

FEDERAL LANDS CONCESSIONS REFORM

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS,
AND LANDS

OF THE

COMMITTEE ON
RESOURCES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

H.R. 721

A BILL TO ESTABLISH FAIR MARKET VALUE PRICING OF FEDERAL
NATURAL ASSETS, AND FOR OTHER PURPOSES

H.R. 773

A BILL TO REFORM THE CONCESSION POLICIES OF THE NATIONAL
PARK SERVICE, AND FOR OTHER PURPOSES

H.R. 1527

A BILL TO AMEND THE NATIONAL FOREST SKI AREA PERMIT ACT
OF 1986 TO CLARIFY THE AUTHORITIES AND DUTIES OF THE SEC-
RETARY OF AGRICULTURE IN ISSUING SKI AREA PERMITS ON NA-
TIONAL FOREST SYSTEM LANDS AND TO WITHDRAW LANDS WITH-
IN SKI AREA PERMIT BOUNDARIES FROM THE OPERATION OF
THE MINING AND MINERAL LEASING LAWS

H.R. 2028

A BILL TO PROVIDE FOR A UNIFORM CONCESSIONS POLICY FOR
THE FEDERAL LAND MANAGEMENT AGENCIES, AND FOR OTHER
PURPOSES

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FEDERAL LANDS CONCESSIONS REFORM

TUESDAY, JULY 25, 1995

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 1324, 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. This morning, we will take up a topic long debated within this committee and the halls of Congress, concession reform. This is an important topic, and we have a long list of persons to be heard from today. Therefore, I will not take time to recount the issues surrounding concession reform which are well established in the record. That same record also reflects the concerns which full committee Chairman Young and I share with respect to the topic of concession reform.

I do want to appraise members and other interested persons that I intend to mark this legislation up in the early fall. I would reiterate the comment I made in the introduction of my concession reform bill that it is a work in progress. I am willing to work with interested parties to perfect concession reform legislation, and I look forward to the testimony today to determine who has an interest to work on this issue.

I have noticed throughout the years that a lot of people have an interest, but it is very self-serving if I may respectfully say so. I take the River Runners as an example of that on our wilderness bill. We asked for input on all of it and got nothing. When they came to all the hearings, they verbally abused us all over the place but wouldn't come up and tell us a thing. Therefore, they have made their point, and I will make mine when we mark this up.

Mr. HANSEN. Our first witness is Mr. James Duffus, Director of National Resources Management Issues, General Accounting Office. Would you tell us who you have with you please?

STATEMENT OF JAMES DUFFUS III, DIRECTOR OF NATURAL RESOURCES MANAGEMENT ISSUES, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY JOHN KALMAR, STAFF MEMBER; AND NED WOODWARD, STAFF MEMBER

STATEMENT OF JAMES DUFFUS III

Mr. DUFFUS. Thank you, Mr. Chairman.

Mr. HANSEN. Mr. Duffus, would you tell us who you have with you please?

Mr. DUFFUS. Yes, I will. With me today are Ned Woodward on my right and John Kalmar on my left. They both have worked on concession issues within the Office.

Mr. HANSEN. Mr. Duffus, how much time do you need?

Mr. DUFFUS. It takes me about five and a half—six minutes. I will deliver a summary statement.

Mr. HANSEN. We will put eight minutes down on the thing, and you know how that clock works in front of you.

Mr. DUFFUS. Yes, I do. Thank you, Mr. Chairman. Mr. Chairman and members of the subcommittee, we are pleased to be here today to summarize our work on Federal policies and practices for managing recreation concessioners and to provide our views on the four bills now before the subcommittee.

Our work has involved concessions activities at six agencies: the National Park Service, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, Forest Service, and the Corps of Engineers.

In summary, our work has shown that the agencies' concession policies and practices are based on at least 11 different laws and, as a result, vary considerably; more competition is needed in awarding concession contracts; and the Federal Government needs to obtain a better return from concessioners for the use of its lands, including obtaining fair market value for the fees it charges ski operators.

Each of the bills before the subcommittee proposes changes to current concessions policies and practices. Overall, the changes proposed are consistent with our past work, and, therefore, we support their objectives.

I will first highlight our earlier work and then provide our views on the bills. No single law authorizes concession operations for all six agencies. As a result, agencies have developed policies that differ substantially in terms of concession agreements and terms of the agreements.

Our work has also shown the need for greater competition in awarding concession contracts. As early as 1975, we reported that the Park Service's preferential right of renewal is not in the government's best interest because it impedes competition. Competition is impeded because existing concessioners who perform satisfactorily have a right to continue their contracts.

We have also reported that the concessions fees paid to the government appear to be low. As we reported in June 1991, the six agencies received about \$35 million in fees from gross concessions revenues of \$1.4 billion, an average return of about 2.4 percent. We have updated these figures for the Park Service and the Forest Service which are shown on the chart to my left. Concessions reve-

nues now exceed \$2 billion, and fees are approaching \$50 million. The return to the government remains at about 2.4 percent.

I would like now to discuss the four bills currently before the subcommittee. While the bills differ, each proposes significant reform in Federal concessions policy. As I said, our work has shown the need for one law to establish common concessions policies so that similar concessions operations are managed consistently throughout Federal recreation lands.

One policy difference among agencies is possessory interest. H.R. 2028 would encourage the private sector to build and maintain concessions facilities but would not grant possessory interests for these facilities. Under H.R. 773 and H.R. 721, the Park Service would generally extinguish possessory interest. As existing contracts expired, the new contracts would depreciate the value of possessory interests over an extended period of time. Once fully depreciated, the structures would be owned by the government.

Removing possessory interests as proposed in H.R. 773 and H.R. 721 would provide the Park Service with greater control over the facilities and allow greater flexibility in managing concessioners. However, acquiring these facilities could be costly.

If the Park Service acquired a concessions facility during the term of the contract, the fees it received would likely be lower because the concessioner would probably not give up its ownership interest in a park facility without some form of compensation in return. In addition, once the Park Service owns the facilities, it will be responsible for maintaining them which could increase its multibillion dollar backlog of deferred maintenance.

In our opinion, any effort to reform concessions policy should include greater competition in the awarding of concessions contracts. Competition could improve both the return to the government and the quality of visitor services. The bills promote more competition but treat preferential right of renewal differently.

H.R. 2028 proposes that no concessioner have a guaranteed preferential right of renewal. However, a concessioner could acquire a limited preference on the basis of its past performance. H.R. 773 and H.R. 721 guarantee a preferential right of renewal for concessioners generating less than \$500,000 annually, which constitute about three-quarters of all park concessioners.

While removing preference for the largest concessioners is a good start toward creating a competitive environment, we continue to believe that a preferential right should not be guaranteed for any park concessioner. H.R. 2028, H.R. 773, and H.R. 721 each propose expanding competition in awarding concessions contracts. This competition will likely result in a better return to the government.

These bills also propose that the fees collected from the concessioners would be available for use by the collecting agency. Returning fees to the local level would, if properly managed, help to bring about needed improvements. However, the benefit would only be realized if the funds were used to supplement and not supplant existing funding.

Finally, the fee system proposed in H.R. 1527 would be simpler to administer than the existing system benefiting both the Forest Service and individual ski areas. However, the proposed fee system has the same rates as those the ski industry proposed in 1993. As

we reported at that time, these rates were not designed to reflect fair market value but to generate fees comparable to the fees collected under the existing system.

Forest Service officials acknowledge that they do not know whether the fees collected under the existing system reflect fair market value. As such, any fee system designed to collect comparable fees will likewise not ensure that fair market value is received. Mr. Chairman, this concludes my statement, and we would be glad to respond to questions.

[The prepared statement of Mr. Duffus can be found at the end of the hearing.]

Mr. HANSEN. Thank you, Mr. Duffus. Do either of your colleagues have anything they would like to add to that?

Mr. KALMAR. No, sir.

Mr. WOODWARD. Not at this time.

Mr. HANSEN. Mr. Allard. I will recognize members of the committee for five minutes each to ask the witness questions.

Mr. ALLARD. You say that all three of these bills keep the concession process more competitive than what it is now. Is that correct?

Mr. DUFFUS. That is correct.

Mr. ALLARD. Which one of the pieces of legislation in your view opens up the free market the most?

Mr. DUFFUS. Well, as were reported in the past, the preferential right of renewal is a right which, in our view, impeded competition because that gives the concessioner the right to better any offer that is received on a new concessions contract.

H.R. 2028 would essentially remove preferential right of renewal; whereas, the other two bills still have a guaranteed right. So from the standpoint of preferential right of renewal, H.R. 2028 would do a better job.

Mr. ALLARD. How do you address the area where you have a concessioner who made a substantial investment just to be there? How do you assure that he gets back—or is there a way of provision there where there can be a contract with the Forest Service where that contract can be of sufficient length where he can get a return on his investment? Or are you going to compact that down so that he has to charge an exceptionally high fee on maybe the goods or services that he provides in order to recoup a profit on that?

Mr. DUFFUS. Well, I guess you are talking about possessory interest to some extent?

Mr. ALLARD. Yes.

Mr. DUFFUS. Possessory interest is unique to the Park Service. It doesn't exist in any of the other agencies.

Mr. ALLARD. Yes.

Mr. DUFFUS. These other agencies are able to deal with concessioners' investment in a way without offering possessory interest. We favor possessory interest not being included in concessions contracts. We think it has associated problems. The issue of what do you do with existing contracts with possessory interest is something that needs to be looked at rather carefully in terms of whether or not acquiring the ownership interests of concessioners could result in less fees.

It seems reasonable that if the government is to acquire a concessioner's ownership interest then the concessioner would want some-

thing in return. The one thing he may want in return perhaps is to pay less fees.

Mr. ALLARD. I see. OK. Thank you.

Mr. HANSEN. Thank you. The gentleman from Oregon, Mr. Cooley.

Mr. COOLEY. Thank you, Mr. Chairman. In your testimony, you talked about establishing a single policy to manage similar concessions operations on Federal lands. Could you explain to me why you think a single policy with the diversity that we have of concessioners on Federal lands would be a good policy? Shouldn't we have maybe something that has some flexibility in it for special situations?

Mr. DUFFUS. Yes. Let me just make a comment and then I would ask Mr. Woodward to respond. The issue here is that we see a need for consistency in the management of similar concessioners that are operating on Federal recreation lands.

We are not saying that the agencies should not have flexibility in the management of concessioners on their lands, but at least they should be consistent, for example, in the rates that they charge and the process by which they go about setting the rates. And perhaps Mr. Woodward would comment.

Mr. COOLEY. Excuse me. When you say rates——

Mr. DUFFUS. Fees. I am sorry.

Mr. COOLEY. You are talking about fees?

Mr. DUFFUS. Yes, sir.

Mr. COOLEY. OK. Because I was going to say if you look at a concessioner who may or may not have a living space as a rental and then you look at a concessioner that sells convenience—hot dogs, things of that type, and that is what I was really looking at. And you are talking about a flat rate system——

Mr. WOODWARD. Sir, I don't think we are——

Mr. COOLEY [continuing]. are you thinking in the point of profit margins or——

Mr. WOODWARD. I don't think we are suggesting a flat rate system. I think what we are suggesting is that a marina on Corps of Engineers' land may be a lot like a marina on Forest Service land and the same with a marina in the Park Service.

Our point is that similar concessioners should probably be managed in a similar fashion. What we see not only in just dealing with the fee, but length of contract, the possessory interest type of issues, whether they need to report revenues, things of that nature, are very inconsistent throughout these six agencies.

So I think our point is where you have similar facilities, and many of them are similar—there are a lot of restaurants, there is a lot of lodging throughout the Forest Service, the Corps, the Park service especially—we would suggest that there are strong reasons to have those types of concessioners managed in a consistent fashion.

Mr. COOLEY. So what you are talking about is a general overall management plan with the flexibility within the units itself on nonsimilar things?

Mr. WOODWARD. Flexibility still remains a key issue. We are not trying to tie the hands of any of the agencies to one strict law. I think H.R. 2028 provides for the agencies to develop regulations

based on some overall guidelines, and to that extent we would support that.

Mr. COOLEY. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you. The gentlewoman from Idaho, Mrs. Chenoweth.

Mrs. CHENOWETH. Mr. Chairman and Mr. Duffus, I am really pleased with what I am seeing proposed in 1527 for return on ski operations. But I need to ask you a question because I don't understand this particular section of the law. Formerly, the GRFS, you reported in your testimony, did not ensure that the Forest Service receives fair market value for the use of its land. And in what law did we establish that they should receive fair market value rather than a marginal return for their operations?

Mr. DUFFUS. I believe it is the National Forest Ski Area Permit Act of 1986 that requires the Forest Service to obtain fair market value for the use of its lands for ski operations.

Mrs. CHENOWETH. Can you help me by explaining how you calculate fair market value for the Forest Service lands?

Mr. DUFFUS. I am not so sure I can do that, but I will offer some suggestions. It is difficult, and I think the Forest Service recognizes it is difficult to do. The Forest Service, as we reported in 1993, had attempted through a contracted private appraiser, to analyze some 11 or so transactions where ski land was sold in order to get a better feel as to what the value of ski area operations would be.

I believe that effort was not concluded. I believe it was terminated, and currently I don't know what they are doing. But when you look at fair market value for ski operations, it is difficult to determine because there are not a lot of comparables that exist. There is a very small market of non-Federal lands carrying out ski operations.

So you have to look to other areas. Perhaps some other areas would be the rents that are being paid for highly developed resort areas such as golf courses or maybe oceanside resorts, although it is not exactly the same type of situation. It is not a ski operation, but it is a resort area. Perhaps another area to look at would be the profitability norms for ski areas.

That information probably is available through Dun & Bradstreet and some other financial referral document. So it is not an easy thing to do, but we believe that what they are doing now and how they are setting the rates does not reflect fair market value.

Mrs. CHENOWETH. I thank you because if we were to really analyze fair Forest Service activities because they are a government organization, I mean, they are not in the free market system at all. We should analyze their activities on the rest of the forest and make comparables with regards to their fair market return on the rest of the forest. And their activities have been virtually nil on the rest of the forest as far as any kind of commercial activity.

But you also mentioned in your testimony that the Park Service currently has a multibillion dollar backlog of deferred maintenance. Would you detail out how you would expect concessioners to deal with that again?

Mr. DUFFUS. I don't believe we are expecting the concessioners to deal with the backlog. The backlog—and it is a pretty soft fig-

ure—but we estimated it a few years back at about \$2 billion. Now the estimates are as high as \$4 billion.

The point we are making is that—and it was on possessory interest—as you gradually extinguish possessory interest as H.R. 773 and H.R. 721 propose, then at the end of that period of time in which it is amortized and extinguished, the ownership of the facilities would be turned over to the Federal Government.

And what we are saying is that this would add to the maintenance backlog. Now, either the Park Service would have to maintain those facilities if they needed maintenance, or they could negotiate with the concessioner to do the maintenance. If the concessioner is to maintain the facilities, I think it would be reasonable again to expect that he gets something in return and that would probably be paying less fees.

Mrs. CHENOWETH. My final question is I used to operate a ski school and a ski shop, and I know that there needs to be flexibility built in because of the weather patterns. In the last two weeks of January, we often would stand and watch the rivulets of snow run off the mountain and realize, "Gosh, there go the profits." And as I analyze the bill, I really hope we can build in more flexibility for weather. Thank you very much.

Mr. DUFFUS. You are welcome.

Mr. HANSEN. Thank you. The gentleman from Nevada, Mr. Ensign.

Mr. ENSIGN. Thank you, Mr. Chairman. Just very briefly, are there set-asides for disabled or for minority preferences for the concessions?

Mr. DUFFUS. I don't think we know about the disabled. But it seems to me that our earlier work—and it was in 1975—pointed out that there were no set-asides for concession contracts. That was the situation in 1975, and I don't know what it is today.

Mr. ENSIGN. I was under the impression at least at Hoover Dam that I am familiar with some for the disabled out there, and that is one of the issues to be dealt with and hopefully will. Is that going to be dealt with, Mr. Chairman, within this particular bill?

Mr. HANSEN. Well, Mr. Hodapp tells me we can deal with the context. We will look into it when we have time to review your questions. It is a good question. I would like to know a little bit more about it myself.

Mr. ENSIGN. OK. Thank you. That is all I have.

Mr. HANSEN. The gentleman from California, Mr. Radanovich.

Mr. RADANOVICH. No questions.

Mr. HANSEN. No questions. Mr. Duffus, your testimony is very interesting. Have you seen this chart comparing these different pieces of legislation with the existing law, the Miller and Meyers and Hansen legislation? Do you have that before you by any chance?

Mr. DUFFUS. No, we don't.

Mr. HANSEN. Well, then I can't ask you to respond to it, but I will ask you a question. Your testimony seems to support the concept of establishing a single policy to manage similar concession operations on Federal land. Would you elaborate why you feel that is better than having separate ones for everyone?

Mr. DUFFUS. You mean to have one policy or one law—

Mr. HANSEN. The one that Mr. Allard asked his question a moment ago which you seemed to support that concept over the other two approaches.

Mr. DUFFUS. Yes. I think Mr. Woodward did respond. I don't know how much more I can add to his response. Possessory interest is unique to the Park Service. The other five agencies do not have possessory interest. Preferential right of renewal exists in the Park Service and to some extent for small concessioners in the Forest Service, and BLM uses it as well but administratively and not by legislation.

The terms of the concessions contracts are negotiated. Each of the agencies allow field managers to negotiate different terms such as length and fees and so forth. But the issue I think, as we said before, was that similar concession operations on Federal lands should be managed consistently.

With respect to small outfitters and guides, the Forest Service and BLM both charge a fee, three percent of gross revenues; whereas, if that same outfitter operates on Park Service land, he would pay a flat fee of \$50 to \$100. So it is those sorts of things that we think the government would benefit from in having a consistent policy with respect to concessioner management.

Mr. HANSEN. Thank you. The gentleman from Tennessee just walked in. It would be unfair to ask you any questions, but if there is something you are just dying to say to this group, here is your chance.

Mr. DUNCAN. Thank you, Mr. Chairman. I have nothing.

Mr. HANSEN. Thank you, Mr. Duffus and your colleagues. We appreciate you being with us and your excellent testimony. I would appreciate it if you would take a copy of this comparison chart. I would like to ask you a question or two about it later, but I will call you if I need you on that if that is OK with you?

Mr. DUFFUS. Yes. Thank you.

Mr. HANSEN. We have now been joined by our colleague from Kansas, Jan Meyers. Jan, we are grateful to have you with us. We appreciate you. Jan has shown a great interest in legislation in this regard, introduced a bill last year, and also has a bill in front of us at this time. If you would like to come forward, Jan, we appreciate you being with us.

STATEMENT OF HON. JAN MEYERS, A U.S. REPRESENTATIVE FROM KANSAS

Mrs. MEYERS. Good morning, Mr. Chairman, and thank you for hearing me this morning. I appreciate having the opportunity to testify before you on Federal lands concession reform.

The reason that I became so involved in this, Kansas does not have parks, of course. I have three or four members in my district, the 3rd district of Kansas, who have been members of the Parks and Conservation Association Board of Directors, and one was president last year. And over a period of the last many years, they have involved me, and I have become extremely interested.

They think that improving the concessions reform policy will develop more money for national parks, and they think and I think that there is a way to do this so that we modernize this policy and yet are fair to those who have concessions currently.

While this hearing encompasses concession policies for the Forest Service, Fish and Wildlife Service, and Corps of Engineers, I want to speak directly about my bill, H.R. 773, the National Park Service Concessions Policy Reform Act, that applies solely to the National Park Service. My bill, which has 48 bipartisan co-sponsors, is the same bill that the House overwhelmingly approved by a vote of 386 to 30 because it makes substantial improvements to National Park Service concession contracting procedures which right now are non-competitive.

H.R. 773 sustains the will of the House from the 103rd Congress to open Park Service concession contracts to competition, provide American taxpayers an adequate return from Park Service concessioners, and dedicates more funding to our parks. At the same time, it fulfills the Park Service's commitment to existing contracts and related property values. What my bill does for taxpayers is convert the current noncompetitive contracting process to a very competitive one.

The first step in this new concessions contracting method is establishing a floor or a minimum franchise fee for new contracts or those being renewed. After this floor is established by the Secretary of Interior, bidding would be allowed above that minimum, incumbent concessioners competing against other interested parties solely on their tendered contracts, and no one is given advantage over the other.

Right now, the National Park Service rarely receives competing bids for a concession contract being renewed because the incumbent contractor can retain the contract by meeting the lowest bid up for renewal. Consequently, no other bidders are willing to take the time and the money in an effort to win the contract only to have the current concessioner meet the best competing bid because of this preferential right to renew.

The lack of competition for Park Service concession contracts was investigated by Interior Department's Inspector General who reported that of 29 Park Service contract offerings, 28 incumbent concessioners had no competing offer. I think this statistic bears repeating. Of 29 Park Service concession contracts up for renewal, 28 were renewed without a competing bid.

It is clear that current law stifles competition not only from a resourceful small businessperson, but for large diversified concession operators, the same ones that provide concessions to airports and arenas. Large concession operators do not compete for Park Service concession contracts when they are being renewed because they know the incumbent always wins on this uneven playing field.

When contracts are renewed without competition, franchised fees continue to be low while concessioner profits increase. In 1993, concessioners generated more than \$657 million in gross revenue and as a group returned to the Federal Government just 2.6 percent, \$17.6 million of that \$657 million, none of which went to the parks.

I know the lack of adequate appropriations for the upkeep of the park system is of concern to this subcommittee, and I think my bill provides a solution through the establishment of park improvement funds into which franchised fees collected from the gross revenues from concessioners are deposited.

The bill includes a much needed directive to the Park Service requiring that half of the fees generated in a park be reinvested back into its operating budget of the park. The remaining half is directed to reducing the \$2 billion backlog of infrastructure repair in the Park Service. The Park Service already is instituting these practices, and my bill will enact them into law requiring no expensive bureaucratic adjustment.

This is one of the key recommendations that has been made many times by various commissions on reforms for the Park Service, including the Grace Commission. This provision is common sense since many popular parks are being loved to death by the public and are in desperate need of infrastructure repair and upkeep.

H.R. 773 also changes the policy which grants possessory interest in structures built on park system land by concessioners. Possessory interest which is only granted in Park Service concession contracts—no other Federal land agency uses this atypical title arrangement for concession contracts—forces potential concessioners or even the Federal Government to buy capital assets such as a hotel at an inflated cost from a retiring concession business. Why?

Current law values these structures at their replacement cost which increases over time giving a concessioner an increasing asset. As you can guess, estimates of possessory interest are very high because the structures are located in the park system with a captive market.

Under my bill, structures will be valued by the straightline depreciation method over a 30-year period which is the method used in GAAP, General Accepted Accounting Principles, and in similar real estate transactions. Should a concessioner decide not to renew his contract, he will be fully reimbursed for his assets based on depreciation. This is the manner in which other concessions are contracted by State parks in private land development agreements and is fair to the taxpayer and to the concessioner.

I would like to point out to my colleagues that some of the larger Park Service concessioners operate successful concessions for State parks, airports, and other public venues, winning these contracts on a competitive basis and without the guaranteed lock on a permanent contract which they have with the National Park Service.

Mr. Chairman, because of preferential right of renewal and possessory interest, we do not have open bidding for the concessions in the park system. Consequently, the Federal Government receives less than three percent of gross receipts from concessioners which are not even invested back into the parks. That is why the Citizens Against Government Waste and the National Parks and Conservation Association are endorsing my bill.

I do want to make it clear that I am not questioning the good service concessioners are giving to park visitors, but the policies in the 1965 concessions law may have been necessary then to get people into parks, but now they simply are not prudent. Our national parks are visited by 275 million people annually, and these numbers are expected to increase to half a billion in five years.

Mr. Chairman, I am aware that you have introduced a bill that would set an across-the-board concessions policy for Federal agen-

cies. Although our bills differ, I know that we support the same goals of competition and returning a fair franchise fee back to the national parks. I would like to work with you and the rest of this subcommittee on concessions and encourage you not to use a one-size-fits-all concession policy since there are so many variables. I thank the committee very much for hearing my testimony today.

Mr. HANSEN. We thank our colleague for her testimony. We appreciate it very much. Is there anyone on the committee who has a question for our colleague from Kansas? The gentleman from New Mexico, our ranking member.

Mr. RICHARDSON. I would just like to ask unanimous consent that my statement be in the record. And also I have no question for the gentlelady, but I want to commend her for her bill. I am a co-sponsor. She has shown leadership on this issue. Her bill passed overwhelmingly in the last session. I think it should be the basis for any kind of reform, and I just wanted to say that I am proud to be on her side in this debate.

Mr. HANSEN. I was going to recognize the gentleman for any opening remarks that he may have. If you would like to go ahead—

Mr. RICHARDSON. That will do it, Mr. Chairman. The ski permit fee bill—I think that this is an important issue too. I think as long as we stay close to fair market value, and I commend you for moving these bills.

[Statement of Mr. Richardson follows:]

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

Mr. Chairman, I am pleased that at long last we are considering national park service concession reform legislation. I am a cosponsor of H.R. 773, introduced by my friend and colleague from Kansas, Mrs. Meyers. The gentlelady is to be commended for her advocacy of this important legislative initiative, which represents a broad, bipartisan consensus.

A little history bears repeating. H.R. 773 is the successor of the NPS concessions reform legislation that passed the House in 1994 by an overwhelming vote of 386 to 30 and which also passed the Senate by an equally overwhelming vote of 90 to 9. The bill has been the subject of numerous hearings over the years and addresses problems identified in GAO and Inspector General reports. It is a proposal that also has the support of the Administration.

Unfortunately, the same cannot be said for H.R. 2028, which was introduced less than 2 weeks ago. H.R. 2028 is a substantial rewrite of the concessions policy of the six principal Federal land management agencies. Whereas H.R. 773 represents a long-debated and carefully considered response to an abundantly identified problem, H.R. 2028 has no such history. I am concerned that by lumping all the Federal agencies together, we will delay and undercut the reforms needed for the NPS. H.R. 773 is a tested proposal, that given the chance, I believe the House would again overwhelmingly support.

I also note we are considering H.R. 1527, dealing with ski permit fees. This is something the subcommittee will want to look at carefully. I am all for simplifying the fee determination, as long as I can be assured that the Federal Government is getting fair market value for the use of Federal assets.

Mr. Chairman, let me conclude by once again saying that I am pleased to voice my support for the bipartisan proposal of the gentlelady from Kansas.

Mr. HANSEN. Thank you. The gentleman from Oregon has a question.

Mr. COOLEY. Representative Meyers, I wanted to ask you about one thing I have some concern about. There seems to be a conflict of numbers involved here. You don't have your pages here, but let

us say on page three when you talk about the Federal Government just 2.6 percent or \$17.6 million of the \$657 million that was generated revenue, is that \$17.6 million how much went back to the Treasury?

Mrs. MEYERS. Yes.

Mr. COOLEY. OK. Well, does that take into account the funds spent by the concessioners that do not go back in funds? I went to a rededication of the Crater Lake Lodge which is very, very beautiful, and there was a lot of controversy concerning a \$21,000 privy that is located pretty close to that site. And I found out that the taxpayer didn't pay that money. That was paid for by the concessioner.

Would that \$17.6 million reflect those moneys that are paid by concessioners that are improvements made on the park? Are we getting a figure here that does not really reflect how much is returned to the "benefit of the public" or the general return or cost by the concessioners?

Mrs. MEYERS. Well, you make a very good point, Mr. Cooley. I think my figures represent what is returned in concession fees. However, for whatever improvements he makes, he does or she does have a possessory interest in that. And at the time they want to pass that on to a new buyer or to the U.S. Government, they do have a possessory interest in that which is unique to the parks.

Mr. COOLEY. Well, I understand that but what I am trying to say is that for my own clarification here the \$17.6 million does not really represent the amount of money that is returned by the concessioners to the "public." Part of it—that is actual cash goes into the Treasury but does not really represent what is really contributed by the concessioners to the public. So this figure might be much, much higher if we take into account the money that some concessioners agree to pay to the system in order to upgrade that system?

Mrs. MEYERS. Well, I am sure that is true. I tried to model the bill after concession agreements that are made in the other areas of our economy and society, Mr. Cooley, and I think possibly we should be getting a much higher return than less than three percent. That is my only point.

Mr. COOLEY. I have something from the staff here which you probably have, and counting the special annual fees and add-on with no possessory interest, it comes up to \$32.6 million, and that is closer to the return. I just wanted to clarify that figure to show that it really is not \$17.6 million, but may even be double that which this shows. This is from staff.

Mrs. MEYERS. That would be closer then to maybe 4 percent.

Mr. COOLEY. No. I am not saying that it is right. I just wanted to clarify that part of it so we understood exactly what the return was to the public from the concessioners.

Mrs. MEYERS. Well, it is good to be clear. I still think that 4 percent is a relatively low—

Mr. COOLEY. I agree and I am not arguing that point. I just wanted to clarify that number so we did not misrepresent exactly about what we were getting back in. Thank you very much. I didn't want to be controversial. I just wanted to correct that number. Thank you very much. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you. Other members of the committee have a question for our colleague from Kansas? The gentlelady from Idaho.

Mrs. CHENOWETH. Mr. Chairman, I have a question of Mrs. Meyers. You started to say 4 percent is relatively low. I would like you to finish that for my edification.

Mrs. MEYERS. Well, I think the concessions paid—I mean, it is very hard to compare these, and I will grant that because in some cases concessioners—the point Mr. Cooley made—are involved with making construction, and in some places it is just a concession as in an airport or another public area. But I do know that they go as high as 25 to 50 percent in some areas, but I don't think you can compare them. I think it has to be one on one.

However, I think because two other bills have been introduced, one by the Chairman of this committee, I think there is general agreement that the concessions returned to the government for the benefit of the taxpayer and for the benefit of the parks should be higher. I don't think there is any real disagreement on that.

Mrs. CHENOWETH. I appreciate that because you mentioned that actually a formula for reimbursement for facilities would be based on the depreciated value, and unless we see a higher return on investment, you know, that is squeezing concessioners in from both ends, and it won't open up competition I don't think. I think it may close it down.

Mrs. MEYERS. I just think we have to get a fairer method than possessory interests, and I think Mr. Hansen's bill addresses that also. I am not sure about Mr. Hansen's bill, but I do think you address possessory interest; also that is unique only to the park system. I think it was granted initially to get people into the parks, and I think it was probably all right then. I think we simply need to do something to change that system now.

Mrs. CHENOWETH. I too want to thank you. It is certainly a pleasure to see the chairman of the Small Business Committee here. Thank you very much.

Mrs. MEYERS. Thank you.

Mr. HANSEN. Thank you. In your bill, you speak of the adverse consequences of preferential right of renewal and competition for concession contracts. Yet, your bill grants this right to 80 percent. Is that the best way to ensure competition?

Mrs. MEYERS. It is the smaller ones, Mr. Hansen. It is those who have less than \$500,000 in gross revenue and no possessory interest. Sometimes they are called mom and pops although \$500,000 in gross revenue sounds like a high number. It really is not for the smaller operators, and so they are exempt from this competition. I think that there was some concern last year about the smaller operators, and we addressed it in the bill last year and in H.R. 773.

Mr. HANSEN. You think \$500,000 is a good cut? And you say \$1 under and you are OK. You go \$1 over, you got trouble, huh?

Mrs. MEYERS. Well, I think you have to draw the line someplace, and that is what we did.

Mr. HANSEN. I am glad you were here when the GAO was talking. I hope you noticed that they said the aspect of your bill to buy out possessory interests would direct hundreds of millions of dollars away from the parks and into the acquisition of properties.

Would you like to respond to that, or have you had a chance to give that some thought?

Mrs. MEYERS. Well, I think we purchased possessory interests over a period of time. I think I would rather have someone else address that more completely. I don't know if someone is here from the Park Service or from the National Parks and Conservation Association.

Mr. HANSEN. I see. I notice that we do have the National Parks and Conservation Association coming on, and I understand they had a big hand in your bill. So we will ask the question to them when they come on.

Mrs. MEYERS. All right.

Mr. HANSEN. Any further questions for Mrs. Meyers? We surely appreciate you being with us, Jan. It is very kind of you, and thank you for sitting through the first part of it with us, and we appreciate your testimony.

Mrs. MEYERS. I appreciate very much being heard, and I am glad for the interest of the committee, and thank you very much.

Mr. HANSEN. Thank you so much. We will now turn to the first panel; Mr. Roger Kennedy, Director of the National Park Service; Mr. David G. Unger, Associate Chief of the Forest Service; and Mr. Barry J. Frankel, Director of Real Estate, U.S. Army Corps of Engineers. If these gentlemen would come forward, we would really appreciate it. Some of the members of the committee said we should swear you in, but I trust all three of you so we won't do that. OK? How much time do you need, seriously?

Mr. FRANKEL. Five minutes.

Mr. KENNEDY. Yes. I will try to stay under five, Mr. Chairman.

Mr. HANSEN. Well, Roger, if you need more time, just let us know. This is the time to say it.

Mr. KENNEDY. OK.

Mr. HANSEN. How much time?

Mr. KENNEDY. Eight if I may.

Mr. HANSEN. Eight minutes. Good to see an honest response there. Mr. Unger, how much time do you need?

Mr. UNGER. I would say five minutes, sir.

Mr. HANSEN. Five. And, Mr. Frankel, you said five?

Mr. FRANKEL. Five minutes.

Mr. HANSEN. OK. You have got that. We would like to start with Mr. Frankel if that is OK. Mr. Frankel, you are recognized for five minutes.

STATEMENT OF BARRY J. FRANKEL, DIRECTOR OF REAL ESTATE, U.S. ARMY CORPS OF ENGINEERS

Mr. FRANKEL. Yes, sir. Mr. Chairman and members of the subcommittee, I am Barry Frankel, Director of Real Estate of the Army Corps of Engineers. Accompanying me today is Ms. Janice Howell, the Chief of Management and Disposal, of my office. I am pleased to appear before the subcommittee today to present the views of the Department of the Army on H.R. 2028. As requested, my full statement has been furnished for the record, and I will summarize it here.

Under various authorities, the Corps impounded lakes and pools as part of navigation and flood control projects. The Flood Control

Act of 1944 recognized the recreational potential of these waters and authorized the Secretary of the Army to construct, operate, and maintain public park and recreation facilities either by itself or through State and local governments or private entities.

The Corps provides land through leases. The cost of developing facilities and services are borne by the lessee. These facilities do not belong to the United States Government, and title is retained by the lessee who operates and maintains the premises. The lessee assumes the normal business risks as well as those associated with water level fluctuations from project operations. These risks are unique to a water resource project.

The bill repeals or supersedes the Federal Land Management Agency's current authorizations for commercial concessions and replaces them with one Federal authority. We are concerned that language in the bill could be interpreted as eliminating significant Corps authorities. This would leave us with limited authority to construct, operate, and maintain recreation facilities and no authority to allow State and local governments to provide parks and to perform management activities. The current cost-sharing policy for flood control and other purposes would be eliminated, and the Corps's authority to acquire and develop land for recreation purposes would be drastically reduced.

Assuming that H.R. 2028 is intended to supersede only concession authority, we believe that the various and differing missions of the affected agencies make it undesirable to require application of one authority. Our major concerns with the bill are the implementation of fee calculation, use of an agreement rather than a lease, forum for disputes, and the renewal process.

Since the bill states that concession programs will be fully consistent with each agency's missions and laws, we see no need for a single set of regulations. Each agency could incorporate a new policy into a regulation tailored to its specific mission. In our view, the attempt to standardize all concessions under one regulation would take away the discretion to resolve conflicts with missions.

The bill assumes that the competitive process for determining the fee charged will alone ensure a fair return to the Federal Government and reasonable economic viability for the concessioner. Our experience has indicated otherwise.

From 1945 to 1958, our rental rates were competitive. Many bids were based on best year projections and were overly optimistic. When flood, drought, or other unforeseen events occurred, lessees could not meet their payments. Ultimately, special legislation was required to allow modifications in rent to prevent disruption of the service.

We developed a system based on a combination of investment and gross receipts called the graduated rental system. We have recently changed that approach and now base rents solely on a scheduled percentage of gross receipts.

H.R. 2028 also provides authority for concession service agreements and concession licenses. The Secretary of the Army is currently authorized to issue leases for commercial concessions. Although on the surface this does not appear to be anything more than semantics, there is a real difference in the area of land law.

Concessioners who propose significant capital investment use the leasehold interest to obtain financing. Not having a lease could have a chilling effect on development in areas where the income alone will not support the financing. In instances where demand is low or the season short, requiring competition for all renewals would not be worth the expense to the government to readvertise, evaluate, and award a new contract or expense to prospective concessioners to submit proposals. In this bill, there is no discretion allowed to the Secretaries to determine that the situation does not justify formal competition.

The bill establishes a Board of Concession Appeals. We see no need to establish a new administrative board. Various agency appeal boards established under the Contract Disputes Act or other agency-specific legislation are familiar with agency missions and laws and are best able to review agency decisions and settle disputes.

In summary, the Army would not support legislation that does not sufficiently take into account different Federal agency missions and does not recognize certain key elements that have made our concession program successful when establishing a standard Federal concession policy.

Mr. Chairman and members of the subcommittee, this concludes my statement. I would be pleased to answer your questions.

Mr. HANSEN. Thank you. We will go with the rest of the panel, and then we will go to questions. Let me state I am embarrassed to see you folks standing up there, but there is a rule around here that we can't have you take these seats, or I would have you do that. In the past, we could do that, but we got in trouble this year. Mr. Doolittle can talk about that in detail, and we no longer can have you take these seats. So I am embarrassed to see you stand but hope you can bear with us. Mr. Kennedy, good to have you with us, sir. You are going to be here for eight minutes. Is Mr. Dan Beard with you?

Mr. KENNEDY. Am I up next, Mr. Chairman?

Mr. HANSEN. You are on. Yes.

STATEMENT OF ROGER KENNEDY, DIRECTOR, NATIONAL PARK SERVICE

Mr. KENNEDY. Thank you, sir. It is the first three because I am testifying on behalf of the Department of the Interior and for the National Park Service. With me are representatives of the BLM, the Fish and Wildlife Service, the Bureau of Reclamation, and the Park Service.

These representatives are Dan Beard, Commissioner of the Bureau of Reclamation; Hord Tipton who is the Associate Director for Resource Use and Protection from Bureau of Land Management; Mike Boylan, a Refuge Program Specialist for the U.S. Fish and Wildlife Service; Rhea Infinity, the Associate Director for Park Operations and Education at the Park Service; and Bob Yearout who is the Chief of Concessions for the Service.

Mr. Chairman, I am here to testify in vigorous support of the Meyers free competition for concessions bill, H.R. 773. I believe that there is a way of moving the bills before us closer together, and we certainly want to work with you to get there. I do have

some criticisms to offer of alternatives to the Meyers bill, and I want to be as specific as I can about the kinds of improvements that I think are necessary.

At the outset, I would like to speak to the matter of conformity and uniformity. We all want to get to a place at which those services which are similarly performed by each of these agencies are operated on similar standards. Our sense that this bill this time should be limited to the Park Service arises from our view that these are very different outfits doing very different things.

For instance, Fish and Wildlife Service has a very small operation involving a number of boats largely. You can't even buy a granola bar from the Fish and Wildlife Service's concessioners. They are just in the get-there business.

The Bureau of Land Management has innumerable very small, very efficiently issued special-use permits—10,000 to 12,000 of them—which they issue on a local, easy basis, a single sheet of paper, and they get the job done, and people don't get bothered. They just do that. Those folks are radically different from the much larger operations that we are running.

We have nearly \$700 million worth of business with people in the hotel business and hugely complex operations, some of them running up to gross revenues of \$60—\$70—\$80 million a year. The Corps is in an entirely different business than we are in. There are some overlaps, and I think we should strive to get the overlaps dealt with similarly.

Our recommendation would be that we get on with a bill—last year's bill, which a whole lot of people understand now—Mrs. Meyers' bill—that gets it right, gets some real competition in the Park Service, gets some revenue back to the Park Service, puts some term limits for concessioners, and lets us get on with that, and then strive for the overlaps with the other agencies, and that we will achieve conformity by working together where the overlaps occur, but they are really negligible. The areas of overlap are very, very small. We are in very different kinds of businesses.

Now, if I may, I would like to proceed to state why we think the Meyers approach—last year's consensus approach—is the best one for each of the things that I think we all agree we want to achieve, and those things are that we really don't want to put in the fix on the right of renewal. We want to remove the fix.

We know that all of us want to get rid of the possessory interest. It is obsolete, and it is in restraint of trade. We want to get rid of a system in which concessioners could set any price they want to for the public with no redress by the public, and we certainly don't want to permit there to be perpetual contracts at the whim of a Secretary of the Interior.

We also don't think that anybody in this room wants to have another layer of bureaucracy and yet another appeals group which encourages perpetual litigation. Let me try to be a little more detailed with what I think is a better way of approaching each of these objectives than some other proposals before us. I am advocating the Meyers approach.

As to the automatic right of renewal, there is another approach before us which suggests essentially that all other things being equal—if Mrs. Chenoweth and I were together in the ski shop busi-

ness, which both of us have been in, and we wanted to get up and do business on a larger scale, let us say, in Mr. Cooley's district where we are going to want to get into business at Crater Lake, if we wanted to compete with the existing excellent concessioner, but if we wanted to compete with them, all other things being equal, the language of one of the proposals before us says that you are going to have to have a 5 to 20 percent better deal offered by the contender than that which is offered by the person presently in occupation of that facility—that present concessioner.

That is almost as bad, and maybe it is worse, in effect—we don't know what the economic effect is, but it looks pretty bad to us—that is almost as bad as the current situation in which if Mrs. Chenoweth and I as relatively small businesspeople went in against a big guy and we thought we could get up and do business in a place where somebody much bigger than we were operating, we would have to spend a whole lot of money trying to find out what their numbers were. We would hire lawyers and accountants and get all of this proposal together, and then we would put it on the table.

And as it currently operates, we have got to change this. All they have to do is say, "Fine. I will match it. I will match it. Go away." After we have spent all that money on all of those accountants and lawyers getting all that stuff together, are we going to compete? No, we won't. And what is the proof of the pudding? People haven't. There isn't competition now as Mrs. Meyers pointed out in her testimony. The proof of the pudding is nobody is going to do that.

Now, let us talk about the possessory interest. It is entirely true that in one of the proposals before us there the language says that the possessory interest is eliminated. Mrs. Meyers' proposal is that you eliminate it by amortizing it over 30 years. My own sense of that, having looked at the numbers, is that 30 years is a good number, 40 years is a good number, 50 years is a good number, but let us get rid of it because as it is, nobody understands it except the lobbyists. They understand it very well. We don't. It is very, very hard to determine the value of a possessory interest—extremely tough.

And there is a proposal before us in one of the other pieces of legislation that says although we wipe out the possessory interest, here is what has to happen. If, once again, somebody is at the end of their term, they are getting close to the end, they—like the previous concessioner in Yosemite—have a three-quarter of a percent return to the government, we know perfectly well that at the end of that term any sensible person is going to try to raise that rate of return to the government, let us say, to 4 percent.

Under this arrangement, buying out that person by a new competitor would require that it not be the new rate of return but the old rate of return, which everybody knows is going to change, that is embedded in the price that you are going to have to pay to get them out of there. It embeds the history of an old obsolete and excessive return to the concessioner, and it does not recognize that the time has come to change it upward.

Now, let us look at pricing. I know I have got two more minutes to go here. As to pricing, Mrs. Meyers' bill says that the Park Service and others will continue to watch pricing to be sure it is really

competitive. There is another proposal before us which essentially shifts the burden to the Secretary of the Interior to prove that the concessioner is offering competitive pricing which really means unless you are going to face a whole lot of litigation that the concessioners can charge any price they please.

And, finally, there is in other legislation, but not in Mrs. Meyers', the proposal that any future Secretary of the Interior can grant, if they want to, perpetual contracts. There isn't any 20-year limitation or 10-year limitation or 10-year preference with a 20-years-if-you-have-to-get-to-it provision.

And that sounds like the Holy Roman Empire to me rather than to a free, competitive system. Not since the Princes of Tern and Toxas got perpetuity from the Hapsburgs have concessioners had such a good deal, and we don't think it is right. Mr. Chairman, I think I have concluded your patience and my testimony. Thank you, sir.

Mr. HANSEN. Thank you. I always enjoy your testimony. Mr. Unger, you are represented for five minutes.

STATEMENT OF DAVID UNGER, ASSOCIATE CHIEF, FOREST SERVICE

Mr. UNGER. Thank you, Mr. Chairman. We would like to comment for the Department of Agriculture on two of these pieces of legislation, H.R. 1527 and H.R. 2028. Let me begin with the ski area fee bill, H.R. 1527. The Department would prefer to implement an acceptable ski fee system administratively, but if the committee decides to move forward with this legislation, we would strongly recommend that it be amended.

As has been said already, the system that we have had in place since 1972 is the Graduated Rate Fee System, or GRFS as we call it, based and calculated on sales with some credit for the cost of capital improvements. Under GRFS, 140 ski areas paid \$19 million on sales of \$939 million, about a two percent fee on those sales.

We find GRFS too cumbersome and expensive to administer, and, more important, in view of the 1986 ski permit law, we can't clearly demonstrate that it meets the requirement of being based on fair market value.

So about two weeks ago on the 13th of July, we published a proposal to replace GRFS with a system based on appraisals of the land used for ski areas. We think this will better enable us to meet the fair market value criterion. It reduces burdensome audits. It should be simpler, cheaper, and easier to administer for us and easier for the permittees as well.

But we hasten to point out it hasn't been tested, and all parties may not agree that appraisals would represent fair market value, and we are looking forward to comments on this proposal which will be received through the 11th of September.

Now, a legislated system such as H.R. 1527 would have some advantages. It would be a straightforward formula. It would be applied to existing financial data and would be probably cheaper and less burdensome than even the proposal that we have out for public comment. But there are some problems. There would be no assurance that fair market value with this system is indeed achieved

and less flexibility to modify the system to meet changing conditions.

But let me just mention the amendments that we would propose if this legislation moved forward. First of all, it would include the value of ancillary facilities on national forest system lands such as restaurants or daycare centers and so forth. These revenues total only 10 percent of the overall total, and we would suggest simplifying the system even further and reducing paperwork by leaving them out and adjusting the fee percentages accordingly in the formula.

Second, the system would produce about the same level of fees as our existing GRFS system, and, therefore, we don't see a need for a transition period which would be complex and time consuming. And because the percentage of fees is relatively low compared to overall revenues, we believe that there would not be a need for such a transition period.

