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BUREAU OF RECLAMATION

Land-Use Agreements With the City of Scottsdale, Arizona

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Before the
Subcommittee on Environment, Energy,
and Natural Resources
Committee on Government Operations
House of Representatives

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Mr. Chairman and Members of the Subcommittee,

I am pleased to be here today to discuss our review of two recreation land use agreements between the Department of the Interior's Bureau of Reclamation and the city of Scottsdale, Arizona, that involve concession-type activities. Before getting into the specifics of these agreements, however, I would like to highlight several related points from my March 21, 1991, testimony before this Subcommittee, and our June 11, 1991, report on concessioner agreements managed by six federal land management agencies.[1]

As you recall, we identified over 9,000 separate concessioner agreements across the six agencies. The agreements generally fell into three categories: long-term and short-term agreements directly between the agencies and the concessioners, and land use agreements between the agencies and nonfederal public entities. We estimated that in 1989 the six agencies received about $35 million in fees from gross concession revenues of about $1.4 billion--an average return rate to the government of about 2 percent.

We also pointed out that there was no one single law authorizing concession operations and that no agency maintained a complete data base to identify the number and types of concession agreements. Additionally, total compensation to the federal government could not be calculated because of incomplete financial data and unrecorded non-fee considerations.

Our report recommended ways to improve the management of concessioner activities. Specifically, we recommended that the

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[1]Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991) and
Federal Lands: Improvements Needed in Managing Concessioners (GAO/RCED-91-163, June 11, 1991).

agencies develop and maintain centralized concessioner data on the number and types of agreements and fees paid to the government. We also recommended that, after these data were collected, the agencies develop and present to the Congress a policy on how to achieve greater consistency in managing concession operations.

I would now like to focus on what we found in reviewing the Bureau agreements with the city of Scottsdale. The Bureau entered into these agreements under the authority of the Federal Water Project Recreation Act of 1965, which is designed to promote the development of water project lands for recreation. These agreements fall into the third category of concessioner operations--land use agreements with nonfederal public entities. You asked us to determine whether (1) the agreement terms and conditions are consistent with federal law and (2) the activities approved are consistent with applicable agency policies and guidance. In addition, you asked us if the potential exists for the Bureau to enter into similar agreements elsewhere.

In summary, while the agreements themselves do not appear to be contrary to the act, the absence of comprehensive implementing policies and guidance led local Bureau officials to make many key agreement decisions on the basis of their personal judgment. Those decisions include (1) agreeing to the long-term use of these lands with no fee compensation to the federal government; (2) approval of several commercial, for-profit activities, the type and scale of which are not usually found at public outdoor recreation sites on federal lands; (3) approval of a reservation policy that grants priority access to a select group of users; and (4) allowing the private operators to set public-use fees without verifying the data used to set such fees. Further, although the Bureau must approve development plans, it does not have adequate monitoring and oversight policies and procedures to ensure that the areas are being developed and operated in accordance with the terms and conditions of the agreements.

In addition to the Scottsdale agreements, the Bureau has approved three similar agreements in Arizona. According to Bureau headquarter officials, it is likely that additional agreements will be entered into under the act.

THE BUREAU'S AGREEMENTS WITH THE CITY OF SCOTTSDALE

The Federal Water Project Recreation Act of 1965 (P.L. 89-72) gives the Bureau broad authority to make federal lands at water resource projects available to nonfederal public entities to promote the development of the lands in the public interest for recreation. Nonfederal entities are required to pay at least 50 percent of the cost to develop the recreation facilities and all operation, maintenance, and replacement costs. The act does not require, nor does it preclude, the government from being compensated for the use of its lands, and it does not define what constitutes recreation. The act does, however, require that the Bureau approve the nonfederal public entities' recreation development plans.

The two Bureau agreements with Scottsdale, one in 1982 and the other in 1985, transferred, for recreation development, about 760 acres of federal lands to the city for an initial 50-year term with a 25-year renewal option. The city has developed two major recreation areas--a combination equestrian center and theme park, and a golf complex. The city subsequently leased these areas to private operators in exchange for a percentage of gross revenues. The operators of these areas generated about $24 million in gross revenues from 1988 through 1990. The city is entitled to receive about $1.5 million of this amount in compensation.

The Equestrian Center and Theme Park

The Bureau transferred 361 acres of land to Scottsdale to develop an equestrian center and theme park. The city's original plan in 1982, envisioned the area as a replacement for an equestrian-oriented park that was being displaced by Scottsdale's airport expansion. The equestrian center opened in 1983 with one arena and a few facilities. The city's plans for the area changed in 1985 and again in 1988 to include the theme park concept and to add other tourist attractions. The changes were approved by local Bureau officials.

In 1986 the city leased the area to a private firm for operation and further development. The lease provides for phased development of the area. Development of phase one, the equestrian center, was funded primarily by the city. Development of phase two, the theme park and other tourist attractions, is to be privately funded.

