an area where it is of limited profitability.

Isn't that correct, Director Kennedy?

Mr. KENNEDY. Yes, but we are for competition and we are moving on the backlog without waiting for anybody, because we sort of gave up on waiting for things and we are just going to try to get those contracts written and out under the current law the best way we can, sir.

Mr. VENTO. Yes. But the issue is that you have to separate here where there are services necessary, and it really is a—there is no fee that is possible in some of these instances for services where the profitability is really very limited. So you almost have to arbitrate or come up with a different type of agreement in those instances.

Mr. KENNEDY. There are limited instances of that kind, but there—yes, the short answer is, yes, some.

Mr. VENTO. So there should be some waiver in terms of the law.

Is there provisions today which—I mean, for instance, we try to treat this all as if there is competition. Is there a waiver in the law today, or should there be in the future with regard to that?

Mr. KENNEDY. That permits us to waive competition in some instances?

Mr. VENTO. Rather than going through this entire process, as an example. I mean, you can obviously open for business, but I mean, the fact is that there are no bids. For instance, we had in Voyagers, that has been the topic of conversation in the committee here off and on this year, they didn't have a bid at various times to manage the Kettle Falls Hotel or other spots.

Mr. KENNEDY. Yes, sir, there are instances, and there will be more, there will be more, in which nobody is going to bid because the economics won't work. And that particular situation I am familiar with, too. There are going to be more instances in which we will not, under the current economics of doing business in these kinds of places, where there won't be any bids.

As this committee knows, we have had some difficulty getting bids in part of the Sequoia Kings Canyon situation, and we are going to have to work at the economics of this more comprehensively than is currently in the course of the discussion of these bills.

Yes, sir, this is a ripening problem, it is not one that is diminishing.

Mr. VENTO. Mr. Chairman, one of the other pitfalls, I recall, in the last session was the debate concerning the concessions in terms of services being offered; that is to say, white-water rafting and other services that are really located outside the park but are operating within the park.

Do you recognize or are you familiar with any categories of activities like that that probably should not be under the concession contract law? Our decision was to include them.

Mr. KENNEDY. Yes.

Mr. VENTO. And the House—the Senate decision was not to. It turned out to be probably a mistake in the sense of not moving forward with the Senate bill and just accepting it like it came.

But any words of advice for the Subcommittee or those working on this concerning that matter?

Mr. KENNEDY. Mr. Yearout is the expert here on that.

Mr. YEAROUT. I think in terms of operations like river running operations that begin outside and go inside the park, one of the difficulties we have had in the past is our ability to limit those kinds of operations unless we had a concession authorization. We have other permitting forms that we can use for those kinds of activities that are kind of incidental to the park, people coming in and going out. But we are not concerned about that.

But we have been advised by the solicitor's office that the only way that we can control the numbers, if we want to control the numbers, of operations in the park, is to use a concession operation.

In those cases where it is a rather large kind of an operation like the Grand Canyon, I mean, we have concessioners there that gross between half a million and four million dollars a year. It is going to be a more complex contracting operation. In other instances, where there are really very small operations, we try to do that with a very simple permit form. It sort of depends on the situation and what the—

Mr. VENTO. It is a permit versus a concession issue, and, you know, I don't know, but I do agree that they are offering services. They are using it. There are even more bizarre situations that result in terms of the air flights over the Grand Canyon.

Mr. KENNEDY. Mr. Vento, your question was, I think, do we have anything useful to say given the legislative situation which we have now got?

Mr. VENTO. Yes.

Mr. KENNEDY. I don't think we do. My view of this is that we should focus on the primary points of distinction; as the Chairman said earlier, try to resolve those and get a bill. Here is an instance in which administrative discretion is probably right. You have got to have somebody make these choices.

And my personal guess—and I could easily want to amend this comment when I am better informed—is that we shouldn't legislate that one, that that probably ought to be a matter of administrative action because of its intricacies. Reserving the right to be corrected, that is my hunch at the moment.

Mr. VENTO. Well, we have some dollar differences and other threshold issues that we used. Some of them actually are quite large in terms of it.

Mr. KENNEDY. Yes.

Mr. VENTO. They were obviously legislating to exempt themselves, the outfitters were.

Mr. KENNEDY. Yes, sir.

Mr. VENTO. That was of concern, so it wasn't exactly—it isn't necessarily something that we can—I don't think that you can necessarily walk away from. We probably ought to have some clarity extended to what the disposition of those activities should be and how they should be dealt with.

Mr. HANSEN. The time of the gentleman has expired.

For the benefit of the gentleman from Minnesota, as we both know and everyone else knows around here, time is running very

rapidly. I was talking to a legislator yesterday, a Congressman, who said, "Every time I look at a bill, I look at it on a scale of 1 to 10. If it is over 5, I vote yes. If it is under 5, I vote no." That is an interesting analysis.

Maybe we want to put this on a scale of 1 to 10, and if these folks, the Park Service, our staff, the Senate staff, and those who have a concern, can finally work this thing out in a very limited and short time, if it is over 5, maybe we ought to try to move it on real fast. If not, we will look at the 105th Congress and see what happens.

And I honestly think that we were very close on a bill we sent that the President vetoed. That was pretty darn close to the Meyers bill. They weren't really that far apart. So if we are going to play lawyer and everyone has got to dot the I and cross the T and get it exactly their way or go to court, forget it; we are not going to make it.

If there is not any compromise in the hearts of those people that are in this room and others, or if we are going to play the idea of—no disrespect to anyone—of a great staffer who finds something with the NEPA law that isn't exactly right or something else, obviously we can't do that; and look for a point of order to kill this thing, fine, we will kill it. I mean, we can all play that game. You know, that is what some people feel that their life is intended to do. When they stand before their maker, they can say how many bills they killed on technical things. So I worry about that also.

So I come down to the idea, we just have to—if we want to do this thing, we will know in a week. If we have got good faith on both sides, if it gets over 5, Bruce, let's look at it. If not, we will have to let it go.