Third, current laws and regulations under which we operate require advanced payments and periodic payments of fees. We believe this is appropriate, and that the ski industry, like other users of Federal property, should continue that practice of advanced payment rather than the system that is set forth in H.R. 1527.

Fourth, we would recommend a process to update the formula every five years to try to ensure that the fees paid truly do reflect fair market value, and we have one other recommendation. Rather than withdrawing ski areas from the mining laws immediately as is proposed in the bill, we would suggest segregating those lands for a two-year evaluation period to see whether there would be other ways to moderate impacts on ski areas from mining activities; maybe underground mining, horizontal drilling, changes in the boundaries of the areas and so forth before proceeding with withdrawal.

Let me now turn to H.R. 2028 on the concessions. We do object to the enactment of H.R. 2028 in its present form. Recognizing the extensive experience of the Park Service, we defer to the Department of the Interior on sections 4 through 9, but we do have concerns about three parts of the bill.

First, Section 10[b] would return all fees to the agency which sounds attractive to us, but under law, we return 25 percent of all revenues that we collect for all national forest purposes to States and counties for schools and roads. We believe strongly in the value of that practice. We would want to continue it and would recommend that the legislation, if it would go forward, be modified to direct that 25 percent to States and counties.

Second, section 13 provides for compensation to concessioners if the government breaches the contract. We certainly intend to meet our commitments. We believe that this provision would unnecessarily expand the scope of litigation and management of the national forests.

Finally, section 15 would allow sales of national forest lands to concessioners. We already have authority for equal value exchanges. This provision would return only half the value to the government, thereby diminishing the overall value of the national forests. It also would, if used, sever the relationship between the public and the entrepreneurs, and we believe that a purpose of

H.R. 2028 is to try to improve that public-private partnership. That concludes our remarks.

[The prepared statement of Mr. Unger can be found at the end of the hearing.]

Mr. HANSEN. Thank you. I hope all you folks realize that there is no great pride of authorship in any of these bills by anyone I am sure, and we are in a process of trying to work these things out. And so your comments are well received, and we do appreciate them. I will recognize each member of the committee for five minutes to question the panel. I will start with Mr. Allard of Colorado.

Mr. ALLARD. Mr. Unger, does the Forest Service support H.R. 1527?

Mr. UNGER. We feel, as I indicated, that we would rather proceed administratively with an acceptable fee system, and that if the committee decides to go forward with the bill that we would ask that it be amended as I indicated in my summary.

Mr. ALLARD. How strongly do you support it? Moderately or are you opposed to it?

Mr. UNGER. Well, as I say, we are not saying that we are supporting or opposing the bill. We are saying that with amendments it would be more acceptable than in its present form.

Mr. ALLARD. Let me put it this way. Are you looking at extensive amendments or just one or two?

Mr. UNGER. The amendments that I indicated, which I believe are five in number, were the ones that are of most concern to us. Clearly, our first choice since we spent some time preparing it would be the administrative approach that we have just now published for public comment to base fees on an appraisal system. And we would hope that the public would give us their best evaluation of that proposal and see if we can go forward with it unless legislation is adopted.

Mr. ALLARD. There are some ski areas that are completely surrounded by forests or public lands, and they are right now having a hard time finding housing for employees that work in the ski area or even schoolteachers or maybe somebody who works even for the county—not so much the county but probably the city—because sometimes these ski areas are relatively remote. Are you amenable at all to the Forest Service providing some forest lands available just for employees to use for living quarters to meet that employment base in that particular community?

Mr. UNGER. With the permission of the Chairman, I would like to call forward our recreation director, Lyle Laverty, to respond to that question if I might.

Mr. HANSEN. I am sorry. I wasn't following the debate there. I was talking to—what was the question?

Mr. ALLARD. I have asked a question about the Forest Service being permitted to make lands available for employees in the ski community that is completely surrounded by public lands, and he wanted to bring up one of his soulmates to answer the question.

Mr. HANSEN. Bring your person up and—

Mr. UNGER. Here he is.

Mr. HANSEN. Just give us your name for the record.

Mr. UNGER. This is Lyle Laverty, Director of Recreation.

Mr. HANSEN. Thank you. By all means, we will recognize you, sir.

Mr. LAVERTY. Just in response to the question, I believe that we have been working with the committee on looking at another piece of legislation that would deal with Park Service housing, and we would hope that we could incorporate that part of the response to employee housing in that bill and keep that separate from the fee bill. But we would be willing to entertain that——

Mr. ALLARD. I mean, we have four pieces of legislation here that we are hearing on a hearing today, and it seems to me like it fits in appropriately with concessions and ski areas and everything else. And so would you have any objection if this all came in together with one piece of legislation?

Mr. LAVERTY. We would just as soon keep the employee housing separate from the fee legislation.

Mr. ALLARD. I see. So have you taken a position on that then? Are you opposed to that idea, or do you support it?

Mr. LAVERTY. In terms of addressing the employee——

Mr. ALLARD. The employee problem.

Mr. LAVERTY. Looking at that in a comprehensive piece, I believe we would look at that.

Mr. ALLARD. What are your thoughts on that? Do you support it, or do you oppose it? I mean, we need to get some direct answers in this committee if you want us to work with you.

Mr. LAVERTY. Because of the diversity of the issues, you need to look at it on a site-specific basis. What happens in Aspen is different than what may be happening in, say, Mammoth Lakes in California so I would just as soon——

Mr. ALLARD. Don't forget Alaska.

Mr. LAVERTY. I won't forget Alaska because I know that is important. However, we don't have any ski areas in Alaska, at least on national forest lands. But we would approach that on a site-specific approach rather than a blanket call on that. And, you know, certainly legislation linking that with the——

Mr. ALLARD. Well, let me ask you this. Does the current law allow you the flexibility to deal with it on a site-specific basis, or do you need legislation that would allow you to deal with it on a site-specific basis?

Mr. LAVERTY. We have, through the Land Exchange, opportunities that we have existing. I think we have authorities where we could explore options right with what we have already.

Mr. ALLARD. So the Land Exchange would give you some opportunity?

Mr. LAVERTY. That is right.

Mr. ALLARD. Do you have some opportunity in current law where you can actually sell the land with the stipulation that that property be used for employee housing only?

Mr. LAVERTY. I don't know the answer to that. I would have to follow up on that one.

Mr. ALLARD. Would you give me a written response to that please? I would appreciate that. How soon can you get that to me?

Mr. LAVERTY. Tomorrow.

Mr. ALLARD. Tomorrow would be fine. Thank you.

Mr. HANSEN. The gentlelady from Idaho.

Mrs. CHENOWETH. Mr. Chairman, I was sitting here rather amused. Being a freshman in Congress, I find the term "fair market value" easily used. And until this Congress and the agencies really understand the dynamics of the marketplace as laid out in the entire book of *Wealth of Nations* by Adam Smith, *Mainspring of Human Progress* by Grady Weaver, the *Federalist Papers* or the *AntiFederalist Papers*, we are just throwing terms around that really by force are constraining the dynamics of the marketplace.

And whether it is this Congress, this majority, or whether it is the agencies, I really resent having the terms used so loosely because the dynamics of the marketplace mean a *laissez-faire*, a marketplace that is not constrained by government constraints. And I know that I worked with the Corps of Engineers up on the Dworshak Reservoir and tried to work with them on a marina, and we had a 2-percent limitation on profit. And there is just no way that you can use the term "fair market value".

Anyway, after I get through with that, I do want to ask Mr. Frankel, the Water Resources Development Act of 1986 and the Federal Water Projects Recreation Act, where in that Act did that allow you to buy property for recreation purposes that were not already on or adjacent to Corps projects?

Mr. FRANKEL. Well, the Water Resources Development Act of 1986 didn't give us the authority to acquire lands not adjacent to the project. The 16 USC 460[d]—that gave us the basic authority to buy or use land for recreation purposes. The Water Resources Development Act of 1986 also talked to the cost-sharing issue.

Mrs. CHENOWETH. Now, would you repeat which Act gave you the authority to buy land that was not adjacent to a project?

Mr. FRANKEL. Not adjacent?

Mrs. CHENOWETH. Not adjacent to a project operated by the Corps.

Mr. FRANKEL. I don't think we have generic authority for that purpose under section 926 of WRDA 1986.

[A letter of correction was sent by Mr. Frankel to Mrs. Chenoweth and a copy also sent to Chairman Hansen. The contents are stated below.]

In response to your question as to under what act we could acquire lands not already on or adjacent to Corps projects, I stated that I did not think we had generic authority to acquire for recreation purposes. I have since reviewed our land acquisition authorities and conclude that, under Section 926 of the Water Resources Development Act of 1986, Public Law 99-662, we can acquire lands for recreation purposes even though they are not contiguous to the principal part of the project.

I apologize for any erroneous impression I may have given you on this question. For your use and information, I have enclosed Section 926 of Public Law 99-662.

[Section 926 of Public Law 99-662 can be found at the end of the hearing on page 280.]

Mrs. CHENOWETH. Good. OK. I am glad you stated that for the record. You also stated on page three of your testimony that there was a Memorandum of Understanding recently signed by the National Park Service, the Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, Forest Service, and Department of the Army creating an interagency task force to look at concessions management.

Mr. FRANKEL. Yes, ma'am.

Mrs. CHENOWETH. When was that signed? Under what statutory authority was that MOU signed, and does this committee have a copy of that MOU?

Mr. FRANKEL. I don't know what the statutory authority was, but I would be delighted to give it to you.

Mrs. CHENOWETH. I don't think there is any, and I would like to be corrected by the agencies because I honestly don't think there is any authority.

Mr. FRANKEL. It was signed by various people in April and May of 1995.

Mrs. CHENOWETH. So if there is no authority, is there really an agreement?

Mr. FRANKEL. I don't know the answer to that.

Mrs. CHENOWETH. Let me ask you, was there public involvement in the signing of this MOU? Can you tell us what kind of public involvement?

Mr. FRANKEL. I don't believe there was, ma'am.

Mrs. CHENOWETH. Was there any public notification?

Mr. FRANKEL. No.

Mrs. CHENOWETH. Did you meet with representatives of any concession groups when you entered into this MOU?

Mr. FRANKEL. No, I don't think so. I think what this was was an agreement between agencies on how to attempt to begin to work together that would result in the types of things that you are talking about later. This is just, "Well, let us start talking together and find out where we have our differences and where we agree", and that is all it was.

Mrs. CHENOWETH. Well, but one of the basic elements of your interdepartmental agreement states that the concession contract shall be of the shortest practicable length. So that does impact on concessioners, and they had absolutely no input. There was no public involvement, and this body was not involved in an MOU that I question has any authority at all if we didn't give it to you.

I do want to ask, I think Mr. Kennedy would feel terribly neglected if I didn't ask him a question. Mr. Chairman, with your indulgence, I do have a question. In recent years, the National Park Service has initiated a policy of retaining all or substantial portions of concession franchise fees without submitting such funds to the Treasury.

But in 1994, the National Park Service deposited over \$10 million in concession funds into park accounts which are not subject to appropriation. And both the GAO and the Interior Inspector General have reviewed National Park Service handling of these accounts and found them inadequate.

Further, the committee has received communication from several park concessioners that they have been contacted by park superintendents who have directed them to deposit franchise fees into these park accounts in lieu of depositing them into the Treasury as required in their contracts. It is unknown how many millions of dollars may have been diverted from the Treasury by park superintendents.

Mr. Kennedy, are you familiar with section 1341 of title 31 which prohibits any employee of the United States from making an obli-

gation or an expenditure of Federal funds unless authorized by the law?

Mr. KENNEDY. The answer I assume has to be yes. I don't know what section of law says so, but I assume that you are correct in identifying it, and, therefore, the answer to that is, of course, yes.

Mrs. CHENOWETH. Thank you, sir. Could you provide to this committee the specific citation in the existing concession law which authorizes the National Park Service to spend money on nongovernment buildings without authorization or to divert franchise fees which are required under the terms of an existing contract to be deposited in the Treasury?

Mr. KENNEDY. Mrs. Chenoweth, I don't believe that funds due the Park Service as franchise fees, due to the Treasury, therefore, are being expended on properties in the parks. I don't believe that is happening, but I will certainly give you a comprehensive response and speedily—let us say 30 days so that you know it is coming—as to what exactly does happen to those funds which are held by concessioners. That does happen in some parks. I don't believe those are deductions from the Treasury's appropriate take, but, in any case, you are due a response and in detail to that question, and I will offer it to you.

Mrs. CHENOWETH. Thank you, sir. And then finally, for all of the agencies involved in the Memorandum of Understanding I referred to in my questions, could you provide your file, each one of you, to the committee for our review?

Mr. KENNEDY. Yes. Could I just inquire because I am curious as well as to whether or not this committee has seen the text of this MOU of inquiry which is what I understood it to be? If not, we should submit that to you within 24 hours. It is obviously something that the public record should have, and we should do it. If it is not present—

Mr. HANSEN. We received a draft last night. We haven't received the final of it.

Mr. KENNEDY. OK, sir.

Mr. HANSEN. But I will be interested in the two questions that Mrs. Chenoweth asked you. We would appreciate it. Send me a copy, would you? I would appreciate it.

Mr. KENNEDY. Yes.

Mr. HANSEN. The time of the gentlelady has expired. Do you have one that you are just burning to ask, Mrs. Chenoweth?

Mrs. CHENOWETH. Mr. Chairman, I simply wanted to ask that we receive more than the MOU. I would like the entire file in the decisionmaking process that went into establishing the MOU from each agency.

Mr. HANSEN. I am sure Mr. Kennedy could furnish you with whatever information you desire. Is that correct?

Mr. KENNEDY. We will strive to do so, Mr. Chairman.

Mr. HANSEN. Thank you.

Mrs. CHENOWETH. Thank you.

Mr. HANSEN. We will now recognize in this order the gentleman from Tennessee, Mr. Duncan; Mr. Radanovich from California; Mr. Pombo from California; and Mr. Hayworth from Arizona for five minutes each. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. Mr. Kennedy, I understand that the Park Service has approximately 600 concessions contracts. Is that correct?

Mr. KENNEDY. Yes, sir.

Mr. DUNCAN. But I am also told that some number of those contracts are in an expired status, and some of them have been for quite some time and are simply renewed on a year-to-year basis. Can you tell me how many of those 600 are in an expired status at this time?

Mr. KENNEDY. Yes, sir. The short form is too many. Approximately 500 concession contracts and permits had expired or will expire by the end of 1995. The backlog was because of a freeze on contracting during a couple of years while the concessions contracting procedures were reviewed and revised.

Secretary Lujan, I think, very properly undertook that process of revision. The big ones were beginning to be reissued at the end of 1994. 180 of the 500 have been processed since that time. Permits will be authorized or prospectuses issued by the end of this year, and the rest of them will be done next year. They have been held up too long, and we are pushing them out the door just as fast as we can.

Mr. DUNCAN. All right. Thank you very much. But let me ask you from another angle about your concessions contracts, and that is this: I was reading some of the testimony in the package that we were provided, and a witness in the next panel will testify that State concessions contracts return on the average about four times as much as your concessions contracts. Can you tell me why there is such a great discrepancy there?

Mr. KENNEDY. I think, Mr. Duncan, that those are for the reasons to which Mrs. Chenoweth referred in general and to which the Chairman and others have referred specifically. There are inhibitions upon the play of market forces on these contracts.

The automatic right of renewal and the possessory interests are just inhibitions upon honest, direct competition. And there is no reason for somebody to elevate the rate of return if there is nobody who is going to come in and offer a better deal. That is all.

Now, we have learned in the Yosemite case, and I understand Yosemite is special, but in the Yosemite case when you go from three-quarters of one percent up toward 16, 17 percent, it indicates there is a great big gap, and that gap can be improved.

I do not think that 16 or 17 percent is anywhere near what we are going to get in many instances. I don't want to imply that at all, but there is a great big difference there. It is just that there hasn't been real competition for these contracts. There has not.

Mr. DUNCAN. Let me ask, and I guess this might be considered almost a proconcessioners question, but I don't mean it as such. But out of the 600 contracts, have you done an analysis or how many do you feel are making exorbitant-type profits or have really sweetheart-type deals at this time?

Mr. KENNEDY. I, of course, haven't reviewed a whole lot of them personally, but I don't think those terms are useful. I don't think there is a sweetheart deal or excessive profits. I do think that what there is here is a lot of stale air, a lot of closed circumstances, an

absence of free play of competition. That means that some concessioners can do a better job for the public.

We are not just talking about dollars here. Some of them can just do a better job, and they won't do that if there is nobody out there on their heels. That is all. I think there are splendid concessioners. There are people who do much more than they need to under their contracts.

The very last thing we want to establish in this record is that the concessioners aren't good partners. Far from their being excessive, a lot of them are better than good partners. They do a lot more than they need to under their contracts. It is just that we want competition here.

Mr. DUNCAN. Is it fair to say to the panel as a whole that all of you feel that we should make some changes in the present policy? Is that fair?

Mr. KENNEDY. Certainly for us. You bet.

Mr. DUNCAN. Mr. Unger, let me ask you this. I notice in your testimony that you are very much opposed to this idea or concept of giving up control over these ski areas, and I am told that that amounts to a little less than one-tenth of one percent of the land that the Forest Service has. I understand also that the Forest Service now controls or has about 190 million acres. Is that correct?

Mr. UNGER. That is correct, sir.

Mr. DUNCAN. In 1984, the Grace Commission made a very strong recommendation that one of the best ways to do something about our horrendous national debt would be to sell off some of the public lands, I think lands that were owned by the BLM and other agencies.

And yet it seems that almost every Federal agency is in some sort of competition with other agencies, and all of them want to grow and become the biggest. And they are in this ever-increasing battle to expand, and yet our land mass is not growing. Is there even one acre of the 190 million that you have now that you could identify that you would be willing to sell to the private sector?

Mr. UNGER. I don't know—

Mr. DUNCAN. Well, first of all, I assume that you do believe in private property?

Mr. UNGER. We certainly do.

Mr. DUNCAN. Now, is there any land anyplace that you would be willing to part with?

Mr. UNGER. We have in every one of our forest plans a process where we try to identify whether there are indeed lands that need to be exchanged, need to be acquired, or need to be disposed of in accordance with the authorities that we have. We are not interested in adding large quantities of land to the national forest system.

Our chief has made it clear, however, that we believe in private property rights. We intend to do everything we can to operate in consonance with those rights in our programs, but we also believe that the public lands of the Nation that have been set aside by this Congress are an important treasure for all the people, and that we would resist any large effort to privatize those lands.

Mr. DUNCAN. How about a small effort? I assume you would resist that too. Thank you very much.

Mr. HANSEN. Thank you. Mr. Radanovich from California.

Mr. RADANOVICH. Thank you, Mr. Chairman. Being that Yosemite is in my district, Mr. Kennedy, I wanted to go through a few things and then ask you a general question about the contract period. And it seems to me that to begin with concessions were allowed to take a lot of responsibility off the National Park Service so that private business could come in and run the food services and lodgings of the national parks.

My concern with what happened in Yosemite seems to be under the idea of making the contract more competitive, it has really allowed for perhaps a lot more intervention in the National Park Service in those delivery processes in the park.

As a humorous example, I was in the Wawona Hotel the other day having lunch, and as you know, it is one of the premier hotels in the national parks. It is a very beautiful place. And somebody had mentioned that the National Park Service was in the kitchen determining the size and amount of services that were to go on the plate on each menu, and it struck me that maybe there was a little bit too much going on here that private enterprise might be better off without. What I want to get is your comment about—

Mr. KENNEDY. Unless, Mr. Radanovich, the portion got down to zero.

Mr. RADANOVICH. Well, I was upset because it was smaller, but my concern, and I would like you to comment, Mr. Kennedy, on the fact that it seems to me that everybody knows that prior contracts for services in Yosemite was a cash cow. It was pretty obvious, and it created a lot of changes in the new contract with the new concessioner that is in the Park Service right now.

But it seems to me that it was really just an issue of price, and that perhaps the government screwed up when they made the contractual arrangement over the fee in the first place. And if you had gone back and corrected that without making all the other changes, barring your concept of competitiveness, it seems to me that that would have solved the problem, rather than—I mean, you guys got away with the 17 percent figure which you are not going to get on very many other concession agreements.

Mr. KENNEDY. No, sir. Agreed.

Mr. RADANOVICH. But that was an unusual situation. The other comment, Mr. Kennedy, was with regard to being concerned about the prices charged for food and lodging in the Park Service. I would rather think that the Park Service reaction to that would be since most of the services in national parks draw a captive audience, the prices should be directly related to the fee that you get back so that those funds can perhaps stay in the park.

But my general thought is that I am more concerned about government intervention in the concessioner process rather than I am making sure it is competitiveness, because if you make it too competitive and unprofitable for private business to go in there, you may be losing some of the benefits that you would get from concessioners. I think the argument can be made that Yosemite Park and Curry Company contribute a lot to the park outside of the agreement that was there in place for many, many years. So my thought was don't you think that it was really just a question of fees rather than anything else?

Mr. KENNEDY. Two comments, if I may. First, there is no question that three-quarters of a percent to 17 percent is a wholly artificial way of looking at the difference between the two. The previous concessioner did a lot of very good things that they, so to speak, don't get credit for. No question about that.

Second, I think everybody in this room thinks fundamentally that the reason to have concessioners there is to provide service to the public. The dollars are important, and it is good to get revenue back. But the reason you got them at all is the reason you have parks; that is to serve the public. You want to have hotel rooms, and you want to have food service, and whatever else it takes to give the public a decent experience.

Now, the National Park Service is responsible for the parks, and it is responsible for trying to be sure that service to the public is as well delivered as possible. While there are very good concessioners, there are some not so good concessioners. And the fact is that the public, when we ask them their opinions of what we do, most of the negative comments have to do with what happens on the part of concessioners operating in the parks. We have a real interest in being sure that services are well performed.

Now, that gives us a dilemma to which you point. Do you want Park Service people in measuring the steak? Of course not. Do you want Park Service people deciding whether the ice cream has melted or not? No. But there is a point beyond which the Park Service has an interest in being sure the public gets well served.

And this, as in all human affairs, means somebody has got to be sensible in the way they administer it because you have the two extremes; let them do anything they please and to hell with the public, and at the other end a bunch of people peddling around through the kitchen making unnecessary trouble. It is a dilemma of management, and I don't know any way to legislate it.

Mr. RADANOVICH. Thank you. I don't have any other comments.

Mr. HANSEN. Mr. Pombo.

Mr. POMBO. Thank you, Mr. Chairman. Mr. Unger, in response to Mr. Duncan's question, you said that the land that the Federal Government owns was set aside by action of this Congress for the good of the public. And I think a more truthful statement is it is what we were left with, and with very few exceptions, notably what Mr. Kennedy oversees, the land was not set aside by actions of this Congress. It was just what we ended up with.

Specifically, in your written statement, you say that in opposition to privatization of any Forest Service lands that it would also increase direct spending and, therefore, increase the deficit under the PAYGO provisions of the Omnibus Budget Act.

I am a little bit confused as to what you mean by that because we will hear testimony in a few minutes and we have heard testimony already that the Federal Government loses a lot of money because of the way these contracts are structured. And the cost of operating the Forest Service or the Park Service or the Bureau, whoever oversees these, is not being reimbursed enough to pay for what you are doing.

I don't understand how it will cost us more money if you are not doing that anymore. If you don't have to oversee a ski resort somewhere, and you don't have to have any of your employees on-site

to oversee the actions on that formerly public land, how would that cost you more money in your agency?

Mr. UNGER. As I understand the statement in our testimony, Mr. Pombo, it is specifically referring to the fact that under that provision half of the money received would go to the Treasury and half would go to the agency. And I believe, according to those that are familiar and expert in this business of scoring, apparently the money that would come into the Treasury would not be scored as revenue, but the money that would be expended by the agency would be considered an outlay, would be considered a direct expenditure, and, therefore, would be considered as contributing to the deficit.

Mr. POMBO. So the goofy way we budget back here is basically what your statement is based on.

Mr. UNGER. Well, I am saying that that is my understanding from the people who are familiar with those processes.

Mr. POMBO. But in the real world, I mean, outside of the way we budget?

Mr. UNGER. Right.

Mr. POMBO. In the real world, it wouldn't cost you more money. In fact, it would bring money into your agency to accomplish some of the other missions and goals that you have because it would give you money to go out and do some of the things that you guys come in here and ask for every year. So in the real world, you would be better off, I mean, outside of our budget process. In the real world you would be better off, and the deficit would be lower?

Mr. UNGER. In the real world, if this provision were enacted and land were sold and the Treasury would clearly receive some of that money, the agency would receive some of that money, we would not have the responsibility of administering that particular piece of land, and the funds would be used for other purposes. That is true.

Mr. POMBO. In your mission of your agency, would it not be better to carry out what your mission really is in caring for Forest Service lands if we did go in and privatize some of these ski resorts or what other things that are on forest land and lower your outlay in terms of caring for these that are really outside of your mission statement and give you the ability to do what your agency was really set up to do?

Mr. UNGER. Well, our agency was set up to do and has been given the responsibility of doing many things, including providing recreation on the national forests. And one of the kinds of recreation that is very important is the providing of this kind of skiing resource. Probably 60 percent of the lift capacity of skiing in this country is on national forest land so it is a very, very important way in which these lands serve the public as well as—

Mr. POMBO. And it is probably a higher percentage of mountainous areas than 60 percent are actually owned by the Federal Government.

Mr. UNGER. That is logical. Yes.

Mr. POMBO. You know, in my State alone it is way over 60 percent of our forests are owned by the Federal Government so that is kind of a skewed number. I mean, you have sat here and listened, and I am sure privately you have talked to Mr. Kennedy many times about all of the problems that they have being a Fed-

eral Government landlord. And, I mean, he has laid out all the reasons why the Federal Government has problems in the testimony that we have heard.

And it seems to me it would be an obvious step to look at each one of these individually, but to look at these and say that there are some of them that we should privatize, that we should sell off, and that that is money that we could use to care for other lands much better than what we are doing, I mean, to me, that makes sense. And, you know, you brought up the land and resource management plans. Are those not prepared by you?

Mr. UNGER. They are prepared by the Forest Service in consultation with all of the publics that we serve. There is a wide process of public involvement in determining how the plan shall be prepared and in developing the various principles and components of the plan.

Mr. POMBO. My time has expired, but I just wanted to sum it up by saying that you have already stated for the record that you oppose privatizing the Forest Service lands. And with that attitude, none of these land management plans are going to come back and say, "We think we ought to privatize this particular facility because it does not fit with what the Forest Service is doing."

If that is the way you go about it, it is no wonder that the land management plans come back in the manner that they do because I do believe that there are places where the public would be better served if they were private. And I think that our natural resources would be better served if you and your staff weren't spending time and money trying to take care of a ski resort.

Mr. HANSEN. The time of the gentleman has expired. Mr. Hayworth, we have time for your questions. And then we will go for this vote which is a motion to recommit with instructions on the San Diego Correction bill. But before you speak, Mr. Hayworth, Mr. Vento, Mr. Kildee, do you have questions for this panel?

Mr. VENTO. Yes.

Mr. HANSEN. So we will take Mr. Hayworth, and then if you could stay, we would appreciate it, and we will be right back after the vote. Mr. Hayworth.

Mr. HAYWORTH. I thank you, Mr. Chairman. In light of the question from my friend from California and preceding that, the gentleman from Tennessee, Mr. Unger, I just really want to get a handle on this. It is my understanding that H.R. 2028 really talks about a provision to transfer to private ownership one-tenth of one percent of Forest Service land; not a huge area—one-tenth of one percent. If that were transferred to private ownership, what would be the impact or what impact would that have on the overall mission of the Forest Service?

Mr. UNGER. Well, we would have to look at the areas that would be transferred and their values, their scenic values, their role in providing recreation to the public. The overall mission of the Forest Service is a broad mission. It includes providing commodities such as timber, forage for livestock.

It includes protecting watersheds and providing water supplies for communities. It includes providing fish and wildlife resources and hunting and fishing and all kinds of recreation in terms of camping, skiing, outdoor recreation of many, many kinds. If we

begin to reduce our ability to provide all of those kinds of services to the public, we are going to reduce the legacy that the national forests provide for the American people.

Mr. HAYWORTH. So, in essence, any type of transfer you believe is just at odds with the Forest Service mission?

Mr. UNGER. Well, the Forest Service lands have been built up over a period of time, first in the late 1800's, later in the teens at the beginning of this century; put together very carefully piece by piece truly by this Congress in setting aside land reserves and in making authorities for purchase under the Weeks Act.

It has not been something that has been growing by leaps and bounds. It has not grown like topsy. It has been a process in which the Congress has carefully determined which lands ought to be managed as part of the national forest system. So I think that if there is any question about whether some of those lands appropriately meet the mission, those kinds of questions have to be looked at just as closely and carefully as the Congress did in establishing the forests in the first place.

Mr. HAYWORTH. Thank you very much for your answer. I thank all of you for coming and spending some time with us today, and I have no further questions.

Mr. HANSEN. Thank you, Mr. Hayworth. The committee will stand in recess while we go vote. We will come right back.

[Recess.]

Mr. HANSEN. I recognize the gentleman from Minnesota, Mr. Vento, for five minutes.

Mr. VENTO. Thanks, Mr. Chairman. I was following up with the Forest Service testimony and the issue of the proposal H.R. 2028, which is before us. Obviously, the other measure, that is to say the one that we have co-sponsored with Mrs. Meyers and part of the Miller bill, has been gone over.

Obviously, the issue here is holding these together, it is an interesting proposal. I suppose that there is commonality, and you think you have got an absolute fix on what the solution or the proper policy path was, having the same policies for all the agencies would work. But I think that there are substantial differences between the agencies. For instance, do we have any ski concessions in the Park Service, Mr. Kennedy?

Mr. KENNEDY. We have a couple rope tows, Mr. Vento, but essentially, no.

Mr. VENTO. One of the problems, of course, is that the possessory interest under the Park Service has actually created, in essence, a sort of new property right within the parks. Does this bill, H.R. 2028, extinguish that? I mean, the other proposals that we have had here actually amortize whatever interests so that they are coincidentally with the contract or if not with the contract, that they basically would be extinguishable on a regularized period. That is the intent I think of H.R. 723 and of the Miller bill. Does this new bill, H.R. 2028, extinguish these such property interests in the parks?

Mr. KENNEDY. The automatic right of renewal is not extinguished, but accelerated I think in the way that H.R. 2028 is now drafted.

Mr. VENTO. Well, Director Kennedy, I guess I didn't make myself clear because what I am talking about is does this bill, H.R. 2028, personify, enhance, and, in fact, create new inholdings, property rights, with regards to interests—not interests with regards to right of renewal but with regards to what is now, for instance, public land-public resources? Does this, in fact, inject private ownership into some elements of our park system?

Mr. KENNEDY. Mr. Vento, as I testified, we feel that H.R. 2028, unless substantially modified, would be anticompetitive. Your question with regard to the possessory interest requires a much more complicated answer than I think you want to give me time for now.

Mr. VENTO. I don't want to give you time because I only have five minutes, but it is my understanding that it does not extinguish possessory interests and, in fact, simply initiates or puts in place new types of property rights within the park system. We know, of course, with regards to the Forest Service that it does that, Mr. Unger, with regards to the ski lift bill. Is that correct?

Mr. UNGER. Could you repeat the question please?

Mr. VENTO. Well, the point is that it suggests that you ought to sell parcels of land within the Forest Service for concession purposes. The issue is with regards to the bill, it directs the Forest Service to, in fact, enter into contracts to convey parcels of land that are used for recreation purposes to an individual. Is that correct?

Mr. UNGER. I am not sure, Mr. Vento, which part of the bill you are referring to.

Mr. VENTO. Well, the privatization of Forest Service lands.

Mr. UNGER. OK.

Mr. VENTO. It is section 15 of your testimony on page nine.

Mr. UNGER. That doesn't direct us. It provides the authority to sell a ski area to a concessioner that is operating the ski area.

Mr. VENTO. These would, in essence, say to the Forest Service that you could actually sell for that key part of the resources? In other words, if the Forest Service took this activity, it would, in fact, establish an inholding within a national forest. Is that correct?

Mr. UNGER. Yes.

Mr. VENTO. But only in such areas that would have these recreational qualities I guess. How is that defined? I mean, if some new recreation activity were to come about, then would the Forest Service have the authority, in fact, to sell that portion of the forest?

Mr. UNGER. Well, I believe it is restricted just to existing ski area concessions. If I can take a moment to go back to the section and double-check it.

Mr. VENTO. In any case, I don't know. I note your opposition to it, but the point is that it would result in new inholdings in the forest. I mean, one of the issues is the consolidation, and if somebody else owns land, depending upon the State—we know that each State treats ownership about the same—but that there are all sorts of other restrictions that might be placed on it which would have impacts on the adjacent Forest Service lands like, for instance, how do you direct your fire service responsibility.

Mr. UNGER. Yes.

Mr. VENTO. Or the Park Service. I mean, one of the goals of this legislation is obviously to try and recover more dollars, and I ap-

plaud my colleagues in their efforts to do so from concessioners in such a way as to *inure* to the benefit of the park visitor and to the parks, that they can meet some of the growing expenses they face with providing the recreational and other park experiences, Forest Service experiences, Corps of Engineer experiences, that are necessary. And I, you know, am fully prepared to try and do that, at the same time trying to reform an Act.

It seems to me one of the problems is that we have discovered that selling off parts of the parks even for the good purpose of providing concessions, and I would, you know, obviously testify to the fact and recognize the fact that some of the concessioners were there before the parks, and the function is absolutely essential. There is a private service role but not on the basis on conveying.

I think the mistakes made in 1965 ought not now to be compounded. And so we need to I think, Mr. Chairman and the members of the panel, find a way to provide and extinguish that particular possessory interest so that we don't develop that type of inholding problem.

The amounts of money here when you compare, no matter the good intentions, are rather small. The amount of flexibility the Park Service had and other agencies have is apparently of some concern. You want to provide guidance. The guidance provided in 1965 was pretty good except we ought not to repeat the mistakes. I obviously have used up my time.

Mr. HANSEN. Does the gentleman require an additional couple of minutes?

Mr. VENTO. Well, no. I just wanted to convey the concern. I think we are very close to a solution. I would look to see if we can raise the dollars that are necessary. I think also we ought to try and emphasize the development outside the parks and outside the Forest Service areas where it is at all feasible.

This only ought to be done when it is not feasible to do so outside, and obviously that benefits the communities in and around parks and around forests. It provides development in more of an organized community type of setting, and I think we would be far better off—and, as you know, Mr. Chairman, I am very concerned about the housing type of policy path that is in parks. And I think the same holds true for that.

I think we have got to recognize we are moving into the next century, that, in fact, of course, many things that were not likely when the park system and the Forest Service began offering services are now able to be operated in a private way.

I guess the question is if we continue to, in fact, accord preferential treatment to those—I don't mean that in the legal sense of the word that we were talking about, the park cap—but if we end up giving preferential incentives, then you obviously discourage the development in the communities around.

Of course, this ultimately we know today results in a little more fragmentation, even for the best of intentions of that landscape, whether it be park, whether it be cultural, whether it be natural, the forest, or these other resources. So, Mr. Chairman, I look forward to working with you on this. I think we go down the road. We have had some elements here working together on many of

these issues, and I trust that this will be the case in this instance. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you, the gentleman from Minnesota. I agree with your comments. We are moving into another century, and I think we have got to roll with that a little bit. I am sure that the things that we are all looking at, as Mr. Kennedy pointed out—we are all trying to achieve this thing.

We are now hashing over the details, and we have put a couple proposals on the table. They didn't come from Mt. Sinai. They weren't written by God. They are just written by a puny little man, and we are trying to do our best to work this thing out. And we all realize that some of us are punier than others, if I may say so.

But looking at this and what we are trying to accomplish is we really just want to come to something that works. I think that we will accept the fact that a lot of the things we have done in the past haven't worked out. It doesn't mean they were wrong. They just didn't work, and it is our position to refine and purify these things.

I think in my 36 years as an elected official, I think in city council, State legislative bodies, and Congress, we find something—"Well, it was a good idea, but it didn't work right. So let us refine it now. Let us purify it a little bit. Let us get the thing so it works a little better," and that is all we are asking. We don't want to put anybody on the defensive. We don't want to take anybody on. That is not the idea of these hearings.

The idea is to get good comment from you folks who know a lot more about it than we do; people on the ground, the concessioners in this case, the agencies are now before us, and others that we can work all these things out. Now, we try our best to take care of the interests of people where we can. Many times you can't.

Our number 1 concern here is to do what is right for the United States of America first, and, second, we get down to the more individual things. So I hope no one takes it that we are trying to pick on anybody. That is not the point at all. And in concept, I agree with the gentleman from Minnesota. There are some things I would disagree with, but that is what we do around here. We agree to disagree.

Mr. Unger, you were asked a lot of questions about the exchange of land, and in your opening comments, you listed three reasons why you didn't like the idea of a ski resort going in there. We have held hearings on land exchange. And no disrespect to any of you folks here, but land exchange just doesn't happen, in our opinion—those of us who have to go out and deal with real people all the time in the St. George and the Logan, Utah, or wherever they may be. They don't see that.

And I have to respectfully say as a city councilman for 12 years in the little third class city of Farmington, Utah, we had a piece of ground right in the middle of the city that was owned by the Forest Service. For 12 years we tried to get the Forest Service—we had you surrounded—to do something.

Here was debris on it; kids riding their bikes on it; accidents on it. You were a target defendant and didn't realize it, but a lot of plaintiff attorneys were salivating at the mouth waiting for some

kid to hurt himself on it because he had a deep-pocket defendant sitting there.

We wanted out of the deal; couldn't do it. I sat eight years in the legislature; couldn't do it. Sat two years as speaker of the house. I couldn't do it. And I finally got back here, and we put an omnibus bill together which we took 11 States, and we did it. Why did it take that? Why did it take all those years to move a little teeny piece of ground in the little Town of Farmington, Utah? I will never understand.

But we did that for 11 States, and Members of Congress all came in with the same kind of horror stories. Somebody in Riverside, California, had one. Somebody in Oregon had one. And so that is probably our fault, that we have made it so cumbersome you folks have to go through all of these steps and take these years, and the people who are trying to make the exchanges, they say, "Well, what they do is they bore us to death," or, "They keep putting a new guy on it, and we finally give up."

And that is the theory that the Forest Service, the BLM, and Fish and Wildlife, and everybody has. I don't really think that is true, but I think maybe a lot of the responsibility rests here—not there, but up here because we give you such a cumbersome thing to deal with. So all we want to do is streamline it a little bit if we can.

So when you bring up the point we can't exchange with the ski resorts, I think the fault rests here. But when you say, "We do have the right to do it," yes, that is right, but we don't see it occurring. I don't mean that to zero in on you, and please don't take it that way. I am just saying it becomes difficult.

Director Kennedy brings up the problems he has on the things of concessioners. We want free competition, but in our bill—and I am not defending—we may change it—who knows—we are just working on it—we say, "Well, but the guy who is the concessioner ought to have some rights a little better than somebody else because he has put in the blood, sweat, and tears."

Maybe he did it, and I look at some of these fellows out in the area that we represent that have been there a long time—a family business. They have put a lot into it. I don't want to jerk away their rights and what they have. That doesn't seem right to me. So we hope we can come to something on this.

The problem we get around here is we get extremists. You know, the environmental community came along, and they probably gave us a great wake-up call, and we all needed it in the 1960's and 1970's; made us more acutely aware of the environment which is probably right. But we get so extreme. "Take only pictures, leave only footprints" becomes a little ridiculous in some instances.

My friend, Mr. Vento, talks about inholdings. I would like to see every inholding out of your parks, Roger. I would like to see every inholding out. But I don't agree with that when it comes to Forest Service. The Forest Service is a different ballgame. It is huge. There are a lot of areas where it almost necessitates people being in that area. And those of us who were raised in the West and have been all through that area, we can see those areas.

So I don't have the aversion of inholdings in Forest Service or BLM, but I do in your area. I would like to get them out of the

Zions and the Bryce Canyonlands and all those areas where you got inholdings. If there is a way to get them out, I want to do it. So I don't mean to pontificate here, and I apologize, and I see my time is up. But I just hope we get the right perspective on which way we want this thing to go.

Mr. VENTO. Would the gentleman yield to me just briefly?

Mr. HANSEN. I don't know if I dare, but I will.

Mr. VENTO. I would just say on the inholdings, it is the issue of whether we develop new inholdings. I think that it is not the intention to develop new inholdings because there has been a pattern of service and problems that are associated with them. Maybe they are reasonable and that we ought to have reasonable problems in the Forest Service, but the question of adding to that I think needs to be looked at in that vein.

Mr. HANSEN. I appreciate the gentleman's comment, but let me just say I think it has to be done on a retail basis. As they come up, you look at one, and you say, "Maybe for some reason, it has changed. We have to look at this one; maybe not." But I think that can be done on a retail basis rather than a wholesale basis.

I agree with you. In the overall concept I agree, but I don't think you should make a black and white response to it. Anyway, thank you to the panel. We appreciate your comments. We appreciate your patience. We appreciate the patience of the people who have been here.

We will now call the next panel. Mr. Thomas A. Schatz, President of the Council for Citizens Against Government Waste; Mr. William Chandler, Director of Conservation Policy, National Parks and Conservation Association; Mr. Curtis Cornelissen; Mr. Kenneth Wilson; Mr. Aubrey C. King; and Mr. David Senior will be our next panel.

Gentlemen, we have got two more panels behind this panel, and as you can see, the committee has a way of falling off. We expect a few more of them to come back. There are a number of hearings going on. There are a lot of things going on the floor.

So if it is OK and if no one has a strong objection, I am going to limit you to five minutes. Is that all right? Does anyone strongly object to that? OK. You see in front of you three lights. The green light means go, the yellow light means wrap it up, and the red light means we cut you off. OK? Mr. Schatz, we will start with you. The floor is yours.

STATEMENT OF THOMAS A. SCHATZ, PRESIDENT, COUNCIL FOR CITIZENS AGAINST GOVERNMENT WASTE

Mr. SCHATZ. Thank you very much, Mr. Chairman. I am here on behalf of the 600,000 members of the Council for Citizens Against Government Waste. Concessions reform was a Grace Commission recommendation. The Grace Commission was, of course, the predecessor to CCAGW back in 1984.

I am pleased to testify regarding H.R. 773 and H.R. 2028, both of which would correct many of the fiscal and managerial problems under the present concession system. We endorsed Representative Meyers' bill last year. The bill passed by a vote of 386 to 30, and the Senate counterpart was approved 90 to 9. And this year, of

course, we are starting with both bills reintroduced as well as your own proposal and several others.

Mr. Chairman, we support the approach you have taken and others have taken as well, and we believe that by combining the best points in both bills, you will be successful in your effort to end the problems in concessions management that have been occurring for the past 30 years.

Reform is long overdue. The Grace Commission concluded that the 1965 law created an anticompetitive system that has been slow to respond to the needs of the visitor and remains grossly unfair to the taxpayer because it fails to provide an adequate return on the taxpayers' investment.

Between 1981 and 1990, franchise fees as a percentage of gross receipts changed little from 1.8 percent to 2.5 percent. The Grace Commission recommended raising the franchise fee from 2 to 4 percent and other legislative and administrative steps.

Both bills before you would open the concession contracts to competitive bidding while increasing franchise fees. The Meyers bill would establish park improvement funds so that the higher fees are used for park maintenance and enhancement, and we agree with Representative Meyers that taxpayers and the parks both benefit from her bill. And we also applaud your legislative effort as well.

Now, one of the strong points in your bill, Mr. Chairman, is to standardize processes in structuring concessions agreements among the various agencies affected, and we think elimination of duplication among agencies is welcome.

CCAGW is obviously interested in deficit reduction, but we are also interested in the condition of our parks and the efficient management. We are well aware, as many others are, of the tremendous backlog in operations and maintenance, and we endorse allowing a significant portion of fees to remain in the park where they are collected, whether it is the 75-25 split that you have or some other number.

We also endorse the idea of moving to a kind of quasi-free market approach in which appropriations would be reduced for parks and recreation. The agencies would be given complete control over fee management, and each agency would be able to keep the fees collected for operations and maintenance purposes. This may be a radical change from the past, but it is certainly worth observing.

The people in the field, Mr. Chairman, are good people. Right now they have little incentive to increase fees from concessions because that money goes to the Treasury, and maybe we now have an environment in which the motives of sound management, market-based fees, and confidence in our recreation and park managers can come together for everyone's benefit.

The greatest singular concern we have about H.R. 2028 is the appraisal method, giving the owner of the property a stake in the value accrued from the location of the property which really belongs to the taxpayers. In the original description of H.R. 2028, appraisals were to be based on replacement cost, and we think that might be a better way to assess the current value of the structure without adding any other value that comes about because the structure is in a national park, forest, or other similar area.

Mr. Chairman, the concessions monopoly has gone on for too long. It is the right time for Congress to act favorably and pass legislation to reform the Concessioner Policy Act of 1965. We are happy to be here today in the hope that your subcommittee will solve this problem. In the coming weeks, we look forward to assisting you in your task in every appropriate way. Thank you for holding these hearings on two very good pieces of legislation. That concludes my testimony. I will be happy to answer questions.

Mr. HANSEN. Thank you, Mr. Schatz; I appreciate your comments. Mr. Chandler.

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

Mr. CHANDLER. Thank you and good morning, Mr. Chairman. It is a pleasure for me to appear before you again today to testify on behalf of national park concessions reform. I represent over 450,000 citizen members of the National Parks and Conservation Association, a nonprofit organization dedicated to the protection and betterment of the National Park System.

As documented and recommended by numerous government studies as well as by business operators knowledgeable about the concessions industry whom you will hear from today, concessions reform is necessary to terminate taxpayer subsidies to an industry that simply does not need them.

Reform is critical to enable all interested parties to fairly compete for contracts, to ensure that reasonable fees are paid for the use of taxpayer assets, to enhance the quality of visitor services, and to dedicate concessions revenues to our parks.

Although it has been alleged, Mr. Chairman, that NPCA has a hidden agenda to "kick concessioners out of the parks", this is not true now, nor has it ever been true. NPCA became involved in concessions reform at the direction of its Board of Trustees over half of whom are either businesspersons or employed by businesses throughout this country.

Frankly, our Board was appalled by the anticompetitive nature of standing park concessions policy and the liability it puts on the backs of the taxpayers, and they determined to change it. We do believe, Mr. Chairman, that concessions should be run by the private sector, and I want to make that perfectly clear here as well. We do not favor Federal operation of concessions.

However, we also believe that the best way to select a park concessioner is through fair, open competition. Frankly, we believe that is the only issue before this committee today or it should be the only issue before this committee today, and that is how to secure fair and open competition.