Phase I includes the following facilities:

-- one covered multi-use arena with seating for 6,500 spectators and eight open arenas,

-- two polo fields,

-- ten barns containing a total of 480 permanent horse stalls,

-- utility hookups (water and electricity) to accommodate 400 recreational vehicles,

-- a 10,000-square-foot facility for meetings and other large events,

-- two administration buildings, and

-- one restaurant.

Construction of phase II has not yet begun. Phase II includes the following planned facilities:

-- a "main street" with commercial shops for gifts, clothing, food and beverages, as well as veterinary and blacksmith services;

-- a theme village center providing entertainment (shows, rides, and movies) as well as tours of the park;

-- a cultural village with museum and educational facilities, a zoo, an 8,000 seat amphitheater, and lodging; and

-- a village with a movie production studio, additional offices for park administration, and a gas station.

According to city officials, the city's cost to construct phase one totaled about $10 million, including about $226,000 in federal funds. The private operator stated that an additional $10 to $12 million has been spent for other capital improvements, operation and maintenance, and research and development. From 1988 through 1990, gross revenues totaled about $3 million. Under the agreement terms, the city is to receive 2 percent of gross revenues from all operations.

The Golf Complex Agreement

The 1985 Bureau agreement with Scottsdale transferred 400 acres to the city for a golf complex. The golf complex includes two 18-hole courses: a championship course on which the annual Phoenix Open professional golf tournament is played and a municipal course. According to city officials, the total cost to construct the golf complex was about $20 million, including about $62,000 in

federal funding. The golf complex began partial operations in December 1986 and full operations in July 1987.

In 1984, in anticipation of obtaining the land, the city contracted with PGA Tour Investments, Inc. (PGA-TI)[2] to manage and operate the complex. The city's lease with the private operator provides that the city receive 10 percent of the golf course revenues and 2 percent of all other revenues. For 1988 through 1990 (the first 3 years of full operation), the golf complex generated more than $21 million in gross revenues. Under these terms, the city is entitled to receive about $1.4 million in compensation.

FEDERAL LAW AND AGENCY PROCEDURES

None of the terms and conditions of the agreements between the Bureau and Scottsdale appear to be contrary to the requirements of the act. The Federal Water Project Recreation Act gives the Bureau broad discretion to enter into such terms and conditions as will best promote the development of its lands in the public interest for recreation. The Bureau's internal instructions provide only general guidance. They do not provide any specific guidance on key agreement terms and conditions such as (1) compensation to the government, (2) what constitutes the appropriate promotion of recreation, (3) limitations on public access, (4) public-use fees, or (5) monitoring and oversight of agreements. The only specific Bureau instruction is that agreements should not exceed 50 years.

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[2]The city contract is with the Tournament Players Club (TPC), a corporate subsidiary of PGA-TI. However, PGA-TI actually operates the golf complex. PGA-TI is a wholly-owned subsidiary of PGA Tour, Inc., the professional golf organization that sanctions and cosponsors professional golf tournaments.

Compensation to the Government

The Federal Water Project Recreation Act does not require the Bureau to be compensated for the use of its lands, nor does it preclude it from being compensated. In the absence of statutory guidance, and agency policies and guidance, local Bureau officials concluded that it was appropriate for the government not to receive a fee compensation since leasing the lands supports the Bureau's goal of providing its lands for recreation. Local Bureau officials believed it is more appropriate for the city to share in the revenues since the city, and not the federal government, is funding most of the development costs.

Although the Bureau is not required to receive compensation, doing so is encouraged by other statutes as well as by the Office of Management and Budget (OMB). For example, the Independent Offices Appropriations Act of 1952 encourages agency heads to charge fees for the use of public resources. The fees are to be fair and based on the value of the service provided to the recipient. OMB Circular A-25 states that fair market value should be obtained when federally owned resources or property are leased or sold.

Appropriate Promotion of Recreation

Also, lacking guidance on what constitutes appropriate development of lands for recreation, local Bureau officials used their personal judgment when approving development plans. For example, at the equestrian center and theme park, the local Bureau approved--in concept--the development of a main street with commercial shops, a theme village center providing entertainment (shows, rides, and movies) and tours of the park, a movie production studio, an 8,000 seat amphitheater, and a gas station.

In addition, to those activities approved in concept, several commercial, for profit activities, the type and scale of which are not usually found at public outdoor recreation sites on federal lands, have been constructed. Local Bureau officials approved these activities on the basis that they would support park events or serve to draw additional visitors to scheduled events. For example, a restaurant at the equestrian center and theme park was originally approved by the Bureau as a food service support facility with hours of operation in conjunction with park activities. However, because of staffing and other problems associated with operating a restaurant intermittently, the city--on behalf of the operator--requested and received approval from the local Bureau to open the restaurant even when there are no scheduled park activities. In March 1991 the restaurant, with an indoor seating capacity of 530 and an estimated outdoor seating capacity of 500, was operating daily as a full-service restaurant.