But there are things that bother us. You raised a good point, Roger, when you talked about this idea, and you say, well, what is another way to provide an incentive? We count up the point system. You folks don't like it. We are saying: OK, give us another idea.

We look at this GAO report, and why is this? Here is the frustration we have. Here we talk about this special account. The one reported by the Park Service headquarters is entirely different than some of these others. Why? You look at Yellowstone. They are four million apart—you report \$4,116,000; they report \$7,000,990.

Mr. KENNEDY. It isn't as if we lost the money. It is, what pocket do you put it in? That is the point I want to stress. Nobody has lost any money. Nobody has lost track of anything. It is just, what category does this thing fall into?

Mr. HANSEN. I think someone should give us an elucidation and show us where it is, what happened to the three million bucks at Yellowstone.

Mr. KENNEDY. GAO can do that.

Mr. HANSEN. The list goes on.

Mr. KENNEDY. Even in this world, I will bet you we could give you a reconciliation of that quickly. I am instructed by my professional betters here that they know how to resolve these box differences. There is no difference about what is in the box.

Mr. HANSEN. We need someone who can balance their checkbook then, do a bank reconciliation statement for us so we can see it.

We find it a little frustrating because we sit here—I sit with Ralph regularly every day and say, “How much are we going to give them?” And he comes back and his people come back, and they say, “We don’t even know the figures.”

And I talk to Steve, who is a real professional, and he says we have to get this reconciled. All in all, we are kind of frustrated. So when Ralph and I sit down and say here is how much we are going to go, we are not even sure what you have got.

It is kind of like when the Pentagon found \$40 billion 2 years ago. It really surprised me as a member of the Armed Services Committee. That is a lot of money. We are saying, where is this all coming from? We are given the obligation to appropriate the money for you folks.

Well, let me just thank everyone for being here.

Mr. Vento, thank you for coming over. You are probably the most knowledgeable man there is in Congress on a few things.

Mr. VENTO. Don’t do that to me, please.

Mr. HANSEN. I was trying to set you up and blame you.

The meeting stands adjourned, and thanks to all of you.

[Whereupon, at 11:25 a.m., the Subcommittee was adjourned; and the following was submitted for the record:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on National Parks, Forests, and
Lands, Committee on Resources, House of Representatives

For Release on Delivery
Expected at 10 a.m. EDT
Thursday
July 18, 1996

FEDERAL LANDS

Concession Reform is Needed

Statement of Victor S. Rezendes,
Director, Energy, Resources, and Science Issues,
Resources, Community, and Economic Development Division



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to summarize our past work on concessions issues, discuss the need for concession reform, and provide some details on the Park Service's use of concessioner special accounts. My remarks today are based on over 30 reports and testimonies we have issued over the past 20 years. Of the six land management agencies, much of our work on concessions has focused on the concession activities at the National Park Service within the Department of the Interior. In addition, we have also reviewed concession activities in the other five land management agencies including, the U.S. Forest Service within the Department of Agriculture; Bureau of Land Management, Bureau of Reclamation, and U.S. Fish and Wildlife Service within the Department of the Interior; and the U.S. Army Corps of Engineers within the Department of Defense. Our most recent report on concessions, which we issued in April 1996, discussed rates of returns from concessioners operating in civilian agencies throughout the federal government.¹ The findings of that report as well as the others continues to demonstrate the need for concessions reform among the land management agencies.

In summary, our work has shown the following:

- Concession activities on federal lands is a large industry that generates billions of dollars. In 1994, there were over 11,000 concession agreements managed by civilian agencies through-out the federal government.² Concessioners operating under these agreements generated about \$2.2 billion in gross revenue. Over 90 percent of concession agreements and the concession gross revenues were from concessioners in the six land management agencies. For agreements that were

¹ Concessions Contracting: Governmentwide Rates of Return (GAO/GGD-96-86, Apr. 29, 1996).

²Other than the U.S. Army Corps of Engineers, the April 1996 report did not include concessioners in the Department of Defense.

either initiated or extended during fiscal year 1994, concessioners in the land management agencies paid the government an average of about 3 percent of their gross revenues. In contrast, concessioners in nonland management agencies paid fees of about 9 percent of their gross revenues.

- The key factors affecting the rate of return to the government were (1) whether the fee was established through competition (2) whether the agency was permitted to retain most of the concessions fees it generated, and (3) whether an incumbent concessioner had a preferential right in renewing its concession agreement with the government. Throughout the federal government, rates of return from concessioners were higher when established through competition. In addition, agencies which had authority to retain fees and which did not grant preferential rights of renewal generally obtained higher rates of return to the government from concessioners.
- In previous reports, we noted that as the Congress considers reforming concessions it may want to consider (1) encouraging greater competition and eliminating preferential rights of renewal, and (2) promoting greater consistency among the land management agencies in managing concessioners at federal recreation areas. In addition, it may wish to consider providing opportunities for the land management agencies to retain at least a portion of concession fees.

Mr. Chairman, before I discuss our most recent report on concessions issues and the need for concession reform, I would like to note that concessioners play a vital role in enhancing the public's enjoyment of the national parks, forests, and other recreation areas. At the same time, the land management agencies managing concessioners have an obligation to ensure not only that these concessioners provide healthy and safe services to the public, but also that the government receives a fair return for the use of its lands so that the nation's natural resources can be adequately conserved and enjoyed by future generations.

CONCESSIONS OPERATIONS
IN THE FEDERAL GOVERNMENT

Our work has shown that concession activities on federal lands are a large industry that generates billions of dollars. In April 1996, we issued a report on governmentwide concessions activities. Unlike our past work, which examined concession activities within the six land management agencies, this report reviewed concession operations throughout the civilian agencies of the federal government and included concession activities at agencies such as NASA, the U.S. Postal Service, the Department of Justice, and the Department of Veterans Affairs—just to name a few. In the report, we found that in fiscal year 1994, there were 11,263 concession agreements managed by 42 different federal agencies. Concessioners operating under these agreements generated about \$2.2 billion in revenues, and paid the government about \$65 million in fees and about \$23 million in other forms of compensation. The average total rate of return to the government from concessioners that had their concession agreement initiated or extended in fiscal year 1994 was about 3.6 percent of concession revenues.