Of the freestanding measures pending before this committee, H.R. 773 and H.R. 2028, we recommend passage of the Meyers bill because we believe it most effectively addresses all of the problems identified with current park concessions policy and most closely adheres to free market competitive principles.

As a whole, we are concerned that H.R. 2028 would not promote fair competition for park concessions contracts, and it would replace some of the preferences enjoyed by existing incumbents with

yet another set of preferences. Therefore, we regrettably cannot support H.R. 2028 in its present form.

I would now like to shift my testimony to a couple of the provisions that are of concern to us; necessary and appropriate concessions. Under existing law in the Meyers bill, concessions are only to be provided in parks that are necessary and appropriate. And the Secretary has the leeway to determine when a concession is necessary and appropriate in a particular park. There is no such provision in H.R. 2028.

The Meyers bill further states that concessions facilities and services should be consistent with the preservation and conservation of park resources and values. Without such provisions, Mr. Chairman, we believe we invite overcommercialization of the parks to their long-term detriment.

Preferences for large incumbents: H.R. 773 establishes a competitive selection process for large concessions located in parks and eliminates rights of preference for incumbent operators. These concessions, Mr. Chairman, many of which are now managed by multi-million dollar conglomerates, are clearly able to compete in the business world, and they do so every day outside the parks. We see no reason why these concessioners should not also compete for these contracts on a level playing field with other interested businesses just like they do everywhere else in America.

H.R. 2028 would maintain rights of preference for incumbent concessioners for one contract term which, as we understand the bill, could extend 10 years or perhaps even indefinitely longer. It would then replace the right of preference with what is called an incentive system under which incumbent concessioners would receive a renewal incentive of 5 to 20 percent.

We don't see any need for this, Mr. Chairman, because if these concessioners are as good as they say they are, we think they already are going to have a leg up in the bidding process on anybody who tries to outbid them. They know the parks. They have been there for a long time.

They know the Park Service. And, frankly, they should be able to craft, and probably will craft, winning bids most of the time. But if you give them preference over other businessmen, you are going to lock legitimate businesses out of the parks. And you will hear from some of these businesses today, Mr. Chairman.

Finally, on the issue of possessory interest, we do not think it is appropriate or fiscally sound to give ever-appreciating, compensable interests in structures that concessioners build on park land. The standard practice within the industry is to amortize capital investments on leased lands over the life of the contract, usually 10 to 15 years. And we have numerous examples of that attached to our statement.

So we would recommend, Mr. Chairman, that that situation of compensating concessioners for their investments be structured along similar lines, letting them amortize their investments over a contract of sufficient length that they can get back those investments and make a profit over the term of the contract. That concludes my testimony, Mr. Chairman, and I will be happy to answer any questions.

Mr. HANSEN. Thank you very much. Mr. Wilson.

STATEMENT OF KENNETH WILSON, LANDAUER REALTY ADVISORS

Mr. WILSON. Yes. Thank you, Mr. Chairman. My name is Ken Wilson, and I am the National Director of Hospitality Advisory Services for Landauer Realty Advisors. I have approximately 20 years of experience in operations management, and consulting to the lodging, food and beverage, and recreational real estate industries.

Testifying with me here from our firm today is Curt Cornelssen who is a senior vice president and an expert in hospitality operations and real estate consulting for government and institutional entities. His focus is on improving the performance and customer responsiveness of public sector hospitality entities by carefully applying the commercial sector operational standards, philosophies, and technologies that our firm moves forward with.

Landauer is a recognized leader in providing operational, financial, and real estate advisory services to the hospitality industry, both nationally and internationally. Our staff annually values and analyzes over \$1 billion worth of hospitality real estate in the United States and overseas.

While we maintain a significant presence in the private sector, we have also established a government institutional consulting practice. Our public sector clients include numerous Federal, State, and local agencies with a need for hospitality industry operations and development expertise.

Our services for these clients generally mirror those for private sector clients with an additional focus on the needs and interests of the affected agencies and the end users. And with respect to the Chairman's request, I would offer the services of our firm as you go forward with drafting this legislation in the future.

I would like to address three points with regard to the proposed legislation reform. The first is the preferential right of renewal of contracts for incumbent concessioners; second is possessory interest in the private sector; and the third is the ability of a concessioner or lessor to attract financing without possessory interest.

First, preferential rights of renewal contributes to a noncompetitive environment, particularly at the larger facilities and should be reconsidered where appropriate. The National Park Service and the taxpayers are likely losing tens of millions of dollars to the low fees that they receive from their concessioners. The inability to bid these contracts competitively keeps the fee structures significantly below market.

For example, typical franchise fees in the private sector hospitality industry range from 5 percent to 10 percent, and these fees are simply for the right to use the name and the reservation system only and do not include land grant or land leases. Typical land grant or land leases can range from an additional 5 to 25 percent more depending upon who owns the buildings and the contents.

Next, the concept of possessory interest is a unique and unusual one in both private and public sector contracts. However, most National Park Service contracts contain this concept, and it has been supported as a requirement to attract expansion and/or renovation financing.

The volume of lending that occurs in the private sector in concession and leasing area annually is indicative that possessory interest is not a requirement to attract financing. Typical lending criteria and requirements in the private sector have been and continue to be consistent and straightforward.

Lenders look for a number of characteristics to underwrite a loan, and these include a confidence in the reputation and past business practices of the borrower, a track record in similar types of operations, realistic cash-flow projections based on the stability and historical levels of demand, and a confidence in the reputation and stability of the lessor and the lease, in this case being the U.S. Government. An equity participation and some form of equivalent collateral or guarantee from the borrower is also always required.

The loan is generally amortized over the life of a contract term, typically between 5 and 20 years, and these lenders typically are not looking to the lessor to provide any guarantees with the exception of a provision possibly for early termination. However, there is not a lender out there who will tell you that possessory interests would not be an acceptable addition to collateral. They would welcome that with open arms since collateral is really the thing that lenders try to add on to any loan that they do.

Capital available generally requires a 20 percent to 50 percent equity investment, and the type of firms that handle the larger National Park Service facilities today are very financeable through a wide variety of lending sources for expansion and renovation and require few, if any, contract concessions.

The smaller concessioners will have a more difficult time financing expansion and renovations for park facilities, but it is no more onerous than it would be if they were in the private sector. In other words, if they are unable to get financing without significant Park Service contract concessions, they would be an equally bad risk in the private sector.

Possessory interests in the hospitality real estate industry is virtually nonexistent. Loans are made based on the criteria previously outlined, and, in fact, the concept of possessory interests in combination with other characteristics of the NPS concession contract appears to create a monopolistic structure instead of a competitive structure, and the resulting rate of return to concessioners could be greater than the return that they would receive in the private sector without taking any of the risk.

We do not feel preferential rights of renewal or possessory interests reflect private sector characteristics and would not support them in new legislation.

Mr. HANSEN. Thank you, Mr. Wilson. Mr. Cornelssen.

STATEMENT OF CURTIS CORNELSSEN, LANDAUER HOSPITALITY ADVISORY SERVICES

Mr. CORNELSSEN. Thank you, Mr. Chairman. As Mr. Wilson indicated in his opening statement, my expertise is bringing commercial sector hospitality operational technology to Federal, State, and local entities, and it is no easy task, I can assure you.

Perhaps the best example of this work is the work that we do for the Department of Defense where over the past five years we have saved literally hundreds of millions of dollars through provid-

ing commercial sector approaches to the financing, development, and operation of hospitality and recreational facilities.

We take great pride in this work as we feel we are agents of positive change to bureaucracy which, quite frankly, can be slow moving and steeped in tradition. Furthermore, I must stress that we always introduce change, recognizing the needs and desires of the end users and, most importantly, the U.S. taxpayers.

I would like to focus my testimony on two issues, the need for open competition in Federal, State, and local government contracts as we see it, and the concept of possessory interest as it relates to other Federal Government contracts of this type particularly with the Department of Defense with which I am most familiar.

My experience suggests that the concept of open and fair competition exists in most Federal, State, and local hospitality development and management contracts. Moreover, I have not experienced a situation where any form of preferential right of renewal exists for contracts of this type.

Generally, when government entities contract for hospitality management and/or development services, they focus on the operator's similar experience in contracts in both the private and public sectors, as well as the contractor's success in meeting the terms of the contract, i.e., contractors can be penalized for poor performance. They are not necessarily given credit for good performance, but they can be penalized, particularly if they have done a poor job.

If preferential right of renewal were eliminated, the existing concessioners would continue to be given credit for their experience in developing and/or operating concessions in national parks provided that they were effective in serving the needs of the National Park Service and park visitors. However, with open competition, the existing concessioner would be forced to compete with other comparable and well-qualified operators to provide the Park Service with the best possible deal.

As an advisor to government agencies on contracts of this type, I can assure you that this approach yields positive results for the government, and that the best qualified operators have little difficulty in securing and maintaining government contracts.

In my work with all types of public sector agencies, I have never encountered the concept of possessory interests. In leases where a developer-operator must invest capital up-front, the agreement will allow sufficient time for the lessee to depreciate the asset to ensure a good deal for both the developer and for the government. At the expiration of the contract, ownership of the facility then reverts to the government at little or no cost.

Over the course of the lease term, the developer-operator is generally responsible for maintaining and effectively operating the facilities. Based on the economics of the deal structure, the operator pays the government a monthly or annual lease fee. In return, the government will typically guarantee a payment for early contract termination. This amount is normally the undepreciated value of the improvements.

One example of this is use of concession contracts on military installations by the Army and Air Force Exchange Service, AAFES, a nonappropriated fund instrumentality of the Department of Defense. AAFES has numerous contracts for food and beverage and

retail service facilities at military bases around the world. They are quite large. Concessioners include national chains such as McDonald's, Popeye's, Pizza Hut, as well as numerous regional and local operators.

Under the standard terms of an AAFES contract, the concessioner finances and develops the facility to include all construction, equipment, and supplies. On completion of construction, the building and all fixed equipment then reverts to the government and becomes government property to be maintained over the course of the lease term by the concessioner.

The concessioner typically pays for all utilities, maintenance, and repair. In addition, they will pay AAFES anywhere from 5 to 13 percent of sales based on market location and potential sales volume. Upon contract expiration, the facility becomes a property of AAFES, the Federal Government in this case, at no cost.

The terms for these leases range from 5 to 20 years depending on the level of required capital investment. At the end of the contract period, AAFES has been directed by Congress to readvertise to all potential bidders with no credit given to the incumbent operators. AAFES has found this approach to be very successful and, to the best of my knowledge, has never experienced a lack of interest from private sector developers and operators.

Our firm has encountered numerous other similar examples of this type of contract arrangement. Providing a competitive concessioner selection process, as well as reasonable returns for both the government and the operator, are critical factors in the success of these ventures.

As I hope we have illustrated, we strongly believe that the proposed legislation will significantly improve the operation and upkeep of our parks by providing for increased competition and concession contracts which are fair and equitable to private sector operators, while ensuring the best possible return for the U.S. taxpayers. Once again, we thank you for this opportunity, and we would be pleased to answer any questions that you may have for us.

Mr. HANSEN. Thank you very much. Mr. King.

**STATEMENT OF AUBREY KING, EXECUTIVE DIRECTOR,
TRAVEL AND TOURISM GOVERNMENT AFFAIRS COUNCIL**

Mr. KING. Mr. Chairman, on behalf of the nation's travel and tourism industry, I very much appreciate the opportunity to testify before you today on the subject of reforming and improving the concession system for the public lands.

I am Aubrey King, Executive Director of the Travel and Tourism Government Affairs Council and Senior Vice President of the Travel Industry Association. The council is a coalition of 35 national organizations representing every segment of America's \$416 billion travel and tourism industry and its 6.2 million workers. I am here today to testify in support of the bill that you have introduced, Mr. Chairman, H.R. 2028, the Federal Land Management Agency Concession Reform Act of 1995.

Increasingly, States and local communities are turning to travel and tourism to nourish their economies. Many of these States contain national parks and other public lands which are major tourist

draws for Americans and international visitors alike. In 1994, there were nearly 270 million visits to our national parks, and retail sales for local communities were generated amounting to about \$10.1 billion and supported 230,000 tourism-related jobs in and around those communities.

More than 12 million international visitors came to our parks so you can see that the travel and tourism industry is a vital part of the economic food chain and our country, and the national parks and public lands are very much a strong, integrated link within that chain. And we believe that the concessioners help to keep that chain strong.

As an example of the vital importance of the concessioner and the services he or she provides, we could use the example of Zion National Park which I know you are familiar with, Mr. Chairman. It is truly one of our most beautiful, spectacular national parks and also one of our most isolated. While there is a small town located outside the park land, more popular cities are located much farther away up to 40 miles.

Now, if we hypothetically took away the park concessioner and it came time for even a drink of water, you would probably have to find yourself a cactus because 40 miles is a long way to go for a drink. And if your children were screaming, "Dad, what is for dinner?" a 40-mile drive may not be conducive to a restful vacation. Even if you were to reach a closer, quaint town, it may not be able to handle a carload of kids or to provide lodging for the night. For tour buses laden with 40 or 50 park visitors, the problem is, of course, much more severe.

The parks and other public lands were established for the enjoyment of the people, not exclusively as courses for "Ironman" competition. Were the concessioner to be taken away, the public lands would become a viable vacation destination only for an elite super-fit few, and while I wish I were among them, I dare say myself and millions of other Americans would not, alas, make the grade.

We should note also that among the most rapidly growing markets for visits to the parks in recent years have been the increased numbers of senior citizens and those who are disabled or handicapped. And as Park Director Kennedy testified a little bit earlier, the biggest reason for the park concessions that we have is to serve the public, to make those visits to the park as enjoyable and as feasible as possible.

Now, when it comes to matters of reform, it is always admirable to be bold and take risks in order to bring about positive change. But in the case of concession reform, the old saying, "If it ain't broke, don't fix it," holds especially true.

It is our understanding through our discussions with the Park Service that there are fewer complaints today about visitor services than at anytime in the history of the Park Service. Certainly, I have heard nothing today so far to contradict that. So we believe that any reform should not jeopardize the current good standing of the concessioners and the services they perform. We believe H.R. 2028 is exactly the right kind of reform and exactly on track to achieve that goal.

Perhaps one of the "hot list" terms of 1995 is "public-private partnerships." A major responsibility of the public sector to private

firms making such commitments, however, is to ensure that there is a reasonable amount of security in their public lands investment. If such assurance is not given, we believe that eventually there will be a deterioration in the level of certain products and services.

To ensure an atmosphere conducive to healthy, productive, long-term relationships between the public and private sectors, we recommend four guidelines. We believe these guidelines are met very well in H.R. 2028. First, that there should be an incentive to best serve the public. A fair rating system should be established, one which accurately measures the competence of the service provider.

Second, we believe there should be reasonable provisions for contract terms to help concessioners have enough time to grow a successful business and capitalize their investments. With regard to the third item, approval for sale, we think that at the time of sale or other transfer of operations to a new operator, there should be a timely and fair way to gain approval of the Secretary of the Interior for the transfer. Fourth, competition. The system should allow competition, but preference should be given to those who can best serve the public as demonstrated by their performance record.

It seems to us, again, that of the concessions reform bills now being considered, only one, H.R. 2028, satisfies all of these four guidelines and is conducive to a fair and cooperative relationship between the government and this nation's concessioners. This bill promotes public-private partnerships and deals positively with the park concessioners and their needs. It also treats concession fees in an intelligent way, containing the mechanisms needed to bring about a fair return to the government while still maintaining a reasonable margin of profit for the concessioner.

This bill should be supported for, as I hope we have illustrated here, the park concessioner is an integral part of the public lands experience and a critical ingredient for the local economic development supported by the parks and other public lands.

Mr. HANSEN. Thank you, Mr. King. Mr. Senior.

STATEMENT OF DAVID SENIOR, BANK OF AMERICA, LAS VEGAS, NEVADA

Mr. SENIOR. Thank you, Mr. Chairman. It is a pleasure to be able to be here to testify as a lender on behalf of a lender. My name is David Senior. I am a vice president with Bank of America in Las Vegas, Nevada. I have been with the bank's commercial banking division for a little over two years in Nevada and have been primarily assigned to develop and underwrite lending opportunities to the middle market. As such, I am familiar with the lending policies of the bank and its procedures in making business loans.

The bank's attention was drawn to this hearing on the subject of concessions policies for Federal public land agencies because the bank has had in the past and continues to have a number of business customers who are concessioners doing business in public land areas.

The bank's purpose in testifying is to discuss the primary issues of possessory interest, tenor of concession contracts, and preferential right of renewal, and how these issues impact a conces-

sioner's ability to obtain a loan from a bank for investment in the improvement of public parks.

Let me illustrate by reciting to you the facts in a loan which I serviced for the bank with Forever Resorts, the operators of Callville Bay Marina at the Lake Mead National Recreation Area and of Cottonwood Cove at Lake Mojave. And I want to preface my example by saying that each loan made by my division has very unique characteristics.

Callville Bay has maintained a borrowing relationship with the bank since 1987. At the time the original loan was underwritten and with each subsequent renewal of the credit, the aforementioned issues continue to surface that inhibit the bank's underwriting process; namely, the value of concessioners' possessory interest in the National Park Service contract and the preferential right of renewal and tenor of concession contract.

The bank has placed significant reliance on the possessory interest of the collateral as defined under the present law in underwriting a loan. The Callville Bay possessory interest, for example, was valued by an independent appraiser sufficient to produce a loan-to-value ratio of approximately 60 percent within the policy established by the bank for sound lending practices.

If what Mr. Wilson says about banks taking collateral only as an abundance of caution is true, the appraisal division of his firm may possibly go out of business. The loan for Callville Bay was ultimately approved with reliance on the understanding that the possessory interest provided in the concession contract was based on a sound or fair market value of real property. The clauses relating to possessory interest in H.R. 773 and 721 and to a certain extent H.R. 2028 would under the bank's lending policy have prevented the loan for Callville Bay from being made.

Next, it is vital that a lending institution has some predictability about a concessioner's future. The length of term of concession contracts and preferential right of renewal are, therefore, also key factors in determining the acceptability of a loan package. Without the security of the preferential right of renewal, approval of the Callville Bay loan referenced earlier would have been denied.

As previously discussed, H.R. 773 and H.R. 721 radically changes the concept of possessory interest. These bills propose to treat possessory interest in a manner which would cause the amount a concessioner could expect to receive through transfer or sale to be amortized eventually to zero even if the concessioner has faithfully maintained the property and then would have substantial market value in any other context.

This obviously offers no incentive to a concessioner to invest in the improvement of parks and would also not comprise sufficient collateral to a lender to carry loans for that purpose. If one of your goals is to encourage private sector investments on public lands, this formula should be rejected by the committee as unworkable.

Also important to the decisions in the loan process in concessions businesses are the length of contract terms and the continuity of service by a concessioner. Other features of H.R. 2028 address these matters, and I would urge you to set a base of at least 10 years for all concession contracts with maximum flexibility left to

the agencies to expand that time if the contract requirements make that necessary.

Last, the present law grants a concessioner a preference in renewal conditioned upon his satisfactory performance. I would encourage that this remain intact and would suggest that the evaluations must be fair and simple with achievable standards within the reach of good operators.

In summary, Mr. Chairman, I suggest that you carefully reconsider section 11 of H.R. 2028 and strengthen it by defining a property right and length of contract term which can be utilized for financing private investments on public lands. Thank you for this opportunity to testify, Mr. Chairman, and that concludes my testimony.

Mr. HANSEN. Thank you, Mr. Senior. Let me thank all of the six members of the panel. Your testimony was excellent and very provocative. You do us a great favor. As I have stated all along here, there is nothing in stone here. This is jello, and this is very, very flexible.

So if you want to do us a real favor, what you would do is you would look at—there will be a marriage of these things—there always is—and you would look at these and tell us where you could feel they can be improved or changed or modified or the good parts of every bill.

Mr. King brought up four things that he felt was good. How do we get those into the bill? I personally think maybe those four are in, but, you know, there are certain things that you could do that would be very helpful to us.

I have some questions here. I am not going to ask you, but I am going to send you a quick letter. And if you would respond in writing, it would probably be better than if I asked you the question. But would you mind at all, and if you would take the time to do that, you would do this committee a great service, and we would appreciate it. It would mean an awful lot to us.

You can see there are not too many folks here right now, but that doesn't mean they won't come in. I doubt if they will because of the heavy schedule that we are going through as we are getting ready for this wrap-up before the August work break. So I will excuse this panel, and, again, thank you very sincerely for the excellent testimony and expect to hear from us, and we expect to hear from you. OK?

Our next panel is Mr. Gaylord Staveley, Vice President of the National Forest Recreation Association; Mr. David Brown, Executive Director of American Outdoors; Mr. Paul Nielsen, Attorney for the Fred Harvey Company representing the National Park Hospitality Association; Mr. Chad Henderson, Public Policy Manager of the National Outdoors Leadership School; Mr. Stanley Selengut, Maho Bay Camps Incorporated; and Mr. Lee Bigwater, Canyon de Chelly Guides Association. I probably didn't pronounce that one right.

We appreciate your patience in waiting as long as you have. It is very kind of you. You have heard this discussion on and on; no sense in me repeating everything. The same thing I said to the last panel applies to this panel regarding time, input on the bill, what you want to say.

We would appreciate hearing from you. Where we get our information is from you folks so all of those things apply to every panel. Mr. Staveley, we will start with you. We are going to recognize each person for five minutes. We would appreciate it if you would watch the lights. The time is yours.

**STATEMENT OF GAYLORD STAVELEY, VICE PRESIDENT,
NATIONAL FOREST RECREATION ASSOCIATION**

Mr. STAVELEY. Thank you, sir. Mr. Chairman, my name is Gaylord Staveley. I am Vice President of the National Forest Recreation Association. NFRA is a national association of private sector businesspeople who construct and operate facilities and services that help visitors use and enjoy the national forests.

Most forest-related concession businesses are small companies and in many cases, family owned. They include developed sites such as resorts, marinas, and lodges. They include concessioners to operate Forest Service campgrounds for the Forest Service. They also include trail-based or river-based activities such as pack trips, hunting trips, trail rides, and scenic and whitewater river trips.

NFRA applauds and supports the nine stated goals of the subcommittee's proposed concession reform legislation. As to concessions authorizations, we feel there should only be one class of concessions authorizations, and those should be concession service agreements.

The reason is that all concessioners, regardless of the size of their investment, regardless of whether that investment is inside a park or forest or outside a park or forest, have invested in a concession business because an agency of the Federal Government selected them to provide facilities or services for the public use or enjoyment of those lands.

Concession service agreements should be 10 years in duration with the Secretary authorized to write longer agreements where a longer term is in the public interest or is necessary due to the capital investment required and the time needed to recover that investment plus a reasonable profit on it.

Commercial use licenses should be issued by the agencies in the way the Park Service presently uses them; that is, to authorize commercial uses of Federal lands on an infrequent or a non-competitive basis.

As to the selection process, presently H.R. 2028 provides that the concerned Secretary would obtain a pool of the most highly qualified bidders and then award the opportunity to whichever of them bids the highest fee above the specified minimum.

That makes fee bidding the ultimate criterion, and we would suggest instead that the Secretary first establish a pool of timely and responsive applicants; second, establish qualification points for all eligible applicants; third, establish performance points for the existing concessioner; and then, fourth, establish higher fee points for new applicants in all of this.

Because resource protection and the quality and the continuity of visitor services is said to be more important than the commission the government receives on them, there would be two parameters. There would be an upper limit on the higher fee add-on points, and this add-on should be lower than the performance points add-on.

As to operations and performance evaluations, the bill provides for annual evaluations, and any concessioner who receives an annual rating of unsatisfactory then becomes ineligible for the top rating over the life of the agreement.

We feel it would be in the best interest of both the agency and the concessioner to have evaluations and ratings performed more frequently than once a year so that the quality and performance can be more closely tracked and corrections made more quickly.

As to performance ratings and rating systems, there should be a mechanism whereby a concessioner can earn back a previously held higher rating because sometimes ratings may reflect the agency's use of an inexperienced evaluator; sometimes ratings reflect a personality conflict with the concessioner; and sometimes ratings may reflect an act or omission of an employee that was totally against the concessioner's policies.

A rating system that is usable and user friendly should have logical positions. It should have a top, a middle, and a bottom. Letter grades could be used and assigned numerical values. Periodic ratings could be averaged to create grade point averages. The goal could be as in food service establishments to have grade A concessions operations; that is, anyone above a 3.0 average on a 4.0 would be a good concessioner.

As to fees, we support the provision for establishing the minimum acceptable fee in the solicitation. For areas where essentially identical services are being bid, we feel that averaging all those fee bids and taking the average of those bids is not desirable. In effect, it would probably lower the actual fee of higher bidders and raise the actual fee of lower bidders, and the amount would not even be known until the bidding process had closed.

NFRA would like to see the bill include a provision for recognizing and crediting to the concessioner the noncash and sometimes nonfee compensation that concessioners provide the managing agencies by performing work that the agencies can't or won't do. Presently, these requirements are being imposed on concessioners outside the authorizations and sometimes after the fact.

As to the removal or retention of facilities, we would like to see section 11[b] expanded to provide that as the end of a concession authorization approaches, the Secretary concerned shall make a finding as to whether the facilities or services are to be continued in a subsequent concession agreement; that if they are to be continued and the existing concessioner is not selected as the new concessioner, then the existing concessioner may either sell the business to the new concessioner at fair market value as determined by an independent valuation expert, or remove any improvement and restore the site.

In summary, the goal of an interagency concessions policy, we believe, should be to identify those concessioners who deliver quality service to the public and protect the natural and cultural resources and deliver a fair return to the government, and also to retain those concessioners as long as they meet those qualifications.

H.R. 2028 contains provisions that go a long way toward creating those incentives. However, the portion of section 2 that provides a reasonable opportunity for the economic viability of the concessioner needs to be strengthened to provide instead the reasonable

opportunity of recovering one's investment plus a reasonable profit on it.

We would also like to see a clearer statement in the bill that revenue to the government is secondary to protection of the resource and continued quality service to the public. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you, Mr. Staveley. Mr. Brown.

STATEMENT OF DAVID BROWN, EXECUTIVE DIRECTOR, AMERICA OUTDOORS

Mr. BROWN. Thank you, Mr. Chairman. My name is David L. Brown, Executive Director of America Outdoors. I have provided a written statement for the record and will summarize those remarks.

America Outdoors is a national trade association representing the interests of over 1,600 companies that provide professional outfitter and guide services to more than 2 million Americans each year. And hopefully none of these river running companies have taken a position on your Utah wilderness bill that you described in your opening remarks.

Mr. HANSEN. Just about half of them is all.

Mr. BROWN. Well, I hope not. In fact, the only comment that we know or letter that we know about was written in support of that bill by the past president of this organization, and we certainly haven't taken a position on that.

Mr. HANSEN. I hope they believe in repentance.

Mr. BROWN. We wish to thank the subcommittee and the staff for its openness and diligence in developing this legislation. We very much appreciate the opportunity to represent the views of the outfitting industry before you today.

Mr. Chairman and members of the subcommittee, while we believe that the current concessions policy has been successful in providing high quality services to the public, we also believe that it can be made more cost effective and efficient. H.R. 2028 proposes some positive steps in that area.

However, we believe the bill focuses largely on raising fees to the government in some ways that may disable the incentives for highly motivated concessioners to offer quality services to the public, and I want to touch on some of those in my comments. For that reason, we cannot support H.R. 2028 as written, but wish to continue working with the subcommittee to improve the bill.

In general, we also believe the goal of concessions policy should be to enable agencies to identify concessioners who deliver quality services to the public, protect the resources, and provide a fair return to the government. The policy should then allow the agencies to retain those concessioners for as long as they meet those qualifications.

There are some examples of the product of this performance-based renewal policy in my written testimony with some photos of the investments that have been made under a 20-year period by permittees and concessioners who have been able to reinvest their profits and with the understanding that their permits would be renewed based on good performance.

A very important byproduct of the growth of these businesses which operate in rural areas surrounded by Federal lands is the economic benefit and development that accompanied that growth. These investments in the quality services and the economic benefits that evolved with these businesses would not have been made possible under the fee bidding proposals in H.R. 2028.

We don't believe money would be lent to these businesses under these terms, nor would concessioners be willing to reinvest their profits under these terms or work 12 hours a day to build a business without some realization that their performance would be rewarded.

May we suggest some elements to include in any concessions reform? The first element would be permit renewal as an incentive and reward for good service and resource protection. It also encourages the reinvestment of profit.

We think competition for customers is also important. In every instance, there is competition in the outfitting businesses. Three or more companies or frequently as many as 20 companies provide the same or similar services in an area. Transferability of the permit to a qualified buyer with a sale of the business is also important to allow return of equity. The final version of H.R. 2028 should incorporate some of these incentives in order to retain investment and quality service.

With that, I would like to touch on a couple of specific areas of agreement and some additional areas where we disagree. We agree with some others that I think you will hear that substantial capital investments as defined in the bill is inappropriate and should not be used as a criteria for the 10-year permits. We believe 10-year permits should be the minimum term for a concession service agreement, and longer terms should be available to concessioners with substantial investments.

We support the language that allows the market to establish rates for services where competition exists. We do believe the renewal incentive contained in section 7 is inadequate, and the final round fee bidding is the only criteria stipulated to be considered from among the highly qualified applicants. We believe past performance and a record of protection of the resource should outweigh any fee bid.

The concession evaluation language in section 8 needs further consideration, and we recommend a three-tiered system. We support a system that allows the agencies to retain the fees collected as provided for in H.R. 2028. We also support the concept of dispute resolution outlined in the bill.

And, finally, let me say that the transition language contained in the final section of the bill will call into question the loans and financial obligations assumed by many concessioners under the current system. I believe it could easily be corrected by recognizing incentives mentioned earlier and retaining performance-based renewal. Thank you, Mr. Chairman. We look forward to working with you further.

Mr. HANSEN. Thank you, Mr. Brown. Mr. Nielsen.

**STATEMENT OF PAUL NIELSEN, ATTORNEY, FRED HARVEY
COMPANY**

Mr. NIELSEN. Mr. Chairman, my name is Paul Nielsen. I appreciate the opportunity to appear before you today. I am here on behalf of Amfac Resorts, Inc., which is also known as The Fred Harvey Company, and the National Park Hospitality Association, an organization of concessioners who provide services such as food, lodging, and recreational activities to millions of visitors to our national parks every year.

My experience is primarily in commercial real estate where I have engaged in the acquisition, financing, leasing and sale of major real estate assets for certain affiliates of Fred Harvey. I have also analyzed and commented upon various legislative initiatives relating to national parks concessions and have participated in reviewing prospectuses and preparing bids for concession opportunities. With me today is Allan Howe, Washington Representative of the National Park Hospitality Association. I am sure that you know Mr. Howe.

We come here today, Mr. Chairman, to support the initiative you have made to reexamine concessions contracting on Federal lands. We think the approach taken in your bill, H.R. 2028, is much preferable to the other bills which are before your committee relating to the national parks concessions.

In fact, we agree with every word of the introductory statement you issued in connection with the bill. However, we think that H.R. 2028 can be improved in a number of areas. I have commented on various provisions of the bill in my written testimony and cannot touch upon all of them now.

The basic point that I would like to make is that the basic rules of business, real estate, and finance do not somehow magically change once you drive through the gates of a national park or other Federal land area. Return on investment and cash flow are still the measures of a business's success.

It should be realized that companies considering bidding on concession contracts will be comparing those opportunities with other alternative businesses. To the extent this committee makes one aspect of a concession business less attractive than a similar business conducted on private land, it must make up for it somewhere else to generate interest.

It is to be realized that fees, revenues, expenses, capital investment, and property values are all interrelated components of the mathematics of business. We believe that the development of a more integrated bidding system can be good both for our industry and the American public if consistent with these business fundamentals.

Such a system should accomplish three things. First, it should stimulate investment by the private sector in facilities which serve the public. Second, it should result in the best operator under each contract. And, third, it should encourage continuity by rewarding good performance.

The system should also be easily understood and administratively efficient. If those goals are satisfied, we believe that there will be no shortage of bidders for most operations, and that fees to the government will rise somewhat over current levels.

Investment will only be made by retaining the feature of the current law which grants a concessioner a property right which is similar to that which it would have if it built a facility on private land. How can anyone expect a company to build or renovate a building or other substantial facility and then simply give it to the government and pay high fees besides?

When you buy a house, you hope if you maintain it correctly it will appreciate in value. When the Hyatts and the Marriotts of the world build a hotel, they are not only counting on the cash it will generate for them, but also that they will likely be able to sell it at market value in a number of years. This is true for any large real estate investment. Without this residual value unless the cash returns are extraordinarily high, the investment just won't cut it.

Amortization of the value will not make the numbers work either. This is why most concessioners are frustrated with the arguments which you have heard before today that possessory interest as it is called in the current law is anticompetitive and unnecessary.

It is not anticompetitive to legislate that a business large or small which invests in our Federal land should be paid fair market value for that investment when it is time for that business to leave. So long as the next holder is also assured a fair market value, it will be able to obtain financing and predict a return, just like any other purchaser of real estate or any other asset.

H.R. 2028 attempts to recognize that such an interest is necessary to encourage new investment and the purchase of existing improvements. However, it fails to fashion a right which will achieve these results.

First, it is imperative that the government have the responsibility for the purchase of these assets in the first instance. How it obtains the money to do so, most likely from the next operator, is the government's business.

Second, the concessioner must be paid fair value for these investments whether passed on to a new operator, closed, or taken by the government for some other purpose. H.R. 2028 has only addressed the first of these possibilities. And, third, the law must grant a property right in terms which are sufficiently clear so that it can be employed as security for a loan.

It is also critical that a concessioner be able to transfer these rights along with its contract without fear that the government will attempt to take some of the value of the concessioner's business away by trying to cut itself a better deal. So long as the transferee has sufficient experience to fulfill the contract, the government should honor its end of the bargain as well.

The bidding process must be constructed to provide the agency with sufficient flexibility to make sure that the best applicant will emerge from the first round of bidding. The extraordinary emphasis on fees under H.R. 2028 will not produce the best operator, and neither will a rigid system which requires each bidder to necessarily satisfy every criteria loaded into a prospectus.

The third goal is to promote the continuity of good service by rewarding good performance. Although we believe that the current law generally succeeds in this regard, we understand that Congress wants to limit contract terms to 10 years, and that the 30-year con-

tract is likely to be a thing of the past. However, terms longer than 10 years may continue to be necessary depending on investment required.

We are also prepared to endorse a renewal preference which is based upon evaluations and which awards additional points to the incumbent during the bidding process if the incumbent has met certain performance goals.

We hope, Mr. Chairman, that H.R. 2028 when it is passed will accomplish the goals which I have outlined. If it does, you will have the hardy endorsement of our industry, and you will have taken a major step toward guaranteeing quality visitor services on our Federal lands for the future. Thank you.

Mr. HANSEN. Thank you, Mr. Nielsen. As you can see, we have a vote on. Mr. Henderson, we probably have time till the second bell to hear your testimony so we will turn the time over to you at which time we will recess for a vote, and we will be right back if that is all right with you other gentlemen.

**STATEMENT OF CHAD HENDERSON, PUBLIC POLICY
MANAGER, THE NATIONAL OUTDOORS LEADERSHIP SCHOOL**

Mr. HENDERSON. Thank you, Mr. Chairman. Thank you for the privilege of addressing the subcommittee today regarding concession reform. My name is Chad Henderson, and I am the Public Policy Manager for the National Outdoor Leadership School, also known as NOLS. You have my written testimony in front of you, and I will summarize my comments.

NOLS operates throughout the West and teaches outdoor skills, leadership, and ethics to over 2,600 students each year on extended backcountry expeditions. NOLS is a non-profit organization with headquarters in Wyoming, and we employ over 500 staff at our eight branches worldwide and have annual revenues that exceed \$12 million. Our courses travel in 19 national parks, 21 national forests, three national wildlife refuges, and Bureau of Land Management lands in eight western States.

NOLS has three concessions: mountaineering in Denali National Park, river running in Dinosaur National Monument, and backcountry skiing in Grand Teton National Park. Additionally, we have over 50 permits used to access a variety of other Federal lands. Thirty years of complying with this dazzling variety of permits proves there is plenty of room for reform. Reform can assure that concessions provide quality recreation services to the public while conserving our remarkable natural resources.

Reform is needed for many reasons. Current law, regulation, and customary practice confound the interests of providing reliable, and economically viable, high quality recreational and educational services to the public. Even within a single agency, we find a wide variety of permit mechanisms applied to our use; use which is generally similar in type and scope from park to park or from forest to forest.

Concession managers have varying degrees of knowledge about permit administration, and some lack an appreciation of what it takes to support a successful private enterprise. In some cases, the permittees themselves do not engender trust or understanding between us and the agency, such as the absence of clear regulatory

authority for commercial use licenses. This shaky ground has led to uncertainty. We have a high quality program, but it is never certain that if we do a good job we will have a reasonable chance of maintaining our program in a given national park.

To address these concerns and the very real concern of fair financial returns to the government, Congress has sought to reform concession management. While H.R. 2028 contains innovative proposals that we do support, at this time NOLS does not endorse the bill. But we do appreciate the constructive debate represented by this hearing.

NOLS has three main concerns. First, we oppose a one-size-fits-all approach to permitting. There are significant differences in agency missions and customary uses that need to be recognized in the permitting process. There is a great deal of room for standardization among agencies, but uniformity for its own sake does not play to the strengths of an agency.

Second, the language regarding the two-tiered system of permit authorizations lacks clarity. The questions of frequency of use and competitive interests differentiate among categories, but how will frequency of use be defined? How broad or narrow will competitive interests be construed?

Third, we are concerned that small businesses and nonprofit organizations such as scouting groups, church groups, university outing clubs, and backcountry education groups like NOLS will be affected to a great degree by a system that may award permits to the highest bidder.

NOLS is not afraid of competition, evaluations, or reasonable fees, but we are concerned that competition for competition's sake, evaluations that weigh Federal revenue enhancement above quality service, and the potential for fee wars jeopardize our ability to operate.

Beyond these three basic concerns, there are provisions that we do support in H.R. 2028. Returning fees to the parks and forests is a good idea. Resource protection as a factor in determining qualified applicants and for evaluating concessions is appropriate. Also, permit managers need to understand private enterprise, so setting minimum qualifications for concession managers is critical.

In conclusion, NOLS sees the potential for reform that recognizes the full array of concessions including nonprofit educational groups like NOLS, and the best reform will promote high quality concessions with a fair and reliable system.

Thank you, Mr. Chairman. This concludes my statement. I will be happy to answer any questions.

[The prepared statement of Mr. Henderson can be found at the end of the hearing.]

Mr. HANSEN. Thank you, Mr. Henderson. We appreciate your comments. We will recess for a short time to vote. Would the panel mind staying with us?

[Recess.]

Mr. HANSEN. Mr. Selengut, we will turn five minutes over to you, sir.

STATEMENT OF STANLEY SELENGUT, MAHO BAY CAMPS INCORPORATED

Mr. SELENGUT. Good afternoon. I own Maho Bay, a 114-unit ecoresort on a leased private inholding within the U.S. Virgin Islands National Park. We have provided all the capital for constructing the resort and ancillary facilities which we are amortizing over the length of our 30-year lease. We have no renewal or possessory rights. We pay our landlord seven times the land rent paid by Cinnamon Bay, a comparable park concession within the same park, and we are still delighted with our profitability.

This year we have been chosen for the 1995 Conde Nast Global Ecotourism Award. We won the 1994 Popular Science Grand Award for Environmental Technology. We were the only resort under the U.S. flag to receive the British Airways 1994 Tourism for Tomorrow Award. We are a leader in sustainable development.

Sustainability is an initiative the National Park Service is attempting to promote throughout the park system. I would love to bid on park concessions. However, it would be futile under existing law. Sustainability practices require a knowledge of new technologies, energy production, food production, waste disposal, transportation, recycling, and all aspects of solar design.

I encourage a more competitive climate where those of our companies who are promoting sustainable design and who are leading hopefully the movement toward a society where we live within our resource means can be encouraged to come into the Park Service and help the Park Service follow along their initiative. But right now it is impossible under the existing system. Thank you.

Mr. HANSEN. Thank you. We appreciate your testimony. Mr. Bigwater.

STATEMENT OF LEE BIGWATER, CANYON DE CHELLY GUIDES ASSOCIATION

Mr. BIGWATER. Mr. Chairman, my name is Lee Bigwater. I am from the Navajo Nation, and I am President of the Canyon de Chelly Guides Association. The Canyon de Chelly Association was found in 1993. Our members provide professional guiding and interpretation service to visitors at Canyon de Chelly National Monument. The canyon is one of the most famous units in the National Park System. It is known worldwide for its beauty and significance. The monument received 767,000 visitors in 1994.

No one knows and understands the canyon like my people, the Navajo. The monument is located within the boundary of the Navajo Nation, and its lands are owned and controlled by the Navajo Nation. It is where my people have lived for centuries, where we have fought and died. We were torn from this country by force relocation in 1864, but we have returned.

Today, my people still live, farm, ranch, and pray in these sacred canyons. My family owns a ranch in Canyon de Chelly. We are the gatekeepers and wisdomkeeper of Canyon de Chelly. One of our guides, Johnson John, is 68 years old. He has been taking people into the Canyon de Chelly for 25 years. "See the color of my skin," he tells our visitors. "It is the same color as the earth and the canyon walls. It comes from the canyon. The canyon is my mother."

While the Canyon de Chelly is our spiritual mother, Navajo people do not share completely in the benefit of this monument. There is a very lucrative concession at the monument called the Nabert Lodge. It is operated by White Dove, Incorporated, which is owned by nonIndian interests and has a 20-year contract that expires in 2004.

White Dove, Incorporated, pays a franchise fee of only 4.5 percent. According to 1993 figures, that concessioner grossed over \$5.1 million, yet return only \$203,104 to the Federal Government. This total includes a \$3,700 building use fee. None of this franchise fee money goes to the Navajo Nation, nor does it benefit Canyon de Chelly directly since the fund goes to the Federal Treasury.

Because of the 1965 Concession Act, Navajo people have been systematically prevented from owning and operating this business on their own land. Really, we have been barred from even trying to operate it. Because of the preferential right to renew contracts guaranteed by the 1965 Act, existing concessioners have a complete unfair advantage.

All the others who wish to bid on this contract, including my people, are at a completely unfair competitive disadvantage. While Navajos are employed by White Dove, Incorporated, we also would like the chance to operate the business. We are capable of doing this. The Navajo Nation and individual Navajo people are successfully operating other similar businesses.

The U.S. Government war against our people marched us to Fort Sumter and told us that we can come back to our homeland, only to obey the white man's law and behave like U.S. citizens. The Navajo people are patriotic and love America. We fought for America in every war this century. It is the Cotuckers who enabled U.S. force to baffle the Japanese in the Pacific during World War II.

We were told and taught that the American way is supposed to mean equal rights, equal opportunity, and free enterprise. Instead, this concession law violates many principles of America that the Native people respect and have fought for.

I believe that passing H.R. 773 is what should be done instead of passing H.R. 2028. Only H.R. 773 would put in place a truly competitive system that will open the doors for opportunity to my people; whereas, H.R. 773 eliminates the right of preference and institutes full, open competition. H.R. 2028 does not. If the existing law is not changed and even if H.R. 2028 is enacted, the gatekeepers of Canyon de Chelly will once again be shut out of our own land.

The 20-year concessions contract at Canyon de Chelly comes up for renewal in 2004 so the Navajo people have to wait nine years for a chance to bid on the contract. If H.R. 2028 were to pass, we will have to wait for another 10 years. And after these 19 years of waiting for a competition, if the concessioner does not do anything wrong, they will get a 5 percent advantage over us and 20 percent if they do well.

That will be enough to give them the contract for 10 more years. If all this waiting is the result of a system which has had no competition, the White Dove's current contract begins back in 1984. How long do my people have to wait for a fair chance to compete for this business? This does not seem like much to ask. I cannot

see any reason to continue to extend a preferential right advantage to Canyon de Chelly or any other park.

H.R. 773 in addition to providing us with a real chance to compete also provides for the Park Service to select the best bid overall instead of just the bidder offering the highest fee. I feel that this will assist Navajo people in preparing competitive bids.

There is another reason that I believe H.R. 773 gives the Navajo a real chance to compete while H.R. 2028 does not. H.R. 2028 provides that the concessioner owns the facility in which they make improvements, while in H.R. 773 their improvements value is slowly reduced as the property is used and amortized.

The weight of equipment that I use for my guide and ranching business slowly loses resale value after years of use. I know that the value of White Dove's possessory interest in their facility was roughly \$1.4 million in 1991. If White Dove, Incorporated, suddenly had ownership in them and values were set at the appraised fair market value formula outlined in H.R. 2028, I know that no Navajo business will be able to buy these facilities.

I do not think it is right that the private companies should have ownership in the property on national parks in Navajo land. National park lands belongs to all American people, and these Navajo lands belong to my people.

Mr. Chairman, the Navajos are a proud people. I do not ask for special treatment with this concession business. Just give us a chance to compete on a level playing field with everyone else. I believe that H.R. 773 would do that while your bill would not. Thank you for your time, and thanks for the opportunity to testify before you. And I am glad to answer any questions.

Mr. HANSEN. Thank you, Mr. Bigwater. I appreciate your testimony. Mrs. Chenoweth, any questions for this panel?

Mrs. CHENOWETH. Mr. Chairman, I have two surprises for you. Number 1 is I have no questions, and the second surprise is that Mr. Vento and I agree on something, and that is that I would go to any length to divert his questioning. Thank you.

Mr. HANSEN. Well stated. Again, the same as the last panel. Let me thank you. There is nothing in cement here. This is how we find things out. If you want the chapter and verse, by all means, tell us where to change it. We will look at this thing. We just threw something on the table.

We have to have a beginning point somewhere. We are not entirely happy with last year's. We didn't think it was a good piece of legislation. However, it has been changed somewhat since last year. There are some parts in it that we found offensive last year that we feel OK about. So if you want to give us some chapter and verse on something, we would appreciate it.

We have some questions for you, but we will mail them to you. We would really appreciate it if you would give us some response, and we know there are a variety of interests sitting there at that panel now. And in this business you can't please anybody. You just do what you think is right, but we have got to have the input. So we will get it from you.

And, Mr. Brown, we don't mean to be offensive to the river runners. Please don't take it that way. I think that we were a little offended in the Utah delegation. The governor, both Senators, and

all members of the delegation have all stated how offended they were when river runners took on our bill without any knowledge.

