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NATIONAL PARK SERVICE

Concession Reform Issues

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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to summarize our past work on concession issues and discuss the need for concession reform. My remarks today are based on over 30 reports and testimonies we have issued on concessions over the past 20 years—much of which has focused on the concession activities at the National Park Service. Our most recent report on concessions, which we issued in April 1996, discussed the rates of returns from concessioners operating in civilian agencies throughout the federal government.[1] This report provided a comparison of the Park Service's concessions programs with those of other federal agencies. The findings of that report as well as the others continues to demonstrate the need for concessions reform in the Park Service as well as in other land management agencies.[2]

In summary, our work has shown the following:

- Concession activities on federal lands is a large industry that generates billions of dollars. Our most recent work showed that over 11,000 concession agreements were managed by civilian agencies throughout the federal government.[3] Concessioners operating under these agreements generated about $2.2 billion in gross revenues. Over 90 percent of concession agreements and the concession gross revenues were from concessioners in the six land management agencies—with many of the largest concessioners operating in the Park Service. For agreements that were either initiated or extended during fiscal year 1994, concessioners in all of the land management agencies paid the government an average of about 3 percent of their gross revenues. In the case of the Park Service, the average return was about 3.5 percent. 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

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

[2] Besides the Park Service, the six land management agencies are the Bureau of Land Management, Bureau of Reclamation, and the Fish and Wildlife Service within the Department of the Interior; the Forest Service within the U.S. Department of Agriculture; and the U.S. Army Corps of Engineers within the Department of Defense.

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

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 in the Park Service, it may want to consider (1) encouraging greater competition by eliminating preferential rights of renewal and (2) providing opportunities for the Park Service to retain at least a portion of concession fees. In addition, some concession reform proposals have suggested removing possessory interest—the concessioners right to be compensated for facilities constructed or acquired on federal lands. At issue are the long-term costs of acquiring concessioner-owned facilities relative to the benefits realized by having greater control through government ownership of facilities.

Mr. Chairman, before I discuss our most recent report on concession 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 and other recreation areas. At the same time, the Park Service has 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 and cultural resources can be adequately preserved 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 the land management agencies was about 3 percent—in the case of the Park Service it was about 3.5 percent.[4] In contrast, the return from concessions in the other nonland management agencies averaged about 9 percent. (See app. 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 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 that were entered into during fiscal year 1994, only 8.6 percent of over 2,100 agreements in the land management agencies were established

[4]According to the Park Service, in 1996, the average return for all park concessioners, including franchise fees, improvement accounts and other forms of compensation was 6.8 percent.

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 businesses are reluctant to expend time and money preparing bids in a process where the award is most likely to go 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) under what circumstances it would be appropriate to provide opportunities for the land management agencies to retain at least a portion of their concession fees. In addition, some concession reform proposals have suggested removing possessory interest—the right of concessioners in the Park Service to be compensated for facilities constructed or acquired on federal lands. At issue are the costs of acquiring concessioner-owned facilities relative to the benefits realized by having greater control through government ownership of facilities.

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 April 1996 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 indicated that the agency has a multibillion dollar backlog of unmet maintenance and infrastructure needs. Furthermore, in recent years, the agency has 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 units across the nation.

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

Costs and Benefits of Removing Possessory Interest

One issue that is frequently discussed as part of Park Service concession reform is possessory interest—the concessioners right to be compensated for improvements constructed or acquired on federal lands. Possessory interest was established by the Concessions Policy Act of 1965 and is unique to the Park Service. Bills to reform concessions law have often differed in their treatment of possessory interest. Some proposals have sought to get rid of possessory interests while others would allow it to remain. There are some costs and benefits of removing possessory interest which I would like to discuss.

Bills which have proposed to remove possessory interest have suggested it be done over time. As existing concession contracts expired, the new contracts would contain language directing the concessioner to depreciate the value of its possessory interest over an extended period of time. Once the possessory interest was fully depreciated, the structure would be owned by the government.

Removing possessory interest in concession facilities would provide the Park Service with greater control over these facilities and would allow greater flexibility in managing concessioners. For example, when possessory interest is provided for, the Park Service would have to use appropriations to buy out the possessory interest of a nonperforming concessioner. If possessory interest were eliminated, the Park Service could terminate the contract of a nonperforming concessioner without having to use appropriations to acquire concession facilities. In addition, government ownership of concessions facilities has the potential of expanding competition for concession contracts. If the concession facilities are government owned, prospective bidders for concession contracts would not be required to expend capital to acquire facilities. As such, the Park Service may receive more bids for the award of concession contracts which has the potential of increasing the return to the government.

However, in the near-term, acquiring these facilities could be costly. If the Park Service acquired a concession facility during the term of the contract, the fees it received would likely be lower because the concession would probably not give up its ownership interest in a park facility without some form of compensation in return. This result becomes more significant if, as the administration proposes, concession fees are returned to the parks. While the Park Service would gain ownership of the facilities, it would be getting less, and possibly substantially less, in fees during the acquisition period.

In addition, once the Park Service owns these facilities, it is responsible for maintaining them. The Park Service currently has a multibillion dollar backlog of deferred maintenance. If the concessions' possessory interest is eliminated and the Park Service acquires additional facilities that need to be maintained, its workload will increase. While the Park Service could require the facilities to be maintained as part of a concession contract, such a requirement may lead to some reduction in the fees it receives.

Mr. Chairman, in recent years, an understanding has emerged that the federal government needs to be run in a more businesslike manner than in the past. It is clear that agencies such as the Park Service can learn some lessons about competition and incentives from nonland management agencies. However, if the Congress proceeds with reforming concessions, it should consider (1) changing existing concessions law to encourage greater competition and eliminating preferential rights of renewal, and (2) providing opportunities for the Park Service to retain at least a portion of its 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 FY 1994

Agency	Concessioners' gross revenue	Fees	Amount desposited 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 depositied 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.

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