While 42 different federal agencies have concession agreements, 93 percent of these agreements and revenues are managed by the six land management agencies. However, in spite of having the largest programs, the rate of return from concessioners operating in the land management agencies is significantly less than the return generated from concessioners in other federal agencies. We found that for concession agreements that were either initiated or extended during fiscal year 1994, the average return to the government from concessions in land management agencies was about 3 percent while the return from concessions in the other federal agencies averaged about 9 percent. Within the six land management agencies, concession agreements in the National Park Service accounted for about 30 percent of the gross revenues and the return to the government. (See att. I for a list of rates of return from concessioners for agreements initiated or extended during fiscal year 1994 for each federal agency in our review.)

FACTORS AFFECTING THE RATE OF RETURN

Our analysis of rates of return throughout the federal government indicated that there are three key factors that affect the rate of return to the government. These are (1) whether the return from a concession agreement was established through a competitive bidding process, (2) whether the incumbent concessioner had a preferential right of renewal in the award of a follow-on concession agreement, and (3) whether the agency had the authority to retain a majority of the fees generated from the concession agreement.

Our work indicated that when concession agreements are awarded through a competitive process, the rate of return to the federal government was higher. Specifically, for concession agreements that were initiated during fiscal year 1994, the return to the government from concession agreements that were competed averaged 5.1 percent of the concessioners' gross revenues. When competition was not used in establishing concession agreements, the return to the government averaged about 2.0 percent. While the return to the government is higher for concessions that are competitively selected, very few concessions agreements have fees established through competition—especially among concessions in the land management agencies. For concession agreements which were entered into during fiscal year 1994, only 8.6 percent of over 2,100 agreements in land management agencies were established through competition. In contrast, for concession agreements in the nonland management agencies, about 96 percent of 101 concession agreements were established through competition during this time period.

Another factor affecting the return to the government from concessioners is the existence of preferential rights of renewal. These rights primarily affect concessioners in the Park Service. Under the Concessions Policy Act of 1965, Park Service concessioners that have performed satisfactorily have a preferential right of renewal when their concession agreements expire. This preference has generally meant that when a concession agreement expires, an incumbent concessioner has the right to match or

better the best competing offer to win the award of the next concession agreement. This preference tends to put a chilling effect on competition because qualified business are reluctant to expend time and money preparing bids in a process where the award is most likely going to the incumbent concessioners. With fewer bidders, there is less competitive pressure to increase the return to the government. Our analysis of Park Service concession agreements showed that in fiscal year 1994, new concession agreements that were awarded with a preferential right of renewal resulted in a return to the government of about 3.8 percent. In contrast, Park Service concession agreements that were competed in the same year without any preference resulted in an average return to the government of 6.4 percent.

A third factor that affects the rate of return to the government from concessioners is the agencies' authority to retain fees. Our analysis of federal concessions showed that when agencies are permitted to retain over 50 percent of the fees from concessions, the return to the government is over 3 times higher than agencies that are not authorized to retain this level of fees. In addition, five nonland management agencies that had authority to retain most of their fees managed 5 percent of the concession agreements throughout the government. These agreements generated about 3 percent of the total revenues from concessioners, but generated 18 percent of the total concession fees. In contrast, the six land management agencies, which have not had authority to retain concession fees, have over 90 percent of the total concession agreements and concession revenues, but generate only 73 percent of the total concession fees. Thus, our work showed that agencies authorized to retain fees obtained more fees in proportion to their concessioners' revenue than agencies that were not authorized to retain fees.

NEED FOR CONCESSION REFORM

For over 20 years, we have issued reports and testimonies that highlighted the need for reform of federal concession laws and policies. Our most recent work, which I have just summarized, is further evidence of the need for reform. Based on this body of work, it is

our view that any efforts at reforming concessions should consider (1) encouraging greater competition in the awarding of concession agreements, including eliminating preferential rights of renewal; and (2) promoting more consistency by including all of the land management agencies as part of concessions reform. In addition, Congress may also wish to consider providing opportunities for the land management agencies to retain at least a portion of their concession fees.

Encouraging greater competition in awarding concession agreements, and eliminating preferential rights of renewal, should be a primary goal of reforming concessions. Using a competitive bid process to award concession agreements has several benefits. Our April 1996 report presents evidence that where there is competition in awarding concession agreements the rate of return to the government is significantly higher. Competition among qualified bidders would also likely result in improving the level or quality of services provided to the public. Finally, using competition to establish fees would eliminate much of the need for elaborate and at times cumbersome fee systems used by the land management agencies. A significant impediment to competition is preferential rights of renewal granted to Park Service concessioners by the Concessions Policy Act of 1965. Thus, in our view, any legislative effort to reform existing concessions law should consider including the elimination of preferential rights of renewal.

Our work has shown the need for common concessions policies among the land management agencies so that similar concessions operations are managed consistently throughout federal recreation lands. As we reported in June 1991,³ no single law authorized concessions operations for all six land management agencies. Rather, at least 11 different laws govern concessions operations. Many of these laws are specific to an agency and allow the agency broad discretion in establishing policies on the terms and conditions of concessions agreements. One exception to this is the Concessions Policy

³Federal Lands: Improvements Needed in Managing Concessioners (GAO/RCED-91-163. Jun. 11, 1991)

Act of 1965 which prescribes Park Service policy for several key terms and conditions in concessions agreements. The results of differing laws and policies are that similar concessioners are managed quite differently among the land management agencies. For example, a marina operator in the Park Service may have a preferential right of renewal and pay a fee based the Park Service's fee system that is based on industry profitability norms. In contrast, a marina operator in the Forest Service may not have any preferential right to renew his agreement, and pays a fee based on the Forest Service's fee system that determines fees based on the concessioners level of investment in facilities and a percentage of their revenues in up to nine different business categories such as food service or grocery.