And then what really offended that group was basically when we sent them a letter asking for some correspondence regarding it, and no one had the courtesy to respond. It is a free country. They surely have the right to do that. But I wasn't picking on you. Please don't take it that way. I thank the panel for coming.

And we will now turn to our last panel; Harry Mosgrove, President of Copper Mountain Ski Resort in Colorado; Mr. Tim Beck, President of Sno.engineering. Well, gentlemen, you know the rules. You had to sit patiently. Any problem with that?

Mr. MOSGROVE. Not at all. Thank you, Mr. Chairman.

Mr. HANSEN. Can you both handle it in five minutes? Appreciate it. Mr. Mosgrove, we will start with you, sir.

STATEMENT OF HARRY MOSGROVE, PRESIDENT, COPPER MOUNTAIN SKI RESORT, COLORADO

Mr. MOSGROVE. Thank you, Mr. Chairman and members of the subcommittee. My name is Harry Mosgrove, and I am Chairman of the National Ski Areas Public Lands Committee. The National Ski Areas Association represents over 600 ski areas and suppliers nationwide. I am also president of Copper Mountain Ski Resort in Colorado. Copper Mountain is located partially in the National Forest Service System. I have spent the last 15 years working at and managing ski area operations on Forest Service permitted lands, and I feel I am familiar with the subject matter of today's hearing.

Ski industry and national forest systems land. Before addressing the specifics of H.R. 1527, I would like to make a few general comments about the ski industry as it currently exists on public lands.

First and foremost, I would stress that ski area operators themselves are not large businesses. Of the 132 areas operating on national forest system land during the past ski season, only 12 had revenues exceeding \$15 million. Even the nation's largest area, Vail, had gross revenue in the \$60 million range. This is smaller than some timber firms that qualify for government small business set-aside sales.

Ski area operators on the average receive 10 to 15 cents of every dollar which an out-of-state skier spends for ski vacations. Far larger amounts are spent on transportation, lodging, meals, merchandise, and other associated businesses.

The point I am making is that ski areas are a rather small business engine which drives a far larger economy. With perhaps a few exceptions, most of the money which flows into ski towns does not go to the ski area operator who provides the economic generator.

The ski industry shares many things in common with farmers. In some ways, we are snow farmers. In particular, our financial success is directly related to the weather. If it does not snow, our areas can experience absolutely disastrous years and/or incur dramatically increased costs to power snowmaking equipment. This is why a 1989 study of the University of Colorado indicated that in an average year, approximately two-thirds of the ski areas either lose money or struggle to break even.

It is also worth noting that ski areas are not exclusive users of the land they lease, nor do they extract a resource from the land.

Rather, skiing is a nonconsumptive use which frequently shares the land with hunters and fishermen, livestock grazers, offroad vehicles, hikers, cross-country skiers, mountain bikers, utility rights-of-way, communications facilities, and numerous other uses.

In addition, at many ski areas, lift operations together with road and trail networks provide the public with far greater access to, and the use and enjoyment of, the national forest lands than would occur in their absence.

The need for a new fee system. The National Ski Area Association has taken the lead in seeking introduction and enactment of H.R. 1527. We feel a change in the way ski areas pay rent for the use of national forest system land is warranted because the existing Graduated Rate Fee System, also known as GRFS, has become too complex and cumbersome.

As the subcommittee may be aware, GRFS was initiated by the Forest Service in the early 1970's to capture a fair market value leasing fee for the United States. In general, we believe it has done that remarkably well, and the fee for national forest ski areas is indeed significantly higher than most other private or government ski area lease rates as will be discussed later in the testimony of Sno.engineering, Inc.

However, by its very nature, GRFS is complex because it relies on a different breakeven point for various aspects of a ski area's income; it uses calculations of gross fixed assets which have been increasingly subject to varying interpretations; it contains difficult definitions as to what lands or activities should be subject to the fee; it raises debates over gratuities given to employees and/or the public, and other complexities.

The ski industry has spent several years, hundreds of hours, and considerable money attempting to resolve these issues with the Forest Service administratively. These efforts have not met with success. Therefore, the ski industry believes that it is time to change the fee formula legislatively and boil it down to a simple percentage of gross sales system.

The calculation of rent for the use of national forest land should not require a 40-page-plus document, nor should the Forest Service be permitted to assess rent against private land that it does not manage for the citizens of the United States. Those are only the two underlying tenets of H.R. 1527—simplicity and the elimination of private land assessments.

The General Accounting Office and the Forest Service have made numerous estimates of the national average of rent paid by ski areas expressed as a percentage of the ski area gross revenue. These percentages have ranged from 2.2 to 2.5 percent of the ski area gross revenue as defined by the Graduated Rate Fee System. Keep in mind that GRFS includes revenue attributed to the cost of free lift tickets given to ski area employees as well as the revenue of businesses on private land not owned or operated by the ski area permittee.

Regardless of the percentage that is used as an estimate of the ski area industry's national average of Forest Service fees paid as a percentage of gross revenue, the following facts should be understood. Ski areas on Federal land pay more than ski areas on private or State land for land rent.

The Urban Land Institute index on rents for commercial operations demonstrates that 1.8 percent of gross revenue for land rents is at the high end for land rents for commercial projects such as regional shopping centers.

There are a lot of advantages to this new system, and obviously I am out of time, but I would like to submit the rest of my testimony to the Chairman, and if—

Mr. HANSEN. If you feel you need additional time on any pertinent points, go ahead.

Mr. MOSGROVE. There are a lot of pertinent points here, Mr. Chairman.

Mr. HANSEN. Practice restraint.

Mr. MOSGROVE. But suffice it to say, we will submit this entire testimony to the Chairman. We think that we are paying fair market rents based upon other comparable industries. We realize how difficult that fair market value terminology is and how difficult it is to determine that.

We think that this new formula will limit the assessment of the fees to activities which are physically located on the National Forest Service lands. It will simplify the system that we currently have. It will save all of us time, money, and aggravation in the determination of what our Forest Service fee should be. We think it will save the government money, it will save the operators money, and it will be a simplistic system that gives a good return to the U.S. Government for the use of their lands.

In addition to my testimony, Mr. Chairman, I would like to introduce a letter from Arthur Anderson from the managing partner in the Denver office who corroborates a lot of these issues as well. Thank you for your time, and I will be happy to answer any questions.

[At press time, the abovementioned letter had not been received from Mr. Mosgrove. The prepared statement of Mr. Mosgrove can be found at the end of the hearing.]

Mr. HANSEN. Thank you very much for your testimony. Mr. Beck, do you want to grab that mike over there?

STATEMENT OF TIMOTHY BECK, PRESIDENT, SNO.ENGINEERING

Mr. BECK. Mr. Chairman and members of the subcommittee, my name is Tim Beck, and I am the President of Sno.engineering headquartered in Littleton, New Hampshire. We also have offices in Colorado, British Columbia, Tokyo, and Bellevue, Washington. Since our inception in 1958, we have worked on over 1,000 projects involving all phases of ski area development including feasibility, mountain and land planning, environmental permitting, appraisals, construction and operation consulting.

I appear before you today to address the issues relating to whether the ski area fee formula contained in H.R. 1527 and/or the existing Graduated Rate Fee System achieves a fair market value return to the United States.

This question is complicated by the fact that ski areas are a relatively unique use of public lands. Unlike many other uses such as mining, oil, and gas development, timber harvest, and livestock grazing, the ski industry does not extract a renewable or

nonrenewable commodity from the land. Instead, what the ski industry does is essentially lease raw, undeveloped land, install all improvements on the land, and then use those improvements to attract business and provide recreational and mixed use opportunities to the public.

While national parks and other high visitation Federal lands attract the public because of pre-existing values, ski areas attract the public largely because of the private capital which is invested on the mountain. In short, it is not the commodity provided by the government land that draws the public to ski areas, but rather the quality of the lifts, trails, snowmaking, ski schools, and other facilities which the ski area places on the land at its own expense.

My testimony will focus on three approaches which the 1988 General Accounting Office fee report to Senator Metzenbaum suggested might be the most accurate indicators of fair market value.

The first is the percent of net profits paid in rent. In 1988, the General Accounting Office report to Senator Metzenbaum described several studies which suggested that a fee system which captures 10 to 24 percent of an operator's profit would achieve fair market value. We submit that both existing GRFS and the proposed new formula of H.R. 1527 do far better than that.

For example, a 1989 University of Colorado study, the so-called Goeldner study, revealed that the average ski area profits before taxes were 3.5 percent of revenues. For the same year, 1989, the Forest Service told Congressman Synar's Government Operations Subcommittee that ski areas paid an average of 2.4 percent of revenues in rental fees. A 1989 survey by the National Ski Areas Association of its members indicated an average of 2.89 percent of revenues was paid in fees.

Using these alternate figures, it can be readily determined that the average rental fee equals from between 69 to 83 percent of annual profits which is many times higher than the 10 to 24 percent recommendations discussed in the GAO study.

Despite the fact that the ski industry is already exceeding the percent of profitability tests cited by GAO, Sno.engineering believes that there are drawbacks to its use if revenue neutrality is of concern to the United States.

That is because in any given year, as the Goeldner study and as Mr. Mosgrove just alluded to, other areas have estimated that approximately one-third to one-half of ski areas only break even or lose money and, therefore, have little or no profit and would pay no rent. Switching to a percent of profit tests, therefore, could significantly reduce revenues to the United States from current levels.

The second methodology and perhaps more familiar is the comparability or comparable sales approach to market evaluation. This method is generally preferred by appraisers to provide the most accurate indication of whether fair market value is being realized for real estate sales or rentals.

Finding comparables for ski mountain rentals is not as easy as it is for other leasing situations because the vast majority of ski areas in North America that are not on government land own their land and do not pay rent.

However, the ski industry has conducted a thorough survey of ski areas in the United States and Canada and has assembled in-

formation on areas which do lease government on private lands. The findings of this survey, which we believe covers every large size, non-national forest ski area in North America, are contained in an appendix to my testimony.

This confirms, in our opinion, that the Forest Service has been a fairly tough negotiator and has set rental fees that are significantly higher than most other government or private rates. For example, and I am going to be speaking about both Canada and the United States here, 25 areas in British Columbia, Canada, including the two largest resorts in Canada, Whistler and Blackcomb, are located on provincial land and pay a flat fee of 2 percent of lift revenues.

Five areas in British Columbia located on park land pay a 2 percent fee. Four areas in Alberta, Canada, on national park land pay 2 percent. Mt. Tremblant ski area in Quebec pays a flat rate of \$5,000 per year to the province. In British Columbia, the fees are paid only on lift revenues. No fees are paid on ski school, restaurant, ski shop, and other nonlift revenues which typically average about 30 percent of gross income.

In the United States, fewer comparables exist, but those that do exist, the Alpine Meadows Ski Area in California pays the same proportionate rent to the Nature Conservancy as it does to the Forest Service. Wachusett Mountain in Massachusetts, which is located on commonwealth land, pays 2 percent of gross revenues to the State. Deer Valley in Utah, one of the newest resorts in North America, pays a combined rate of 1.25 percent of lift ticket sales.

There are many more examples, but as you can see, we could not find a lessor that does not own or invest in mountain or base facilities. Further, as the ski area revenue growth nationwide has been exceeding the annual Consumer Price Index, and is expected to continue to do so, more and more ski areas will enter into the 2.75 percent to 4 percent brackets, so the effective rate should increase above the 2.4 percent estimate.

We found a few lease situations where effective rates were slightly higher, one in Washington State and several in Vermont. However, in both cases, the State builds or owns buildings, parking lots, roads or other facilities which are part of the lease. In addition, the tenure of the lease is 60 to 99 years versus the 30 to 40 years of the Forest Service.

It is also worthy to note that many States and communities, and to a lesser degree, private corporations make their land available for skiing at a subsidized or heavily discounted rate. I see my time is up.

There is the third analysis. It focuses on a comparison to land-holding costs and compares the ski areas' annual rental fee to what it would cost a ski area to finance a mortgage if it owned the land. An evaluation for a ski area at Valbois in Idaho was evaluated at \$632 an acre. I have given additional examples in my written testimony of what it would cost for ski areas that were sold, the date of sale, the amount per acre, and other comparables in the marketplace.

In summary, Mr. Chairman, it is our belief as supported by the data recited in this testimony and my written testimony that fair market value returned to the United States for the use of the land

uncategorically obtains a fair market value. This concludes my testimony. Thank you for the opportunity to testify, and I would be happy to answer questions that the subcommittee may have.

[The prepared statement of Mr. Beck can be found at the end of the hearing.]

Mr. HANSEN. Thank you, Mr. Beck. We appreciate your testimony. In exercising the prerogative of the Chair, I would like to have Mr. Ray Gardner, Chief Executive Officer of Snowbird, respond for a few moments if he would. We will give you five minutes, Ray.

**STATEMENT OF RAY GARDNER, CHIEF EXECUTIVE OFFICER,
SNOWBIRD SKI RESORT, UTAH**

Mr. GARDNER. Thank you very much, Mr. Chairman. It is kind of you to invite me to do this. Mrs. Chenoweth and members of the subcommittee, I do not have prepared testimony here today, but I do have some observations that I think may be helpful to the committee.

First, I am familiar with the testimony of Mr. Mosgrove and Mr. Beck and subscribe to it wholeheartedly. Snowbird is one of those resorts that is located both on private as well as public land. Seventy-five percent of the ski mountain is owned by the Forest Service; 25 percent by Snowbird. All of our facilities, that is our hotels, our restaurants, our other facilities, sporting goods stores, et cetera, at the base of the mountain are totally on private land.

Under the Graduated Rate Fee System, there has been constant conflict, since our permit was written to amend and allow the Graduated Rate Fee System into our permit about 10 years ago, with the Forest Service constantly trying to get us to pay fees on the revenues that are generated on our private land, simply under their theory that it is somehow related to that which goes on on the mountain; this in spite of the fact that their own Forest Service manual clearly states that only those businesses which are located on private land which are directly related and essential to the use of the mountain are to be included within the fee system.

The latest effort of the Forest Service a matter of a few months ago was to try to get us to include in the revenue the Bases, our 532-room hotel, which cost us many millions of dollars to build. Now, I am pleased to say that with the advent of the new Forest Service supervisor in our forest, we have found a much more cooperative effort, and I believe that we are in the process of resolving some of these difficulties.

I bring this up only to point out that the Graduated Rate Fee System is nothing short of a nightmare for any resort that is located partially on private land and partially on Forest Service land. We have come to the Congress because we need Congress's help in replacing that very difficult and combative system with a system such as proposed in the bill that is here before the committee which is a very simple bill and easily administered.

One thing that I think is important to note is that the Forest Service in the information given to the committee has indicated that there would be about \$200,000 a year savings to the Forest Service in administering the fee system. At least that was the testimony or information given in prior hearings.

My estimation is that the Forest Service has probably spent a very substantial part of that alone in constant hassles and audits and arguments with our resort alone. And I believe that the savings will be much greater than that to the United States by going to a system that is easily administered and easily determined such as that which is before the committee here. I strongly urge the support of this bill and urge the committee to send it out with a favorable recommendation to the House so that we can get this voted on.

Two years ago, the Forest Service through the Administration indicated to the industry that there would be a new fee system proposed administratively by the Forest Service. And then all of a sudden, that didn't happen. We have a new Forest Service administration proposal for administering fees on the Forest land which was mentioned by the Forest Service representatives, Mr. Unger and Mr. Laverty, that appeared here this morning.

I have reviewed that, and that proposal which they would like to adopt administratively would first of all cause problems because it again depends upon subjective analysis rather than objective fact as to what is owed to the Forest Service.

And there is no way that any appraisal system is going to properly reach the question of fair market value, and I believe that the system which is proposed in this bill will avoid all of these difficulties and permit an objective, fair, and proper fee to be paid to the United States for use of these lands.

One last point. It must be remembered that in use of the Forest land, a ski resort is not like a concessioner perhaps in a national park where the drawing point is the asset that is there naturally. A ski resort takes, in many instances, hundreds of millions of dollars to invest to make that resort and to take a piece of raw land and create it into something that is of recreational value to the American people. And that should be kept in mind in looking at the various alternatives here.

Finally, the Forest Service's administrative proposal that they have put out in the **Federal Register** now would simply replace 40 pages of Federal Forest Service Handbook with 30 pages which is a lot different than the very simple bill that is before the committee. Thank you very much for your courtesy in allowing me to speak.

Mr. HANSEN. Thank you, Mr. Gardner. Mrs. Chenoweth.

Mrs. CHENOWETH. Mr. Chairman, I have no questions, but I certainly appreciated the very good and informative testimony, and I will certainly study it. You certainly have my ear. Thank you very much.

Mr. HANSEN. Thank you, Mrs. Chenoweth, and I thank the panel. Mr. Gardner, I appreciate you coming on impromptu. I didn't mean to catch you cold, but I wanted your testimony as part of the record here.

Thanks to Mr. Mosgrove and Mr. Beck—thank you so much for your very informative testimony. Again, you have sat patiently through this hearing and heard what we have discussed. I would appreciate it if you have anything you want to give us. Fine. Nothing is set in stone at this point.

Actually, it is Congress who has to make these decisions, and the Forest Service and Administration can make all kinds of promises, but it is going to come out of the Congress. So we will look forward to moving this along. We do want to have something going on this. We have got a full platter of things that we are moving through this committee, probably more so than any committee in all of Congress.

So we can only allocate so much to this. We would like to make it right, and we want to make it right for the citizens of America. So, again, thanks to each and every person in the room and all those who testified today for your excellent testimony and for your effort to be here. And this meeting is now adjourned.

[Whereupon, at 2:30 p.m., the subcommittee was adjourned, and the following was submitted for the record:]

104TH CONGRESS
1ST SESSION

H. R. 721

To establish fair market value pricing of Federal natural assets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1995

Mr. MILLER of California (for himself, Mr. VENTO, Mr. TORRES, Mr. HINCHEY, Mr. GEJDENSON, Mr. RAHALL, Mr. MEEHAN, Mr. YATES, Mrs. MALONEY, Ms. SLAUGHTER, Mr. NADLER, Mr. STARK, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. GOSS, Mr. ABERCROMBIE, Mr. ACKERMAN, and Mr. SANDERS) introduced the following bill; which was referred to the Committee on Resources and, in addition, to the Committees on Ways and Means, Agriculture, and Government Reform and Oversight, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish fair market value pricing of Federal natural assets, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Public Resources Deficit Reduction Act of 1995”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS

Sec. 101. Fair market value for resource disposal.

Sec. 102. Fees from program beneficiaries.

Sec. 103. Revenues from sale, lease, and transfer of assets.

TITLE II—REVENUE FROM MINING CLAIMS

Sec. 201. Definitions.

Sec. 202. Mining claim maintenance requirements.

Sec. 203. Royalty.

Sec. 204. Severance tax.

Sec. 205. Fund for abandoned locatable minerals mine reclamation.

Sec. 206. Limitation on patent issuance.

Sec. 207. Purchasing power adjustment.

Sec. 208. Savings clause.

Sec. 209. Effective date.

TITLE III—HELIUM

Sec. 301. Amendment of helium act.

Sec. 302. Authority of Secretary.

Sec. 303. Sale of crude helium.

Sec. 304. Elimination of stockpile.

Sec. 305. Repeal of authority to borrow.

TITLE IV—USE OR DISPOSAL OF FEDERAL NATURAL RESOURCES

Sec. 401. Annual domestic livestock grazing fee.

Sec. 402. Elimination of below-cost timber sales of timber from National Forest System lands.

Sec. 403. Timberland suitability.

Sec. 404. Cost of water used to produce surplus crops.

Sec. 405. Reduction in maximum amount of payments under agricultural assistance programs to reflect receipt of Federal irrigation water.

Sec. 406. Off budget expenditures.

Sec. 407. Deposit of Taylor Grazing Act receipts in Treasury.

Sec. 408. Repeal of livestock feed assistance program.

Sec. 409. Communication permits.

Sec. 410. Oil and gas rentals.

TITLE V—NATIONAL PARK CONCESSIONS

Sec. 501. Findings and policy.

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Sec. 516. Implementation.

Sec. 517. Authorization of appropriations.

1 **TITLE I—GENERAL PROVISIONS**

2 **SEC. 101. FAIR MARKET VALUE FOR RESOURCE DISPOSAL.**

3 (a) IN GENERAL.—Notwithstanding any other provi-
4 sion of law, no timber, minerals, forage, or other natural
5 resource owned by the United States, no Federally owned
6 water, and no hydroelectric energy generated at a Federal
7 facility may be sold, leased, or otherwise disposed of by
8 any department, agency, or instrumentality of the United
9 States for an amount less than fair market value, as deter-
10 mined by such department, agency, or instrumentality.

11 (b) EXISTING CONTRACTS, LEASES, ETC.—

12 (1) EXISTING ARRANGEMENTS.—The provisions
13 of subsection (a) shall not apply to any existing con-
14 tract, lease, or other binding arrangement entered
15 into before the date of the enactment of this Act un-
16 less such contract, lease or other arrangement is re-
17 newed or extended after such date of enactment.

18 (2) ARRANGEMENTS ENTERED INTO IN 5-YEAR
19 PERIOD.—The provisions of subsection (a) shall take
20 effect on the date 5 years after the date of enact-
21 ment of this Act in the case of any contract, lease,
22 or other binding arrangement entered into or re-

1 newed or extended after such date but before the
2 date 5 years after such date.

3 (3) ARRANGEMENTS ENTERED INTO AFTER 5
4 YEARS.—The provisions of subsection (a) shall apply
5 immediately to all contracts; leases, or other binding
6 arrangements entered into or renewed or extended
7 after the date 5 years after the enactment of this
8 Act.

9 (c) WAIVER.—The President may waive the require-
10 ments of subsection (a) whenever the President deter-
11 mines that such waiver is in the national interest. The
12 President shall submit a notice to Congress containing an
13 explanation of the reasons for any such determination
14 within 60 days after the date of the determination.

15 **SEC. 102. FEES FROM PROGRAM BENEFICIARIES.**

16 (a) GENERAL AUTHORITY.—The Secretary of the In-
17 terior and the Secretary of Agriculture are each author-
18 ized to establish and collect from persons subject to pro-
19 grams administered by each such Secretary such user fees
20 as may be necessary to reimburse the United States for
21 the expenses incurred in administering such programs.
22 The aggregate amount of fees that may be assessed and
23 collected under this section by each such Secretary in any
24 fiscal year from persons subject to any such program shall

1 not exceed the aggregate amount of expenses incurred in
2 administering such program in such fiscal year.

3 (b) EFFECTIVE DATE; OIL AND GAS LEASE TRANS-
4 FERS.—The Secretary of the Interior and the Secretary
5 of Agriculture may, by rule, establish the applicable effec-
6 tive date of any fee to be imposed under this section, ex-
7 cept that fees shall be established and collected under this
8 section from each person receiving a transfer of a Federal
9 onshore oil and gas lease after the date of the enactment
10 of this section.

11 **SEC. 103. REVENUES FROM SALE, LEASE, AND TRANSFER**
12 **OF ASSETS.**

13 (a) IN GENERAL.—Section 1105(a) of chapter 11 of
14 title 31, United States Code, is amended by inserting at
15 the end the following new paragraph:

16 “(28) a separate statement of—

17 “(A) projected revenues during the fiscal
18 year for which the budget is submitted from the
19 anticipated sale, lease, or transfer of any phys-
20 ical asset; and

21 “(B) the estimated price at which this
22 asset or a comparable asset would be sold in an
23 arms length transaction in the private sector;
24 asset by asset and aggregated by major functional
25 category.”.

1 (b) **EFFECTIVE DATE.**—The amendment made by
2 subsection (a) shall become effective for fiscal year 1997
3 and shall be fully reflected in the fiscal year 1997 budget
4 submitted by the President in February 1996 as required
5 by section 1105(a) of title 31, United States Code.

6 **TITLE II—REVENUE FROM**
7 **MINING CLAIMS**

8 **SEC. 201. DEFINITIONS.**

9 (a) **DEFINITIONS.**—As used in this title:

10 (1) The term “locatable mineral” means any
11 mineral not subject to disposition under any of the
12 following:

13 (A) the Mineral Leasing Act (30 U.S.C.
14 181 and following);

15 (B) the Geothermal Steam Act of 1970
16 (30 U.S.C. 100 and following);

17 (C) the Act of July 31, 1947, commonly
18 known as the Materials Act of 1947 (30 U.S.C.
19 601 and following); or

20 (D) the Mineral Leasing for Acquired
21 Lands Act (30 U.S.C. 351 and following).

22 (2) The term “mineral activities” means any
23 activity for, related to or incidental to mineral explo-
24 ration, mining, beneficiation and processing activi-

1 ties for any locatable mineral, including access.

2 When used with respect to this term—

3 (A) The term “exploration” means those
4 techniques employed to locate the presence of a
5 locatable mineral deposit and to establish its
6 nature, position, size, shape, grade and value.

7 (B) The term “mining” means the proc-
8 esses employed for the extraction of a locatable
9 mineral from the earth.

10 (C) The term “beneficiation” means the
11 crushing and grinding of locatable mineral ore
12 and such processes as are employed to free the
13 mineral from other constituents, including but
14 not necessarily limited to, physical and chemical
15 separation techniques.

16 (D) The term “processing” means proc-
17 esses downstream of beneficiation employed to
18 prepare locatable mineral ore into the final
19 marketable product, including but not limited
20 to, smelting and electrolytic refining.

21 (3) The term “mining claim” means a claim for
22 the purposes of mineral activities.

23 (4) The term “Secretary” means, unless other-
24 wise provided in this title, the Secretary of the Inte-

1 prior acting through the Director of the Minerals
2 Management Service.

3 **SEC. 202. MINING CLAIM MAINTENANCE REQUIREMENTS.**

4 (a) IN GENERAL.—The holder of each mining claim
5 located on lands open to location shall pay to the Secretary
6 an annual claim maintenance fee of \$100 per claim per
7 calendar year.

8 (b) TIME OF PAYMENT.—The claim maintenance fee
9 payable pursuant to subsection (a) for any year shall be
10 paid on or before August 31 of each year, except that for
11 the initial calendar year in which the location is made,
12 the locator shall pay the initial claim maintenance fee at
13 the time the location notice is recorded with the Bureau
14 of Land Management.

15 (c) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.—
16 This section shall not apply to any oil shale claims for
17 which a fee is required to be paid under section 2511(e)(2)
18 of the Energy Policy Act of 1992 (106 Stat. 3111; 30
19 U.S.C. 242).

21 (d) CLAIM MAINTENANCE FEES PAYABLE UNDER
22 1993 ACT.—The claim maintenance fees payable under
23 this section for any period with respect to any claim shall
24 be reduced by the amount of the claim maintenance fees
25 paid under section 10101 of the Omnibus Budget Rec-

1 onconciliation Act of 1993 with respect to that claim and with
2 respect to the same period.

3 (e) WAIVER.—(1) The claim maintenance fee re-
4 quired under this section may be waived for a claim holder
5 who certifies in writing to the Secretary that on the date
6 the payment was due, the claim holder and all related par-
7 ties held not more than 10 mining claims on lands open
8 to location. Such certification shall be made on or before
9 the date on which payment is due.

10 (2) For purposes of paragraph (1), with respect to
11 any claim holder, the term “related party” means each
12 of the following:

13 (A) The spouse and dependent children (as de-
14 fined in section 152 of the Internal Revenue Code of
15 1986), of the claim holder.

16 (B) Any affiliate of the claim holder.

17 (f) CO-OWNERSHIP.—Upon the failure of any one or
18 more of several co-owners to contribute such co-owner or
19 owners’ portion of the fee under this section, any co-owner
20 who has paid such fee may, after the payment due date,
21 give the delinquent co-owner or owners notice of such fail-
22 ure in writing (or by publication in the newspaper nearest
23 the claim for at least once a week for at least 90 days).
24 If at the expiration of 90 days after such notice in writing
25 or by publication, any delinquent co-owner fails or refuses

1 to contribute his portion, his interest in the claim shall
2 become the property of the co-owners who have paid the
3 required fee.

4 **SEC. 203. ROYALTY.**

5 (a) **RESERVATION OF ROYALTY.**—Production of all
6 locatable minerals from any mining claim located under
7 the general mining laws, or mineral concentrates or prod-
8 ucts derived from locatable minerals from any mining
9 claim located under the general mining laws, as the case
10 may be, shall be subject to a royalty of 8 percent of the
11 gross income from such production. The claimholder and
12 any operator to whom the claimholder has assigned the
13 obligation to make royalty payments under the claim and
14 any person who controls such claimholder or operator shall
15 be jointly and severally liable for payment of such royal-
16 ties.

17 (b) **DUTIES OF CLAIM HOLDERS, OPERATORS, AND**
18 **TRANSPORTERS.**—(1) A person—

19 (A) who is required to make any royalty pay-
20 ment under this section shall make such payments
21 to the United States at such times and in such man-
22 ner as the Secretary may by rule prescribe; and

23 (B) shall notify the Secretary, in the time and
24 manner as may be specified by the Secretary, of any
25 assignment that such person may have made of the

1 obligation to make any royalty or other payment
2 under a mining claim.

3 (2) Any person paying royalties under this section
4 shall file a written instrument, together with the first roy-
5 alty payment, affirming that such person is liable to the
6 Secretary for making proper payments for all amounts due
7 for all time periods for which such person as a payment
8 responsibility. Such liability for the period referred to in
9 the preceding sentence shall include any and all additional
10 amounts billed by the Secretary and determined to be due
11 by final agency or judicial action. Any person liable for
12 royalty payments under this section who assigns any pay-
13 ment obligation shall remain jointly and severally liable
14 for all royalty payments due for the claim for the period.

15 (3) A person conducting mineral activities shall—

16 (A) develop and comply with the site security
17 provisions in operations permit designed to protect
18 from theft the locatable minerals, concentrates or
19 products derived therefrom which are produced or
20 stored on a mining claim, and such provisions shall
21 conform with such minimum standards as the Sec-
22 retary may prescribe by rule, taking into account the
23 variety of circumstances on mining claims; and

24 (B) not later than the 5th business day after
25 production begins anywhere on a mining claim, or

1 production resumes after more than 90 days after
2 production was suspended, notify the Secretary, in
3 the manner prescribed by the Secretary, of the date
4 on which such production has begun or resumed.

5 (4) The Secretary may by rule require any person en-
6 gaged in transporting a locatable mineral, concentrate, or
7 product derived therefrom to carry on his or her person,
8 in his or her vehicle, or in his or her immediate control,
9 documentation showing, at a minimum, the amount, ori-
10 gin, and intended destination of the locatable mineral, con-
11 centrate, or product derived therefrom in such cir-
12 cumstances as the Secretary determines is appropriate.

13 (c) RECORDKEEPING AND REPORTING REQUIRE-
14 MENTS.—(1) A claim holder, operator, or other person di-
15 rectly involved in developing, producing, processing, trans-
16 porting, purchasing, or selling locatable minerals, con-
17 centrates, or products derived therefrom, subject to this
18 Act, through the point of royalty computation shall estab-
19 lish and maintain any records, make any reports, and pro-
20 vide any information that the Secretary may reasonably
21 require for the purposes of implementing this section or
22 determining compliance with rules or orders under this
23 section. Such records shall include, but not be limited to,
24 periodic reports, records, documents, and other data. Such
25 reports may also include, but not be limited to, pertinent

1 technical and financial data relating to the quantity, qual-
2 ity, composition volume, weight, and assay of all minerals
3 extracted from the mining claim. Upon the request of any
4 officer or employee duly designated by the Secretary or
5 any State conducting an audit or investigation pursuant
6 to this section, the appropriate records, reports, or infor-
7 mation which may be required by this section shall be
8 made available for inspection and duplication by such offi-
9 cer or employee or State.

10 (2) Records required by the Secretary under this sec-
11 tion shall be maintained for 6 years after cessation of all
12 mining activity at the claim concerned unless the Sec-
13 retary notifies the operator that he or she has initiated
14 an audit or investigation involving such records and that
15 such records must be maintained for a longer period. In
16 any case when an audit or investigation is underway,
17 records shall be maintained until the Secretary releases
18 the operator of the obligation to maintain such records.

19 (d) AUDITS.—The Secretary is authorized to conduct
20 such audits of all claim holders, operators, transporters,
21 purchasers, processors, or other persons directly or indi-
22 rectly involved in the production or sales of minerals cov-
23 ered by this title, as the Secretary deems necessary for
24 the purposes of ensuring compliance with the require-
25 ments of this section. For purposes of performing such

1 audits, the Secretary shall, at reasonable times and upon
2 request, have access to, and may copy, all books, papers
3 and other documents that relate to compliance with any
4 provision of this section by any person.

5 (e) COOPERATIVE AGREEMENTS.—(1) The Secretary
6 is authorized to enter into cooperative agreements with the
7 Secretary of Agriculture to share information concerning
8 the royalty management of locatable minerals, con-
9 centrates, or products derived therefrom, to carry out in-
10 spection, auditing, investigation, or enforcement (not in-
11 cluding the collection of royalties, civil or criminal pen-
12 alties, or other payments) activities under this section in
13 cooperation with the Secretary, and to carry out any other
14 activity described in this section.

15 (2) Except as provided in paragraph (4)(A) of this
16 subsection (relating to trade secrets), and pursuant to a
17 cooperative agreement, the Secretary of Agriculture shall,
18 upon request, have access to all royalty accounting infor-
19 mation in the possession of the Secretary respecting the
20 production, removal, or sale of locatable minerals, con-
21 centrates, or products derived therefrom from claims on
22 lands open to location under the general mining laws.

23 (3) Trade secrets, proprietary, and other confidential
24 information shall be made available by the Secretary pur-

1 suant to a cooperative agreement under this subsection to
2 the Secretary of Agriculture upon request only if—

3 (A) the Secretary of Agriculture consents in
4 writing to restrict the dissemination of the informa-
5 tion to those who are directly involved in an audit
6 or investigation under this section and who have a
7 need to know;

8 (B) the Secretary of Agriculture accepts liabil-
9 ity for wrongful disclosure; and

10 (C) the Secretary of Agriculture demonstrates
11 that such information is essential to the conduct of
12 an audit or investigation under this subsection.

13 (f) INTEREST AND SUBSTANTIAL UNDERREPORTING
14 ASSESSMENTS.—(1) In the case of mining claims where
15 royalty payments are not received by the Secretary on the
16 date that such payments are due, the Secretary shall
17 charge interest on such under payments at the same inter-
18 est rate as is applicable under section 6621(a)(2) of the
19 Internal Revenue Code of 1986. In the case of an
20 underpayment, interest shall be computed and charged
21 only on the amount of the deficiency and not on the total
22 amount.

23 (2) If there is any underreporting of royalty owed on
24 production from a claim for any production month by any
25 person liable for royalty payments under this section, the

1 Secretary may assess a penalty of 10 percent of the
2 amount of that underreporting.

3 (3) If there is a substantial underreporting of royalty
4 owed on production from a claim for any production
5 month by any person responsible for paying the royalty,
6 the Secretary may assess an additional penalty of 10 per-
7 cent of the amount of that underreporting.

8 (4) For the purposes of this subsection, the term
9 “underreporting” means the difference between the roy-
10 alty on the value of the production which should have been
11 reported and the royalty on the value of the production
12 which was reported, if the value which should have been
13 reported is greater than the value which was reported. An
14 underreporting constitutes a “substantial underreporting”
15 if such difference exceeds 10 percent of the royalty on the
16 value of production which should have been reported.

17 (5) The Secretary shall not impose the assessment
18 provided in paragraphs (2) or (3) of this subsection if the
19 person liable for royalty payments under this section cor-
20 rects the underreporting before the date such person re-
21 ceives notice from the Secretary that an underreporting
22 may have occurred, or before 90 days after the date of
23 the enactment of this section, whichever is later.

24 (6) The Secretary shall waive any portion of an as-
25 sessment under paragraph (2) or (3) of this subsection

1 attributable to that portion of the underreporting for
2 which the person responsible for paying the royalty dem-
3 onstrates that—

4 (A) such person had written authorization from
5 the Secretary to report royalty on the value of the
6 production on basis on which it was reported, or

7 (B) such person had substantial authority for
8 reporting royalty on the value of the production on
9 the basis on which it was reported, or

10 (C) such person previously had notified the Sec-
11 retary, in such manner as the Secretary may by rule
12 prescribe, of relevant reasons or facts affecting the
13 royalty treatment of specific production which led to
14 the underreporting, or

15 (D) such person meets any other exception
16 which the Secretary may, by rule, establish.

17 (7) All penalties collected under this subsection shall
18 be deposited in the Treasury.

19 (g) EXPANDED ROYALTY OBLIGATIONS.—Each per-
20 son liable for royalty payments under this section shall
21 be jointly and severally liable for royalty on all locatable
22 minerals, concentrates, or products derived therefrom lost
23 or wasted from a mining claim located or converted under
24 this section when such loss or waste is due to negligence
25 on the part of any person or due to the failure to comply

1 with any rule, regulation, or order issued under this sec-
2 tion.

3 (h) EXCEPTION.—No royalty shall be payable under
4 subsection (a) with respect to minerals processed at a fa-
5 cility by the same person or entity which extracted the
6 minerals if an urban development action grant has been
7 made under section 119 of the Housing and Community
8 Development Act of 1974 with respect to any portion of
9 such facility.

10 (i) EFFECTIVE DATE.—The royalty under this sec-
11 tion shall take effect with respect to the production of
12 locatable minerals after the enactment of this Act, but any
13 royalty payments attributable to production during the
14 first 12 calendar months after the enactment of this Act
15 shall be payable at the expiration of such 12-month period.

16 **SEC. 204. SEVERANCE TAX.**

17 (a) SEVERANCE TAX ON MINERALS.—Chapter 36 of
18 the Internal Revenue Code of 1986 (relating to certain
19 other excise taxes) is amended by adding at the end the
20 following new subchapter:

21 **“Subchapter G—Tax on Severance of**
22 **Locatable Minerals**

23 **“SEC. 4500. TAX ON SEVERANCE OF LOCATABLE MINERALS.**

24 **“(a) IN GENERAL.—**There is hereby imposed a tax
25 on gross income resulting from the severance of any

1 locatable mineral, or mineral concentrates or products,
2 from a mine or other natural deposit located within the
3 United States.

4 “(b) AMOUNT OF TAX.—The amount of the tax im-
5 posed by subsection (a) shall be 8 percent of the gross
6 income derived from the locatable mineral, or from the
7 mineral concentrates or products, severed as described in
8 such subsection.

9 “(c) EXCEPTION IF ROYALTY IMPOSED.—Subsection
10 (a) shall not apply to gross income with respect to which
11 a royalty is imposed by section 203 of the Public Re-
12 sources Deficit Reduction Act of 1995.”.

13 (b) CONFORMING AMENDMENT.—The table of sub-
14 chapters for chapter 36 of such Code (relating to certain
15 other excise taxes) is amended by adding at the end the
16 following new item:

“SUBCHAPTER G. Tax on severance of locatable minerals.”.

17 **SEC. 205. FUND FOR ABANDONED LOCATABLE MINERALS**
18 **MINE RECLAMATION.**

19 (a) ESTABLISHMENT OF FUND.—(1) There is estab-
20 lished on the books of the Treasury of the United States
21 a trust fund to be known as the Abandoned Locatable
22 Minerals Mine Reclamation Fund (hereinafter in this title
23 referred to as the ‘Fund’). The Fund shall be administered
24 by the Secretary acting through the Director of the Office
25 of Surface Mining Reclamation and Enforcement.

1 (2) The Secretary shall notify the Secretary of the
2 Treasury as to what portion of the Fund is not, in the
3 Secretary's judgment, required to meet current withdraw-
4 als. The Secretary of the Treasury shall invest such por-
5 tion of the Fund in public debt securities with maturities
6 suitable for the needs of such Fund and bearing interest
7 at rates determined by the Secretary of the Treasury, tak-
8 ing into consideration current market yields on outstand-
9 ing marketplace obligations of the United States of com-
10 parable maturities. The income on such investments shall
11 be credited to, and form a part of, the Fund.

12 (b) AMOUNTS.—The following amounts shall be cred-
13 ited to the Fund:

14 (1) All moneys received from royalties under
15 section 203.

16 (2) All taxes collected under section 4500 of the
17 Internal Revenue Code of 1986.

18 (3) All donations by persons, corporations, as-
19 sociations, and foundations for the purposes of this
20 section.

21 (c) USE AND OBJECTIVES OF THE FUND.—The Sec-
22 retary is authorized, subject to appropriations, to use
23 moneys in the Fund for the reclamation and restoration
24 of land and water resources adversely affected by past
25 mineral activities on lands the legal and beneficial title to

1 which resides in the United States, land within the exterior boundary of any National Forest System unit.

2 (d) SPECIFIC SITES AND AREAS NOT ELIGIBLE.—
3 The provisions of section 411(d) of the Surface Mining
4 Control and Reclamation Act of 1977 shall apply to expenditures made from the Fund established under this
5 section.

6 (e) FUND EXPENDITURES.—Moneys available from
7 the Fund may be expended for the purposes specified in
8 subsection (d) directly by the Director of the Office of Surface Mining Reclamation and Enforcement. The Director
9 may also make such money available for such purposes
10 to the Director of the Bureau of Land Management, the
11 Chief of the United States Forest Service, the Director
12 of the National Park Service, Director of the United
13 States Fish and Wildlife Service, to any other agency of
14 the United States, to an Indian tribe, or to any public
15 entity that volunteers to develop and implement, and that
16 has the ability to carry out, all or a significant portion
17 of a reclamation program under this title.

18 (f) AUTHORIZATION OF APPROPRIATIONS.—Amounts
19 credited to the Fund are authorized to be appropriated
20 for the purpose of this section without fiscal year limitation.

1 **SEC. 206. LIMITATION ON PATENT ISSUANCE.**

2 (a) **MINING CLAIMS.**—After the date of enactment of
3 this Act, no patent shall be issued by the United States
4 for any mining claim located under the general mining
5 laws unless the Secretary determines that, for the claim
6 concerned—

7 (1) a patent application was filed with the Sec-
8 retary on or before January 27, 1995; and

9 (2) all requirements established under sections
10 2325 and 2326 of the Revised Statutes (30 U.S.C.
11 29 and 30) for vein or lode claims and sections
12 2329, 2330, 2331, and 2333 of the Revised Statutes
13 (30 U.S.C. 35, 36, and 37) for placer claims were
14 fully complied with by that date.

15 If the Secretary makes the determinations referred to in
16 paragraphs (1) and (2) for any mining claim, the holder
17 of the claim shall be entitled to the issuance of a patent
18 in the same manner and degree to which such claim holder
19 would have been entitled to prior to the enactment of this
20 Act, unless and until such determinations are withdrawn
21 or invalidated by the Secretary or by a court of the United
22 States.

23 (b) **MILL SITES.**—After the date of enactment of this
24 Act, no patent shall be issued by the United States for
25 any mill site claim located under the general mining laws

1 unless the Secretary determines that for the mill site con-
2 cerned—

3 (1) a patent application for such land was filed
4 with the Secretary on or before January 27, 1995;
5 and

6 (2) all requirements applicable to such patent
7 application were fully complied with by that date.

8 If the Secretary makes the determinations referred to in
9 paragraphs (1) and (2) for any mill site claim, the holder
10 of the claim shall be entitled to the issuance of a patent
11 in the same manner and degree to which such claim holder
12 would have been entitled to prior to the enactment of this
13 Act, unless and until such determinations are withdrawn
14 or invalidated by the Secretary or by a court of the United
15 States.

16 **SEC. 207. PURCHASING POWER ADJUSTMENT.**

17 The Secretary shall adjust all dollar amounts estab-
18 lished in this title for changes in the purchasing power
19 of the dollar every 10 years following the date of enact-
20 ment of this Act, employing the Consumer Price Index for
21 all-urban consumers published by the Department of
22 Labor as the basis for adjustment, and rounding accord-
23 ing to the adjustment process of conditions of the Federal
24 Civil Penalties Inflation Adjustment Act of 1990 (104
25 Stat. 890).

1 **SEC. 208. SAVINGS CLAUSE.**

2 Nothing in this Act shall be construed as repealing
3 or modifying any Federal law, regulation, order or land
4 use plan, in effect prior to the effective date of this Act,
5 that prohibits or restricts the application of the general
6 mining laws, including such laws that provide for special
7 management criteria for operations under the general
8 mining laws as in effect prior to the effective date of this
9 Act, to the extent such laws provide environmental protec-
10 tion greater than required under this title.

11 **SEC. 209. EFFECTIVE DATE.**

12 Except as otherwise provided in section 206 (relating
13 to limitation on patent issuance) this title shall take effect
14 on the date 1 year after the date of enactment of this
15 Act.

16 **TITLE III—HELIUM**

17 **SEC. 301. AMENDMENT OF HELIUM ACT.**

18 Except as otherwise expressly provided, whenever in
19 this title an amendment or repeal is expressed in terms
20 of an amendment to, or repeal of, a section or other provi-
21 sion, the reference shall be considered to be made to a
22 section or other provision of the Helium Act (50 U.S.C.
23 167 to 167n).

24 **SEC. 302. AUTHORITY OF SECRETARY.**

25 Sections 3, 4, and 5 are amended to read as follows:

1 **“SEC. 3. AUTHORITY OF SECRETARY.**

2 “(a) **EXTRACTION AND DISPOSAL OF HELIUM ON**
3 **FEDERAL LANDS.**—(1) The Secretary may enter into
4 agreements with private parties for the recovery and dis-
5 posal of helium on Federal lands upon such terms and
6 conditions as he deems fair, reasonable and necessary. The
7 Secretary may grant leasehold rights to any such helium.
8 The Secretary may not enter into any agreement by which
9 the Secretary sells such helium other than to a private
10 party with whom the Secretary has an agreement for re-
11 covery and disposal of helium. Such agreements may be
12 subject to such rules and regulations as may be prescribed
13 by the Secretary.

14 “(2) Any agreement under this subsection shall be
15 subject to the existing rights of any affected Federal oil
16 and gas lessee. Each such agreement (and any extension
17 or renewal thereof) shall contain such terms and condi-
18 tions as deemed appropriate by the Secretary.

19 “(3) This subsection shall not in any manner affect
20 or diminish the rights and obligations of the Secretary and
21 private parties under agreements to dispose of helium pro-
22 duced from Federal lands in existence at the enactment
23 of the Public Resources Deficit Reduction Act of 1995 ex-
24 cept to the extent that such agreements are renewed or
25 extended after such date.

1 “(b) STORAGE, TRANSPORTATION AND SALE.—The
2 Secretary is authorized to store, transport, and sell helium
3 only in accordance with this Act.

