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FEDERAL LANDS

Concession Reform is Needed

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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 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

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

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

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 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

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

based on the concessioner's 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

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

agreement with the 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 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[a]	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
U.S. 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%

[a]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.

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

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