Our April report on concessions indicated that when agencies are authorized to retain most of their concession fees, the return to the government from its concessioners is significantly higher. However, permitting agencies to retain a portion of the fees from concessioners has both costs and benefits. Our work has shown that retaining fees for use in agencies' operations serves as a powerful incentive in managing concessioners. However, if the Congress decides to use increased fees to supplant rather than supplement existing appropriations, this incentive would be diminished. In addition, our past work in the Park Service and Forest Service has indicated that these agencies have backlogs of unmet maintenance and infrastructure needs, which combined exceed \$5 billion. Furthermore, in recent years, both agencies have had to cutback on the level of visitor services provided to the public. One option to help address these issues, which we have raised in the past, might be to provide additional financial resources through fees—including entrance fees, user fees, and concession fees. While retaining fees will not resolve such problems as multibillion dollar backlogs, it will nonetheless provide some assistance to parks, forests, and other recreation areas across the nation.

It is important to note that permitting the land management agencies to retain fees is a form of "backdoor" spending authority, and as such raises questions of oversight and accountability. In addition, earmarking revenues reduces governmentwide budget

flexibility. Furthermore, permitting the land management agencies to retain fees could also raise scoring and compliance issues under the Budget Enforcement Act. These issues need to be weighed in considering whether to permit the land management agencies to retain fees.

INFORMATION ON CONCESSIONER SPECIAL
ACCOUNTS AT THE NATIONAL PARK SERVICE

As you requested Mr. Chairman, I would now like to take a few moments to discuss our recently issued report on special account funds within the Park Service.⁴ Park units have been permitted to keep some of the funds that are generated from specific in-park activities without going through the annual appropriation process. One type of these special account funds deals with concessions. These concessions special account funds are generally established as part of the terms and conditions of a concessions agreement with the National Park Service. As part of the agreement, the concession operator periodically escrows a portion of its gross revenues or a fixed sum of money into a bank account. The monies deposited into the account are in lieu or in addition to franchise fees and are used by the concessioner to repair, improve, or construct facilities related to the concession operation. Franchise fees from Park Service concessioners generally go to the Treasury. Expenditures from special accounts are made only with the approval of the Park Service.

The use of concessioner special account funds has increased over the past few years. This is largely because while franchise fees are returned to the Treasury, the special account funds remain at the parks. In fact, at some of the largest parks like Yellowstone and Yosemite, the primary concessioner no longer pays any franchise fees. Instead, the return to the government is entirely from special account funds and other nonfee

⁴National Park Service: Information on Special Account Funds at Selected Park Units (GAO/RCED-96-90, May 17, 1996).

compensation. At other parks, like the Grand Canyon and Glacier National Park, the Park Service and the concessioners have made amendments to concession agreements to reduce or eliminate franchise fees and to establish or increase the special account funds.

According to data from Park Service headquarters, in fiscal year 1994, 21 park units had a concession special account fund; headquarters officials estimated that the deposits totaled \$13.9 million. During this review, we contacted a sample of 27 parks units to determine the level of deposits in special account funds. In fiscal year 1994, 14 of the 27 units we reviewed had concessioner special accounts. These 14 park units reported that a total of \$19.4 million had been deposited into special accounts—a difference of \$5.5 million more than reported by Park Service headquarters. We discussed this difference with Park Service officials. We found that the discrepancies were due to differing interpretations among Park Service concessions officials—both at headquarters and at the individual parks units—as to what should be counted as concessioners' special accounts. However, Park Service officials acknowledged that the headquarter's data were not complete because the Park Service did not have a system in place to routinely collect information on these accounts. The agency has been developing a system to track these accounts, and expects it to be implemented by August 1996. We plan to follow-up on this issue after the Park Service's tracking system is implemented.

Mr. Chairman, in recent years, an understanding has emerged that the federal government needs to be run in a more business like manner than in the past. It is clear that agencies such as the Park Service and the Forest Service can learn some lessons about competition and incentives from nonland management agencies. However, if the Congress proceeds with reforming concessions, it should consider changing existing concessions law to encourage greater competition and eliminating preferential rights of renewal, and promoting greater consistency by establishing common concessions policies among the land management agencies. In addition, it may wish to consider providing

opportunities for the land management agencies to retain at least a portion of concession fees.

This concludes my statement. I would be happy to answer any questions that you or other members of the Subcommittee may have.

Rate of Return on Concessions Agreements Either Initiated or Extended During Fiscal Year 1994

Agency	Concessioners' gross revenue	Fees	Amount deposited into concessioners' special accounts*	Total (fees + special accounts)	Number of concessions	Rate of return
Forest Service	\$306,473,830	\$7,765,758	\$66,339	\$7,832,097	2,361	2.56%
National Park Service	135,626,774	3,624,398	1,116,671	4,741,069	555	3.50
Army Corps of Engineers	9,473,016	214,446	34,531	248,977	27	2.63
Bureau of Land Management	2,376,622	71,243	0	71,243	15	3.00
Fish and Wildlife Service	807,713	39,551	0	39,551	6	4.90
Bureau of Reclamation	16,000	600	0	600	1	3.75
Subtotal, land management agencies	454,773,955	11,715,996	1,217,541	12,933,537	2,965	2.84
Postal Service	27,349,976	1,950,669	0	1,950,669	183	7.13
General Services Administration	17,671,583	143,054	129,605	272,659	17	1.54
Department of Veterans Affairs	6,679,611	1,838,571	0	1,838,571	5	27.53
Department of Justice	5,804,100	810,980	33,003	843,983	54	14.54
National Aeronautics and Space Administration	3,845,102	608,181	0	608,181	16	15.82
Department of Commerce	1,206,526	14,057	15,562	29,619	3	2.45
Department of Transportation	1,441,766	323,925	0	323,925	6	22.47
National Archives and Records Administration	235,000	3,300	0	3,300	1	1.40
Federal Deposit Insurance Corporation	178,803	39,557	0	39,557	1	22.12
Other Interior agencies	7,424	0	3,712	3,712	1	50.00
Subtotal nonland management agencies	64,419,891	5,732,294	181,882	5,914,176	287	9.18
All agencies	\$519,193,846	\$17,448,290	\$1,399,423	\$18,847,713	3,252	3.63%

*Concessioners are allowed to deposit funds into concessioners' special accounts (in lieu of or along with payment of concessions fees) for improvements and maintenance of facilities on federal property.