4 “(c) MONITORING AND REPORTING.—The Secretary
5 is authorized to monitor helium production and helium re-
6 serves in the United States and to periodically prepare re-
7 ports regarding the amounts of helium produced and the
8 quantity of crude helium in storage in the United States.

9 **“SEC. 4. STORAGE AND TRANSPORTATION OF CRUDE HE-**
10 **LIUM.**

11 “(a) STORAGE AND TRANSPORTATION.—The Sec-
12 retary is authorized to store and transport crude helium
13 and to maintain and operate existing crude helium storage
14 at the Bureau of Mines Cliffside Field, together with relat-
15 ed helium transportation and withdrawal facilities.

16 “(b) CESSATION OF PRODUCTION, REFINING, AND
17 MARKETING.—Effective one year after the date of enact-
18 ment of the Public Resources Deficit Reduction Act of
19 1995, the Secretary shall cease producing, refining and
20 marketing refined helium and shall cease carrying out all
21 other activities relating to helium which the Secretary was
22 authorized to carry out under this Act before the date of
23 enactment of the Public Resources Deficit Reduction Act
24 of 1995, except those activities described in subsection (a).

1 “(c) DISPOSAL OF FACILITIES.—(1) Within one year
2 after the date of enactment of the Public Resources Defi-
3 cit Reduction Act of 1995, the Secretary shall dispose of
4 all facilities, equipment, and other real and personal prop-
5 erty, together with all interests therein, held by the United
6 States for the purpose of producing, refining and market-
7 ing refined helium. The disposal of such property shall be
8 in accordance with the provisions of law governing the dis-
9 posal of excess or surplus properties of the United States.

10 “(2) All proceeds accruing to the United States by
11 reason of the sale or other disposal of such property shall
12 be treated as moneys received under this chapter for pur-
13 poses of section 6(f). All costs associated with such sale
14 and disposal (including costs associated with termination
15 of personnel) and with the cessation of activities under
16 subsection (b) shall be paid from amounts available in the
17 helium production fund established under section 6(f).

18 “(3) Paragraph (1) shall not apply to any facilities,
19 equipment, or other real or personal property, or any in-
20 terest therein, necessary for the storage and transpor-
21 tation of crude helium.

22 “(d) EXISTING CONTRACTS.—All contracts which
23 were entered into by any person with the Secretary for
24 the purchase by such person from the Secretary of refined
25 helium and which are in effect on the date of the enact-

1 ment of the Public Resources Deficit Reduction Act of
2 1995 shall remain in force and effect until the date on
3 which the facilities referred to in subsection (c) are dis-
4 posed of. Any costs associated with the termination of
5 such contracts shall be paid from the helium production
6 fund established under section 6(f).

7 **"SEC. 5. FEES FOR STORAGE, TRANSPORTATION AND WITH-**
8 **DRAWAL.**

9 "Whenever the Secretary provides helium storage,
10 withdrawal, or transportation services to any person, the
11 Secretary is authorized and directed to impose fees on
12 such person to reimburse the Secretary for the full costs
13 of providing such storage, transportation, and withdrawal.
14 All such fees received by the Secretary shall be treated
15 as moneys received under this Act for purposes of section
16 6(f).".

17 **SEC. 303. SALE OF CRUDE HELIUM.**

18 Section 6 is amended as follows:

19 (1) Subsection (a) is amended by striking out
20 "from the Secretary" and inserting "from persons
21 who have entered into enforceable contracts to pur-
22 chase an equivalent amount of crude helium from
23 the Secretary".

24 (2) Subsection (b) is amended by inserting
25 "crude" before "helium" and by adding the follow-

1 ing at the end thereof: "Except as may be required
2 by reason of subsection (a), sales of crude helium
3 under this section shall be in amounts as the Sec-
4 retary determines, in consultation with the helium
5 industry, necessary to carry out this subsection with
6 minimum market disruption.

7 (3) Subsection (c) is amended by inserting
8 "crude" before "helium" after the words "Sales of"
9 and by striking "together with interest as provided
10 in subsection" and all that follows down through the
11 period at the end of such subsection and inserting
12 the following:

13 "all funds required to be repaid to the United States as
14 of October 1, 1994 under this section (hereinafter referred
15 to as 'repayable amounts'). The price at which crude he-
16 lium is sold by the Secretary shall not be less than the
17 amount determined by the Secretary as follows:

18 "(1) Divide the outstanding amount of such re-
19 payable amounts by the volume (in mcf) of crude he-
20 lium owned by the United States and stored in the
21 Bureau of Mines Cliffside Field at the time of the
22 sale concerned.

23 "(2) Adjust the amount determined under para-
24 graph (1) by the Consumer Price Index for years be-
25 ginning after December 31, 1994."

1 (4) Subsection (d) is amended to read as fol-
2 lows:

3 “(d) EXTRACTION OF HELIUM FROM DEPOSITS ON
4 FEDERAL LANDS.—All moneys received by the Secretary
5 from the sale or disposition of helium on Federal lands
6 shall be paid to the Treasury and credited against the
7 amounts required to be repaid to the Treasury under sub-
8 section (c) of this section.”.

9 (5) Subsection (e) is repealed.

10 (6) Subsection (f) is amended by inserting
11 “(1)” after “(f)” and by adding the following at the
12 end thereof:

13 “(2) Within 7 days after the commencement of each
14 fiscal year after the disposal of the facilities referred to
15 in section 4(c), all amounts in such fund in excess of
16 \$2,000,000 (or such lesser sum as the Secretary deems
17 necessary to carry out this Act during such fiscal year)
18 shall be paid to the Treasury and credited as provided in
19 paragraph (1). Upon repayment of all amounts referred
20 to in subsection (c), the fund established under this sec-
21 tion shall be terminated and all moneys received under this
22 Act shall be deposited in the Treasury as General Reve-
23 nues.”.

24 **SEC. 304. ELIMINATION OF STOCKPILE.**

25 Section 8 is amended to read as follows:

1 **“SEC. 8. ELIMINATION OF STOCKPILE.**

2 “(a) REVIEW OF RESERVES.—The Secretary shall re-
3 view annually the known helium reserves in the United
4 States and make a determination as to the expected life
5 of the domestic helium reserves (other than federally
6 owned helium stored at the Cliffside Reservoir) at that
7 time.

8 “(b) Sales.—Not later than January 1, 2005, the
9 Secretary shall commence making sales of crude helium
10 from helium reserves owned by the United States in such
11 amounts as may be necessary to dispose of all such helium
12 reserves in excess of 600 million cubic feet (mcf) by Janu-
13 ary 1, 2015. The sales shall be at such times and in such
14 lots as the Secretary determines, in consultation with the
15 helium industry, to be necessary to carry out this sub-
16 section with minimum market disruption. The price for
17 all such sales, as determined by the Secretary in consulta-
18 tion with the helium industry, shall be such as will ensure
19 repayment of the amounts required to be repaid to the
20 Treasury under section 6(c).

21 “(c) DISCOVERY OF ADDITIONAL RESERVES.—The
22 discovery of additional helium reserves shall not affect the
23 duty of the Secretary to make sales of helium as provided
24 in subsection (b), as the case may be.”.

25 **SEC. 305. REPEAL OF AUTHORITY TO BORROW.**

26 Sections 12 and 15 are repealed.

1 **TITLE IV—USE OR DISPOSAL OF**
 2 **FEDERAL NATURAL RESOURCES**

3 **SEC. 401. ANNUAL DOMESTIC LIVESTOCK GRAZING FEE.**

4 Section 401 of the Federal Land Policy and Manage-
 5 ment Act of 1976 (43 U.S.C. 1751) is hereby amended
 6 by adding at the end the following new subsections:

7 “(c)(1) Notwithstanding any other provision of law,
 8 the Secretary of Agriculture, with respect to National For-
 9 est lands in the 16 contiguous Western States (except Na-
 10 tional Grasslands) administered by the United States For-
 11 est Service where domestic livestock grazing is permitted
 12 under applicable law, and the Secretary of the Interior
 13 with respect to public domain lands administered by the
 14 Bureau of Land Management where domestic livestock
 15 grazing is permitted under applicable law, shall establish
 16 beginning with the grazing season which commences on
 17 March 1, 1996, an annual domestic livestock grazing fee
 18 equal to fair market value: *Provided*, That the fee charged
 19 for any given year shall not increase nor decrease by more
 20 than 33.3 percent from the previous year’s grazing fee.

21 “(2)(A) For purposes of this subsection, the term
 22 ‘fair market value’ is defined as follows:

$$\text{Fair Market Value} = \frac{\text{Appraised Base Value} \times \text{Forage Value Index}}{100}$$

23 “(B) For the purposes of subparagraph (A)—

1 “(i) the term ‘Forage Value Index’ means the
2 Forage Value Index (FVI) computed annually by the
3 Economic Research Service, United States Depart-
4 ment of Agriculture, and set with the 1996 FVI
5 equal to 100; and

6 “(ii) the term ‘Appraised Base Value’ means
7 the 1983 Appraisal Value conclusions for mature
8 cattle and horses (expressed in dollars per head or
9 per month), as determined in the 1986 report pre-
10 pared jointly by the Secretary of Agriculture and the
11 Secretary of the Interior entitled ‘Grazing Fee Re-
12 view and Evaluation’, dated February 1986, on a
13 westwide basis using the lowest appraised value of
14 the pricing areas adjusted for advanced payment
15 and indexed to 1996.

16 “(3) Executive Order No. 12548, dated February 14,
17 1986, shall not apply to grazing fees established pursuant
18 to this Act.

19 “(d) The grazing advisory boards established pursu-
20 ant to Secretarial action, notice of which was published
21 in the Federal Register on May 14, 1986 (51 Fed. Reg.
22 17874), are hereby abolished, and the advisory functions
23 exercised by such boards, shall, after the date of enact-
24 ment of this sentence, be exercised only by the appropriate
25 councils established under this section.

1 “(e) Funds appropriated pursuant to section 5 of the
2 Public Rangelands Improvement Act of 1978 (43 U.S.C.
3 1904) or any other provision of law related to disposition
4 of the Federal share of receipts from fees for grazing on
5 public domain lands or National Forest lands in the 16
6 contiguous western States shall be used for restoration
7 and enhancement of fish and wildlife habitat, for restora-
8 tion and improved management of riparian areas, and for
9 implementation and enforcement of applicable land man-
10 agement plans, allotment plans, and regulations regarding
11 the use of such lands for domestic livestock grazing. Such
12 funds shall be distributed as the Secretary concerned
13 deems advisable after consultation and coordination with
14 the advisory councils established pursuant to section 309
15 of this Act and other interested parties.”.

16 **SEC. 402. ELIMINATION OF BELOW-COST TIMBER SALES OF**
17 **TIMBER FROM NATIONAL FOREST SYSTEM**
18 **LANDS.**

19 (a) IN GENERAL.—The National Forest Management
20 Act of 1976 is amended by inserting after section 14 (16
21 U.S.C. 472a) the following new section:

22 **“SEC. 14A. ELIMINATION OF BELOW-COST TIMBER SALES**
23 **FROM NATIONAL FOREST SYSTEM LANDS.**

24 “(a) REQUIREMENT THAT SALE REVENUES EXCEED
25 COSTS.—On and after October 1, 2001, in appraising tim-

1 ber and setting a minimum bid for trees, portions of trees,
2 or forest products located on National Forest System
3 lands proposed for sale under section 14 or other provision
4 of law, the Secretary of Agriculture shall ensure that the
5 estimated cash returns to the United States Treasury
6 from each sale exceed the estimated costs to be incurred
7 by the Federal Government in preparation or as a result
8 of that sale.

9 “(b) COSTS TO BE CONSIDERED.—For purposes of
10 estimating under this section the costs to be incurred by
11 the Federal Government from each timber sale, the Sec-
12 retary shall assign to the sale the following costs:

13 “(1) The actual appropriated expenses for sale
14 preparation and harvest administration incurred or
15 to be incurred by the Federal Government from the
16 sale and the payments to counties to be made as a
17 result of the sale.

18 “(2) A portion of the annual timber resource
19 planning costs, silvicultural examination costs, other
20 resource support costs, road design and construction
21 costs, road maintenance costs, transportation plan-
22 ning costs, appropriated reforestation costs, timber
23 stand improvement costs, forest genetics costs, gen-
24 eral administrative costs (including administrative
25 costs of the national and regional offices of the For-

1 est Service), and facilities construction costs of the
2 Federal Government directly or indirectly related to
3 the timber harvest program conducted on National
4 Forest System lands.

5 “(c) METHOD OF ALLOCATING COSTS.—The Sec-
6 retary shall allocate the costs referred to in subsection
7 (b)(2) to each unit of the National Forest System, and
8 each proposed timber sale in such unit, on the basis of
9 harvest volume.

10 “(d) TRANSITIONAL REQUIREMENTS.—To ensure the
11 elimination of all below-cost timber sales by the date speci-
12 fied in subsection (a), the Secretary shall progressively re-
13 duce the number and size of below-cost timber sales on
14 National Forest System lands as follows:

15 “(1) In fiscal years 1996, 1997, and 1998, the
16 quantity of timber sold in below-cost timber sales on
17 National Forest System lands shall not exceed 75
18 percent of the quantity of timber sold in such sales
19 in the preceding fiscal year.

20 “(2) In fiscal year 1999, the quantity of timber
21 sold in below-cost timber sales on National Forest
22 System lands shall not exceed 65 percent of the
23 quantity of timber sold in such sales in fiscal year
24 1998.

1 “(3) In fiscal year 2000, the quantity of timber
2 sold in below-cost timber sales on National Forest
3 System lands shall not exceed 50 percent of the
4 quantity of timber sold in such sales in the fiscal
5 year 1999.

6 “(e) BELOW-COST TIMBER SALE.—For purposes of
7 this section, the term ‘below-cost timber sale’ means a sale
8 of timber in which the costs to be incurred by the Federal
9 Government exceed the cash returns to the United States
10 Treasury.”.

11 (b) FINDINGS.—Section 2 of the Forest and Range-
12 land Renewable Resources Planning Act of 1974 (16
13 U.S.C. 1600) is amended—

14 (1) by striking “and” at the end of paragraph
15 (6);

16 (2) by striking the period at the end of para-
17 graph (7) and inserting “; and”; and

18 (3) by adding at the end the following new
19 paragraph:

20 “(8) the practice of selling timber from Na-
21 tional Forest System lands for less than the cost to
22 the Federal Government of growing the timber and
23 preparing the timber for sale is not in the best inter-
24 ests of the United States, and such below-cost sales
25 should be eliminated in an orderly manner to achieve

1 a more economically and environmentally sound tim-
2 ber program for the National Forest System.”.

3 **SEC. 403. TIMBERLAND SUITABILITY.**

4 Section 6(k) of the Forest and Rangeland Renewable
5 Resources Planning Act of 1974 (16 U.S.C. 1604(k)) is
6 amended to read as follows:

7 “(k) DETERMINATION OF SUITABILITY OF LANDS
8 FOR TIMBER PRODUCTION.—

9 “(1) DETERMINATION REQUIRED.—In revising
10 land management plans developed pursuant to this
11 section, the Secretary shall identify lands within the
12 management area that are not suited for timber pro-
13 duction based on physical, economic, or other rel-
14 evant factors. The Secretary shall review the identi-
15 fications made under this paragraph during each re-
16 vision of the forest plan.

17 “(2) EVIDENCE OF ECONOMIC
18 UNSUITABILITY.—The Secretary shall identify lands
19 as economically unsuitable for timber production
20 under paragraph (1) if—

21 “(A) the expected cash returns to the
22 United States Treasury that would result from
23 the sale of standing timber on the lands do not
24 exceed the expected costs that would be in-

1 curred by the Federal Government in prepara-
2 tion or as a result of such sales; or

3 “(B) the expected cash returns to the
4 United States Treasury that would result from
5 the sale of subsequent timber stands on the
6 lands do not exceed the expected costs that
7 would be incurred by the Federal Government
8 in preparation or as a result of such sales.

9 “(3) COSTS TO BE CONSIDERED.—For purposes
10 of estimating under paragraph (2) the costs to be in-
11 curred by the Federal Government from timber sales
12 conducted on the lands being reviewed, the Secretary
13 shall assign to sales on such lands the following
14 costs:

15 “(A) The appropriated expenses for sale
16 preparation and harvest administration that
17 would be incurred by the Federal Government
18 from such sales and the payments to counties
19 that would be made as a result of such sales.

20 “(B) A portion of the annual timber re-
21 source planning costs, silvicultural examination
22 costs, other resource support costs, road design
23 and construction costs, road maintenance costs,
24 transportation planning costs, appropriated re-
25 forestation costs, timber stand improvement

1 costs, forest genetics costs, general administra-
2 tive costs (including administrative costs of the
3 national and regional offices of the Forest Serv-
4 ice), and facilities construction costs of the Fed-
5 eral Government directly or indirectly related to
6 the timber harvest program conducted on Na-
7 tional Forest System lands.

8 “(4) METHOD OF ALLOCATING COSTS.—The
9 Secretary shall allocate the costs referred to in para-
10 graph (3)(B) to each unit of the National Forest
11 System on the basis of harvest volume.

12 “(5) PROHIBITION ON TIMBER HARVESTS ON
13 UNSUITABLE LANDS.—In the case of lands identified
14 under paragraph (1) as unsuitable for timber pro-
15 duction, no timber harvesting shall occur on such
16 lands for a period of 10 years or the life of the plan,
17 whichever is greater.

18 “(6) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) The term ‘standing timber’ means an
21 existing stand of timber that has not been har-
22 vested.

23 “(B) The term ‘subsequent timber stand’
24 means a regenerated stand of timber produced

1 on land from which standing timber has been
2 harvested.”.

3 **SEC. 404. COST OF WATER USED TO PRODUCE SURPLUS**
4 **CROPS.**

5 Section 9 of the Reclamation Project Act of 1939 (43
6 U.S.C. 485h) is amended by inserting at the end thereof
7 the following new subsection:

8 “(g)(1) Any contract entered into under authority of
9 this section or any other provision of Federal reclamation
10 law shall require that the organization agree by contract
11 with the Secretary to pay full cost for the delivery of water
12 used in the production of any crop of an agricultural com-
13 modity for which an acreage reduction program is in effect
14 under the provisions of the Agricultural Act of 1949 (7
15 U.S.C. 1421 et seq.).

16 “(2) The Secretary shall announce the amount of the
17 full cost payment for the succeeding year on or before July
18 1 of each year.

19 “(3) As used in this subsection, the term ‘full cost’
20 shall have the meaning given such term in paragraph (3)
21 of section 202 of the Reclamation Reform Act of 1982
22 (43 U.S.C. 390bb(3)).

23 “(4) Paragraph (1) shall apply to any contract en-
24 tered into or amended after the date of enactment of this
25 subsection.”.

1 **SEC. 405. REDUCTION IN MAXIMUM AMOUNT OF PAYMENTS**
2 **UNDER AGRICULTURAL ASSISTANCE PRO-**
3 **GRAMS TO REFLECT RECEIPT OF FEDERAL**
4 **IRRIGATION WATER.**

5 (a) PRICE SUPPORT PROGRAMS.—Title X of the
6 Food Security Act of 1985 is amended—

7 (1) by redesignating sections 1001D (7 U.S.C.
8 1308-4) and 1001E (7 U.S.C. 1308-5) as sections
9 1001E and 1001F, respectively; and

10 (2) by inserting after section 1001C (7 U.S.C.
11 1308-3) the following new section:

12 **“SEC. 1001D. REDUCTION OF PAYMENT LIMITATIONS TO**
13 **REFLECT RECEIPT OF FEDERAL IRRIGATION**
14 **WATER.**

15 “(a) REDUCTION OF PAYMENT LIMITATIONS RE-
16 QUIRED.—If a person subject to section 1001 receives
17 Federal irrigation water for agricultural purposes from the
18 operation of a Federal reclamation project, the payment
19 limitations specified in paragraphs (1) and (2) of such sec-
20 tion and applicable to such person shall be reduced for
21 the year in which such person receives irrigation water.
22 The amount of the reduction shall be equal to the total
23 value during that year of the subsidy portion of the con-
24 tract with such person for the delivery of the irrigation
25 water.

1 “(b) DETERMINATION OF SUBSIDY PORTION OF
2 WATER CONTRACT.—The subsidy portion of an irrigation
3 water delivery contract is equal to the amount by which
4 full cost for the delivery of the irrigation water exceeds
5 the actual contract price for the delivery of the water.

6 “(c) DEFINITIONS.—For purposes of this section, the
7 terms ‘contract’, ‘full cost’, ‘irrigation water’, and ‘project’
8 have the meanings given such terms in section 202 of the
9 Reclamation Reform Act of 1982 (43 U.S.C. 390bb).”.

10 (b) NONINSURED CROP DISASTER ASSISTANCE.—
11 Subsection (h) of section 519 of the Federal Crop Insur-
12 ance Act (7 U.S.C. 1519), as added by section 112 of the
13 Federal Crop Insurance Reform Act of 1994 (title I of
14 Public Law 103-354; 108 Stat. 3202), is amended—

15 (1) by redesignating paragraph (5) as para-
16 graph (6); and

17 (2) by inserting after paragraph (4) the follow-
18 ing new paragraph:

19 “(5) EFFECT OF RECEIPT OF IRRIGATION
20 WATER.—

21 “(A) REDUCTION OF PAYMENT LIMITA-
22 TION.—If a person who receives payments
23 under this title also receives, during the same
24 year, Federal irrigation water for agricultural
25 purposes from the operation of a Federal rec-

1 lamation project, the payment limitation speci-
2 fied in paragraph (2) for such person shall be
3 reduced for that year. The amount of the re-
4 duction shall be equal to the total value during
5 that year of the subsidy portion of the contract
6 with such person for the delivery of the irriga-
7 tion water.

8 “(B) DETERMINATION OF SUBSIDY POR-
9 TION OF WATER CONTRACT.—The subsidy por-
10 tion of an irrigation water delivery contract is
11 equal to the amount by which full cost for the
12 delivery of the irrigation water exceeds the ac-
13 tual contract price for the delivery of the water.

14 “(C) DEFINITIONS.—For purposes of this
15 paragraph, the terms ‘contract’, ‘full cost’, ‘irri-
16 gation water’, and ‘project’ have the meanings
17 given such terms in section 202 of the Reclama-
18 tion Reform Act of 1982 (43 U.S.C. 390bb).”.

19 (c) CONFORMING AMENDMENTS.—Section 1001 of
20 the Food Security Act of 1985 (7 U.S.C. 1308) is amend-
21 ed by striking “through 1001C” in paragraphs (1)(A),
22 (1)(B), (2)(A), and (5)(A) and inserting “through
23 1001D”.

1 **SEC. 406. OFF BUDGET EXPENDITURES.**

2 (a) **KNUTSON-VANDENBERG FUND.**—Section 3 of
3 the Act of June 9, 1930 (commonly known as the
4 Knutson-Vandenberg Act; 16 U.S.C. 576b), is amended
5 by striking “and shall constitute a special fund, which is
6 hereby appropriated and made available until expended,”
7 in the second sentence and inserting “and are authorized
8 to be appropriated”.

9 (b) **DEPOSITS FROM BRUSH DISPOSAL.**—The para-
10 graph relating to deposits from brush disposal under the
11 heading “FOREST SERVICE” in the Act of August 11, 1916
12 (39 Stat. 462; 16 U.S.C. 490), is amended by striking
13 “and constitute a special fund, which is hereby appro-
14 priated and shall remain available until expended” and in-
15 serting “and are authorized to be appropriated for the
16 purpose of disposing of such brush and other debris”.

17 (c) **NATIONAL FORESTS ROADS AND TRAILS.**—Sec-
18 tion 7 of Public Law 88-657 (16 U.S.C. 538) is amended
19 by striking “may be placed in a fund to be available” and
20 inserting “are authorized to be appropriated”.

21 (d) **TIMBER SALVAGE SALE FUND.**—Section 303(d)
22 of Public Law 96-451 (16 U.S.C. 1606a) is amended by
23 inserting “, subject to annual appropriations,” after “The
24 Secretary of Agriculture”.

1 **SEC. 407. DEPOSIT OF TAYLOR GRAZING ACT RECEIPTS IN**
2 **TREASURY.**

3 Section 10 of the Taylor Grazing Act (43 U.S.C.
4 315i) is amended by striking all after “miscellaneous re-
5 ceipts” and inserting in lieu thereof a period.

6 **SEC. 408. REPEAL OF LIVESTOCK FEED ASSISTANCE PRO-**
7 **GRAM.**

8 (a) **REPEAL.**—The Emergency Livestock Feed As-
9 sistance Act of 1988 (title VI of the Agricultural Act of
10 1949; 7 U.S.C. 1471–1471j) is repealed.

11 (b) **EFFECT OF REPEAL ON APPROVED APPLICA-**
12 **TIONS FOR ASSISTANCE.**—The repeal of the Emergency
13 Livestock Feed Assistance Act of 1988 by subsection (a)
14 shall not affect the provision of payments or benefits
15 under such Act pursuant to a completed application ap-
16 proved by the Secretary of Agriculture before the date of
17 the enactment of this Act, and the Emergency Livestock
18 Feed Assistance Act of 1988, as in effect on the day before
19 the date of the enactment of this Act, shall continue to
20 apply to the provision of payments or benefits pursuant
21 to such an application.

22 **SEC. 409. COMMUNICATION PERMITS.**

23 (a) **IN GENERAL.**—No permit, lease, or authorization
24 for the use of any area of the public lands or National
25 Forests for communication uses, including but not limited
26 to radio and television broadcast, mobile radio, cellular

1 telephone, or microwave relay facilities, shall remain in
2 force and effect after October 1, 1995, unless, by such
3 date, and by October 1 of each year thereafter, the holder
4 of such permit, lease, or authorization pays to the Sec-
5 retary of the Interior or the Secretary of Agriculture, as
6 appropriate, an amount equal to the fair market value,
7 as determined by such Secretary, of the right to use and
8 occupy such area for such communication uses.

9 (b) DEFINITION.—For the purposes of this section,
10 the term “public lands” shall have the same meaning as
11 defined in section 103(e) of the Federal Land Policy Man-
12 agement Act of 1976 (43 U.S.C. 1702(e)).

13 **SEC. 410. OIL AND GAS RENTALS.**

14 The Mineral Leasing Act is amended as follows:

15 (1) In section 14 by striking out “a rental of
16 \$1 per acre” and inserting “a rental established by
17 the Secretary of the Interior” and by adding the fol-
18 lowing at the end thereof: “The Secretary shall es-
19 tablish fair market value rental fees under this sec-
20 tion based upon the rental fees which would be
21 charged in arm’s length transactions for comparable
22 leases of oil and gas resources on non-Federal land.”

23 (2) In section 17(d) by striking out “rental of
24 not less than \$1.50 per acre per year for the first
25 through fifth years of the lease and not less than \$2

1 per acre per year for each year thereafter” and in-
2 sserting “rental established by the Secretary of the
3 Interior” and by adding the following at the end
4 thereof: “The Secretary shall establish fair market
5 value rental fees under this section based upon the
6 rental fees which would be charged in arms length
7 transactions for comparable leases of oil and gas re-
8 sources on non-Federal land.”

9 (3) In section 21(a) by striking out “rental,
10 payable at the beginning of each year, at the rate of
11 50 cents per acre per annum, for the lands included
12 in the lease,” and inserting “rental established by
13 the Secretary of the Interior” and by adding the fol-
14 lowing at the end thereof: “The Secretary shall es-
15 tablish fair market value rental fees under this sec-
16 tion based upon the rental fees which would be
17 charged in arms length transactions for comparable
18 leases on non-Federal land.”

19 (4) In section 31(e)(2) by striking “rate of not
20 less than \$10 per acre per year, or the inclusion in
21 a reinstated lease issued pursuant to the provisions
22 of section 17(c) of this Act of a requirement that fu-
23 ture rentals shall be at a rate not less than \$5 per
24 acre per year” and inserting “fair market value rate
25 (but not less than \$10 per acre per year)”.

1 (5) In section 31(f)(3) by striking out “of not
2 less than \$5 per acre per year” and inserting “es-
3 tablished by the Secretary at fair market value
4 based upon the rental fees which would be charged
5 in arms length transactions for comparable leases on
6 non-Federal land.”

7 **TITLE V—NATIONAL PARK**
8 **CONCESSIONS**

9 **SEC. 501. FINDINGS AND POLICY.**

10 (a) FINDINGS.—In furtherance of the Act of August
11 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–
12 4), which directs the Secretary of the Interior to admin-
13 ister areas of the National Park System in accordance
14 with the fundamental purpose of conserving their scenery,
15 wildlife, natural and historic objects, and providing for
16 their enjoyment in a manner that will leave them
17 unimpaired for the enjoyment of future generations, the
18 Congress finds that the preservation and conservation of
19 park resources and values requires that such public ac-
20 commodations, facilities, and services within such areas as
21 the Secretary, in accordance with this Act, determines nec-
22 essary and appropriate—

23 (1) should be provided only under carefully con-
24 trolled safeguards against unregulated and indis-

1 criminate use so that visitation will not unduly im-
2 pair park resources and values; and

3 (2) should be limited to locations and designs
4 consistent to the highest practicable degree with the
5 preservation and conservation of park resources and
6 values.

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

8 (1) development on Federal lands within a park
9 shall be limited to those facilities that the Secretary
10 determines are necessary and appropriate for public
11 use and enjoyment of the park in which such facili-
12 ties and services are located;

13 (2) development within a park should be con-
14 sistent to the highest practicable degree with the
15 preservation and conservation of the park's re-
16 sources and values;

17 (3) park facilities and services the Secretary de-
18 termines suitable to be provided by parties other
19 than the Secretary should be provided by private
20 persons, corporations, or other entities, except when
21 no private interest is qualified and willing to provide
22 such facilities and services;

23 (4) if the Secretary determines that develop-
24 ment should occur within a park, such development
25 shall be designed, located, and operated in a manner

1 that is consistent with the purposes for which such
2 park was established;

3 (5) the right to provide such services and to de-
4 velop or utilize facilities should be awarded to the
5 person, corporation, or entity submitting the best
6 proposal through a competitive selection process;
7 and

8 (6) such facilities or services should be provided
9 to the public at reasonable rates.

10 **SEC. 502. DEFINITIONS.**

11 As used in this title:

12 (1) The term "concessioner" means a person,
13 corporation, or other entity to whom a concession
14 contract has been awarded.

15 (2) the term "concession contract" means a
16 contract, or permit, (but not an authorization issued
17 pursuant to section 504(b) of this title) to provide
18 facilities or services, or both, at a park.

19 (3) The term "facilities" means improvements
20 to real property within parks used to provide accom-
21 modations, facilities, or services to park visitors.

22 (4) The term "franchise fee" means the fee re-
23 quired by a concession contract to be paid to the
24 United States in consideration for the privileges af-
25 forded by such contract to the holder thereof, which

1 may be expressed as a percentage of revenues de-
2 rived by the contract holder from activities author-
3 ized by the contract, and which shall be in addition
4 to fees required to be paid to the United States for
5 the use of federally-owned buildings or other facili-
6 ties.

7 (5) The term "fund" means the Park Improve-
8 ment Fund established under section 8(b).

9 (6) The term "park" means a unit of the Na-
10 tional Park System.

11 (7) The term "proposal" means the complete
12 proposal for a concession contract offered by a po-
13 tential or existing concessioner in response to the
14 minimum requirements for the contract established
15 by the Secretary.

16 (8) The term "Secretary" means the Secretary
17 of the Interior.

18 **SEC. 503. REPEAL OF CONCESSIONS POLICY ACT OF 1965.**

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

1 shall apply to any such contract except to the extent such
2 provisions are inconsistent with the express terms and
3 conditions of the contract. Nothing in this title that is in-
4 consistent with a prospectus issued before January 27,
5 1995, shall apply to the contract with respect to which
6 such prospectus was issued. The Secretary is authorized
7 to award a concession contract prior to promulgation of
8 new regulations to implement this title if the Secretary
9 determines that protection of public health and safety war-
10 rant such action, provided that such contract is consistent
11 with this title.

12 (b) TRANSITION.—Nothing in this Act that is incon-
13 sistent with a prospectus issued before April 1, 1994, shall
14 apply to the contract with respect to which such prospec-
15 tus was issued. The Secretary is authorized to award a
16 concession contract prior to promulgation of new regula-
17 tions to implement this Act if the Secretary determines
18 that protection of public health and safety warrant such
19 action, provided that such contract is consistent with this
20 Act.

21 (c) CONFORMING AMENDMENT.—The fourth sen-
22 tence of section 3 of this Act of August 25, 1916 (16
23 U.S.C. 3; 39 Stat. 535) is amended by striking all through
24 “no natural” and inserting in lieu thereof, “No natural”.

1 **SEC. 504. CONCESSION CONTRACTS AND OTHER AUTHOR-**
2 **IZATIONS.**

3 (a) CONCESSIONS.—(1) Subject to the findings and
4 policy stated in section 501 of this title and the provisions
5 of this section, the Secretary may award concession con-
6 tracts that authorize private persons, corporations, or
7 other entities to provide services to park visitors and to
8 utilize facilities if the Secretary determines that such
9 award is the appropriate means for such authorization.

10 (2) Concession contracts shall be awarded only to the
11 extent that the Secretary finds that the services to be pro-
12 vided and the facilities to be utilized pursuant to each such
13 contract are necessary and appropriate for the accommo-
14 dation of visitors to a park.

15 (3) The provision of services and the utilization of
16 facilities pursuant to concession contracts shall be consist-
17 ent with all applicable requirements of law, including laws
18 relating generally to the administration and management
19 of units of the National Park Service, and with the general
20 management plan, concessions plan, and other relevant
21 plans developed by the Secretary for the relevant park.

22 (b) OTHER AUTHORIZATIONS.—(1) To the extent
23 specified in this subsection, the Secretary, upon request,
24 may authorize a private person, corporation, or other en-
25 tity to provide services to park visitors otherwise than by
26 award of a concession contract.

1 (2)(A) The authority of this subsection may be used
2 only to authorize provision of services to park visitors that
3 the Secretary determines have minimal impact on park re-
4 sources and values and will be consistent with the pur-
5 poses for which the park was established and with all ap-
6 plicable management plans for such park.

7 (B) The Secretary shall require payment of a reason-
8 able fee for issuance of an authorization under this sub-
9 section. The fees shall remain available without further
10 appropriation to be used to recover the costs of managing
11 and administering this subsection.

12 (C) The Secretary shall require that the provision of
13 services under such an authorization be accomplished in
14 a manner consistent to the highest practicable degree with
15 the preservation and conservation of park resources and
16 values.

17 (D) The Secretary shall take appropriate steps to
18 limit the liability of the United States arising from the
19 provision of services under such an authorization.

20 (E) The Secretary shall have no authority under this
21 subsection to issue more authorizations than are consist-
22 ent with the preservation and proper management of park
23 resources and values, and shall establish such other condi-
24 tions for issuance of such an authorization as the Sec-
25 retary determines appropriate for protection of visitors,

1 provision of adequate and appropriate visitor services, and
2 protection and proper management of the resources and
3 values of the National Park System.

4 (3) Any authorization issued under this subsection
5 shall be limited to commercial operations with annual
6 gross revenues of not more than \$25,000 resulting from
7 the services provided within the park pursuant to such au-
8 thorization.

9 (4) The term of any authorization issued under this
10 subsection shall not exceed 2 years.

11 (5) An entity seeking or obtaining an authorization
12 pursuant to this subsection shall not be precluded from
13 also submitting proposals for concession contracts.

14 **SEC. 505. COMPETITIVE SELECTION PROCESS.**

15 (a) IN GENERAL.—(1) Except as provided in sub-
16 section (b), and consistent with the provisions of sub-
17 section (g), any concession contract entered into pursuant
18 to this title shall be awarded to the person submitting the
19 best proposal, as determined by the Secretary through the
20 competitive selection process specified in this section.

21 (2) Within 180 days after the date of enactment of
22 this title, the Secretary shall promulgate appropriate regu-
23 lations establishing a process to implement this section.

24 (3) The regulations referred to in paragraph (2) shall
25 include provisions for establishing a method or procedure

1 for the resolution of disputes between the Secretary and
2 a concessioner in those instances where the Secretary has
3 been unable to meet conditions or requirements or provide
4 such services, if any, as set forth in a prospectus pursuant
5 to sections 505(c)(2) (D) and (E).

6 (b) TEMPORARY CONTRACT.—Notwithstanding the
7 provisions of subsection (a), the Secretary may award on
8 a noncompetitive basis a temporary concession contract if
9 the Secretary determines such an award to be necessary
10 in order to avoid interruption of services to the public at
11 a park. Prior to making such a determination, the Sec-
12 retary shall take all reasonable and appropriate steps to
13 consider alternative actions to avoid such interruptions.

14 (c) PROSPECTUS.—(1) Prior to soliciting proposals
15 for a concession contract at a park, the Secretary shall
16 prepare a prospectus soliciting proposals, shall publish a
17 notice of its availability at least once in such local or na-
18 tional newspapers or trade publications as the Secretary
19 determines appropriate, and shall make such prospectus
20 available upon request to all interested parties.

21 (2) The prospectus shall include, but need not be lim-
22 ited to, the following information:

23 (A) The minimum requirements for such con-
24 tract, as set forth in subsection (d).

1 (B) The terms and conditions of the existing
2 concession contract awarded for such park, if any,
3 including all fees and other forms of compensation
4 provided to the United States by the concessioner.

5 (C) Other authorized facilities or services which
6 may be included in a proposal.

7 (D) Facilities and services to be provided by the
8 Secretary to the concessioner, if any, including but
9 not limited to, public access, utilities, and buildings.

10 (E) Minimum public services to be offered with-
11 in a park by the Secretary, including but not limited
12 to, interpretive programs, campsites, and visitor cen-
13 ters.

14 (F) Such other information related to the con-
15 cessions operation as is provided by the Secretary
16 pursuant to a concession contract or is otherwise
17 available to the Secretary, as the Secretary deter-
18 mines is necessary to allow for the submission of
19 competitive proposals.

20 (d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No
21 proposal shall be considered which fails to meet the mini-
22 mum requirements included in the prospectus. Such mini-
23 mum requirements shall include payment to the United
24 States of a franchise fee and shall also include, but need
25 not be limited to, the following:

1 (A) The minimum acceptable franchise fee, fees
2 for use of any Federal buildings or other facilities,
3 and any other fees to be paid to the United States.

4 (B) The duration of the contract.

5 (C) Any facilities, services, or capital invest-
6 ments required to be provided by the concessioner.

7 (D) Measures that will be required in order to
8 ensure the protection and preservation of park re-
9 sources and values.

10 (2) The Secretary may reject any proposal, notwith-
11 standing the amount of franchise fee offered, if the Sec-
12 retary determines that the person, corporation, or entity
13 making such proposal is not qualified, is likely to provide
14 unsatisfactory service, or that the proposal is not suffi-
15 ciently responsive to the objectives of protecting and pre-
16 serving park resources and of providing necessary and ap-
17 propriate facilities or services to the public at reasonable
18 rates.

19 (3) If all proposals submitted to the Secretary either
20 fail to meet the minimum requirements or are rejected by
21 the Secretary, the Secretary shall establish new minimum
22 contract requirements and re-initiate the competitive se-
23 lection process pursuant to this section.

1 (e) SELECTION OF BEST PROPOSAL.—(1) In select-
2 ing the best proposal, the Secretary shall consider the fol-
3 lowing principal factors:

4 (A) The responsiveness of the proposal to the
5 objectives of protecting and preserving park re-
6 sources and of providing necessary and appropriate
7 facilities and services to the public at reasonable
8 rates.

9 (B) The experience, expertise, and related back-
10 ground of the person, corporation, or other entity
11 submitting the proposal, including whether the per-
12 son, corporation, or entity submitted the proposal
13 has established a record of outstanding performance
14 in providing the same or similar facilities or services.

15 (C) The financial capability of the person, cor-
16 poration, or entity submitting the proposal.

17 (D) The proposed franchise fee: *Provided*, That
18 consideration of revenue to the United States shall
19 be subordinate to the objectives of protecting and
20 preserving park resources including cultural re-
21 sources, and of providing necessary and appropriate
22 facilities or services to the public at reasonable rates.

23 (2) The Secretary may also consider such secondary
24 factors as the Secretary deems appropriate.

1 (3) In developing regulations to implement this title,
2 the Secretary shall consider the extent to which plans for
3 employment of Indians (including Native Alaskans) and
4 involvement of businesses owned by Indians, Indian tribes,
5 or Native Alaskans in the operation of concession con-
6 tracts should be identified as a factor in the selection of
7 a best offer under this section.

8 (f) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
9 retary shall submit any proposed concession contract with
10 anticipated annual gross receipts in excess of \$1,000,000
11 (indexed to 1993 constant dollars) or a duration in excess
12 of ten years to the Committee on Energy and Natural Re-
13 sources of the United States Senate and the Committee
14 on Resources of the United States House of Representa-
15 tives.

16 (2) The Secretary shall not award any such proposed
17 contract until at least 60 days subsequent to the submis-
18 sion thereof to both Committees.

19 (g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)
20 Except as provided in paragraph (2), the Secretary shall
21 not grant a preferential right to a concessioner to renew
22 a concession contract executed pursuant to this title.

23 (2)(A) The Secretary shall grant a preferential right
24 of renewal with respect to a concession contract covered

1 by subsection (h) and (i) subject to the requirements of
2 subsection (h) or (i), as appropriate.

3 (B) As used in this paragraph and subsections (h)
4 and (i), the term “preferential right of renewal” means
5 that the Secretary shall allow a concessioner satisfying the
6 requirements of this paragraph the opportunity to match
7 the terms and conditions of any competing proposal which
8 the Secretary determines to be the best offer.

9 (C) A concessioner who exercises a preferential right
10 of renewal in accordance with the requirements of this
11 paragraph shall be entitled to award of the new concession
12 contract with respect to which such right is exercised.

13 (h) OUTFITTING AND GUIDE CONTRACTS.—(1) Ex-
14 cept as provided in subsection (i), the provisions of sub-
15 section (g)(2) shall apply only—

16 (A) to a concession contract—

17 (i) which solely authorizes a concessioner
18 to provide outfitting, guide, river running, or
19 other substantially similar services within a
20 park; and

21 (ii) which does not grant such concessioner
22 any interest in any structure, fixture, or im-
23 provement pursuant to section 11 of this Act;
24 and

1 (B) where the concessioner has been awarded
2 an annual rating of "Excellent" in at least 50 per-
3 cent of the annual ratings during the term of the
4 contract;

5 (C) where the concessioner has not received any
6 annual unsatisfactory ratings during the term of the
7 contract; and

8 (D) where the Secretary determines that the
9 concessioner has submitted a responsive proposal for
10 a new contract which satisfies the minimum require-
11 ments established by the Secretary pursuant to sec-
12 tion 6 of this Act.

13 (2) In granting a preferential right of renewal pursu-
14 ant to subsection (g)(2), the Secretary shall not require
15 concessioner to match any portion of a proposed franchise
16 fee which exceeds by more than 10 percent the minimum
17 fee established by the Secretary in the prospectus for such
18 contract.

19 (3)(A) With respect to a concession contract (or ex-
20 tension thereof) covered by this subsection, which is in ef-
21 fect on the date of enactment of this Act, the provisions
22 of this paragraph shall apply if the holder of such con-
23 tract, under the laws and policies in effect on the day be-
24 fore the date of enactment of this Act, would have been

1 entitled to a preferential right of renewal upon the expira-
2 tion of such contract.

3 (B) Upon the expiration of a concession contract (or
4 extension thereof) covered by this paragraph, the Sec-
5 retary, with respect to the award of a new concession con-
6 tract to provide the same or substantially similar services
7 as those authorized by the previous contract or extension,
8 shall allow the holder of such contract or extension the
9 right to exercise a preferential right of renewal to the
10 same extent as would have been the case under the laws
11 and policies in effect on the day before the date of enact-
12 ment of this Act.

13 (4)(A) In promulgating regulations to implement this
14 subsection, the Secretary shall include a rating category
15 of "Excellent", and shall establish clear and achievable
16 standards necessary for the award of such rating, includ-
17 ing but not necessarily limited to criteria relating to—

18 (i) protection of the park's resources and val-
19 ues;

20 (ii) furtherance of the educational, recreational,
21 and other purposes for which the Secretary manages
22 the park; and

23 (iii) the adequacy of services provided to park
24 visitors.

1 (B) The Secretary shall take appropriate steps to en-
2 able all holders of contracts covered by this subsection,
3 and all parties seeking to obtain such contracts, to be
4 aware of the criteria established pursuant to this para-
5 graph.

6 (i) CONTRACTS WITH ANNUAL GROSS RECEIPTS
7 UNDER \$500,000.—(1) The provisions of subsection
8 (g)(2) shall also apply to a concession contract—

9 (A) which the Secretary estimates will result in
10 annual gross receipts of less than \$500,000;

11 (B) where the Secretary has determined that
12 the concessioner has operated satisfactorily during
13 the term of the contract (including any extensions
14 thereof); and

15 (C) that the concessioner has submitted a re-
16 sponsive proposal for a new concession contract
17 which satisfies the minimum requirements estab-
18 lished by the Secretary pursuant to section 6 of this
19 Act.

20 (2) The provisions of this subsection shall not apply
21 to a concession contract covered by subsection (h).

22 **SEC. 506. FRANCHISE FEES.**

23 (a) IN GENERAL.—Franchise fees, however stated,
24 shall not be less than the minimum franchise fee estab-
25 lished by the Secretary for each contract. The minimum

1 franchise fee shall be determined in a manner that will
2 provide the concessioner with a reasonable opportunity to
3 realize a profit on the operation as a whole, commensurate
4 with the capital invested and the obligations assumed.

5 (b) MULTIPLE CONTRACTS WITHIN A PARK.—If
6 multiple concession contracts are awarded to authorize
7 concessioners to provide the same outfitting, guide, river
8 running, or other similar services at the same approximate
9 location within a specific park, the Secretary shall estab-
10 lish a standardized schedule of franchise fees for all such
11 contracts, subject to periodic review and revision by the
12 Secretary.

13 **SEC. 507. USE OF FRANCHISE FEES.**

14 (a) SPECIAL ACCOUNT.—Except as provided in sub-
15 section (b), all receipts including fees for use of federally
16 owned buildings or other facilities collected pursuant to
17 this title shall be covered into a special account established
18 in the Treasury of the United States. Amounts covered
19 into such account in a fiscal year shall be available for
20 expenditure, subject to appropriation, solely as follows:

21 (1) 50 percent shall be allocated among the
22 units of the National Park System in the same pro-
23 portion as franchise fees collected from a specific
24 unit bears to the total amount covered into the ac-
25 count for each fiscal year, to be used for resource

1 management and protection, maintenance activities,
2 interpretation, and research.