In March 1991 a 10,000-square-foot meeting and event facility opened. The facility--designed for dances, parties, and other large functions--has a seating capacity estimated at 600.

Promotional materials distributed by the operator state that the equestrian center and theme park can host "private, public, and corporate functions" for groups of 10 to 50,000 people, with convention facilities for corporate picnics, meetings, and barbecues. The promotional materials also invite potential customers to use their imagination in proposing activities to be held at the park.

Limitation on Public Access

Bureau guidance governing land use agreements does not address the issue of public access. Without such guidance, local Bureau officials approved a reservation policy at the golf complex that limits public use. The policy sets aside 20 percent of the tee

times on each course for priority access by PGA Tour, Inc., or its designees. In turn, PGA Tour, Inc., has made a portion of its priority tee times available to guests of a resort hotel adjacent to the championship course.

According to local Bureau officials, the final agreement on an 80/20 split between tee times available to the general public, on a first-come, first served basis, and those available to PGA Tour, Inc., and the hotel was a negotiated compromise between the Bureau, which wanted to minimize restrictions on public access, and PGA Tour, Inc., which wanted a greater percentage of tee times available for priority reservation. Bureau officials told us they had no formal agency guidance to use in their negotiations, and in the absence of any such specific criteria, the 80/20 split seemed reasonable.

Public-Use Fees

Similarly, we found that the Bureau has not developed guidance on establishing public-use fees for recreational activities on its lands. Without guidance, local Bureau officials required fees at the golf complex to be based on fees at comparable area courses. Fees at the championship course are determined on the basis of fees at other metropolitan area private and resort courses and fees at the municipal course are determined on the basis of those charged at other metropolitan area municipal courses. The fees charged to play the courses are adjusted annually and vary, depending on the season of the year. For example, in 1991, the championship course fee is $80 for one 18-hole round of golf during the peak season--including a mandatory cart. At the municipal course, the peak season fee is $16 plus $12 for a nonmandatory golf cart.

Monitoring and Oversight

Current Bureau policies and guidance do not set clear standards for adequate monitoring and oversight of the lease agreements to ensure that the areas are being managed and developed in accordance with the agreements. As a result, local Bureau officials are relying on information provided by the operator and the city to make monitoring and oversight decisions. For example, although fees at the golf complex are to be based on local comparable courses, the Bureau has not independently determined that the courses selected by the private operator are actually the most appropriate for comparison or that the fees reported for the comparable courses are in fact the amounts charged.

OTHER SIMILAR AGREEMENTS HAVE BEEN APPROVED

In addition to the two agreements with Scottsdale, we identified three other agreements that local Bureau officials negotiated with other nonfederal public entities in Arizona. These agreements are with Maricopa County, for the use of 25,000 land and water acres; the city of Phoenix, for the use of 1,500 acres; and Pima County, for the use of 100 acres.

Terms of the agreements range from 75 to 100 years, including renewal options. Recreational activities proposed for development on these lands include equestrian centers, golf courses, sports fields, community centers, hiking trails, picnic areas, and campgrounds. Two of the three agreements anticipate, but do not currently require, federal cost-sharing in developing the recreational areas. The remaining agreement specifies federal cost-sharing up to $8 million. None of the agreements provide for the government to be compensated. Because these agreements are negotiated at the regional or local level, and centralized

information is not maintained, headquarters officials were unable to tell us whether any other agreements were pending.

CONCLUSIONS

In summary, we believe the two Scottsdale agreements are prime examples of what can occur when agencies receive program authority, but then fail to develop sound policies and guidance for implementing that authority. Because the Bureau has not developed the necessary implementing guidance, many key decisions related to the Scottsdale agreements have been made by local Bureau officials on the basis of their personal judgment. These decisions included (1) not requiring compensation for the use of Bureau lands despite strong precedent for requiring such compensation; (2) approving several commercial, for-profit activities, the type and scale of which are not usually found at public outdoor recreation sites on federal lands; and (3) approving a reservation policy that restricts public use. Also, because the Bureau has not developed clear agency standards for management and oversight of such agreements, local Bureau officials have chosen to rely on the city for oversight rather than obtaining independent assurances that the agreement terms and conditions are complied with.

Our report, which you released this morning, contains recommendations to address these deficiencies. We are recommending that, among other things, the Bureau establish policies and procedures to identify when and under what conditions the government should be compensated for the use of its lands, what constitutes the appropriate development of Bureau lands for recreation, and standards for monitoring and oversight. Additionally, we are recommending that until the Bureau develops these policies and guidance, any future agreement negotiations or approval of further development under signed agreements be postponed.

Mr. Chairman, this concludes my statement. We will be happy to respond to any questions you or other members of the Subcommittee may have.

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