Note: From questionnaire financial data, we calculated the rate of return by dividing gross revenues into the sum of reported (1) concessions fees and (2) amounts deposited into concessioners' special accounts. Questionnaire responses that did not contain both revenue and concessions fee data were excluded from this analysis.

Source: GAO questionnaire data.

**Testimony on
Concessions Management -- National Park Service**

Submitted to the

**Subcommittee on National Parks, Forests and Lands
House Committee on Natural Resources**

By

**Dean W. Fischer
Partner
Arthur Andersen LLP**

July 18, 1996

I. Background and Experience - Dean Fischer

Dean is a partner in Chicago working with the Financial and Economic Consulting Services group. Dean has been with Arthur Andersen & Co. in the Chicago office for approximately 19 years. Dean works extensively in our Business Consulting practice where he consults with clients to improve their business processes and uses of technology to reengineer their businesses.

Dean has also performed substantial government contract consulting engagements for Motorola, Inc., Brunswick Corporation, US Sprint and a variety of companies and industries such as environmental treatment, manufacturing, engineering, aerospace, research, etc. Dean also performs a significant amount of his government contract consulting work for major Washington law firms. In addition, Dean has testified as an accounting expert in Federal District Court.

Dean received his B.S. in Accounting from Valparaiso University in 1977. He is a member of the American Institute of Certified Public Accountants, the Illinois Society of Certified Public Accountants, the National Contract Management Association and the American Defense Preparedness Association.

Arthur Andersen is the leading provider of professional services in the world. With more than 82,000 personnel in 76 countries, the Firm divides its business into two units: Arthur Andersen for audit, tax, business advisory, and specialty consulting services; and Andersen Consulting for global management and technology consulting. Andersen Worldwide is the coordinating organization. Financial and Economic Consulting is a natural outgrowth of the tax and audit expertise for which Andersen is renowned.

II. Goals/Purpose of Review

- A. Identify opportunities to improve and simplify franchise fee determination and return to the government from National Park Service (NPS) concession operations.
- B. Improve and simplify the Annual Financial Report (AFR) process and form

This project was approached from the following perspectives and mindset:

1. Constraints - Working within existing laws and regulations
2. Focus:
 - a. Franchise Fee Calculation
 - b. Reconsideration process
 - c. Needs for and uses of AFRs

- ** We were concerned primarily with the process for determining the amount of the franchise fee or return to the government and not with the ultimate use or designation of those funds (i.e. Treasury, capital improvement accounts, etc.). Therefore, our use of the term franchise fee is for the sake of identifying the probable value of the concession contract and not for determining how those funds are eventually used.
- ** We worked closely with NPS personnel in a joint-project team fashion.

III. Work Performed

- A. Interviews
- B. Site Visits
- C. Research
- D. Process Mapping
- E. Roundtable Discussions
- F. Detailed Analysis

Our AA team of four consultants performed the above tasks with the following groups who were intimate with the processes under review:

Internal

- A. *Concessions Division - Contract Operations Branch - Washington Office* (WASO)
- B. *Concession Program Center* - Denver
- C. *Field Areas* - National Capital, Intermountain, Southeast, Pacific West, Northeast Capital, Alaska, Midwest
- D. *System Support Offices* - Columbia/Cascade and Chesapeake/Allegheny
- E. *Individual Parks* - Yosemite, Sequoia, Kings Canyon, The Presidio, Golden Gate National Recreation Area, Lake Mead, and Muir Woods

External

- F. *Concessioners* - ARAMARK, Gettysburg Tours, Guest Services, Evelyn Hill, Tourmobile, AMFAC, and other
- G. *Arthur Andersen Experts* - Franchise Services, Licensing and Patent, Economic Consulting, Valuation Services Group, Hospitality Group

Deliverables:

- ** Although the bulk of our work is completed, the current report is still being finalized and is thus, still in draft form. We will hopefully issue a final report within the next 30 days.

IV. Summary of Issues/Recommendations

A. Franchise Fee Calculation

- Current calculation is subjective, complex, and does not utilize potentially valuable information from the NPS' AFR database.
- ✓ We recommend NPS consider a simplified, alternative methodology that is more objective and broad-based, allows for input of Park and Field level personnel, and reduces concessioner uncertainty - one of their primary concerns.

B. Franchise Fee Determination/Reconsideration Process

- Lack of specific organizational responsibility for administering and monitoring fee determination/process.
- ✓ We recommend NPS consider a new process flow that allows NPS to decentralize decision-making while maintaining control through program direction.

C. Annual Financial Reports

- Database of AFR information is not fully utilized. Information is inaccessible to some and is used inconsistently across various NPS levels.
- Information currently requested of concessioners is too onerous and yet may not provide the information needed by the proposed methodology to calculate franchise fees.
- ✓ We recommend that NPS identify their needs for AFRs and cater the form and process to meet those needs. For franchise fee purposes, AFRs should provide only that information necessary to perform a new, proposed methodology. In most circumstances, that would be the same information and format as provided by industry comparables.

D. Competition

- Preferential right of renewal, possessory interest, and uncertainty likely reduce competition for concessions contracts.
- The importance of the franchise fee in the evaluation of bids is not as great as it could be.
- ✓ We recommend that NPS consider removing or reducing the impact of these issues to incentivize more potential concessioners to bid.
- ✓ We recommend that NPS consider increasing the weight of bid franchise fees as a factor in the selection process (while still maintaining secondary status).