3 (2) 50 percent shall be allocated among the
4 units of the National Park System on the basis of
5 need, in a manner to be determined by the Sec-
6 retary, to be used for resource management and pro-
7 tection, maintenance activities, interpretation, and
8 research.

9 (b) PARK IMPROVEMENT FUND.—(1) In lieu of col-
10 lecting all or a portion of the franchise fees that would
11 otherwise be collected pursuant to the concession contract,
12 the Secretary shall, where the Secretary determines it to
13 be practicable, require a concessioner to establish a Park
14 Improvement Fund in which the concessioner shall deposit
15 the franchise fees that would otherwise be required by the
16 contract.

17 (2) The fund shall be maintained by the concessioner
18 in an interest bearing account in a federally insured finan-
19 cial institution. The concessioner shall maintain the fund
20 separately from any other funds or accounts and shall not
21 co-mingle the monies in the fund with any other monies.
22 The Secretary may establish such other terms, conditions,
23 or requirements as the Secretary determines to be nec-
24 essary to ensure the financial integrity of the fund.

1 (3) Monies from the fund, including interest, shall be
2 expended solely for activities and projects within the park
3 which are consistent with the park's general management
4 plan, concessions plan, and other applicable plans, and
5 which the Secretary determines will enhance public use,
6 safety, and enjoyment of the park, including but not lim-
7 ited to projects which directly or indirectly support conces-
8 sion facilities or services required by the concession con-
9 tract, but no expenditure from the fund shall have the ef-
10 fect of creating or increasing any compensable interest of
11 any concessioner in any such facilities. A concessioner
12 shall not be allowed to make any advances or credits to
13 the fund.

14 (4) A concessioner shall not be granted any interest
15 in improvements made from fund expenditures, including
16 any interest granted pursuant to section 310 of this title.

17 (5) Nothing in this subsection shall affect the obliga-
18 tion of a concessioner to insure, maintain, and repair any
19 structure, fixture, or improvement assigned to such con-
20 cessioner and to insure that such structure, fixture, or im-
21 provement fully complies with applicable safety and health
22 laws and regulations.

23 (6) The concessioner shall maintain proper records
24 for all expenditures made from the fund. Such records
25 shall include, but not be limited to invoices, bank state-

1 ments, canceled checks, and such other information as the
2 Secretary may require.

3 (7) The concessioner shall annually submit to the
4 Secretary a statement reflecting total activity in the fund
5 for the preceding financial year. The statement shall re-
6 flect monthly deposits, expenditures by project, interest
7 earned, and such other information as the Secretary re-
8 quires.

9 (8) A fund established pursuant to this subsection
10 may not be used for any capital expenditure exceeding
11 \$2,500,000 in any fiscal year unless such expenditure
12 from a fund has been authorized in advance by Act of Con-
13 gress. The Secretary shall annually inform the Congress
14 concerning the actual and projected use of moneys in each
15 fund established pursuant to this subsection.

16 (9) Upon the termination of a concession contract,
17 or upon the sale or transfer of such contract, any remain-
18 ing balance in the fund shall be transferred by the conces-
19 sioner to the successor concessioner, to be used solely as
20 set forth in this subsection. In the event there is no succes-
21 sor concessioner, the fund balance shall be deposited into
22 the special account established in subsection (a).

23 **SEC. 508. DURATION OF CONTRACT.**

24 (a) **MAXIMUM TERM.**—A concession contract entered
25 into pursuant to this title shall be awarded for a term not

1 to exceed ten years: *Provided, however,* That the Secretary
2 may award a contract for a term not to exceed twenty
3 years if the Secretary determines that a longer term is
4 a necessary component of the overall contract in order to
5 reduce the costs to the United States of acquiring
6 possessory interests or to carry out the policies of this title
7 and other laws applicable to the National Park System.

8 (b) TEMPORARY CONTRACT.—A temporary conces-
9 sion contract awarded on a non-competitive basis pursuant
10 to section 505(b) of this title shall be for a term not to
11 exceed two years.

12 **SEC. 509. TRANSFER OF CONTRACT.**

13 (a) IN GENERAL.—(1) No concession contract may
14 be transferred, assigned, sold, or otherwise conveyed by
15 a concessioner without prior written notification to, and
16 approval of the Secretary.

17 (2) The Secretary shall not unreasonably withhold
18 approval of a transfer, assignment, sale, or conveyance of
19 a concession contract, but shall not approve the transfer
20 of a concession contract to any individual, corporation or
21 other entity if, among other matters, the Secretary deter-
22 mines that—

23 (A) such individual, corporation or entity is, or
24 is likely to be, unable to completely satisfy all of the
25 requirements, terms, and conditions of the contract;

1 (B) such transfer, assignment, sale or convey-
2 ance is not consistent with the objectives of protect-
3 ing and preserving park resources, and of providing
4 necessary and appropriate facilities or services to the
5 public at reasonable rates;

6 (C) such transfer, assignment, sale, or convey-
7 ance relates to a concession contract which does not
8 provide to the United States consideration commensurate
9 with the probable value of the privileges
10 granted by the contract; or

11 (D) the terms of the transfer, assignment, sale,
12 or conveyance directly or indirectly attribute a significant
13 value to intangible assets or otherwise may
14 so reduce the opportunity for a reasonable profit
15 over the remaining term of the contract that the
16 United States would be required to make substantial
17 additional expenditures in order to avoid interruption
18 of services to park visitors.

19 (b) CONGRESSIONAL NOTIFICATION.—Within thirty
20 days after receiving a request to approve a transfer, assignment,
21 sale, or other conveyance of a concession contract with anticipated
22 annual gross receipts in excess of \$1,000,000 (indexed to 1993 constant
23 dollars) or a duration in excess of 10 years, the Secretary shall notify the
24 Committee on Energy and Natural Resources of the United States

1 ed States Senate and the Committee on Resources of the
2 United States House of Representatives of such proposal.
3 Approval of such proposal, if granted by the Secretary,
4 shall not take effect until sixty days after the date of noti-
5 fication of both Committees.

6 **SEC. 510. PROTECTION OF CONCESSIONER INVESTMENT.**

7 (a) EXISTING STRUCTURES.—(1) A concessioner
8 who, pursuant to a concession contract, before the date
9 of enactment of this title acquired or constructed, or as
10 of such date was required by such a contract to commence
11 acquisition or construction, of any structure, fixture, or
12 improvement upon land owned by the United States within
13 a park, shall have a possessory interest therein, to the ex-
14 tent provided by such contract, the value of such
15 possessory interest to be determined for all purposes on
16 the basis of applicable laws and contracts in effect on the
17 day before such date of enactment.

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

22 (3)(A)(i) Except as provided in subparagraph (B),
23 with respect to a concession contract entered into on or
24 after the date of enactment of this title, the provisions
25 of subsection (b) shall apply to any existing structure, fix-

1 ture, or improvement as defined in paragraph (1), except
2 that the value of the possessory interest as of the termi-
3 nation date of the first contract expiring after the date
4 of enactment of this title shall be used as the basis for
5 depreciation, in lieu of the actual original cost of such
6 structure, fixture, or improvement.

7 (ii) Notwithstanding Generally Accepted Accounting
8 Principles, a concessioner with a possessory interest as
9 provided in subsection (a) may, at the termination date
10 of the first contract expiring after the date of enactment
11 of this Act, re-estimate the useful life of the applicable
12 structure, fixture, or improvement, consistent with sub-
13 section (b): *Provided*, That the estimated useful life of
14 such structure, fixture, or improvement shall not there-
15 after be reestablished or revalued.

16 (B) If the Secretary determines during the competi-
17 tive selection process that all proposals submitted either
18 fail to meet the minimum requirements or are rejected (as
19 provided in section 505), the Secretary may, solely with
20 respect to a structure, fixture, or improvement covered
21 under this paragraph, suspend the depreciation provisions
22 of subsection (b)(1) for the duration of the contract: *Pro-*
23 *vided*, That the Secretary may suspend such depreciation
24 provisions only if the Secretary determines that the estab-
25 lishment of other new minimum contract requirements is

1 not likely to result in the submission of satisfactory pro-
2 posals, and that the suspension of the depreciation provi-
3 sions is likely to result in the submission of satisfactory
4 proposals.

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

19 (2) In the event that the contract expires or is termi-
20 nated prior to the estimated useful life of an asset de-
21 scribed in paragraph (1), the concessioner shall be entitled
22 to receive from the United States or the successor conces-
23 sioner payment equal to the value of the concessioner's
24 interest in such structure, fixture, or improvement. A suc-
25 cessor concessioner may not revalue the interest in such

1 structure, fixture, or improvement, the method of depre-
2 ciation, or the estimated useful life of the asset.

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

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

12 **SEC. 511. RATES AND CHARGES TO PUBLIC.**

13 The reasonableness of a concessioner's rates and
14 charges to the public shall, unless otherwise provided in
15 the prospectus and contract, be judged primarily by com-
16 parison with those rates and charges for facilities and
17 services of comparable character charged by parties in rea-
18 sonable proximity to the relevant park and operating
19 under similar conditions, with due consideration for length
20 of season, seasonal variance, average percentage of occu-
21 pancy, accessibility, availability and costs of labor and ma-
22 terials, type of patronage, and other factors deemed sig-
23 nificant by the Secretary.

1 **SEC. 512. CONCESSIONER PERFORMANCE EVALUATION.**

2 (a) **REGULATIONS.**—Within one hundred and eighty
3 days after the date of enactment of this title, the Sec-
4 retary, after an appropriate period for public comment,
5 shall publish regulations establishing standards and cri-
6 teria for evaluating the performance of concessioners oper-
7 ating within parks.

8 (b) **PERIODIC EVALUATION.**—(1) The Secretary shall
9 periodically conduct an evaluation of each concessioner op-
10 erating under a concession contract pursuant to this title
11 to determine whether such concessioner has performed
12 satisfactorily. In evaluating a concessioner's performance,
13 the Secretary shall seek and consider applicable reports
14 and comments from appropriate Federal, State, and local
15 regulatory agencies, and shall seek and consider the views
16 of park visitors and concession customers. If the Sec-
17 retary's performance evaluation results in an unsatisfac-
18 tory rating of the concessioner's overall operation, the Sec-
19 retary shall so notify the concessioner in writing, and shall
20 provide the concessioner with a list of the minimum re-
21 quirements necessary for the operation to be rated satis-
22 factory.

23 (2) The Secretary may terminate a concession con-
24 tract if the concessioner fails to meet the minimum oper-
25 ational requirements identified by the Secretary within the
26 time limitations established by the Secretary at the time

1 notice of the unsatisfactory rating is provided to the con-
2 cessioner.

3 (3) If the Secretary terminates a concession contract
4 pursuant to this section, the Secretary shall solicit propos-
5 als for a new contract consistent with the provisions of
6 this title.

7 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
8 shall notify the Committee on Energy and Natural Re-
9 sources of the United States Senate and the Committee
10 on Resources of the United States House of Representa-
11 tives of each unsatisfactory overall annual rating and of
12 each concession contract terminated pursuant to this sec-
13 tion.

14 **SEC. 513. RECORDKEEPING REQUIREMENTS.**

15 (a) IN GENERAL.—Each concessioner shall keep such
16 records as the Secretary may prescribe to enable the Sec-
17 retary to determine that all terms of the concessioner's
18 contract have been and are being faithfully performed, and
19 the Secretary, the Inspector General of the Department
20 of the Interior, or any of the Secretary's duly authorized
21 representatives shall, for the purpose of audit and exam-
22 ination, have access to such records and to other books,
23 documents and papers of the concessioner pertinent to the
24 contract and all the terms and conditions thereof as the
25 Secretary and the Inspector General deem necessary.

1 (b) GENERAL ACCOUNTING OFFICE REVIEW.—The
2 Comptroller General of the United States or any of his
3 or her duly authorized representatives shall, until the expi-
4 ration of five calendar years after the close of the business
5 year for each concessioner, have access to and the right
6 to examine any pertinent books, documents, papers, and
7 records of the concessioner related to the contracts or con-
8 tracts involved, including those related to any Park Im-
9 provement Funds established pursuant to section 507(b).

10 **SEC. 514. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
11 **MENTS.**

12 The provisions of section 321 of the Act of June 30,
13 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
14 ing of buildings and properties of the United States, shall
15 not apply to contracts awarded by the Secretary pursuant
16 to this title.

17 **SEC. 515. NO EFFECT ON ANILCA PROVISIONS.**

18 Nothing in this title shall be construed to amend, su-
19 perse, or otherwise affect any provision of the Alaska
20 National Interest Lands Conservation Act (16 U.S.C.
21 3101 et seq.).

22 **SEC. 516. IMPLEMENTATION.**

23 (a) AUDIT REQUIREMENT.—Beginning with fiscal
24 year 1997, the Inspector General of the Department of
25 the Interior shall conduct a biennial audit of the Sec-

1 retary's implementation of this title and the award and
2 management of concession contracts and authorizations
3 described in section 504(b).

4 (b) BIENNIAL REPORTS.—Beginning on June 1,
5 1997, and biannually thereafter the Secretary and the In-
6 spector General of the Department of the Interior shall
7 submit a report to the Committee on Energy and Natural
8 Resources of the United States Senate and the Committee
9 on Resources of the United States House of Representa-
10 tives on the implementation of this title and the effect of
11 such implementation on facilities operated and services
12 provided pursuant to concession contracts.

13 (c) INFORMATION FROM SECRETARY.—In each re-
14 port required by this section, the Secretary shall—

15 (1) identify any concession contracts which have
16 been renewed, renegotiated, terminated, or trans-
17 ferred during the 2 years prior to the submission of
18 the report and identify any significant changes in
19 the terms of the new contract;

20 (2) state the amount of franchise fees, the rates
21 which would be charged for services, and the level of
22 other services required to be provided by the conces-
23 sioner in comparison to that required in any pre-
24 vious concession contract for the same facilities or
25 services at the same park;

1 (3) assess the degree to which facilities are
2 being maintained, using the condition of such facili-
3 ties on the date of enactment of this Act as a base-
4 line;

5 (4) indicate whether competition has been in-
6 creased or decreased with respect to the awarding of
7 concession contracts;

8 (5) set forth the total amount of revenues re-
9 ceived and financial obligations incurred or reduced
10 by the Federal Government as a result of enactment
11 of this Act for the reporting period and in compari-
12 son with previous reporting periods and the baseline
13 year of 1993, including the costs, if any, associated
14 with the acquisition of possessory interests; and

15 (6) include information concerning any park
16 improvement funds established pursuant to section
17 507(b) of this title, including—

18 (A) the total amount of funds deposited
19 into and expended from each such fund during
20 the preceding 2-year period; and

21 (B) the purposes for which expenditures
22 from such funds during such period were used.

23 (d) INFORMATION FROM INSPECTOR GENERAL.—In
24 each report required by this section, the Inspector General
25 of the Department of the Interior shall include informa-

1 tion as to the results of the audit required by subsection
2 (a), including—

3 (1) the status of the Secretary's implementation
4 of this title;

5 (2) the extent to which such implementation
6 has furthered the policies of this title, as set forth
7 in section 501, and has led to an increase or de-
8 crease in competition for concession contracts;

9 (3) the adequacy of recordkeeping and other re-
10 quirements imposed on establishment and use of
11 park improvement funds established pursuant to sec-
12 tion 507(b); and

13 (4) any recommendations the Inspector General
14 may find appropriate in order to further the pur-
15 poses of this title and other laws applicable to the
16 National Park System or to assure that park im-
17 provement funds established pursuant to section
18 507(b) are maintained and expenditures therefrom
19 are used in accordance with this title and sound
20 business practices.

21 **SEC. 517. AUTHORIZATION OF APPROPRIATIONS.**

22 There is authorized to be appropriated such sums as
23 may be necessary to carry out this title.

104TH CONGRESS
1ST SESSION

H. R. 773

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1995

Mrs. MEYERS (for herself, Mr. PORTMAN, Mr. SCHIFF, Mr. MCHUGH, Mr. ROHRBACHER, Ms. MOLINARI, Ms. DANNER, Mr. ACKERMAN, Ms. ESHOO, Mr. OLIVER, Mr. VISCLOSKEY, Mr. MANTON, Mr. JOHNSTON, Mr. WELDON of Pennsylvania, Mr. ZIMMER, Mr. SAWYER, Mr. YATES, Mr. BRYANT, Mr. VENTO, Mr. BARRETT of Wisconsin, Mrs. KELLY, Mr. DINGELL, Mr. BROWN of Ohio, and Mr. PORTER) introduced the following bill; which was referred to the Committee on Resources

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "National Park Service
5 Concession Policy Reform Act of 1995".

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

7 (a) FINDINGS.—In furtherance of the Act of August
8 25, 1916 (39 Stat. 535), as amended (16 U.S.C. 1, 2–

1 4), which directs the Secretary of the Interior to admin-
2 ister areas of the National Park System in accordance
3 with the fundamental purpose of preserving their scenery,
4 wildlife, natural and historic objects, and providing for
5 their enjoyment in a manner that will leave them
6 unimpaired for the enjoyment of future generations, the
7 Congress finds that the preservation and conservation of
8 park resources and values requires that such public ac-
9 commodations, facilities, and services as the Secretary de-
10 termines are necessary and appropriate in accordance with
11 this Act—

12 (1) should be provided only under carefully con-
13 trolled safeguards against unregulated and indis-
14 criminate use so that visitation will not unduly im-
15 pair these values; and

16 (2) should be limited to locations and designs
17 consistent to the highest practicable degree with the
18 preservation and conservation of park resources and
19 values.

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

21 (1) development on Federal lands within a park
22 shall be limited to those facilities and services that
23 the Secretary determines are necessary and appro-
24 priate for public use and enjoyment of the park in
25 which such facilities and services are located;

1 (2) development of such facilities and services
2 within a park should be consistent to the highest
3 practicable degree with the preservation and con-
4 servation of the park's resources and values;

5 (3) such facilities and services should be pro-
6 vided by private persons, corporations, or other enti-
7 ties, except when no private interest is qualified and
8 willing to provide such facilities and services;

9 (4) if the Secretary determines that develop-
10 ment should be provided within a park, such devel-
11 opment shall be designed, located, and operated in
12 a manner that is consistent with the purposes for
13 which such park was established;

14 (5) the right to provide such services and to de-
15 velop or utilize such facilities should be awarded to
16 the person, corporation, or entity submitting the
17 best proposal through a competitive selection proc-
18 ess; and

19 (6) such facilities or services should be provided
20 to the public at reasonable rates.

21 **SEC. 3. DEFINITIONS.**

22 As used in this Act, the term—

23 (1) “concessioner” means a person, corporation,
24 or other entity to whom a concession contract has
25 been awarded;

1 (2) “concession contract” means a contract or
2 permit (but not a commercial use authorization is-
3 sued pursuant to section (6) to provide facilities or
4 services, or both, at a park;

5 (3) “facilities” means improvements to real
6 property within parks used to provide accommoda-
7 tions, facilities, or services to park visitors;

8 (4) “fund” means the Park Improvement Fund
9 established pursuant to section 9(b);

10 (5) “park” means a unit of the National Park
11 System;

12 (6) “disposal” means the complete proposal for
13 a concession contract offered by a potential or exist-
14 ing concessioner in response to the minimum re-
15 quirements for the contract established by the Sec-
16 retary; and

17 (7) “Secretary” means the Secretary of the
18 Interior.

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

20 (a) REPEAL.—The Act of October 9, 1965, Public
21 Law 89-249 (79 Stat. 969, 16 U.S.C. 20-20g), entitled
22 “An Act relating to the establishment of concession poli-
23 cies administered in the areas administered by the Na-
24 tional Park Service and for other purposes”, is hereby re-
25 pealed. The repeal of such Act shall not affect the validity

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

5 (b) CONFORMING AMENDMENT.—The fourth sen-
6 tence of section 3 of the Act of August 25, 1916 (16
7 U.S.C. 3; 39 Stat. 535) is amended by striking all through
8 “no natural” and inserting in lieu thereof, “No natural”.

9 **SEC. 5. CONCESSION POLICY.**

10 Subject to the findings and policy stated in section
11 2, and upon a determination by the Secretary that facili-
12 ties or services are necessary and appropriate for the ac-
13 commodation of visitors at a park, the Secretary shall,
14 consistent with the provisions of this Act, laws relating
15 generally to the administration and management of units
16 of the National Park System, and the park’s general man-
17 agement plan, concession plan, and other applicable plans,
18 authorize private persons, corporations, or other entities
19 to provide and operate such facilities or services as the
20 Secretary deems necessary and appropriate.

21 **SEC. 6. COMMERCIAL USE AUTHORIZATIONS.**

22 (a) IN GENERAL.—To the extent specified in this sec-
23 tion, the Secretary, upon request, may authorize a private
24 person, corporation, or other entity to provide services to

1 park visitors otherwise than by award of a concession con-
2 tract or permit.

3 (b) CRITERIA FOR ISSUANCE OF AUTHORIZATION.—

4 (1) The authority of this section may be used only to au-
5 thorize provision of services to park visitors that the Sec-
6 retary determines will have minimal impact on park re-
7 sources and values and which are consistent with the pur-
8 poses for which the park was established and with all ap-
9 plicable management plans for such park.

10 (2) The Secretary—

11 (A) shall require payment of a reasonable fee
12 for issuance of an authorization under this section,
13 such fees to remain available without further appro-
14 priation to be used to recover the costs of managing
15 and administering this section;

16 (B) shall require that the provision of services
17 under such an authorization be accomplished in a
18 manner consistent to the highest practicable degree
19 with the preservation and conservation of park re-
20 sources and values;

21 (C) shall take appropriate steps to limit the li-
22 ability of the United States arising from the provi-
23 sion of services under such an authorization; and

24 (D) shall have no authority under this section
25 to issue more authorizations than are consistent

1 with the preservation and proper management of
2 park resources and values, and shall establish such
3 other conditions for issuance of such an authoriza-
4 tion as the Secretary determines appropriate for the
5 protection of visitors, provision of adequate and ap-
6 propriate visitor services, and protection and proper
7 management of the resources and values of the park.

8 (c) LIMITATIONS.—Any authorization issued under
9 this section shall be limited to—

10 (1) commercial operations with annual gross
11 revenues of not more than \$25,000 resulting from
12 services originating and provided solely within a
13 park pursuant to such authorization; or

14 (2) the incidental use of park resources by com-
15 mercial operations which provide services originating
16 outside of the park's boundaries: *Provided*, That
17 such authorization shall not provide for the con-
18 struction of any structure, fixture, or improvement
19 on Federal lands within the park.

20 (d) DURATION.—The term of any authorization is-
21 sued under this section shall not exceed two years.

22 (e) A person, corporation, or other entity seeking or
23 obtaining an authorization pursuant to this section shall
24 not be precluded from also submitting proposals for con-
25 cession contracts.

1 **SEC. 7. COMPETITIVE SELECTION PROCESS.**

2 (a) IN GENERAL.—(1) Except as provided in sub-
3 section (b), and consistent with the provisions of sub-
4 section (g), any concession contract entered into pursuant
5 to this Act shall be awarded to the person, corporation,
6 or other entity submitting the best proposal as determined
7 by the Secretary, through a competitive selection process,
8 as provided in this section.

9 (2) Within one hundred and eighty days after the
10 date of enactment of this Act, the Secretary shall promul-
11 gate appropriate regulations establishing such process.
12 The regulations shall include provisions for establishing a
13 method or procedure for the resolution of disputes between
14 the Secretary and a concessioner in those instances where
15 the Secretary has been unable to meet conditions or re-
16 quirements or provide such services, if any, as set forth
17 in a prospectus pursuant to sections 7(c)(2) (D) and (E).

18 (b) TEMPORARY CONTRACT.—Notwithstanding the
19 provisions of subsection (a), the Secretary may award a
20 temporary concession contract in order to avoid interrup-
21 tion of services to the public at a park except that prior
22 to making such a determination, the Secretary shall take
23 all reasonable and appropriate steps to consider alter-
24 natives to avoid such an interruption.

25 (c) PROSPECTUS.—(1) Prior to soliciting proposals
26 for a concession contract at a park, the Secretary shall

1 prepare a prospectus soliciting proposals, and shall publish
2 a notice of its availability at least once in local or national
3 newspapers or trade publications, as appropriate, and
4 shall make such prospectus available upon request to all
5 interested parties.

6 (2) The prospectus shall include, but need not be lim-
7 ited to, the following information—

8 (A) the minimum requirements for such con-
9 tract, as set forth in subsection (d);

10 (B) the terms and conditions of the existing
11 concession contract awarded for such park, if any,
12 including all fees and other forms of compensation
13 provided to the United States by the concessioner;

14 (C) other authorized facilities or services which
15 may be provided in a proposal;

16 (D) facilities and services to be provided by the
17 Secretary to the concessioner, if any, including but
18 not limited to, public access, utilities, and buildings;

19 (E) minimum public services to be offered with-
20 in a park by the Secretary, including but not limited
21 to, interpretive programs, campsites, and visitor cen-
22 ters; and

23 (F) such other information related to the pro-
24 posed concession operation as is provided to the Sec-
25 retary pursuant to a concession contract or is other-

1 wise available to the Secretary, as the Secretary de-
2 termines is necessary to allow for the submission of
3 competitive proposals.

4 (d) MINIMUM PROPOSAL REQUIREMENTS.—(1) No
5 proposal shall be considered which fails to meet the mini-
6 mum requirements as determined by the Secretary. Such
7 minimum requirements shall include, but need not be lim-
8 ited to—

9 (A) the minimum acceptable franchise fee;

10 (B) the duration of the contract;

11 (C) any facilities, services, or capital investment
12 required to be provided by the concessioner; and

13 (D) measures necessary to ensure the protec-
14 tion and preservation of park resources.

15 (2) The Secretary may reject any proposal, notwith-
16 standing the amount of franchise fee offered, if the Sec-
17 retary determines that the person, corporation, or entity
18 is not qualified, is likely to provide unsatisfactory service,
19 or that the proposal is not responsive to the objectives of
20 protecting and preserving park resources and of providing
21 necessary and appropriate facilities or services to the pub-
22 lic at reasonable rates.

23 (3) If all proposals submitted to the Secretary either
24 fail to meet the minimum requirements or are rejected by
25 the Secretary, the Secretary shall establish new minimum

1 contract requirements and re-initiate the competitive se-
2 lection process pursuant to this section.

3 (e) SELECTION OF BEST PROPOSAL.—(1) In select-
4 ing the best proposal, the Secretary shall consider the fol-
5 lowing principal factors:

6 (A) The responsiveness of the proposal to the
7 objectives of protecting and preserving park re-
8 sources and of providing necessary and appropriate
9 facilities and services to the public at reasonable
10 rates.

11 (B) The experience and related background of
12 the person, corporation, or entity submitting the
13 proposal, including but not limited to, the past per-
14 formance and expertise of such person, corporation,
15 or entity in providing the same or similar facilities
16 or services.

17 (C) The financial capability of the person, cor-
18 poration, or entity submitting the proposal.

19 (D) The proposed franchise fee: *Provided*, That
20 consideration of revenue to the United States shall
21 be subordinate to the objectives of protecting and
22 preserving park resources and of providing necessary
23 and appropriate facilities or services to the public at
24 reasonable rates.

1 (2) The Secretary may also consider such secondary
2 factors as the Secretary deems appropriate.

3 (3) In developing regulations to implement this Act,
4 the Secretary shall consider the extent to which plans for
5 employment of Indians (including Native Alaskans) and
6 involvement of businesses owned by Indians, Indian tribes,
7 or Native Alaskans in the operation of concession con-
8 tracts should be identified as a factor in the selection of
9 a best proposal under this section.

10 (f) CONGRESSIONAL NOTIFICATION.—(1) The Sec-
11 retary shall submit any proposed concession contract with
12 anticipated annual gross receipts in excess of \$5,000,000
13 (indexed to 1995 constant dollars) or a duration of ten
14 or more years to the Committee on Energy and Natural
15 Resources of the United States Senate and the Committee
16 on Resources of the United States House of Representa-
17 tives.

18 (2) The Secretary shall not award any such proposed
19 contract until at least sixty days subsequent to the notifi-
20 cation of both Committees.

21 (g) NO PREFERENTIAL RIGHT OF RENEWAL.—(1)
22 Except as provided in paragraph (2), the Secretary shall
23 not grant a preferential right to a concessioner to renew
24 a concession contract entered into pursuant to this Act.

1 (2) The Secretary shall grant a preferential right of
2 renewal with respect to a concession contract covered by
3 subsections (h) and (i), subject to the requirements of sub-
4 sections (h) or (i), as appropriate.

5 (3) As used in this subsection, and subsections (h)
6 and (i), the term “preferential right of renewal” means
7 that the Secretary shall allow a concessioner satisfying the
8 requirements of this subsection (and subsections (h) and
9 (i), as appropriate) the opportunity to match the terms
10 and conditions of any competing proposal which the Sec-
11 retary determines to be the best proposal.

12 (4) A concessioner who exercises a preferential right
13 of renewal in accordance with the requirements of this
14 paragraph shall be entitled to award of the new concession
15 contract with respect to which such right is exercised.

16 (h) OUTFITTING AND GUIDE CONTRACTS.—(1) Ex-
17 cept as provided in subsection (i), the provisions of para-
18 graph (g)(2) shall apply only—

19 (A) to a concession contract—

20 (i) which solely authorizes a concessioner
21 to provide outfitting, guide, river running, or
22 other substantially similar services within a
23 park; and

1 (ii) which does not grant such concessioner
2 any interest in any structure, fixture, or im-
3 provement pursuant to section 12; and

4 (B) where the Secretary determines that the
5 concessioner has operated satisfactorily during the
6 term of the contract (including any extensions there-
7 of); and

8 (C) where the Secretary determines that the
9 concessioner has submitted a responsive proposal for
10 a new contract which satisfies the minimum require-
11 ments established by the Secretary pursuant to sec-
12 tion 7.

13 (2) With respect to a concession contract (or exten-
14 sion thereof) covered by this subsection which is in effect
15 on the date of enactment of this Act, the provisions of
16 this paragraph shall apply if the holder of such contract,
17 under the laws and policies in effect on the day before
18 the date of enactment of this Act, would have been entitled
19 to a preferential right to renew such contract upon its ex-
20 piration.

21 (i) CONTRACTS WITH ANNUAL GROSS RECEIPTS
22 UNDER \$500,000.—(1) The provisions of paragraph
23 (g)(2) shall also apply to a concession contract—

24 (A) which the Secretary estimates will result in
25 annual gross receipts of less than \$500,000;

1 (B) where the Secretary has determined that
2 the concessioner has operated satisfactorily during
3 the term of the contract (including any extensions
4 thereof); and

5 (C) that the concessioner has submitted a re-
6 sponsive proposal for a new concession contract
7 which satisfies the minimum requirements estab-
8 lished by the Secretary pursuant to section 7.

9 (2) The provisions of this subsection shall not apply
10 to a concession contract which solely authorizes a conces-
11 sioner to provide outfitting, guide, river running, or other
12 substantially similar services within a park pursuant to
13 subsection (h).

14 (3) Notwithstanding the limitations set forth in para-
15 graph (1)(A), the provisions of this subsection shall also
16 apply to any concession contract authorizing cruise ship
17 entries into Glacier Bay National Park.

18 (j) NO PREFERENTIAL RIGHT TO ADDITIONAL SERV-
19 ICES.—The Secretary shall not grant a preferential right
20 to a concessioner to provide new or additional services at
21 a park.

22 **SEC. 8. FRANCHISE FEES.**

23 (a) IN GENERAL.—Franchise fees, however, stated,
24 shall not be less than the minimum fee established by the
25 Secretary for each contract. The minimum fee shall be de-

1 terminated in a manner that will provide the concessioner
2 with a reasonable opportunity to realize a profit on the
3 operation as a whole, commensurate with the capital in-
4 vested and the obligations assumed under the contract.

5 (b) MULTIPLE CONTRACTS WITHIN A PARK.—If
6 multiple concession contracts are awarded to authorize
7 concessioners to provide the same or similar outfitting,
8 guide, river running, or other similar services at the same
9 approximate location or resource within a specific park,
10 the Secretary shall establish an identical franchise fee for
11 all such contracts, subject to periodic review and revision
12 by the Secretary. Such fee shall reflect fair market value.

13 **SEC. 9. USE OF FRANCHISE FEES.**

14 (a) SPECIAL ACCOUNT.—Except as provided in sub-
15 section (b), all receipts collected pursuant to this Act shall
16 be covered into a special account established in the Treas-
17 ury of the United States. Amounts covered into such ac-
18 count in a fiscal year shall be available for expenditure,
19 subject to appropriation, solely as follows:

20 (1) Fifty percent shall be allocated among the
21 units of the National Park System in the same pro-
22 portion as franchise fees collected from a specific
23 unit bears to the total amount covered into the ac-
24 count for each fiscal year, to be used for resource

1 management and protection, maintenance activities,
2 interpretation, and research.

3 (2) Fifty percent shall be allocated among the
4 units of the National Park System on the basis of
5 need, in a manner to be determined by the Sec-
6 retary, to be used for resource management and pro-
7 tection, maintenance activities, interpretation, and
8 research.

9 (b) PARK IMPROVEMENT FUND.—(1) In lieu of col-
10 lecting all or a portion of the franchise fees that would
11 otherwise be collected pursuant to the concession contract,
12 the Secretary shall, where the Secretary determines it to
13 be practicable, require a concessioner to establish a Park
14 Improvement Fund in which the concessioner shall deposit
15 the franchise fees that would otherwise be required by the
16 contract.

17 (2) The fund shall be maintained by the concessioner
18 in an interest bearing account in a federally-insured finan-
19 cial institution. The concessioner shall maintain the fund
20 separately from any other funds or accounts and shall not
21 co-mingle the monies in the fund with any other monies.
22 The Secretary may establish such other terms, conditions,
23 or requirements as the Secretary determines to be nec-
24 essary to ensure the financial integrity of such fund.

1 (3) Monies from the fund, including interest, shall be
2 expended by the concessioner solely as directed by the Sec-
3 retary for activities and projects within the park which
4 are consistent with the park's general management plan,
5 concession plan, and other applicable plans, and which the
6 Secretary determines will enhance public use, safety, and
7 enjoyment of the park, including but not limited to
8 projects which directly or indirectly support concession fa-
9 cilities or services required by the concession contract.
10 Projects paid for from the fund shall not include routine,
11 operational maintenance of facilities. A concessioner shall
12 not be allowed to make any advances or credits to the
13 fund.

14 (4) A concessioner shall not be granted any interest
15 in improvements made from fund expenditures, including
16 any interest granted pursuant to section 12.

17 (5) Nothing in this subsection shall affect the obliga-
18 tion of a concessioner to insure, maintain, and repair any
19 structure, fixture, or improvement assigned to such con-
20 cessioner and to insure that such structure, fixture, or im-
21 provement fully complies with applicable safety and health
22 laws and regulations.

23 (6) The concessioner shall maintain proper records
24 for all expenditures made from the fund. Such records
25 shall include, but not be limited to invoices, bank state-

1 ments, canceled checks, and such other information as the
2 Secretary determines to be necessary.

3 (7) The concessioner shall annually submit to the
4 Secretary a statement reflecting total activity in the fund
5 for the preceding financial year. The statement shall re-
6 flect monthly deposits, expenditures by project, interest
7 earned, and such other information as the Secretary re-
8 quires.

9 (8) Proceeds from the fund shall not be used for any
10 capital expenditure exceeding \$2,500,000 in any fiscal
11 year unless such expenditure has been approved in ad-
12 vance by Act of Congress.

13 (9) The Secretary shall annually report to the Com-
14 mittees on Appropriations and Energy and Natural Re-
15 sources of the United States Senate and the Committees
16 on Appropriations and Resources of the United States
17 House of Representatives concerning the actual and pro-
18 jected expenditures for each fund established pursuant to
19 this section.

20 (10) Upon the termination of a concession contract,
21 or upon the sale or transfer of such contract, any remain-
22 ing balance in the fund shall be transferred by the conces-
23 sioner to the successor concessioner, to be used solely as
24 set forth in this subsection. In the event there is not a

1 successor concessioner, the fund balance shall be deposited
2 into the special account established in subsection (a).

3 **SEC. 10. DURATION OF CONTRACT.**

4 (a) MAXIMUM TERM.—A concession contract entered
5 into pursuant to this Act shall be awarded for a term not
6 to exceed ten years: *Provided, however,* That the Secretary
7 may award a contract for a term not to exceed twenty
8 years if the Secretary determines that the contract terms
9 and conditions necessitate a longer term.

10 (b) TEMPORARY CONTRACT.—A temporary conces-
11 sion contract awarded on a non-competitive basis pursuant
12 to section 7(b) shall be for a term not to exceed two years.

13 **SEC. 11. TRANSFER OF CONTRACT.**

14 (a) IN GENERAL.—(1) No concession contract may
15 be transferred, assigned, sold, or otherwise conveyed by
16 a concessioner without prior written notification to, and
17 approval of the Secretary.

18 (2) The Secretary shall not unreasonably withhold
19 approval of a transfer, assignment, sale, or conveyance of
20 a concession contract, but shall not approve the transfer,
21 assignment, sale, or conveyance of a concession contract
22 to any individual, corporation or other entity if the Sec-
23 retary determines that—

1 (A) such individual, corporation or entity is, or
2 is likely to be, unable to completely satisfy all of the
3 requirements, terms, and conditions of the contract;

4 (B) such transfer, assignment, sale or convey-
5 ance is not consistent with the objectives of protect-
6 ing and preserving park resources, and of providing
7 necessary and appropriate facilities or services to the
8 public at reasonable rates;

9 (C) such transfer, assignment, sale, or convey-
10 ance relates to a concession contract which does not
11 provide to the United States consideration commensurate
12 with the probable value of the privileges granted by the contract; or

14 (D) the terms of such transfer, assignment,
15 sale, or conveyance directly or indirectly attribute a
16 significant value to intangible assets or otherwise
17 may so reduce the opportunity for a reasonable profit
18 over the remaining term of the contract that the
19 United States may be required to make substantial
20 additional expenditures in order to avoid interruption
21 of services to park visitors.

22 (b) CONGRESSIONAL NOTIFICATION.—Within thirty
23 days after receiving a completed proposal to transfer, as-
24 sign, sell, or otherwise convey a concession contract, the
25 Secretary shall notify the Committee on Energy and Natu-

1 ral Resources of the United States Senate and the Com-
2 mittee on Resources of the United States House of Rep-
3 resentatives of such proposal. Approval of such proposal,
4 if granted by the Secretary, shall not take effect until sixty
5 days after the date of notification of both Committees.

6 **SEC. 12. PROTECTION OF CONCESSIONER INVESTMENT.**

7 (a) CURRENT CONTRACT.—(1) A concessioner who
8 before the date of the enactment of this Act has acquired
9 or constructed, or is required under an existing concession
10 contract to commence acquisition or construction of any
11 structure, fixture, or improvement upon land owned by the
12 United States within a park, pursuant to such contract,
13 shall have a possessory interest therein, to the extent pro-
14 vided by such contract.

15 (2) Unless otherwise provided in such contract, said
16 possessory interest shall not be extinguished by the expira-
17 tion or termination of the contract and may not be taken
18 for public use without just compensation. Such possessory
19 interest may be assigned, transferred, encumbered, or re-
20 linquished.

21 (3) Upon the termination of a concession contract in
22 effect before the date of enactment of this Act, the Sec-
23 retary shall determine the value of any outstanding
24 possessory interest applicable to the contract, such value
25 to be determined for all purposes on the basis of applicable

1 laws and contracts in effect on the day before the date
2 of enactment of this Act.

3 (4) Nothing in this subsection shall be construed to
4 grant a possessory interest to a concessioner whose con-
5 tract in effect on the date of enactment of this Act does
6 not include recognition of a possessory interest.

7 (b) NEW CONTRACTS.—(1)(A) With respect to a con-
8 cession contract entered into on or after the date of enact-
9 ment of this Act, the value of any outstanding possessory
10 interest associated with such contract shall be set at the
11 value determined by the Secretary pursuant to subsection
12 (a)(3).

13 (B) As a condition of entering into a concession con-
14 tract, the value of any outstanding possessory interest
15 shall be reduced on an annual basis, in equal portions,
16 over the same number of years as the time period associ-
17 ated with the straight line depreciation of the structure,
18 fixture, or improvement associated with such possessory
19 interest, as provided by applicable Federal income tax laws
20 and regulations in effect on the day before the date of
21 enactment of this Act.

22 (C) In the event that the contract expires or is termi-
23 nated prior to the elimination of any outstanding
24 possessory interest, the concessioner shall be entitled to re-
25 ceive from the United States or the successor concessioner

1 payment equal to the remaining value of the possessory
2 interest.

3 (D) A successor concessioner may not revalue any
4 outstanding possessory interest, nor the period of time
5 over which such interest is reduced.

6 (E) Title to any structure, fixture, or improvement
7 associated with any outstanding possessory interest shall
8 be vested in the United States.

9 (2)(A) If the Secretary determines during the com-
10 petitive selection process that all proposals submitted ei-
11 ther fail to meet the minimum requirements or are re-
12 jected (as provided in section 7), the Secretary may, solely
13 with respect to any outstanding possessory interest associ-
14 ated with the contract and established pursuant to a con-
15 cession contract entered into prior to the date of enact-
16 ment of this Act, suspend the reduction provisions of sub-
17 section (b)(1)(B) for the duration of the contract, and
18 reinitiate the competitive selection process as provided in
19 section 7.

20 (B) The Secretary may suspend such reduction provi-
21 sions only if the Secretary determines that the establish-
22 ment of other new minimum contract requirements is not
23 likely to result in the submission of satisfactory proposals,
24 and that the suspension of the reduction provisions is like-
25 ly to result in the submission of satisfactory proposals:

1 *Provided, however,* That nothing in this paragraph shall
2 be construed to require the Secretary to establish a mini-
3 mum franchise fee at a level below the franchise fee in
4 effect for such contract on the day before the expiration
5 date of the previous contract.

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

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

1 interest in such structure, fixture, or improvement, the
2 method of depreciation, or the estimated useful life of the
3 asset.

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

6 (d) INSURANCE, MAINTENANCE AND REPAIR.—
7 Nothing in this section shall affect the obligation of a con-
8 cessioner to insure, maintain, and repair any structure,
9 fixture, or improvement assigned to such concessioner and
10 to insure that such structure, fixture, or improvement
11 fully complies with applicable safety and health laws and
12 regulations.

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

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

1 **SEC. 14. CONCESSIONER PERFORMANCE EVALUATION.**

2 (a) REGULATIONS.—Within one hundred and eighty
3 days after the date of enactment of this Act, the Secretary
4 shall publish, after an appropriate period for public com-
5 ment, regulations establishing standards and criteria for
6 evaluating the performance of concessions operating with-
7 in parks.

8 (b) PERIODIC EVALUATION.—(1) The Secretary shall
9 periodically conduct an evaluation of each concessioner op-
10 erating under a concession contract pursuant to this Act,
11 as appropriate, to determine whether such concessioner
12 has performed satisfactorily. In evaluating a conces-
13 sioner's performance, the Secretary shall seek and con-
14 sider applicable reports and comments from appropriate
15 Federal, State, and local regulatory agencies, and shall
16 seek and consider the applicable views of park visitors and
17 concession customers. If the Secretary's performance eval-
18 uation results in an unsatisfactory rating of the conces-
19 sioner's overall operation, the Secretary shall provide the
20 concessioner with a list of the minimum requirements nec-
21 essary for the operation to be rated satisfactory, and shall
22 so notify the concessioner in writing.

23 (2) The Secretary may terminate a concession con-
24 tract if the concessioner fails to meet the minimum oper-
25 ational requirements identified by the Secretary within the
26 time limitations established by the Secretary at the time

1 notice of the unsatisfactory rating is provided to the con-
2 cessioner.

3 (3) If the Secretary terminates a concession contract
4 pursuant to this section, the Secretary shall solicit propos-
5 als for a new contract consistent with the provisions of
6 this Act.

7 (c) CONGRESSIONAL NOTIFICATION.—The Secretary
8 shall notify the Committee on Energy and Natural Re-
9 sources of the United States Senate and the Committee
10 on Resources of the United States House of Representa-
11 tives of each unsatisfactory rating and of each concession
12 contract terminated pursuant to this section.

13 **SEC. 15. RECORDKEEPING REQUIREMENTS.**

14 (a) IN GENERAL.—Each concessioner shall keep such
15 records as the Secretary may prescribe to enable the Sec-
16 retary to determine that all terms of the concessioner's
17 contract have been, and are being faithfully performed,
18 and the Secretary or any of the Secretary's duly author-
19 ized representatives shall, for the purpose of audit and ex-
20 amination, have access to such records and to other books,
21 documents and papers of the concessioner pertinent to the
22 contract and all the terms and conditions thereof as the
23 Secretary deems necessary.

24 (b) GENERAL ACCOUNTING OFFICE REVIEW.—The
25 Comptroller General of the United States or any of his

1 or her duly authorized representatives shall, until the expi-
2 ration of five calendar years after the close of the business
3 year for each concessioner, have access to and the right
4 to examine any pertinent books, documents, papers, and
5 records of the concessioner related to the contracts or con-
6 tracts involved.

7 **SEC. 16. EXEMPTION FROM CERTAIN LEASE REQUIRE-**
8 **MENTS.**

9 The provisions of section 321 of the Act of June 30,
10 1932 (47 Stat. 412; 40 U.S.C. 303b), relating to the leas-
11 ing of buildings and properties of the United States, shall
12 not apply to contracts awarded by the Secretary pursuant
13 to this Act.

14 **SEC. 17. NO EFFECT ON ANILCA PROVISIONS.**

15 Nothing in this Act shall be construed to amend, su-
16 perse, or otherwise affect any provision of the Alaska
17 National Interest Lands Conservation Act (16 U.S.C.
18 3101 et seq.).

19 **SEC. 18. IMPLEMENTATION REPORTS.**

20 Beginning on June 1, 1997, and biennially thereafter,
21 the Inspector General of the Department of the Interior
22 shall submit a report to the Committee on Energy and
23 Natural Resources of the United States Senate and the
24 Committee on Resources of the House of Representatives
25 on the implementation of this Act and the effect of such

1 implementation on facilities operated pursuant to conces-
2 sion contracts and on visitor services. Each report shall—

3 (1) identify any concession contracts which have
4 been renewed, renegotiated, terminated, or trans-
5 ferred during the year prior to the submission of the
6 report and identify any significant changes in the
7 terms of the new contract;

8 (2) state the amount of franchise fees the rates
9 which would be charged for services, and the level of
10 other services required to be provided by the conces-
11 sioner in comparison to that required in the previous
12 contract;

13 (3) assess the degree to which concession facili-
14 ties are being maintained using the condition of such
15 facilities on the date of enactment of this Act as a
16 baseline;

17 (4) determine whether competition has been in-
18 creased or decreased with respect to the awarding of
19 each contract; and

20 (5) set forth the amount of revenues received
21 and financial obligations incurred or reduced by the
22 Federal Government as a result of the comparison of
23 the Act for the reporting period and in comparison
24 with previous reporting periods and the baseline year

1 of 1995, including the costs, if any, associated with
2 the acquisition of possessory interests.

3 **SEC. 19. AUTHORIZATION OF APPROPRIATIONS.**

4 There is authorized to be appropriated such sums as
5 may be necessary to carry out this Act.

104TH CONGRESS
1ST SESSION

H. R. 1527

To amend the National Forest Ski Area Permit Act of 1986 to clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and mineral leasing laws.

IN THE HOUSE OF REPRESENTATIVES

MAY 1, 1995

Mr. YOUNG of Alaska introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the National Forest Ski Area Permit Act of 1986 to clarify the authorities and duties of the Secretary of Agriculture in issuing ski area permits on National Forest System lands and to withdraw lands within ski area permit boundaries from the operation of the mining and mineral leasing laws.

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

3 **SECTION 1. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—The Congress finds the following:

1 (1) Although ski areas occupy less than one-
2 twentieth of one percent of National Forest System
3 lands nationwide, in many rural areas of the United
4 States, ski areas and investments by ski area per-
5 mittees on National Forest System lands form the
6 backbone of the local economy and a preponderance
7 of the employment base.

8 (2) Ski area operations and their attendant
9 communities provide revenues to the United States
10 in the form of permit fees, income taxes, and other
11 revenues which are extremely significant in propor-
12 tion to the limited Federal acreage and Forest Serv-
13 ice administration and contractual obligations re-
14 quired to support such operations.

15 (3) In addition to alpine skiing, many ski area
16 permittees provide multiseason facilities and en-
17 hanced access to National Forest System lands that
18 result in greater public use and enjoyment of such
19 lands than would otherwise occur.

20 (4) Unlike many other private sector users of
21 Federal lands, ski areas in almost all cases assume
22 the risk to finance, construct, maintain, and market
23 all recreational facilities and improvements on such
24 lands.

1 (5) Many ski areas on National Forest System
2 lands operate in an extremely competitive environ-
3 ment with similar facilities located on private or
4 State lands, which requires ski area permittees to
5 maintain a high level of capital investment to up-
6 grade existing facilities and install new facilities
7 (such as lifts, trails, snowmaking and trail grooming
8 equipment, restaurants, and day care centers) to
9 serve the public.

10 (6) Despite an outward appearance of economic
11 well-being resulting from an intensive capital infra-
12 structure, many ski area operations are marginally
13 profitable due to the competition and capital invest-
14 ments referred to in paragraph (5), weather condi-
15 tions, insurance premiums, the national economy,
16 and other factors beyond the control of the ski area
17 permittee.

18 (7) Because of the contributions of ski areas to
19 the economies of the United States and the rural
20 communities in which they are located, and the en-
21 hanced use and enjoyment of National Forest Sys-
22 tem lands resulting from ski areas, it is in the na-
23 tional interest for the United States, where consist-
24 ent with national forest management objectives, to
25 take actions to promote the long-term economic

1 health and stability of ski areas and associated com-
2 munities.

3 (8) The National Forest Ski Area Permit Act
4 of 1986 (16 U.S.C. 497b) has been of assistance to
5 ski area operations on National Forest System lands
6 by providing longer term lease tenure and contrac-
7 tual stability to ski area permittees, but further ad-
8 justments and policy direction are warranted to ad-
9 dress problems related to permit fees and fee cal-
10 culations and conflicts with certain mineral activi-
11 ties.

12 (b) PURPOSE.—In light of the findings specified in
13 subsection (a), it is the purpose of this Act—

14 (1) to legislate a ski area permit fee that re-
15 turns fair market value to the United States and at
16 the same time—

17 (A) provides ski area permittees and the
18 United States with a simplified, consistent, pre-
19 dictable, and equitable fee formula that is com-
20 mensurate with long-term planning, financing,
21 and operational needs of ski areas; and

22 (B) simplifies bookkeeping and other ad-
23 ministrative burdens on ski area permittees and
24 Forest Service personnel; and

1 (2) to prevent future conflicts between ski area
2 operations and mining and mineral leasing programs
3 by withdrawing lands within ski area permit bound-
4 aries from the operation of the mining and mineral
5 leasing laws.

6 **SEC. 2. SKI AREA PERMIT FEES AND WITHDRAWAL OF SKI**
7 **AREAS FROM OPERATION OF MINING LAWS.**

8 The National Forest Ski Area Permit Act of 1986
9 (16 U.S.C. 497b) is amended by adding at the end the
10 following new sections:

11 **“SEC. 4. SKI AREA PERMIT FEES.**

12 “(a) **SKI AREA PERMIT FEE.**—After the date of the
13 enactment of this section, the fee for all ski area permits
14 on National Forest System lands shall be calculated,
15 charged, and paid only as set forth in subsection (b) in
16 order to—

17 “(1) return fair market value to the United
18 States and at the same time provide ski area permit-
19 tees and the United States with a simplified, consist-
20 ent, predictable, and equitable permit fee;

21 “(2) simplify administrative, bookkeeping, and
22 other requirements currently imposed on the Sec-
23 retary of Agriculture and ski area permittees on na-
24 tional forest lands; and

1 “(3) save costs associated with the calculation
2 of ski area permit fees.

3 “(b) METHOD OF CALCULATION.—

4 “(1) DETERMINATION OF ADJUSTED GROSS
5 REVENUE SUBJECT TO FEE.—The Secretary of Agri-
6 culture shall calculate the ski area permit fee
7 (SAPF) to be charged a ski area permittee by first
8 determining the permittee’s adjusted gross revenue
9 (AGR) to be subject to the permit fee. The permit-
10 tee’s adjusted gross revenue (AGR) is equal to the
11 sum of the following:

12 “(A) The permittee’s gross revenues from
13 alpine lift ticket and alpine season pass sales
14 plus revenue from alpine ski school operations
15 (LTA+SSA), with such total multiplied by the
16 permittee’s slope transport feet percentage
17 (STFP) on National Forest System lands.

18 “(B) The permittee’s gross revenues from
19 nordic ski use pass sales and nordic ski school
20 operations (LTN+SSN), with such total multi-
21 plied by the permittee’s percentage (NR) of
22 nordic trails on National Forest System lands.

23 “(C) The permittee’s gross revenues from
24 ancillary facilities (GRAF) physically located on
25 National Forest System lands, including all per-

1 mittee or subpermittee lodging, food service,
2 rental shops, parking, and other ancillary oper-
3 ations.

4 “(2) DEPICTION OF FORMULA.—Utilizing the
5 abbreviations indicated in paragraph (1), the cal-
6 culation of the adjusted gross revenue (AGR) of a
7 ski area permittee is illustrated by the following for-
8 mula:

$$\text{“AGR} = ((\text{LTA} + \text{SSA}) \times \text{STFP}) + ((\text{LTN} + \text{SSN}) \times \text{NR}) \\ + \text{GRAF}$$

9 “(3) DETERMINATION OF SKI AREA PERMIT
10 FEE.—The Secretary shall determine the ski area
11 permit fee (SAPF) to be charged a ski area permit-
12 tee by multiplying adjusted gross revenue deter-
13 mined under paragraph (1) for the permittee by the
14 following percentages for each revenue bracket and
15 adding the total for each revenue bracket:

16 “(A) 1.5 percent of all adjusted gross reve-
17 nue below \$3,000,000.

18 “(B) 2.5 percent for adjusted gross reve-
19 nue between \$3,000,000 and \$15,000,000.

20 “(C) 2.75 percent for adjusted gross reve-
21 nue between \$15,000,000 and \$50,000,000.

22 “(D) 4.0 percent for the amount of ad-
23 justed gross revenue that exceeds \$50,000,000.

1 “(4) SLOPE TRANSPORT FEET PERCENTAGE.—

2 In cases where ski areas are only partially located on
3 National Forest System lands, the slope transport
4 feet percentage on national forest land referred to in
5 paragraph (1) is hereby determined to most accu-
6 rately reflect the percent of an alpine ski area per-
7 mittee’s total skier service capacity which is located
8 on National Forest System land. It shall be cal-
9 culated as generally described in the Forest Service
10 Manual in effect as of January 1, 1992.

11 “(5) ANNUAL ADJUSTMENT OF ADJUSTED
12 GROSS REVENUE.—In order to insure that the ski
13 area permit fee set forth in this subsection remains
14 fair and equitable to both the United States and ski
15 area permittees, the Secretary shall adjust, on an
16 annual basis, the adjusted gross revenue figures for
17 each revenue bracket in subparagraphs (A) through
18 (D) of paragraph (3) by the percent increase or de-
19 crease in the national Consumer Price Index for the
20 preceding calendar year.

21 “(c) MINIMUM RENTAL FEE.—In cases where an
22 area of National Forest System land is under a ski area
23 permit but the permittee does not have revenue or sales
24 qualifying for fee payment pursuant to subsection (a), the
25 permittee shall pay an annual minimum rental fee of \$2

1 for each acre of National Forest System land under per-
2 mit. Rental fees imposed under this subsection shall be
3 paid at the time specified in subsection (d).

4 “(d) TIME FOR PAYMENT.—Unless otherwise mutu-
5 ally agreed to by the ski area permittee and the Secretary,
6 the ski area permit fee set forth in subsection (b) shall
7 be paid by the permittee by August 31 of each year and
8 cover all applicable revenues received during the 12-month
9 period ending on June 30 of that year. To simplify book-
10 keeping and fee calculation burdens on the permittee and
11 the Forest Service, the Secretary shall no later than
12 March 15 of each year provide each ski area permittee
13 with a standardized form and worksheets (including an-
14 nual fee calculation brackets and rates) to be utilized for
15 fee calculation and submitted with the fee payment.

16 “(e) EXCLUSION OF REVENUE OBTAINED OUTSIDE
17 OF NATIONAL FOREST LANDS.—Under no circumstances
18 shall ski area permittee revenue or subpermittee revenue
19 (other than lift ticket, area use pass, or ski school sales)
20 obtained from operations physically located on nonnational
21 forest land be included in the ski area permit fee calcula-
22 tion.

23 “(f) DEFINITIONS.—To simplify bookkeeping and ad-
24 ministrative burdens on ski area permittees and the For-
25 est Service, as used in this section, the terms “revenue”

1 and "sales" shall mean actual income from sales. Such
2 terms shall not include sales of operating equipment, re-
3 funds, rent paid to the permittee by sublessees, sponsor
4 contributions to special events or any amounts attrib-
5 utable to employee gratuities, discounts, complimentary
6 lift tickets, or other goods or services (except for bartered
7 goods) for which the permittee does not receive money.

8 “(g) EFFECTIVE DATE FOR FEES.—The ski area
9 permit fees required by this section shall become effective
10 on July 1, 1995 and cover receipts retroactive to July 1,
11 1994. If a ski area permittee has paid fees for the 12-
12 month period ending on June 30, 1995, under the grad-
13 uated rate fee system formula in effect prior to the date
14 of the enactment of this section, such fees shall be credited
15 toward the new ski area permit fee due for that period
16 under this section.

17 “(h) TRANSITIONAL SKI AREA PERMIT FEES.—

18 “(1) DETERMINATION OF AVERAGE FEES.—In
19 order to minimize in any one year the effects of con-
20 verting individual ski areas from the fee system in
21 existence on the date of the enactment of this sec-
22 tion to the ski area permit fee required by sub-
23 section (a), each ski area permittee subject to the
24 new fee shall determine the permittee's average ex-
25 isting fees (AEF) for each year of the three-year pe-

1 riod ending on June 30, 1994, and the permittee's
2 proforma average ski area permit fee (ASF) under
3 subsection (a) for each year of that period. Both the
4 AEF and ASF shall be determined by adding to-
5 gether the fee payment made by the ski area or the
6 estimated payment that would have been paid under
7 subsection (a) for each year of that period and divid-
8 ing by three.

9 “(2) DETERMINATION OF TRANSITIONAL
10 FEES.—To calculate the ski area permit fee required
11 by subsection (a) for each year in the five-year pe-
12 riod ending on June 30, 1999, the Secretary of Ag-
13 riculture shall divide the ski area permit fee required
14 by subsection (a) by the ASF and then multiply by
15 the AEF. The resulting fee shall be called the Ad-
16 justed Base Fee (ABF). After June 30, 1999, all ski
17 areas will pay the ski area permit fee required by
18 subsection (a) without regard to previous fees or
19 rates paid.

20 “(3) EFFECT OF LOW ABF.—Should the ABF
21 be less than the ski area permit fee required by sub-
22 section (a), the ski area permittee shall pay the less-
23 er of the fee required by subsection (a) or the ABF,
24 which shall be adjusted by multiplying the ABF
25 by—

1 “(A) 1.1 for the fee required to be paid by
2 August 31, 1995;

3 “(B) 1.2 for the fee required to be paid by
4 August 31, 1996;

5 “(C) 1.3 for the fee required to be paid by
6 August 31, 1997;

7 “(D) 1.4 for the fee required to be paid by
8 August 31, 1998; and

9 “(E) 1.5 for the fee required to be paid by
10 August 31, 1999.

11 “(3) EFFECT OF HIGH ABF.—Should the ABF
12 be greater than the ski area permit fee required by
13 subsection (a), the ski area permittee shall pay the
14 greater of the fee required by subsection (a) or the
15 ABF, which shall be adjusted by multiplying the
16 ABF by—

17 “(A) 0.9 for the fee required to be paid by
18 August 31, 1995;

19 “(B) 0.8 for the fee required to be paid by
20 August 31, 1996;

21 “(C) 0.7 for the fee required to be paid by
22 August 31, 1997;

23 “(D) 0.6 for the fee required to be paid by
24 August 31, 1998; and

1 “(E) 0.5 for the fee required to be paid by
2 August 31, 1999.

3 **“SEC. 5. WITHDRAWAL OF SKI AREAS FROM OPERATION OF**
4 **MINING LAWS.**

5 “Subject to valid existing rights, all lands located
6 within the boundaries of ski area permits issued prior to,
7 on, or after the date of the enactment of this section pur-
8 suant to the authority of the Act of March 4, 1915 (16
9 U.S.C. 497), the Act of June 4, 1897 (16 U.S.C. 473 et
10 seq.), or section 3 of this Act are hereby and henceforth
11 automatically withdrawn from all forms of appropriation
12 under the mining laws and from disposition under all laws
13 pertaining to mineral and geothermal leasing and all
14 amendments to such laws. Such withdrawal shall continue
15 for the full term of the permit and any modification,
16 reissuance, or renewal of the permit. Such withdrawal
17 shall be canceled automatically upon expiration or other
18 termination of the permit unless, at the request of the Sec-
19 retary of Agriculture, the Secretary of the Interior deter-
20 mines to continue the withdrawal. Upon cancellation of the
21 withdrawal, the land shall be automatically restored to all
22 appropriation not otherwise restricted under the public
23 land laws.”.

104TH CONGRESS
1ST SESSION

H. R. 2028

To provide for a uniform concessions policy for the Federal land management agencies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 13, 1995

Mr. HANSEN (for himself and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committees on Agriculture and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for a uniform concessions policy for the Federal land management agencies, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Land Manage-
5 ment Agency Concession Reform Act of 1995”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to provide a uniform policy
8 for management of concessions by Federal land manage-

1 ment agencies (Forest Service, United States Fish and
2 Wildlife Service, National Park Service, Bureau of Land
3 Management, Bureau of Reclamation and Corps of Engi-
4 neers) which—

5 (1) recognizes the importance of a public-pri-
6 vate partnership in providing a quality visitor experi-
7 ence on Federal lands; and

8 (2) utilizes the competitive process to ensure
9 reasonable prices and quality services for the public,
10 a fair return for the Federal Government, and a rea-
11 sonable opportunity for the economic viability of the
12 concessioner.

13 **SEC. 3. DEFINITIONS.**

14 For the purposes of this Act:

15 (1) The term “Secretary concerned” means—

16 (A) the Secretary of the Interior with re-
17 spect to the United States Fish and Wildlife
18 Service, National Park Service, Bureau of Land
19 Management, and Bureau of Reclamation;

20 (B) the Secretary of Agriculture with re-
21 spect to the Forest Service; and

22 (C) the Secretary of the Army with respect
23 to the United States Army Corps of Engineers.

24 (2) The term “concession” means a commercial
25 business which provides visitor services, facilities, or

1 activities on Federal lands or waters pursuant to a
2 concession services agreement or concession license.

3 (3) The term “concession service agreement”
4 means a formal written agreement between the
5 agency head and the concessioner which sets forth
6 the terms and conditions under which the conces-
7 sioner is to provide visitor services, facilities or ac-
8 tivities as well as the rights and obligations of the
9 Federal Government.

10 (4) The term “concession license” means a
11 written agreement between the agency head and the
12 concessioner to provide recreation services or activi-
13 ties on a limited basis.

14 (5) The term “Board” means the Board of
15 Concession Appeals established by section 12.

16 (6) The term “substantial capital investment”
17 means a required investment either for new fixed fa-
18 cilities or acquisition of existing capital improve-
19 ments greater than 10 percent of the estimated
20 gross receipts over the life of a concession service
21 agreement.

22 (7) The term “renewal incentive” means a cred-
23 it based on past performance toward the score
24 awarded by the Secretary to a concessioner’s pro-

1 posal submitted in response to a solicitation for the
2 renewal of such contract.

3 **SEC. 4. NATURE AND TYPES OF CONCESSION AUTHORIZA-**
4 **TIONS.**

5 (a) TYPES.—The Secretary concerned may enter into
6 concessions authorizations, as follows:

7 (1) CONCESSION SERVICES AGREEMENT.—A
8 concession service agreement shall be entered into
9 for all concessions where the Secretary concerned
10 makes a finding that the provision of concession
11 services is in the interest of the Federal Government
12 and issues a competitive offering for concession serv-
13 ices, facilities or activities. Concession service agree-
14 ments may require substantial capital investments.

15 (2) CONCESSION LICENSE.—A concession li-
16 cense may be entered into for those activities which
17 are infrequent (including one-time events), for which
18 the Secretary concerned determines there exists no
19 need to limit the number of concessioners, or for
20 which the Secretary concerned makes a finding of no
21 competitive interest.

22 (3) LANDS UNDER MULTIPLE JURISDIC-
23 TIONS.—The Secretaries of the Departments con-
24 cerned shall designate an agency to be the lead
25 agency concerning concessions which conduct a sin-

1 gle operation on lands or waters under the jurisdic-
2 tion of more than one agency. The agency so des-
3 ignated shall issue a single authorization under
4 paragraphs (1) and (2) for such operation.

5 (b) TERM.—

6 (1) IN GENERAL.—The term of concession serv-
7 ice agreements which require substantial capital in-
8 vestment shall be 10 years, except that the Secretary
9 concerned may agree to a longer term if the Sec-
10 retary determines (in his discretion) that such longer
11 term is in the public interest or necessary due to the
12 extent of investment required. The term for a con-
13 cession license may not exceed three years.

14 (2) TEMPORARY EXTENSION.—The Secretary
15 may agree to temporary extensions of concession
16 service agreements for up to two years on a non-
17 competitive basis to avoid interruption of services to
18 the public.

19 (3) ESSENTIALLY IDENTICAL SERVICES IN A
20 SPECIFIC GEOGRAPHIC AREA.—Where the Secretary
21 concerned offers authorizations for more than one
22 river runner, outfitter, or guide concession operation
23 to provide essentially identical services in a defined
24 geographic area, the duration and expiration of con-
25 cession authorizations shall be identical.

1 **SEC. 5. RATES AND CHARGES TO THE PUBLIC.**

2 In general, rates and charges to the public shall be
3 set by the concessioner. For concession service agreements
4 only, a concessioner's rates and charges to the public shall
5 be subject to the approval of the Secretary concerned in
6 those instances where the Secretary determines that suffi-
7 cient competition for such facilities and services does not
8 exist within or in close proximity to the area in which the
9 concessioner operates. Such determination shall be based
10 on criteria which shall be specified in the regulations is-
11 sued pursuant to section 18. In those instances, the con-
12 cession service agreement shall state that the reasonable-
13 ness of the concessioner's rates and charges to the public
14 shall be reviewed and approved by the Secretary concerned
15 primarily by comparison with those rates and charges for
16 facilities and services of comparable character under simi-
17 lar conditions, with due consideration for length of season,
18 seasonal variations, average percentage of occupancy, ac-
19 cessibility, availability and costs of labor and materials,
20 type of patronage, and other factors deemed significant
21 by the Secretary concerned.

22 **SEC. 6. SALE OR OTHER TRANSFER OF CONCESSION AU-**
23 **THORIZATIONS.**

24 (a) CONCESSION SERVICE AGREEMENTS.—

25 (1) APPROVAL REQUIRED.—A concession serv-
26 ice agreement is transferable or assignable only upon

1 the approval of the Secretary concerned. The Sec-
2 retary may not approve any such transfer or assign-
3 ment if the Secretary determines that the prospec-
4 tive concessioner is or is likely to be unable to com-
5 pletely satisfy all of the requirements, terms, and
6 conditions of the contract or that the terms of the
7 transfer or assignment would preclude providing ap-
8 propriate facilities or services to the public at rea-
9 sonable rates.

10 (2) CONSIDERATION PERIOD.—If the Secretary
11 fails to approve or disapprove a transfer or assign-
12 ment under paragraph (1) within 90 days after the
13 date on which the Secretary receives a request for
14 such an approval, the transfer or assignment shall
15 be deemed approved.

16 (3) NO MODIFICATION OF TERMS AND CONDI-
17 TIONS.—The terms and conditions of the concessions
18 service agreement shall not be subject to modifica-
19 tion at the time of any transfer or assignment under
20 this section.

21 (b) CONCESSION LICENSE.—A concession license
22 may not be transferred.

1 **SEC. 7. COMPETITIVE SELECTION PROCESS FOR CONCES-**
2 **SION SERVICE AGREEMENTS.**

3 (a) AWARD TO BEST APPLICATION.—The Secretary
4 shall enter into, and renew, a concession service agreement
5 with the person whom the Secretary determines in accord-
6 ance with this section submits the best application through
7 a competitive process as defined in this section.

8 (b) PROSPECTUS AND ANNOUNCEMENT.—The Sec-
9 retary concerned shall prepare a prospectus which de-
10 scribes the concession service opportunity and shall pub-
11 lish, in appropriate locations, announcements of the avail-
12 ability of the prospectus and the concession service oppor-
13 tunity. The announcement shall include (but need not be
14 limited to) the following:

15 (1) A description of the services and facilities to
16 be provided.

17 (2) The level of capital investment required (if
18 any).

19 (3) Terms and conditions of the concession
20 service agreement.

21 (4) Facilities and services to be provided by the
22 Secretary to the concessioner.

23 (5) Minimum public services to be offered by
24 the Secretary.

25 (6) The minimum fees to the United States.

1 (c) FACTORS AND MINIMUM STANDARDS IN DETER-
2 MINING BEST APPLICATION.—In determining the best ap-
3 plication, the Secretary concerned shall take into consider-
4 ation (but shall not be limited to) the following, including
5 whether the application meets the minimum requirements
6 (if any) of the Secretary for each of the following:

7 (1) Responsiveness to the prospectus.

8 (2) Quality of visitor services based on the na-
9 ture of equipment and facilities to be provided.

10 (3) Experience and performance in providing
11 similar services at reasonable rates.

12 (4) Record of resource protection (as appro-
13 priate).

14 (5) Financial capability of the applicant.

15 (6) Fees to the United States.

16 (d) SELECTION PROCESS.—

17 (1) BASIS.—The process for selecting the best
18 applicant shall consist of the following:

19 (A) First, the Secretary concerned shall
20 identify those applicants who meet the mini-
21 mum standards (if any) for the factors identi-
22 fied under subsection (c).

23 (B) Second, from the applicants selected
24 under subparagraph (A), the Secretary con-
25 cerned shall rank the applicants without any

1 consideration of fees to the United States and
2 determine the best qualified applicants.

3 (C) Third, after the best qualified appli-
4 cants have been identified, the Secretary con-
5 cerned shall consider fees to the United States.

6 (2) RENEWAL INCENTIVE.—In evaluating appli-
7 cations for the reissuance of a concession services
8 agreement, a concessioner is entitled to a renewal in-
9 centive of—

10 (A) 20 percent of the maximum points
11 available under such evaluations for perform-
12 ance which exceeds concession service agree-
13 ment requirements, as specified in section
14 8(a)(2)(A), over the life of the previous agree-
15 ment and shall be considered to be one of the
16 best-qualified applicants; and

17 (B) 5 percent of the maximum points
18 available under such evaluations for perform-
19 ance which fully meets concession service agree-
20 ments, as specified in section 8(a)(2)(B), over
21 the life of the previous agreement.

22 (e) INAPPLICABILITY OF NEPA TO TEMPORARY EX-
23 TENSIONS AND SIMILAR RENEWALS OF CONCESSIONS
24 AGREEMENTS.—The temporary extension of a concession
25 authorization, or renewal of a concession authorization

1 which is similar to a previous authorization, is not subject
2 to the National Environmental Policy Act of 1969 (42
3 U.S.C. 4331 et seq.).

4 (f) PROVISION FOR ADDITIONAL RELATED SERV-
5 ICES.—The Secretary concerned may modify the conces-
6 sion service agreement to allow concessioners to provide
7 services closely related to such agreement, if the Secretary
8 concerned determines that such changes would enhance
9 the safety or enjoyment of visitors and would not unduly
10 restrict the award of future concession service agreements.

11 **SEC. 8. CONCESSIONER EVALUATIONS.**

12 (a) IN GENERAL.—The Secretary concerned, in con-
13 sultation with concession industry representatives, shall
14 develop a program of evaluations of the concessioners op-
15 erating under a concession service agreement who are pro-
16 viding visitor services in areas under the jurisdiction of
17 the Secretary. The evaluations shall be on both an annual
18 basis as well as cumulative over the duration of the conces-
19 sion service agreement. The evaluation program shall—

20 (1) include four program areas of quality of vis-
21 itor services; resource protection (as applicable); fi-
22 nancial performance; and compliance with concession
23 service agreement provisions and pertinent laws and
24 regulations;

25 (2) define four levels of performance—

1 (A) exceeds concession service agreement
2 requirements;

3 (B) fully meets concession service agree-
4 ment requirements;

5 (C) probationary; and

6 (D) unsatisfactory; and

7 (3) be based on criteria which—

8 (A) are objective, measurable, and attain-
9 able; and

10 (B) shall include general standards appli-
11 cable to all concession operations, industry-spe-
12 cific standards, and standards developed by the
13 Secretary concerned and the concessioner for
14 each concession service agreement.

15 (b) ANNUAL EVALUATIONS.—

16 (1) REQUIREMENTS.—The Secretary concerned
17 shall annually conduct an evaluation of each conces-
18 sioner and shall assign an overall rating for each
19 concessioner for each year. The procedure for any
20 performance evaluation shall be provided in advance
21 to the concessioner, and the concessioner shall be en-
22 titled to a complete explanation of any rating given.
23 If the Secretary's performance evaluation for any
24 year results in an unsatisfactory rating of the con-
25 cessioner, the Secretary concerned shall so notify the

1 concessioner, in writing, and shall provide the con-
2 cessioner with a list of the minimum requirements
3 necessary to receive a rating which fully meets con-
4 cession service agreement requirements.

5 (2) SUSPENSION, REVOCATION, AND TERMI-
6 NATION OF AUTHORIZATION.—The Secretary con-
7 cerned may suspend, revoke, or terminate a conces-
8 sion authorization if the concessioner fails to correct
9 and meet the minimum requirements identified by
10 the Secretary within the limitations established by
11 the Secretary at the time notice of the unsatisfactory
12 rating is provided to the concessioner.

13 (c) EFFECT OF UNSATISFACTORY RATING.—Any
14 concessioner who receives an annual rating of unsatisfac-
15 tory may not be rated as exceeding concession service
16 agreement requirements over the life of the concession
17 service agreement.

18 **SEC. 9. FEES CHARGED BY UNITED STATES FOR CONCES-**
19 **SION AUTHORIZATIONS.**

20 (a) IN GENERAL.—The Secretary concerned shall
21 charge a fee for the privilege of providing concession serv-
22 ices pursuant to this Act. The fee for any concession serv-
23 ice agreement may include any of the following:

24 (1) An annual cash payment for the privilege of
25 providing concession services.

1 (2) The amount required for capital improve-
2 ments required pursuant to section 11(a).

3 (3) Fees for use of Government facilities.

4 (4) Expenditures for maintenance of or im-
5 provements to Government-owned facilities.

6 (b) ESTABLISHMENT OF AMOUNT.—

7 (1) MINIMUM ACCEPTABLE FEE.—The Sec-
8 retary concerned shall establish a minimum fee
9 which is acceptable to the Secretary under this sec-
10 tion and shall include the minimum fee in the pro-
11 spectus under section 7. This fee shall be based on
12 historical data, where available, as well as industry-
13 specific and other market data available to the Sec-
14 retary concerned.

15 (2) FINAL FEE.—Except as provided by para-
16 graph (3), the final fee shall be the amount bid by
17 the selected applicant under section 7.

18 (3) ESSENTIALLY IDENTICAL SERVICES IN A
19 SPECIFIC GEOGRAPHIC AREA.—Where the Secretary
20 concerned simultaneously offers authorizations for
21 more than one river runner, outfitter, or guide con-
22 cession operation to provide essentially identical
23 services in a defined geographic area, the concession
24 fee for all such concessioners shall be determined by

1 taking an average of the bids submitted by all se-
2 lected applicants.

3 (c) ADJUSTMENT OF FEES.—

4 (1) IN GENERAL.—The amount of the fee shall
5 be set at the beginning of the concession authoriza-
6 tion and may only be modified—

7 (A) on the basis of inflation, if the annual
8 payment is not determined by a percentage of
9 gross revenue (as measured by changes in the
10 consumer price index), to reflect changed or
11 unmet conditions identified in the prospectus,
12 or in the event of an unforeseen disaster; and

13 (B) by mutual agreement between the Sec-
14 retary concerned and the concessioner at any
15 time.

16 (2) CPI.—For the purposes of adjustments for
17 inflation under paragraph (1), the Federal agencies
18 shall select a consumer price index published by the
19 Bureau of Labor Statistics and shall use such index
20 in a consistent manner.

21 (d) CONCESSION LICENSE FEE.—The fee for a con-
22 cession license shall cover the program administrative
23 costs and may not be changed over the life of the license.

1 **SEC. 10. DISPOSITION OF FEES.**

2 (a) ESTABLISHMENT OF ACCOUNTS.—The Secretary
3 concerned, in consultation with the Secretary of the Treas-
4 ury, shall establish a special account in the Treasury for
5 each area subject to a concession authorization under this
6 Act and shall establish an agencywide special account in
7 the Treasury for each of the land management agencies
8 identified in section 2. All amounts deposited into such
9 special accounts shall be available without further appro-
10 priation until expended for use by the Secretary con-
11 cerned.

12 (b) AVAILABILITY OF FUNDS.—Seventy-five percent
13 of the amounts collected under this Act with respect to
14 an area shall be deposited in the special account estab-
15 lished for such area under subsection (a) and shall remain
16 available for expenditure for visitor services and facilities.
17 The remaining 25 percent of such amounts shall be placed
18 in the special account established for the agency concerned
19 under subsection (a) and shall be available for expenditure
20 for such services and facilities for use on an agencywide
21 basis.

22 (c) INVESTMENT OF ACCOUNTS.—The Secretary of
23 the Treasury shall invest such portion of amounts in each
24 account established under this section as is not in the
25 judgment of the Secretary concerned required to meet cur-
26 rent withdrawals. Such investments shall be in public debt

1 securities with maturities suitable to the needs of each
2 such account, as determined by the Secretary concerned,
3 and bearing interest at rates determined by the Secretary
4 of the Treasury, taking into consideration current market
5 yields on outstanding marketable obligations of the United
6 States of comparable maturities. The income on invest-
7 ments from an account shall be credited to and form a
8 part of the account.

9 (d) EXEMPTION OF FEES.—Amounts collected under
10 this section and amounts received from the sale of lands
11 under section 14 shall not be taken into account for the
12 purposes of the Act of May 23, 1908, and the Act of
13 March 1, 1911 (16 U.S.C. 500), the Act of March 4, 1913
14 (16 U.S.C. 501), the Act of July 22, 1937 (7 U.S.C.
15 1012), the Act of August 8, 1937, and the Act of May
16 24, 1939 (43 U.S.C. 1181f et seq.), the Act of June 14,
17 1926 (43 U.S.C. 869–4), chapter 69 of title 31, United
18 States Code, section 401 of the Act of June 15, 1935 (16
19 U.S.C. 715s), the Land and Water Conservation Fund Act
20 of 1965 (16 U.S.C. 460l–1–4—460l–11), and any other
21 provision of law relating to revenue allocation.

22 (e) ACCOUNTABILITY.—The regulations developed
23 under section 18 shall provide for a uniform program of
24 administration and expenditure of funds from the special
25 accounts established under this section. The Comptroller

1 General of the United States shall conduct periodic audits
2 to ensure that such funds are accounted for and expended
3 in accordance with such program.

4 **SEC. 11. CAPITAL IMPROVEMENTS.**

5 (a) PRIVATE SECTOR DEVELOPMENT.—It is the pol-
6 icy of the United States to encourage the private sector
7 to develop, own and maintain to the extent possible such
8 public recreation facilities as the Secretary concerned de-
9 termines through the planning process would enhance
10 public use and enjoyment of Federal lands.

11 (b) DETERMINATION OF REMOVAL OR RETENTION
12 OF FACILITIES AT END OF CONCESSION AUTHORIZA-
13 TION.—At the end of any concession authorization entered
14 into under this Act, the concessioner shall either remove
15 any capital improvements and restore the site, or sell such
16 improvements to the next concessioner, as determined by
17 the Secretary concerned. The Secretary shall base such de-
18 termination on the following factors:

19 (1) The remaining service life of the improve-
20 ments.

21 (2) The costs associated with the removal of
22 such improvements and restoration of the site and
23 the subsequent reconstruction (if any) of public
24 recreation facilities.

1 (3) The impact on resources from the removal
2 of such improvements and restoration of the site and
3 the subsequent reconstruction (if any) of public
4 recreation facilities.

5 (4) The historical significance of such improve-
6 ments.

7 (5) The impact on the public if such recreation
8 facilities are no longer available and the existence of
9 alternative facilities to support public use.

10 If the Secretary concerned determines that removal of fa-
11 cilities is the appropriate course of action, the Secretary
12 shall comply with the National Environmental Policy Act
13 of 1969 prior to any action to remove such facilities.

14 (c) APPRAISAL.—

15 (1) INDEPENDENT APPRAISAL REQUIRED.—If,
16 pursuant to subsection (b), the Secretary concerned
17 determines that the public would be best served by
18 the sale of existing facilities to the subsequent con-
19 cessioner, the Secretary, in consultation with the
20 concessioner, shall arrange for an independent ap-
21 praisal to determine the fair market value of all cap-
22 ital improvements on the site in which the conces-
23 sioner has an interest. The appraisal shall be per-
24 formed by an appraiser with significant experience

1 in the appraisal of assets similar to those that are
2 subject to the appraisal.

3 (2) REQUIREMENTS.—The appraisal required
4 by paragraph (1) shall be performed not earlier than
5 18 months before the expiration of the concession
6 service agreement and shall employ the income ap-
7 proach to valuation in determining the fair market
8 value of any such improvement used primarily for
9 the production of income—

10 (A) in a manner consistent with the proce-
11 dures and assumptions then generally employed
12 for similar income-producing assets by apprais-
13 ers who are members of the American Institute
14 of Real Estate Appraisers or the Society of
15 Real Estate Appraisers; and

16 (B) assuming a future fee equal to the av-
17 erage annual fee payable by the concessioner
18 during the term of the concessioner's agree-
19 ment.

20 (3) LATER ACQUIRED OR CONSTRUCTED PROP-
21 erty.—The value of improvements constructed or
22 acquired by the concessioner after the date of the
23 appraisal under paragraph (1) shall be the conces-
24 sioner's original cost of such construction or acqui-
25 sition.

1 (4) PROCEDURES IN EVENT OF DISAGREEMENT
2 WITH INDEPENDENT APPRAISAL.—If the parties
3 have not agreed upon the value of capital improve-
4 ments under this section, the issues in controversy
5 shall be resolved in accordance with the provisions of
6 subchapter IV of chapter 5 of title 5, United States
7 Code (relating to alternative means of dispute reso-
8 lution in the administrative process), as in effect be-
9 fore October 1, 1995.

10 **SEC. 12. DISPUTE RESOLUTION.**

11 (a) BOARD OF CONCESSION APPEALS.—

12 (1) ESTABLISHMENT.—The President shall es-
13 tablish an independent administrative review board
14 to be known as the Board of Concession Appeals.
15 The Board shall be similar to, and operate in a simi-
16 lar manner as, the Interior Board of Land Appeals.

17 (2) JURISDICTION.—The Board shall adjudicate
18 disputes between the Federal Government and con-
19 cessioners arising under this Act, including (but not
20 limited to) disputes regarding the issuance, revoca-
21 tion, suspension, or termination of a concession au-
22 thorization, performance and evaluation ratings,
23 sales of concession service agreements, and rate ap-
24 proval. The expiration of a concession authorization
25 shall not be subject to appeal to the Board.

1 (b) ADMINISTRATIVE REVIEW.—Appeals of decisions
2 may be taken to the Board after one level of review of
3 decisions made within an agency.

4 (c) JUDICIAL REVIEW.—

5 (1) IN GENERAL.—A person may seek judicial
6 review of decisions made by the Board.

7 (2) CONCESSION SERVICE AGREEMENTS.—Judicial
8 review of decisions rendered by the Board re-
9 garding concession service agreements shall be to the
10 United States Court of Federal Claims in accord-
11 ance with section 1491 of title 28, United States
12 Code (commonly referred to as the “Tucker Act”).

13 (3) CONCESSION LICENSES.—Judicial review of
14 decisions rendered by the Board regarding conces-
15 sion licenses shall be to the appropriate Federal Dis-
16 trict Court.

17 (d) INAPPLICABILITY OF CERTAIN PROVISIONS.—
18 Disputes arising under this Act shall not be subject to the
19 jurisdiction of the General Accounting Office to review bid
20 protests under the Competition in Contracting Act of
21 1984.

1 **SEC. 13. BREACH OF CONTRACT BY THE SECRETARY CON-**
2 **CERNED.**

3 If the Secretary concerned breaches a concession au-
4 thorization, the Secretary shall pay just compensation to
5 the concessioner.

6 **SEC. 14. RECORDKEEPING.**

7 (a) MAINTENANCE AND ACCESS.—Each concessioner
8 shall keep such records as the Secretary concerned may
9 prescribe to enable the Secretary to determine that all
10 terms of the concession authorization have been and are
11 being faithfully performed, and the Secretary and his duly
12 authorized representatives shall, for the purpose of audit
13 and examination, have access to said records and to other
14 books, documents, and papers of the concessioner perti-
15 nent to the concession authorization and all the terms and
16 conditions thereof.

17 (b) ACCESS BY COMPTROLLER GENERAL.—The
18 Comptroller General of the United States or any of his
19 duly authorized representatives shall, until the expiration
20 of five calendar years after the close of the business year
21 of each concessioner have access to and the right to exam-
22 ine any pertinent books, documents, papers, and records
23 of the concessioner related to the concession authorization
24 involved.

1 **SEC. 15. PRIVATIZATION OF FOREST SERVICE AND BLM**
2 **LANDS SUBJECT TO CONCESSION LEASES.**

3 (a) **AUTHORIZATION TO SELL.**—

4 (1) **IN GENERAL.**—Not later than the earlier of
5 five years after the date of the enactment of this Act
6 or the expiration of a lease of qualifying concession
7 lands, the Secretary of Agriculture with respect to
8 National Forest System lands and the Secretary of
9 the Interior with respect to Bureau of Land Man-
10 agement lands may sell such lands to the owners of
11 such facilities. Any such sale shall be at fair market
12 value and, subject to valid existing rights, shall
13 transfer all right, title, and interest of the United
14 States in and to the lands.

15 (2) **QUALIFYING CONCESSION LANDS.**—For the
16 purposes of subsection (a), lands are qualifying con-
17 cession lands if such lands are—

18 (A) subject to a lease on the date of the
19 enactment of this Act for private concession fa-
20 cilities with a fair market value greater than
21 \$2,000,000; and

22 (B) located either adjacent to the boundary
23 of the Federal lands or adjacent to other sig-
24 nificant private inholdings.

25 (b) **APPRAISAL.**—

1 (1) IN GENERAL.—The appropriate Secretary
2 shall provide for an independent appraisal of the
3 lands and interests therein to be transferred pursu-
4 ant to subsection (a). The appraiser shall—

5 (A) utilize nationally recognized appraisal
6 standards, including to the extent appropriate
7 the uniform appraisal standards for Federal
8 land acquisition; and

9 (B) not include the value of any improve-
10 ment placed on the lands by the concessioner.

11 (2) APPRAISAL REPORT.—The appraiser shall
12 submit a detailed report to the Secretary.

13 (3) PAYMENTS.—The Secretary may accept and
14 use donated funds to pay, in whole or in part, for
15 appraisals under this section.

16 (d) USE OF PROCEEDS BY THE APPROPRIATE SEC-
17 RETARY.—The appropriate Secretary shall deposit 50 per-
18 cent of the funds generated through sales under this sec-
19 tion to the credit of the appropriate agency in the agency-
20 wide account established under section 10(b). The remain-
21 ing 50 percent of such amount shall be deposited in the
22 Treasury as miscellaneous receipts.

1 **SEC. 16. APPLICATION OF GENERAL GOVERNMENTAL AC-**
2 **QUISITION REQUIREMENTS.**

3 The following laws and regulations shall not apply to
4 concession service agreements and concession licenses
5 under this Act:

6 (1) Title III of the Federal Property and Ad-
7 ministrative Services Act of 1949 (41 U.S.C. 251–
8 266).

9 (2) The Office of Federal Procurement Policy
10 Act (41 U.S.C. 401 et seq.).

11 (3) The Federal Acquisition Streamlining Act
12 of 1994 (Public Law 103–355).

13 (4) The Brooks Automatic Data Processing Act
14 (40 U.S.C. 759).

15 (5) Chapters 137 and 141 of title 10, United
16 States Code.

17 (6) The Federal Acquisition Regulation and any
18 laws not listed in paragraphs (1) through (5) provid-
19 ing authority to promulgate regulations in the Fed-
20 eral Acquisition Regulation.

21 (7) The Act of June 20, 1936 (20 U.S.C. 107;
22 commonly referred to as the “Randolph-Sheppard
23 Act”) and the Service Contract Act of 1965 (41
24 U.S.C. 351 et seq.).

1 **SEC. 17. RULES OF CONSTRUCTION.**

2 Concession programs of an agency on Federal lands
3 and waters subject to this Act shall be fully consistent with
4 the agency's mission and laws applicable to the agency.
5 Nothing in this Act shall be construed as limiting or re-
6 stricting any right, title, or interest of the United States
7 in any land or resources.

8 **SEC. 18. REGULATIONS.**

9 (a) **IN GENERAL.**—Within one year after the date of
10 enactment of this Act, the Secretary of the Interior, Sec-
11 retary of Agriculture, and Secretary of the Army shall de-
12 velop a single set of regulations to implement this Act.

13 (b) **QUALIFICATIONS OF AGENCY PERSONNEL AS-**
14 **SIGNED CONCESSION MANAGEMENT DUTIES.**—The Sec-
15 retary, by regulation under subsection (a) and taking into
16 account the provisions of this Act, shall specify the mini-
17 mum qualifications required for agency personnel assigned
18 predominantly to concession management duties.

19 **SEC. 19. RELATIONSHIP TO OTHER EXISTING LAWS.**

20 (a) **REPEALS.**—

21 (1) The Act entitled “An Act relating to the es-
22 tablishment of concession policies in the areas ad-
23 ministered by the National Park Service and for
24 other purposes” (16 U.S.C. 20–20g) is repealed.

25 (2) The last paragraph under the heading
26 “FOREST SERVICE” in the Act of March 4, 1915 (38

1 Stat. 1101), as amended by the Act of July 28,
2 1956 (chap. 771; 70 Stat. 708) (16 U.S.C. 497), is
3 repealed.

4 (3) Section 7 of the Act of April 24, 1950 (16
5 U.S.C. 580d) is repealed.

6 (b) SUPERSEDED PROVISIONS.—The provisions of
7 this Act shall supersede the provisions of—

8 (1) the Federal Water Project Recreation Act
9 of 1965 (16 U.S.C. 460l–12–21);

10 (2) the Federal Land Policy and Management
11 Act of 1976 (Oct. 21, 1976);

12 (3) the Recreation and Public Purposes Act (43
13 U.S.C. 869 et seq.);

14 (4) section 4 of the Act entitled “An Act au-
15 thorizing the construction of certain public works on
16 rivers and harbors for flood control, and for other
17 purposes” (16 U.S.C. 460d);

18 (5) sections 103 and 926 of the Water Re-
19 sources Development Act of 1986 (100 Stat. 4084
20 and 4197);

21 (6) Public Law 87–714 (16 U.S.C. 460k et
22 seq.; commonly known as the “Refuge Recreation
23 Act”); and

24 (7) the National Wildlife Refuge System Ad-
25 ministration Act of 1966 (16 U.S.C. 668dd).

1 (c) SAVINGS.—

2 (1) IN GENERAL.—The repeal of any provision,
3 and the superseding of any provision, of an Act re-
4 ferred to in subsection (a) or (b) shall not affect the
5 validity of any authorizations entered into under
6 such Act. The provisions of this Act shall apply to
7 any such authorizations, except to the extent such
8 provisions are inconsistent with the express terms
9 and conditions of such authorizations.

10 (2) RIGHT OF RENEWAL.—The right of renewal
11 provided for by any concession contract under any
12 such provision shall be preserved for a single renewal
13 of a contract following the enactment of, or conces-
14 sion authorization under, this Act.

15 (3) VALUE OF POSSESSORY INTEREST.—Noth-
16 ing in this Act shall be construed to change the
17 value of existing possessory interest as identified in
18 concession contracts entered into before the enact-
19 ment of this Act.