E. Other

We made additional observations and recommendations in the areas of Organizational Structure, Pricing/Comparability Studies, Contracting, Evaluations/Incentives, Park Incentives/Special Accounts, and Resource Constraints.

for
release

July 17, 1996

The following is a professional opinion by Robert L. Andrews of the statistically related procedures in NPS-48 and the way they are applied in managing the contractual relationship between the National Park Services (NPS) and concessioners. Specific reference is made to the Franchise Fee Analysis (FFA) for Fort Sumter Tours, Inc. (FST) because it illustrates some of the major problems. These procedures appear to be counter to trends in other arenas where deregulation has been implemented to improve quality of service.

The comments below address two primary questions relative to NPS-48.

A. Does the government want to control profitability of NPS concessioners to near the middle of a peer group of business enterprises by adjusting franchise fees?

NPS-48, Chapter 24, Financial Administration, page 19, states, "If this fee is in a comparable range with industry statistics, then this percentage franchise fee will be the determined fee and presented to the Regional Director for presentation to the parties." Adjusting profitability measures to be comparable to the middle of a distribution means that a concession provider has little or nothing to gain by performing well. This procedure takes away any incentive to perform well. Central control of profits does not provide incentives for good performance, which has an economic impact. The current situation in the former Soviet Union is an example of the result of management that controls profits at the central level. Working closely with business partners is a part of the philosophy in managing for quality espoused by Dr. Deming and other recognized experts. If one member of a business activity has been particularly profitable then it may make sense to encourage that partner to share some of the gain with another entity involved in the activity. However, reducing profitability to the middle level for the industry removes the incentive to perform well and has serious long-term implications financially for the NPS and for the quality of services provided by concessioners. This procedure is not a profit sharing procedure, it is a profit grabbing procedure. In effect, NPS-48 sets up a range of profitability that taxes enterprises 100% of the profitability in this range.

If the NPS intends to adjust profitability for individual concessioners to the middle of the industry norm then to be equitable, the NPS would also be required to decrease fees for companies below the middle. Consequently, the NPS would be taking on risk associated with the operation of a business over which the NPS has no direct management control. This is of particular concern because the NPS is at the same time taking away incentive for the concessioner to perform well. This policy may increase short-term income for the NPS but has serious consequences long-term.

B. If government does want to control profitability of NPS concessioners, then is the NPS-48 procedure as outlined and applied a fair and equitable way to accomplish this?

I find this procedure as outlined and applied to be flawed in several ways. Specifics will be drawn from how the procedure in NPS-48 was used to perform the Franchise Fee Analysis by the National Park Services (NPS) for Fort Sumter Tours, Inc. (FST). In this procedure the profitability data from FST were compared with industry norms for the SIC Code 4489. The fee charged to FST by the NPS affects profitability. In the analysis for FST, the fee charged by the NPS was adjusted until the profitability for FST was comparable to the median of the industry norm.

1. Companies in an SIC code and the norms obtained can provide a very questionable peer group.

I would argue that data from all NPS concessioners would be a more appropriate peer group than trying to use SIC codes to determine a peer group. Data on this group are available to NPS. Even if those in the SIC code do provide an appropriate peer group, there is no check to determine if those in a SIC code who did not respond to the survey have introduced non-response bias in the reported quartile values. Non-response bias is not an easy problem to tackle but if ignored it can produce very questionable results.

To illustrate how this can be a problem the quartiles used by the NPS for the FFA for FST represent what I find to be questionable norms.

	1st Quartile	Median	3rd Quartile	
ROG	-0.5	3.2	8.7	Return on Gross
ROE	-13.3	5.7	35.0	Return on Equity
ROA	-2.9	4.7	11.6	Return on Assets

These quartile values alone mean that over one quarter of the firms in this group operate at a loss. In fact, if one fits a bell-shaped normal distribution to these data then about one third of the companies would be operating at an annual loss. This does not pass as being reasonable to me. Surely the NPS does not expect one third of its concession providers to operate at a loss. Unrealistic results generally come from incorrect analysis or data or both.

2. No consideration is given to either measurement error or sampling error when using the norms.

Characteristics calculated from sample data are subject to variation from the population characteristics due to the fact that only a portion of the population has been selected and this is known as sampling error. NPS-48 makes no attempt to recognize the existence of sampling error which is a violation of the foundation of statistics.

The measurements obtained in the sample used to create the norms are self-reported with no control for uniformity. This can be a source of significant deviation. The NPS adjusted the FST self-reported value for equity by 47.7%. However, the norms obtained from self-reported data from other businesses are treated as absolute truth.

3. There is an inconsistency in comparison when the NPS adjusts the self-reported values provided by a concessioner and compares them to the unadjusted self-reported values for the industry norm.

As stated above the NPS adjusted the FST self-reported value for equity by 47.7%. After the NPS adjusted the equity value for FST they then compared the adjusted measure of profitability to norms obtained from unadjusted self-reported data.

4. There is an apparent inconsistency in following NPS guidelines

NPS 48, Chapter 24, Section D "Franchise Fee," Financial Administration, Exhibit 3, page 1, states, "The review of the concessioner's results will consist of a search for overstated or understated expenses and for evidence of good or poor management."

I found no indication of a search for evidence of good or poor management to accompany the adjustments of financial data by the NPS. Calculations and statistics are guides to be used along with knowledge of the process being analyzed. Good or poor management clearly has an effect on productivity and profitability. The process used by the NPS seems to be more intent on penalizing good management rather than encouraging it.

5. The NPS is effectively taxing at 100% profitability above an undefined and apparently narrow band around the median.

In a country that developed its greatness on a free-enterprise system and which currently has a graduated income tax, it is impossible for me to view a procedure being fair that effectively takes away all profit above a specified level.

6. No focus on quality of service being provided

The concessioners have a contract with the National Park Service to provide services to customers. How can an enterprise adjust the profitability of a service provider without taking into consideration the quality of services provided to the customers? NPS-48, Chapter 24, Financial Administration, page 12, SEC. 3(d) states, "Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates." The NPS-48 restructuring of fees totally ignores the quality of service provided even though the document itself says that revenue shall be subordinate to service to visitors and protecting the area.

Summary Statement

I understand the idea of creating a mechanism that would have financially successful concessioners to share some of their gain with the National Park Service, who is a collaborator in their concession business. However, the fee revision process outlined in NPS-48 is not a fair process for the concessioners and its implementation has serious long-term financial implications for the National Park Service. If the government believes that it is essential to implement some type of profit-sharing for concessioners then the National Park Service needs to go back to the drawing board to create a mechanism of sharing gain that would be reasonable for the concessioners and would not have potentially detrimental long-term effects for the National Park Service.

Background and Experience of Robert L. Andrews

I am an Associate Professor of Management Science in the School of Business at Virginia Commonwealth University. I hold a Ph.D. in statistics from Virginia Tech, 1971. I have 20 years experience teaching statistics and related topics in business schools. Courses taught have been at the undergraduate, masters and doctoral levels. My work has been published in a variety of professional journals. I have been recognized professionally by my peers by being elected to numerous positions including the Board of Directors of the Decision Sciences Institute, an international organization of primarily university faculty who teach statistical and quantitatively related topics.

National Parks and Conservation Association

STATEMENT OF
WILLIAM J. CHANDLER
VICE PRESIDENT for CONSERVATION POLICY
NATIONAL PARKS AND CONSERVATION ASSOCIATION

TO THE
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS
ON

OVERSIGHT OF CONCESSIONS FEE MANAGEMENT IN THE NATIONAL PARK
SYSTEM

JULY 18, 1996

Mr. Chairman and members of the Subcommittee, thank you for the opportunity for the National Parks and Conservation Association to testify again on the issue of National Park Service concessions management. The purpose of today's hearing, as I understand it, is to investigate the methods used by the National Park Service in setting and adjusting the franchise fee rates paid by park concessioners. Also testifying this morning are Arthur Anderson, which is under contract to the NPS to advise the agency on methods of improving their concessions system, Dunn and Bradstreet, which produces industry statistics used by the NPS in setting and adjusting fees, and the Director of the National Park Service. With these three witnesses present, there is little in the way of technical advice or comment on the issue of fee setting that I can provide the Subcommittee.

Also testifying, however, are representatives of the General Accounting Office, which has recently released a document, "Governmentwide Rates of Return." The results of this report are important for Committee members to digest, and they lead to one and only one conclusion: The National Park Service is crippled in its ability to manage concessions in a way which reflects market conditions because of a 30 year old law which gives every conceivable advantage in contract negotiations to incumbent concessioners. The 1965 Concessions Policy Act requires the National Park Service to follow a set of rules which guarantee lower than expected returns to the government. Nonetheless, the National Park Service has made sincere efforts since 1992 to improve the fee return for the government.



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Though the NPS has achieved marginal improvement in the fee return over the past few years, this improvement has not come without cost. On several occasions, incumbent concessioners have challenged fee increases, and in one case, involving the concessioner operating at Fort Sumter National Monument, the concessioner sued the NPS over its authority to raise the concessioner's fee. I am not suggesting that there is anything wrong with these challenges; it is well within the right of concessioners to do so. But the process is very cumbersome and it consumes time and resources. A market-directed system would substantially obviate the need for all of this wasted time and wasted resources.

The GAO report reviews many of the reasons why fee return from NPS contracts lags so significantly behind the return experienced by any of a variety of other government entities. Notably, the report makes the following statements:

- Analysis... showed a rate of return of 2.8 percent for the six land management agencies' concessions and 9.2 percent for non-land management agencies' concessions
- When the federal agencies reported that they competed fees for concessions agreements, the rate of return was 5.1 percent, compared to a 2.0 percent rate when agencies reported that they did not use competition
- Other governments... including Canada, California, Maryland, Michigan and Missouri reported receiving on average a 12.7 percent rate of return on a range of concessions that were similar
- The rate of return on agreements [that allowed agencies] to retain over 50 percent of the fees was 3.3 times the rate on agreements [where] over 50 percent... was to be deposited into the Department of the Treasury as general miscellaneous receipts.

The report also comments on some of the reasons for the above findings, specifically, that both the statutory right of preference contained in the 1965 Concessions Policy Act and the provision for granting possessory interest have a bearing on the ability of NPS to increase the fee return to the government. The report includes these additional statements:

On preferential right:

- Businesses are reluctant to expend time and money preparing bids in a process where the award is most likely going to the incumbent contractor.
- New agreements with preferential right... resulted in a 3.8 percent rate of return, and those without... resulted in a rate of return of 6.4 percent.

On possessory interest:

- Officials from the four states and Canada said their regulations do not allow concessioners to acquire possessory interests. According to the officials, concessioners are given enough time to make a profit and amortize their investments, but the maximum term of the contract is 20 years.
- New and extended agreements granting possessory interest resulted in a rate of return of 3.8 percent, and those without... resulted in a rate of return of 4.5 percent.

Like a large number of reports which have come before, from the Grace Commission, from the Department of the Interior Inspector General, and from the General Accounting Office, this report suggests that the only route to better fee returns is through reform.

In the House, there are two primary vehicles for park concessions reform, HR 773, introduced by Rep. Jan Meyers, and HR 2028, introduced by Chairman Hansen. To be sure, there are differences between the two pieces of legislation. But the need for reform is clear and has been repeated often enough.

What we need now is legislative action. Whatever differences in perspective about the two pieces of legislation can be worked out on the floor of the House, or before legislation reaches the floor. But if no legislative vehicle moves to the floor for a vote, there will be no reform, whether large or small, in this Congress. The issue will drag on for yet another Congress, with America's parks the loser.

My plea today, Mr. Chairman, is a plea to get the process moving. You know as well as I that time is short and the clock is running. I know that your interest in providing for a reform of the concessions system is sincere. Though we may differ on a variety of specifics, there is room in the legislative process to arrive at an agreement which achieves real, meaningful reform, but only if the process is directed to move ahead. Fee returns to the federal government can, and should be considered as a part of the process of reforming park concessions with an eye toward greater competition. Much of the concern for arriving at appropriate and equitable concessions fees will be resolved with that reform.

Mr. Chairman, thank you again for the opportunity to testify.

STATEMENT BY ROGER KENNEDY, DIRECTOR, NATIONAL PARK SERVICE, BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND LANDS, HOUSE COMMITTEE ON RESOURCES, CONCERNING THE MANAGEMENT OF THE NATIONAL PARK SERVICE CONCESSIONS PROGRAM.

JULY 18, 1996

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today at this oversight hearing on the management of the National Park Service concessions program.

The National Park Service understands the importance of the role of concessions in the National Park system. Stephen T. Mather, the first Director of the National Park Service, once said, "scenery is a hollow enjoyment to the tourist who sets out in the morning after an indigestible breakfast and a fitful night's sleep on an impossible bed". Director Mather understood that the quality of a stay in a park hotel, or the quality of a meal in a park restaurant, could determine how a visitor feels about that park or about the park system in general.

We are mindful of this, and strive to provide visitors with the best possible concession operations. Administrative reform of the of the concessions program began in earnest in the 1970's, with the development of the "standard form contract", and annual performance evaluations of each concessions operation. Previously, concession contracts did not have consistent terms, and while contract renewal

was tied to performance, the elements of the performance evaluation system were inconsistently applied.

The Department of the Interior continued the process of improving the concessions program in 1992 by promulgating new regulations and revising the standard concessions contract. The primary purpose of these changes was to promote competition for concessions contracts and to ensure that a portion of the return to the government under concessions contracts was made available to the generating park through concession improvement accounts. We have continued implementing these and other changes, and have found that they have improved competition for concessions contracts. Nevertheless, the concessioner's trade association, the National Parks Hospitality Association, sued the National Park service over the legality of these regulations. This case was recently dismissed on procedural grounds but is expected to be reinstituted.

We have also worked toward enhancing the professionalization of the Concessions Division of the National Park Service. We have instituted training programs for our staff, hired individuals with financial and hospitality industry experience, engaged the services of private sector professionals, and are developing upgraded operating standards, to help us better serve the taxpayer. We also recently introduced a special account tracking system that should improve the accuracy and consistency of data on concessioner special accounts.

This effort has produced results. Concessioner service to visitors has improved, and the return to the government under concessions contracts has risen significantly over the past several years. System-wide, the return to the government increased from about 2 percent of gross sales in 1992 to 4 percent in 1993 and 5.5 percent in 1994. This percentage will continue to grow as the current backlog of concessions contracting actions is processed during the next 3 to 4 years. Most of the recent increases have been in the form of payments into concession improvement accounts rather than higher franchise fees.

Fees have also risen through fee reconsiderations. Under the Concessions Policy Act, and the standard concessions contract, we are required to review a contract's franchise fee at least every five years. In doing this we compare a concessioner's financial performance with the performance of similar businesses that operate outside of parks, and set the fee at a level that provides a concessioner a "reasonable opportunity for profit". The overwhelming majority of our concessioners do not contest the reconsidered fee. In recent years, though, three concessioners, located in Blue Ridge Parkway, Glacier National Park, and Mesa Verde National Park, have exercised their contractual rights to contest the reconsidered fee by asking for the recommendation of a neutral arbitrator. One of these arbitrations is pending. The other two resulted in fees that were significantly higher than the fees advocated by the contesting concessioners. Most importantly, each

of these concessioners continues to operate profitably.

In addition, the Federal District Court for the Southern District of South Carolina and the 4th Circuit Court of Appeals recently rejected a concessioner's legal challenge to the validity of our franchise fee system. The Court found the system to be a "reasoned process", stating that the "profit of others in the industry is a valid factor for NPS to include as a consideration in the fee determination." The Court also stated that the use of industry statistics is entirely appropriate in determining franchise fees.

Although fees have risen under some concession contracts, they remain eminently fair to concessioners. There is no danger of a concessioner going out of business as a result of our fees. In fact, to our knowledge, in the 75 year history of National Park concessions, only one concessioner has ever failed financially. This one failure, however, (the concession operation in Lake Meredith National Recreation Area), was probably not due to the requirements of the concessions contract or a lack of business, as this authorization has operated successfully since this failure. This almost complete absence of business failures is astounding, considering that thousands of contracts have been processed over the past 75 years, and the failure rate for similar businesses operating outside of parks can reach as high as 30 to 40 percent.

To ensure that our fees remain fair, we recently contracted with

Arthur Anderson & Co. to review our franchise fee system. We expect their report to be sent to us some time next month.

Despite our successes in raising fees, we are convinced that open competition is the only way to ensure that the return to the government is fair. Open competition will also ensure that we are getting the best concessioner under each concessions contract. As I stated in the July 1995 hearing on the various concessions bills before this Subcommittee, the existing law that governs the concessions contracting process, the "Concessions Policy Act", constrains our ability to attract the widest range of competitors for concessions contracts. Under this law we are required to offer a "right of preference in contract renewal" to existing concessioners that perform to the satisfaction of the Secretary. This anti-competitive requirement deprives the public of a competitive process that would ensure that the best possible concessioner is operating a park concession.

The present concessions contract for Yosemite National Park, for example, provides a healthy return to the government that is the equivalent 15-17 percent of gross receipts. This contract is an anomaly under existing law, however, because offers for the contract were solicited following the buyout of the previous concessioner's operation. As a result, the solicitation did not involve a right of preference in contract renewal. Thus, the contract was offered to the public through a competitive process,

which generated serious offers from 6 applicants. The result was a contract that is significantly better for the park and the public than the previous Yosemite concessions contract, which earned franchise fees of only three-quarters of one percent of gross receipts. For this and other reasons we support legislative reform that would enhance the competitive environment for concessions contracts.

This concludes my statement. I would be happy to answer any of your questions.



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