20 (d) ANILCA.—Nothing in this Act shall be construed
21 to amend, supersede or otherwise affect any provision of
22 the Alaska National Interest Lands Conservation Act (16
23 U.S.C. 3101 et seq.) relating to revenue-producing visitor
24 services.

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
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FEDERAL LANDS

Views on Reform of Recreation Concessioners

James Duffus III, Director,
Natural Resources Management Issues,
Resources, Community, and Economic
Development Division



Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to summarize our work on federal policies and practices for managing recreation concessioners and to provide our views on four bills now before this Subcommittee. My remarks today are based on 32 reports and testimonies we have issued over the past 20 years.¹ Our work has examined concessions activities involving six federal agencies: the National Park Service, Bureau of Land Management, Bureau of Reclamation, and U.S. Fish and Wildlife Service within the Department of the Interior; the U.S. Forest Service within the Department of Agriculture; and the U.S. Army Corps of Engineers within the Department of Defense. However, most of our work has focused on two agencies--the Park Service and the Forest Service--since activities managed by these agencies account for 90 percent of all revenues resulting from concessions.

In summary, our work over the years has shown the following:

- The agencies' concessions policies and practices are based on at least 11 different laws and, as a result, vary considerably.²
- More competition is needed in awarding concessions contracts.
- The federal government needs to obtain a better return from concessioners for the use of its lands, including obtaining fair market value for the fees it charges ski operators.

¹App. I lists these GAO products.

²App. II lists these laws.

Each of the bills now before this Subcommittee proposes changes to current concessions policies and practices. Overall, the changes proposed in these bills are consistent with our past work and findings, and we therefore support their objectives.

Mr. Chairman, before providing the details, 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 agencies managing the 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 and that the nation's natural resources are adequately conserved so that they can be enjoyed in the future.

I will first describe our earlier work on concessions and then provide our views on the four proposed bills.

CONCESSIONS POLICIES AND PROCEDURES
ARE DERIVED FROM 11 DIFFERENT LAWS

As we reported in June 1991,³ no single law authorizes concessions operations for all six 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 and on the associated fees, among other things.

With the exception of the Concessions Policy Act of 1965, which prescribes Park Service policy for several key terms and conditions in concessions agreements, the laws allow the agencies wide discretion in establishing concessions policies. As a result,

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

the six agencies have developed policies that differ in the types of concessions agreements, terms of the agreements, or fees associated with these agreements. For example, under the Concessions Policy Act of 1965, concessioners under the Park Service's management have the right to be compensated for improvements they construct on federal lands. This right, called "possessory interest," is unique to the Park Service. The other agencies' concessions agreements do not provide for possessory interest.

The Concessions Policy Act of 1965 also grants existing Park Service concessioners that perform satisfactorily a preferential right of contract renewal when their agreement expires. The Bureau of Land Management also grants a preferential right of renewal; however, this right was established by policy and not by legislation. The Forest Service offers a preferential right of renewal to smaller concessioners with short-term agreements, such as outfitters and guides, but does not extend this right to concessioners with longer-term agreements. The Corps of Engineers, Fish and Wildlife Service, and Bureau of Reclamation grant no preferential right of renewal to any concessioner.

Policies also vary concerning the terms and conditions that agency field personnel can negotiate. The Bureau of Land Management, Bureau of Reclamation, and Fish and Wildlife Service allow their field office managers to negotiate nearly all the terms of concessions agreements, regardless of the size of the contract. Thus, field office managers in these agencies can negotiate the length of the agreement, types of service provided, rates charged to the public, and cash fee or non-cash compensation paid to the federal government. In the Park Service, field managers may also negotiate nearly all the terms of concessions agreements; however, final approval for large agreements (annual revenues over \$100,000) rests with the Director of the Park Service. Generally, in the

Forest Service and the Corps of Engineers, field office managers negotiate only the length of agreements.

MORE COMPETITION IS NEEDED

Our work has shown the need for greater competition in awarding concessions contracts. As early as 1975,⁴ we reported that the preferential right of renewal is not in the government's best interest because it impedes competition.

Because existing concessioners are granted the right to match any better offer for a new concessions contract, the preferential right of renewal does not promote competition in awarding contracts. The Concessions Policy Act of 1965 requires the Park Service to provide concessioners with a preferential right of renewal. However, this legislation also requires the Park Service to give the public the right to compete for concessions contracts. Recognizing that the preferential right of renewal impedes competition, the Park Service has tried to address this matter administratively. Specifically, in October 1992 the Park Service regulations regarding the preferential right of renewal were modified. Under these regulations, prospective concessioners must respond to a Park Service prospectus on concessions operations. However, existing concessioners who perform satisfactorily still have the right to match or better the best offer received.

The Park Service believes that providing the public with an opportunity to bid on a concessions contract through a prospectus outlining the terms and conditions of the new contract will attract

⁴Concession Operations in the National Parks--Improvements Needed in Administration (RED-76-1, July 21, 1975), Better Management of National Park Concessions Can Improve Services Provided to the Public (CED-80-102, July 31, 1980), and Federal Land: Little Progress Made in Improving Oversight of Concessioners (GAO/T-93-42, May 27, 1993).

bidders, thus introducing competition. Nonetheless, the Park Service acknowledges that since the current concessioners maintain a preferential right to renew their contract by matching or bettering the best offer, competition continues to be impeded.

In our opinion, the Park Service's efforts, while limited by the provisions of the Concessions Policy Act of 1965, are a step in the right direction. However, a change in the 1965 act is needed to eliminate the preferential right of renewal.

THE GOVERNMENT NEEDS TO OBTAIN
A BETTER RETURN FROM CONCESSIONERS

We have reported that the concessions fees paid to the government appear to be low. In our June 1991 report,⁵ we reported that the six agencies received about \$35 million in fees from gross concessions revenues of \$1.4 billion--an average return to the government of about 2.4 percent. Since that report, we have updated these figures for the Park Service and the Forest Service. These figures are shown in appendix III. Concessions revenues now exceed \$2 billion and fees are approaching \$50 million; the return remains at about 2.4 percent.

In 1991 and 1992,⁶ we testified that it was difficult to determine whether the federal government was receiving a fair return from Park Service concessioners because in addition to the cash fees it received, the Park Service was receiving various types of compensation from sources other than cash fees. Non-cash

⁵GAO/RCED-91-163.

⁶Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991) and National Park Service: Policies and Practices for Determining Concessioners' Building Use Fees (GAO/T-RCED-92-66, May 21, 1992).

compensation generally consists of concessioners' repairs, maintenance, improvements, or construction of government-owned facilities--either in lieu of or in addition to paying a cash fee. The Park Service has a detailed system for calculating cash fees, but, to date, it has not determined what types of non-cash compensation are appropriate and how they should be valued. In addition, while such compensation results in needed improvements, the Park Service does not have sufficient controls over the documentation of and accounting for this compensation to ensure that the required work is adequately performed. The Park Service is in the process of developing such controls.

Forest Service Is Not Receiving Fair Market Value From Ski Operators

As you requested, Mr. Chairman, I would now like to briefly comment on the fees paid by ski operators for the use of Forest Service lands. You asked us to comment on these fees because one of the bills before the Subcommittee would change the method used to calculate ski fees. The Forest Service currently calculates the ski fees using the Graduated Rate Fee System (GRFS), which the Forest Service developed in 1965. Under GRFS, fees are calculated by applying a selected rate to gross sales in nine business categories--restaurants and lodging, for example. The calculations are further complicated because the fees are based on sales from ski area operations not only on Forest Service lands but also on private lands. When we last reported on ski fees,⁷ 143 permittees had ski areas either entirely or partly on Forest Service lands. Of these 143 permittees, 112 had their annual fees calculated under GRFS. The gross sales of these 112 permittees amounted to about \$737 million. After making adjustments reflecting the revenues generated from federal lands, the permittees paid \$13.5 million in

⁷Forest Service: Little Assurance That Fair Market Value Fees Are Collected From Ski Areas (GAO/RCED-93-107, Apr. 16, 1993).

fees to the federal government, or about 2.2 percent of the total revenues generated.⁸ The remaining permittees either paid flat fees or were not operating.

In our 1993 report, we concluded that the fees generated under GRFS do not ensure that the Forest Service receives fair market value for the use of its lands. When GRFS was put in place 30 years ago, it was intended that the rates would be adjusted periodically to reflect the current economic conditions, but that has not happened. We recommended that the Forest Service develop a simplified fee system that ensures that the government receives fees that are based on fair market value.

At the time of our 1993 report, the ski industry had proposed a simplified fee system. The industry proposed a progressive fee system based on the gross sales from all ski lifts and ski school operations. However, this proposal did not ensure that the fees collected from ski areas represent fair market value. Ski industry officials said that in developing their system they did not attempt to determine fair market value but instead aimed to generate fees comparable to the total fees generated under GRFS.

The Forest Service, as was the case at the time of our report, is developing a new fee system that agency officials have said would represent fair market value. Forest Service officials would like to implement this new fee system for the 1996-1997 ski season.

COMMENTS ON PROPOSED LEGISLATION

We would now like to discuss the four bills currently before this Subcommittee. While these bills differ, each proposes

⁸The \$13.5 million in fees from ski operations is part of the \$35 million figure mentioned earlier for revenues generated by all concessioners.

significant reforms in federal concessions policy. H.R. 2028, the most comprehensive, would bring the six agencies' management of concessioners under one law. H.R. 773 and title V of H.R. 721 propose significant changes in concessions policy for the Park Service. H.R. 1527 proposes a new fee system for ski areas on Forest Service lands. Overall, the changes proposed in these bills are consistent with our past work and findings. Thus, overall we support their objectives.

Making Policies Consistent

Our work has shown the need for one law to establish common concessions policies so that similar concessions operations are managed consistently throughout federal recreation lands.

As noted earlier, one policy difference among agencies concerns their treatment of 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, which affects only Park Service concessioners. Possessory interest is not offered to concessioners operating on lands administered by the other agencies. H.R. 2028 would encourage the private sector to build and maintain concessions facilities but would not grant possessory interest for these facilities. Under the bill, the head of an agency could direct the concessioner, at the end of the term of a concessions contract, to either remove the facilities and restore the site or sell the facilities to the next concessioner at a price established by an independent appraisal.

H.R. 773 and title V of H.R. 721 take a different approach to possessory interest. Under both of these proposed bills, the Park Service would gradually extinguish possessory interest. As existing contracts expired, the new contracts would contain language directing the concessioner to depreciate the value of its

Increasing Competition

In our opinion, any effort to reform concessions policy should include greater competition in the awarding of concessions contracts. Competition could improve both the return to the government and the quality of visitor services. H.R. 2028, H.R. 773, and title V of H.R. 721 encourage greater competition and limit the preferential right of renewal.

H.R. 2028 establishes a competitive selection process for awarding concessions contracts. It also proposes that no concessioner have a guaranteed preferential right of renewal. However, a concessioner could acquire a limited preference on the basis of its performance over the term of the contract. By linking a limited preference to performance, the bill would provide concessioners with a performance incentive while still providing a competitive environment in the awarding of new contracts.

H.R. 773 and title V of H.R. 721 establish a competitive selection process for awarding the Park Service's concessions contracts. However, both guarantee a preferential right of renewal for concessioners generating less than \$500,000 annually--which constitute about three-quarters of all current park concessioners. While removing preference for the largest concessioners is a good start toward creating a competitive environment in the awarding of concessions contracts, we continue to believe that a preferential right should not be guaranteed for any park concessioner.

Improving Return to the Federal Government

H.R. 2028, H.R. 773, and title V of H.R. 721 each propose expanding competition in awarding concessions contracts. This competition will likely result in a better return to the government from the concessioners.

These bills propose that the fees collected from the concessioners would be available for use by the collecting agency. We have previously testified before this Subcommittee⁹ that providing greater revenues by returning concessions fees and other fees to the parks was an option available to the Congress to address the deterioration of visitor services and the lack of sufficient scientific data for sound resource management. Other federal land management agencies would also likely benefit from returned concessions fees. Thus, returning concessions fees to the local level could, if properly managed and accounted for, help improve the condition of visitor services in the national parks, forests, and public lands. However, the benefit would only be realized if these funds are used to supplement and not supplant existing funding.

Reflecting Fair Market Value in Fees for Ski Areas

H.R. 1527 amends the National Forest Ski Area Permit Act of 1986 to prescribe a new fee system for ski areas on Forest Service lands. The proposed fee system is much simpler than the existing fee system. Currently, the fees for ski areas are based on GRFS, a complex system requiring numerous calculations based on the level of sales, source of sales, and level of a ski area's investment in facilities and equipment. Calculations under GRFS include sales from nine different business categories and assign multiple fee rates for each category.

In contrast, fees under H.R. 1527 would be calculated using a progressive rate structure under which a ski area's fees would increase as the sales increased. The sales subject to fee calculations under this system would fall into two categories: (1) lift ticket and ski school operations and (2) all business

⁹National Park Service: Difficult Choices Need to Be Made on the Future of the Parks (GAO/T-RCED-95-124, Mar. 7, 1995).

activities located on Forest Service lands (e.g., restaurants, ski rental shops, and overnight lodging).

Since ski areas are frequently a mix of both private and federal lands, both GRFS and the fee system proposed in H.R. 1527 would determine the percentage of private and federal lands involved, called the slope-transport-feet percentage. This percentage is used to determine the portion of sales that would be subject to fee calculations.

In our 1993 report on ski fees,¹⁰ we recommended that ski fees be simpler and that they reflect fair market value. The fee system in H.R. 1527 would be simpler to administer than GRFS. This simplicity would benefit both the Forest Service and individual ski areas. However, the fee system proposed in H.R. 1527 has the same rates as those the ski industry proposed in 1993. As we reported at that time, those rates were not designed to reflect fair market value but to generate fees comparable to the fees collected under GRFS. Forest Service officials acknowledge that they do not know whether the fees collected under GRFS reflect fair market value. As such, any fee system designed to collect comparable fees will likewise not ensure that fair market value is received as required by the Ski Area Permit Act of 1986.

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Mr. Chairman, this concludes our statement. We would be glad to respond to any questions that you or other members of the Subcommittee may have.

¹⁰GAO/RCED-93-107.

APPENDIX I

APPENDIX I

PERTINENT GAO
REPORTS AND TESTIMONIES

National Park Service: Difficult Choices Need to Be Made on the Future of the Parks (GAO/T-RCED-95-124, Mar. 7, 1995).

National Park Service: Better Management and Broader Restructuring Efforts Are Needed (GAO/T-RCED-95-101, Feb. 9, 1995).

National Park Service: Activities Outside Park Borders Have Caused Damage to Resources and Will Likely Cause More (GAO/RCED-94-59, Jan. 3, 1994).

Federal Lands: Improvements Needed in Managing Short-Term Concessioners (GAO/RCED-93-177, Sept. 14, 1993).

Federal Land: Little Progress Made in Improving Oversight of Concessioners (GAO/T-RCED-93-42, May 27, 1993).

Forest Service: Little Assurance That Fair Market Value Fees Are Collected From Ski Areas (GAO/RCED-93-107, Apr. 16, 1993).

Natural Resources Management Issues (GAO/OCG-93-17TR, Dec. 1992).

National Park Service: Policies and Practices for Determining Concessioners' Building Use Fees (GAO/T-RCED-92-66, May 21, 1992).

Federal Lands: Oversight of Long-Term Concessioners (GAO/RCED-92-128BR, Mar. 20, 1992).

Bureau of Reclamation: Land-Use Agreements With the City of Scottsdale, Arizona (GAO/T-RCED-91-74, July 11, 1991).

Bureau of Reclamation: Federal Interests Not Adequately Protected in Land-Use Agreements (GAO/RCED-91-174, July 11, 1991).

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

Forest Service: Difficult Choices Face the Future of the Recreation Program (GAO/RCED-91-115, Apr. 15, 1991).

Recreation Concessioners Operating on Federal Lands (GAO/T-RCED-91-16, Mar. 21, 1991).

Changes Needed in the Forest Service's Recreation Program (GAO/T-RCED-91-10, Feb. 27, 1991).

Parks and Recreation: Resource Limitations Affect Condition of Forest Service Recreation Sites (GAO/RCED-91-48, Jan. 15, 1991).

APPENDIX I

APPENDIX I

National Forests: Special Recreation Areas Not Meeting Established Objectives (GAO/RCED-90-27, Feb. 5, 1990).

Management of Public Lands by the Bureau of Land Management and the U.S. Forest Service (GAO/T-RCED-90-24, Feb. 6, 1990).

Parks and Recreation: Maintenance and Reconstruction Backlog on National Forest Trails (GAO/RCED-89-182, Sept. 22, 1989).

Parks and Recreation: Problems With Fee System for Resorts Operating on Forest Service Lands (GAO/RCED-88-94, May 16, 1988).

Parks and Recreation: Park Service Managers Report Shortfalls in Maintenance Funding (GAO/RCED-88-91BR, Mar. 21, 1988).

Maintenance Needs of the National Park Service (GAO/T-RCED-88-27, Mar. 23, 1988).

Parks and Recreation: Limited Progress Made in Documenting and Mitigating Threats to the Parks (GAO/RCED-87-36, Feb. 9, 1987).

Parks and Recreation: Recreational Fee Authorizations, Prohibitions, and Limitations (GAO/RCED-86-149, May 8, 1986).

Corps of Engineers' and Bureau of Reclamation's Recreation and Construction Backlogs (RCED-84-54, Nov. 25, 1984).

The National Park Service Has Improved Facilities at 12 Park Service Areas (RCED-83-65, Dec. 17, 1983).

Information Regarding U.S. Army Corps of Engineers' Management of Recreation Areas (RCED-83-63, Dec. 15, 1983).

National Parks' Health and Safety Problems Given Priority: Cost Estimates and Safety Management Could Be Improved (RCED-83-59, Apr. 25, 1983).

Increasing Entrance Fees--National Park Service (RCED-82-84, Aug. 4, 1982).

Facilities in Many National Parks and Forests Do Not Meet Health and Safety Standards (CED-80-115, Oct. 10, 1980).

Better Management of National Park Concessions Can Improve Services Provided to the Public (CED-80-102, July 31, 1980).

Concession Operations in the National Parks--Improvements Needed in Administration (RED-76-1, July 21, 1975).

APPENDIX II

APPENDIX II

ELEVEN DIFFERENT LAWS GOVERN CONCESSIONS OPERATIONS

<u>Law</u>	<u>Agency affected</u>
Concession Policy Act of 1965 (Oct. 9, 1965)	National Park Service
Federal Water Project Recreation Act of 1965 (July 9, 1965)	Bureau of Reclamation Corps of Engineers
National Forest Ski Area Permit Act of 1986 (Oct. 22, 1986)	Forest Service
16 U.S.C. 497 (Act of Mar. 4, 1915)	Forest Service
Granger-Thye Act (Apr. 24, 1950)	Forest Service
Recreation and Public Purposes Act (June 14, 1926)	Bureau of Land Management
Federal Land Policy and Management Act of 1976 (Oct. 21, 1976)	Bureau of Land Management
Public Park and Recreation Facilities at Water Resource Development Projects (Dec. 22, 1944)	Corps of Engineers
Water Resources Development Act (Nov. 17, 1986)	Corps of Engineers
Refuge Recreation Act (Sept. 28, 1962)	Fish and Wildlife Service
National Wildlife Refuge System Administration Act (Oct. 15, 1966)	Fish and Wildlife Service

GAO Concessions Agreements, Revenues, and Fees

Agency	Number of concessions agreements	Concessions ^a revenues (in millions)	Concessions ^a fees (in millions)
Forest Service	5,322 ^b	\$1,205.0 ^b	\$26.0 ^b
Park Service	1,942 ^b	657.0 ^c	18.6 ^c
Corps of Engineers	631	102.2	1.9
Bureau of Land Management	1,413	33.8	0.8
Bureau of Reclamation	23	8.9	0.3
Fish and Wildlife Service	428	4.5	0.2
Total	9,759	\$2,011.4	\$47.8

^aExcludes agreements for which agencies did not have complete financial data.

^b1994 data.

^c1993 data.

Source: Data supplied by the agencies. All data are for 1989 except where otherwise noted.

STATEMENT OF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on National Parks, Forests, and Public Lands
Committee on Natural Resources
United States House of Representatives

Concerning H.R. 1527 - Amending the
National Forest Ski Permit Act of 1986
and
H.R. 2028 - the "Federal Land Management Agency
Concession Act Reform Act of 1995"

July 25, 1995

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am pleased to be here today to present the position of the Department of Agriculture on two bills of importance to the operation of the Forest Service. These bills are: H.R. 1527 which would amend the National Forest Ski Area Permit Act of 1986 and H.R. 2028, the Federal Land Management Agency Concession Reform Act of 1995. Let me begin with H.R. 1527.

H.R. 1527

The Department would prefer to maintain the flexibility to implement an acceptable fee system through the regulatory process. However, should this Committee decide to move forward, we strongly recommend that H.R. 1527 be amended to address several concerns that we have.

The National Forest Ski Area Permit Act of 1986 (P.L. 99-522) provides for the issuance of ski area permits for operations on National Forest System (NFS) lands. The Act requires that ski area permits be subject to a fee based on fair market value as determined by the Secretary of Agriculture in accordance with applicable law.

H.R. 1527 would amend the Act by adding two additional sections. Section 4 would establish a methodology for determining permit fees. The section also provides for minimum rental fees, payment schedules and a 5-year phase-in of the new fee system. Section 5 provides for the withdrawal of ski areas from operation of mining laws.

Our budget analysis of the bill is that it is revenue neutral complying with the PAYGO requirements of the Omnibus Budget Reconciliation Act of 1990 (OBRA).

Section 4 - Ski Area Permit Fees

In 1972, we implemented the Graduated Rate Fee System (GRFS) to determine the fees paid by the then 122 ski areas whose operations occur on NFS lands. Under the terms of that system, in fiscal year 1994, 140 ski areas paid almost \$19 million in permit fees based on applicable sales of over \$939 million--about 2 percent of applicable sales.

GRFS has long been recognized as being cumbersome and expensive to administer. More importantly, it cannot be demonstrated that the GRFS represents "fair market value" as required by the 1986 Act. Accordingly, on July 13, 1995, the Department published a proposed policy in the Federal Register that would replace GRFS with a new permit fee system.

The proposed system improves on GRFS in two significant ways. First, it attempts to estimate "fair market value" for ski areas and is based on site-specific appraisals of the use of National Forest System lands by ski areas--a necessary step in determining "fair market value." Secondly, it would eliminate the need for burdensome audits of ski area assets and revenues making it simpler and less costly to administer. Current plans call for the new system to be in place for fiscal year 1997.

Our proposed system has not been tested. Because of the nature of the appraisal process, some parties may not agree that the fee level determinations reflect "fair market value." We look forward to receiving comments on the Department's proposed policy to help address these concerns.

While the fee system described in H.R. 1527 would be less burdensome and less expensive to apply than our proposed system for both the permittee and the Government, it is not without its faults. Because it is intended to maintain the same fee levels as

GRFS, this formula suffers from the same inadequacy as GRFS in that there is no assurance that "fair market value" is being collected. In effect, this approach may provide an unwarranted subsidy to the ski area permittees, or result in overcharges on a case-by-case basis. Additionally, by replacing an administratively determined process with a legislated one, the Forest Service loses the flexibility to modify the fee system to meet changing conditions.

The formula in H.R. 1527 is based on a determination of adjusted gross revenue (AGR) for each permitted ski area. AGR includes the value of gross revenues for ancillary facilities located on NFS lands. As these revenues constitute not more than 10 percent of the AGR, we recommend they not be used in the fee calculation. This would significantly reduce the paperwork burden of both the ski area and the Government. To compensate for the loss of revenue, thereby avoiding PAYGO problems, the brackets in section 4(b)(3) could be adjusted.

In addition to changing the formula, we would recommend the following other changes to H.R. 1527:

First, we question the need for a transitional step in implementation of the new system. It would collect about the same level of fees as GRFS and, because these fees constitute only about 2 percent of the applicable sales for the ski areas, changes

in fee determinations at any location should be a relatively small part of that area's costs.

Additionally, current regulations, CFR 215.57, Rental Fees for Special Use Authorizations, require the collection of advanced and periodic fee payments. Section 4(d) is not consistent with this regulation. We see no reason why the ski industry should be exempted from the common practice of paying, in advance, for the use of property. Therefore, we recommend this provision be deleted from the bill.

Finally, we strongly recommend the bill include a mechanism for updating the formula periodically--we would suggest every five years--to ensure that fees paid reflect "fair market value." This could be done through appraisals of a representative sample of ski areas thereby minimizing the cost and inconvenience for both the industry and the Forest Service. We would work with the ski industry and other interested parties to formulate a reasonable and cost effective process to update such a system, which could be based upon the appraisal process proposed by the Forest Service in the July 13, 1995 Federal Register notice.

We also have a number of minor, technical changes we would like to see made in the bill. We would be happy to work with your committee on these matters.

Section 5 - Withdrawal of Ski Areas from Operation of Mining Laws

I would now like to address the proposed section 5 that would withdraw ski areas from operation of mining laws. We recognize that mining activities can have a negative impact on the operation of ski areas. In many cases, the potential value of the mining operations may not warrant the disruption they would cause to the ski area. However, a better approach would be to segregate the NFS lands currently under permit for a period of 2 years during which time the lands can be evaluated in accordance with the provisions of section 204 of the Federal Land Policy and Management Act of 1976 before withdrawing any lands from operations of mining laws. In a limited number of cases, the evaluation may disclose the presence of significant mineral deposits which may call for reconsideration of the ski area itself. It may also show that mineralization could be developed without effect on a ski area, through underground or directional drilling, for example, or that ski area boundaries could be changed to accommodate mineral development. By evaluating the mineral resources of each ski area before withdrawal, we can better ensure that the highest benefit can be derived from NFS lands. Again, we would be happy to work with the committee on revised language for this section.

This completes my testimony on H.R. 1527. I would like now to turn to H.R. 2028.

H.R. 2028

The Department of Agriculture objects to the enactment of H.R. 2028.

The National Forest System is a major provider of outdoor recreation experiences for the American public. In 1991, 1.6 billion visits were recorded on Federal lands. Of these, 600 million took place on NFS lands. Increasingly, we are accommodating this demand through partnerships and other non-Federal resources. Currently, approximately 5,300 concessioners operate on NFS lands generating revenues in excess of \$1.2 billion of which \$26 million is returned to the Federal Government in the form of permit fees. Approximately 60 percent of the capacity of NFS-developed recreation facilities are operated by concessioners under the authority of the Granger-Thye Act of 1950 (P.L. 81-478, 64 Stat. 82, 16 U.S.C. 580d). Without the extensive use of concessioners, the Forest Service could not begin to fulfill the ever-growing recreation demands of the American public.

While the intent of H.R. 2028 is to enhance the role of the private sector in providing recreation experiences on Federal lands, we believe the bill contains a number of critical provisions that would have the opposite effect in application.

Recognizing the more extensive experience of the National Park Service in dealing with concessioners, we defer to the Department of the Interior in addressing sections 4 through 9 of the bill. These sections describe modifications to the concession program. Our specific concerns are as follows:

Section 10 - Disposition of Fees

Subsection (b) would make 75 percent of all collected fees available to the area where the fees were collected. The remainder of the fees would be made available for use of the agency. Subsection (d) would exempt these funds from the purposes of various acts that provide for the annual payment of 25 percent of all money received by a national forest to the state in which the the national forest is located for the benefit of public schools and roads. We strongly support the Twenty-five Percent Fund as a cornerstone of Forest Service and state and county relationships and would object to any legislation that would exempt any class of receipts from the fund. Therefore, we suggest that the formula for distribution of funds be modified to direct 25 percent of fee income for payments to counties. Any further diversion of fees and authorization of their use without further appropriations action would present a PAYGO problem because of the loss of current receipts to the Treasury without offsetting revenues.

Section 13 - Breach of Contract

Section 13 would provide for the payment of just compensation to a concessioner if the Government had breached the terms of the concession agreement.

We are committed to meeting the terms and conditions of all agreements to which we are a party. Nevertheless, we fail to see how this provision will lead to better relationships with concessioners. We would oppose any provision that would unnecessarily expand the scope of litigation in the management of National Forests.

Section 15 - Privatization of Forest Service Lands

Section 15 would provide for the sale of certain lands that are under concession agreement to concessioners. The proceeds of these sales would be equally divided between the agency and the Treasury. This provision is both unnecessary and counterproductive. It would also increase direct spending and, therefore, increase the deficit under the PAYGO provisions of OBRA.

Under the provisions of the National Forest Management Act, each national forest develops a Land and Resource Management Plan (LRMP). The LRMP specifies what parts of the national forest are suitable for disposal. These lands can then be exchanged, on an

equal value basis, for other lands thus improving the overall condition of the national forests, or they can be disposed of through existing property disposal procedures. Section 15 would authorize the direct expenditure of half of the receipts. Because the revenue from the sale of assets are not scorable under the PAYGO procedures of OBRA, the net result would be an increase in the deficit.

Finally, the most compelling argument for concession reform is that it would enhance partnerships between the Federal Government and the private sector in providing recreation opportunities to the American public. Privatization of Forest Service lands would clearly sever these relationships removing the agency as a participant in the planning and operation of key recreational facilities. We do not believe this approach would be in the best long-term interests of the recreational public.

This concludes my testimony on H.R. 1527 and H.R. 2028. I would be happy to answer any questions you might have on either bill.

Statement before the Subcommittee on National Parks, Forests and Lands
Committee on Resources
United States House of Representatives

Regarding H.R. 2028: the Federal Land Management Agency
Concession Reform Act of 1995

by

Chad Henderson, Public Policy Manager
National Outdoor Leadership School
Lander, Wyoming

July 25, 1995

Mr. Chairman and members of the committee, I thank you for the privilege of addressing this subcommittee today regarding your bill, H.R. 2028. Concession reform is necessary, and we are pleased to see Congress taking up the task.

Concessions seek to serve the public, work as partners with the managing agencies, and conserve the natural resource. Concession management should optimize these relationships by supporting the highest quality services possible. While H.R. 2028 contains innovative proposals that we support, the basic elements of the two-tiered authority and fee-bidding lack clarity. This lack of clarity threatens to confound the interests of efficient concession management and will thus adversely impact the provision of quality outfitting services. At this time, NOLS cannot endorse H.R. 2028, but we will work constructively with the committee in its effort to produce effective concession reform legislation.

From the Arctic to the Rio Grande, and from the Olympics to the Black Hills, the National Outdoor Leadership School, also known as NOLS, teaches outdoor skills, leadership and ethics to over 2,600 students each year on extended backcountry expeditions. NOLS is a non-profit organization headquartered in Lander, Wyoming. We

employ 520 instructors and staff at our eight branches worldwide and have annual revenues that exceed \$12 million. Our courses travel in 19 national parks, 21 national forests, three national wildlife refuges and Bureau of Land Management lands in eight western states.¹

NOLS has three concessions: Denali National Park (mountaineering), Dinosaur National Monument (river running), and Grand Teton National Park (backcountry skiing). Additionally, we operate with commercial use licenses ("CULs") in sixteen other national parks and have 35 special recreation use permits used to access a variety of other federal lands. Thirty years of complying with this dazzling variety of permits provides us with a depth of experience that we are happy to share with you today.

Principles for concession reform

We believe the debate should be underscored with the value that commercial recreation operations can provide to the public and to the land itself. The industry can assist agencies to protect the integrity and long-term viability of the resource, provide quality recreational experiences, ensure the public health and safety, provide for educational and interpretative needs of the public, and provide access to and education about public lands to a growing and increasingly diverse constituency of public land users. We are not afraid of competition, evaluations, or reasonable fees, but we are afraid of competition for competition's sake, evaluations that weigh federal revenue enhancement above quality service, and the potential for fee-wars that jeopardize our charitable contributions to land management.

Concession management, understood in its broadest scope regarding any commercial recreational activity on federal land, should be based on the following principles:

1. The public values a range of recreational activities, including organized recreational and educational pursuits.
2. If the government desires this range of activities, it must provide reliable and consistent permit mechanisms.
3. The public expects safe and high quality recreational experiences and the government has a duty to evaluate operators to ensure these expectations.
4. Recreation partners can provide real value to land management through commitment to conservation, service projects and visitor education.
5. It is a privilege to operate on federal land and commercial operators should provide a fair return to the government for this use.
6. Businesses do not run one year at a time, and concession authorizations must provide a reasonable term to justify the development of an educational program or business.

How does H.R. 2028 measure up to these principles? In some practical ways, this bill makes progress towards business- and resource-friendly concessions. Resource protection as part of concession applications and evaluations, inapplicability of NEPA to permit renewals if sufficient analysis exists at the forest or park plan level, and a standard for qualifications for concession managers, all make substantial contributions to wise management.

However, these issues affect only the margin of concession management. The critical issues of guaranteeing quality concessions with an administratively efficient system are met with unclear, and therefore dangerous, guidelines. Through the lack of a reasonable weight given to the fee-bidding factor in applications, a high quality program may be outbid by a well-financed but less capable concessioner. The

concession license authority is administratively intimidating to the extent that we believe concession managers, merely for the sake of convenience and lack of manpower, may very well choose to limit the number of small operations currently authorized by commercial use licenses. Our experience tells us that both of these scenarios are very real and are thus very troubling.

Need for reform

Beyond the clear need to provide a fair return to the government for operating on public lands, there are other, practical, reasons to support concession reform. The pursuit of responsible recreational and educational activities on federal land is confounded by permits that have no statutory authority, environmental analyses arbitrarily applied, and permit managers who do not understand that partnership is a two-way street, among other problems. Access to federal land by educational and commercial operations must be predicated by the desire of all parties to provide quality services that enliven, educate and serve the public, while providing a fair return to the government for the privilege of operating on federal land. But this ideal relationship has been a fleeting goal.

Knowing that you have a commitment to conservation and public service is not enough to know that you will always be treated with the same level of commitment and professionalism by land managers. While most land managers understand the benefits of partnerships and private enterprise, we run into too many that seek to place obstacles before legitimate programs that provide quality services. Knowing that you do an excellent job is not enough to know that you have a reasonable chance of renewing your permit. For these reasons, among others, concession reform is a proper public policy endeavor.

The debate regarding reform can too easily focus on the large concession contracts that provide hotels and similar services. The debate must recognize that most commercial operations in national parks are currently authorized by a different type of permit. A 1993 General Accounting Office report titled, "FEDERAL LANDS: Improvements Needed in Managing Short-Term Concessioners" (GAO-RCED-93-177), describes this use. The report states that in 1993 the National Park Service authorized 1,164 commercial use licences (CULs) that accounted for 80 percent of all concession agreements. Outfitter and guide services accounted for 65 percent of all CULs issued. CULs are problematic in their own right and deserve the attention of Congress. Clearly, the impact on outfitted services is widespread if concession reform does not create a workable authority for these types of recreational services.

Comments on selected sections of HR 2028

SEC. 2. PURPOSE. We agree that there is a need for greater uniformity and consistency in the management of concessions by Federal land management agencies. However, given that each of the six agencies encompassed by this bill has a different mission, given that each has developed customary practices -- not all of which are inefficient or ineffective -- we oppose a one-size-fits-all approach. Uniformity for its own sake may not play to the strengths of an agency that has developed a permitting procedure consistent with its statutory mandate. What should be sought is a modular approach incorporating the best elements of the permitting process that these agencies have in common, yet allowing for efficiencies based on each agency's unique strengths.

The need for flexible concession management was underscored in a 1990 Department of the Interior report titled "Report of the Task Force on National Park Service Concessions." It states very well the basic need in concession reform: "The great

variety in the size, scope and nature of Park Service concessions operations underlines the need for a flexible concessions management system."

SEC. 3. DEFINITIONS. We support the attempt to improve clarity by consistently using the term "concession" to describe each tier of the statutory authorization -- as in "concession service agreement" or "concession license." Myriad terms meant to cover this usage -- "concession permit," "concession contract," "commercial use license" -- have sometimes led to confusion.

SEC. 4. NATURE AND TYPES OF CONCESSION AUTHORIZATIONS. We support an approach which makes differentiation between types of usage and business operations. Depending on how we are defined we may or may not have competition, depending on how we are defined our use may or may not be infrequent. In areas where we operate we welcome the opportunity to secure long-term concession authorizations.

(a)(1) CONCESSION SERVICE AGREEMENT. Although agreements of this kind would probably not be the norm for our operations, much of that would depend on whether the Secretary concerned would make a "finding of competitive interest." The requirement of substantial capital investment is discretionary, and it is not clear to NOLS when this requirement might likely be applicable.

(a)(2) CONCESSION LICENSE. The lion share of NOLS authorizations would probably fall under this type of authorization -- or so it seems. Without a definition of the term "infrequent" and/or without a clearer understanding of the parameters of a "competitive interest," it is difficult to know whether we would qualify for the concession license or the concession service agreement.

These uncertainties make us wonder what the practical effect of this legislation will be. It is our experience that if management of small, outfitter-type, non-proprietary operations becomes any more complicated than it currently is, some managers will choose not to pursue the administrative headaches of this authorization and will only

work on the high-profile concession service agreements. This is clearly not in the public interest and Congress must keep in mind the implications of legislation on the field managers.

Nonetheless, this second tier of concession authority is important and we will support it if changes are made to clarify and simplify its form. Permits need to rest on legitimate authority if there is to be hope for consistent application. Current National Park Service policy utilizes a CUL as the authority to allow access to national parks for a large number of operators. CULs have no statutory basis and existing regulations only define what a CUL is not, not what it is: CULs are described as not being concession permits (36 CFR § 51.1). By providing both statutory authority and congressional direction for this level of authorization, Congress will clean up a problem that the agency has created in the vacuum of congressional intent. Competing concession management bills, S. 309, H.R. 721 and H.R. 773, are supported by NOLS with regard to provisions dealing with authorizations for non-proprietary interest services.

(a)(3) LANDS UNDER MULTIPLE JURISDICTIONS. This is a terrific idea. On roughly 30 percent of our courses NOLS operates on land managed by several agencies. For example, one NOLS course travels across Canyonlands National Park, the BLM's San Juan Resource Area and the Manti-LaSal National Forest. We deal with three very different permitting regimes for this one course. Having a single agency coordinate with other agencies in order to issue a single authorization is proper.

(b)(1) TERM. IN GENERAL. This provision providing a minimum term of 10 years for concession agreements requiring substantial capital investment is good, but the language should read "substantial investment" rather than focus on capital investments alone. Organizations such as NOLS have substantial personnel training programs, marketing and student building demands. This should encourage both a commitment to quality service and a recognition of the financial commitment.

(b)(3) ESSENTIALLY IDENTICAL SERVICES IN A SPECIFIC GEOGRAPHIC AREA. If a concessioner "provides essentially identical services in a defined geographic area" it seems reasonable that the duration and expiration of concession authorizations shall be identical.

SEC. 7. COMPETITIVE SELECTION PROCESS FOR CONCESSION SERVICE AGREEMENTS.

(c) FACTORS AND MINIMUM STANDARDS IN DETERMINING BEST APPLICATION.

(4) Record of resource protection (as appropriate). Resource protection is an excellent standard. The language "as appropriate" is vague and ambiguous. We could support language that makes resource protection a factor always applied to any recreation-related activity. Language of this sort is beneficial to the resource, to other visitors, and to wildlife.

(d) SELECTION PROCESS. The process for selecting the best applicant needs to reflect the value of substantive service, e.g., programs which provide the government with monetary savings, savings which an operator might otherwise apply to a competitive bid. A fee-based consideration alone does not recognize the immediate financial value (i.e., savings to the agency(ies)) of public-private partnerships. If such recognition were to be subsumed under the record of resource protection element of the best application determination (See (c)(4) above), would this offset the difference in potential bids being offered? The weight given to the fees factor should be reasonable and not jeopardize our ability to compensate the government through other means, such as service projects.

(d)(2) RENEWAL INCENTIVE. It is proper to recognize quality service. This provision provides a mechanism for proper application of that recognition.

(e) INAPPLICABILITY OF NEPA TO TEMPORARY EXTENSIONS AND SIMILAR RENEWALS OF CONCESSION AGREEMENTS. This is one of the gems of this legislation. We support its implementation. Provided that sufficient NEPA analysis exists at the land management

plan level and the plan recognizes the type and scope of commercial services, there is no need to duplicate the analysis with each permit renewal.

The need for this language is real and practical, and in no way does it circumvent the interests of proper environmental safeguards. We have experienced national forests and national parks that have required environmental assessments before a permit is issued while other forests and parks do not require these assessments even if faced with the same type and scope of use. Environmental analysis consistent with the National Environmental Policy Act (NEPA) is important, but needless duplication can be avoided if cautious land managers are given direction to utilize analyses that have been undertaken at broader levels of planning.

SEC. 8. CONCESSIONER EVALUATIONS.

(a)(1) " . . . [R]esource protection (as applicable) . . . " Again, like the same provision for evaluating applications, this is appropriate, but the underlying vagueness and ambiguity potentially neutralizes the value of the recognition.

SEC. 9. FEES CHARGED BY UNITED STATES FOR CONCESSION AUTHORIZATIONS. NOLS supports a fee regime which properly balances operator use with a reasonable charge for services provided. We have a quality program and we are not afraid of a fair competitive bidding structure. We have voiced our concern that the current CUL, with a typical fee of \$100, undersells the government's resources. However, fees alone do not recognize the value of other services provided by concessions to the government. Service projects such as trail maintenance and campsite clean-up, and educational partnerships such as jointly-produced visitor brochures make dollar-for-dollar contributions to land management.

SEC. 10. DISPOSITION OF FEES. NOLS supports the special accounts into which fee revenues will be deposited and from which the agencies will draw for services and

facilities. We commend a process which gives the agencies greater responsibility over the fees collected on their lands.

SEC. 13. BREACH OF CONTRACT BY THE SECRETARY CONCERNED. Although the definition of concession in Sec. 3(2) seems to cover this point, the breach of contract provision should apply to both concession service agreements and concession licenses.

SEC. 18. REGULATIONS.

(b) QUALIFICATIONS OF AGENCY PERSONNEL ASSIGNED CONCESSION MANAGEMENT DUTIES. NOLS supports this section. Concession permits outline in great detail the qualifications of several aspects our operations, e.g., our instructors and our performance history. However, the process has to date not established minimum criteria for the agencies' concession managers. Consequently, in our experience, there is a great deal of inconsistency in the application of policy in the acquisition and maintenance of concession authorizations.

Permit managers need to understand private enterprise. If the government sees a benefit in allowing commercial use on public land to meet public needs, then the government must work with commercial operators to ensure reasonably viable operations. It is our sense that too many permit managers are naive about basic business concepts such as lead-time needed with a permit guarantee to market and enroll courses, and some managers do not veil their distaste for commercial operations on "their" land. The establishment of minimum standards for concession managers would go a long way to further uniform regulation and effective, efficient concession management.

¹ NOLS operates on the following federal lands:

National Parks: Big Bend National Park, Texas; Bighorn Canyon National Recreation Area, Montana; Canyonlands National Park, Utah; Carlsbad Caverns National Park, New Mexico; Denali National Park and Preserve, Alaska; Devils Tower National Monument, Wyoming; Dinosaur National Monument, Colorado; Gates of the Arctic National Park and Preserve, Alaska; Glen Canyon National Recreation

Area, Utah; Grand Canyon National Park, Arizona; Grand Teton National Park, Wyoming; Jewel Cave National Monument, South Dakota; Mount Rainier National Park, Washington; Mount Rushmore National Memorial, South Dakota; Noatak National Preserve, Alaska; North Cascades National Park, Washington; and, Olympic National Park, Washington; Wind Cave National Park, South Dakota; and Yellowstone National Park, Wyoming.

National Forests: Bighorn National Forest, Wyoming; Black Hills National Forest, South Dakota; Bridger-Teton National Forest, Wyoming; Chugach National Forest, Alaska; Coronado National Forest, Arizona; Custer National Forest, Montana; Gallatin National Forest, Montana; Gila National Forest, New Mexico; Kaibab National Forest, Arizona; Lincoln National Forest, New Mexico; Manti-LaSal National Forest, Utah; Medicine Bow National Forest, Wyoming; Mt. Baker-Snoqualmie National Forest, Washington; Okanogan National Forest, Washington; Olympic National Forest, Washington; Salmon-Challis National Forest, Idaho; Shoshone National Forest, Wyoming; Targhee National Forest, Idaho; Tongass National Forest, Alaska; Tonto National Forest, Arizona; and, Wenatchee National Forest, Washington.

National Wildlife Refuges: Arctic National Wildlife Refuge, Alaska; Kofa National Wildlife Refuge, Arizona; and, Yukon Flats National Wildlife Refuge, Alaska.

Bureau of Land Management lands in Alaska, Arizona, Colorado, Idaho, New Mexico, Oregon, Utah, and Wyoming.

Testimony of Harry Mosgrove
before
the House Subcommittee on National Parks, Forests and Lands
in support of
H.R. 1527 - National Forest Ski Area Permit Fee Legislation

July 25, 1995

Mr. Chairman and Members of the Subcommittee,

My name is Harry Mosgrove and I am the Chairman of the National Ski Areas Public Lands Committee. The National Ski Areas Association represents over 600 ski areas and suppliers nationwide. I am also President of Copper Mountain Ski Resort in Colorado. Copper Mountain is located partially on the National Forest System. I have spent the last fifteen years working at and managing ski operations on Forest Service permitted lands and feel I am familiar with the subject matter of today's hearing.

Ski Industry and National Forest System Land

Before addressing the specifics of H.R. 1527, I would like to make a few general comments about the ski industry as it currently exists on public lands.

First and foremost, I would stress that ski area operators, themselves, are not large businesses. Of the 132 areas operating on National Forest System Land during the past ski season, only twelve had revenues exceeding fifteen million dollars. Even the nation's largest area, Vail, had gross revenue in the sixty million dollar range. This is smaller than some timber firms that qualify for government small business set aside sales. Ski area operators on the average receive 10 - 15 cents of every dollar which an out of state skier spends for a ski vacation. Far larger amounts are spent on transportation, lodging, meals, merchandise, and other associated businesses.

The point I am making is that ski areas are a rather small business engine which drives a far larger economy. With perhaps a few exceptions, most of the money which flows into ski towns does not go to the ski area operator who provides the economic generator.

The ski industry shares many things in common with farmers. In some ways, we are snow farmers. In particular, our financial success is directly related to the weather. If it does not snow, our areas can experience absolutely disastrous years and/or incur dramatically increased costs to power snowmaking equipment. This is why a 1989 study by the University of Colorado indicated that in an average year approximately two-thirds of the ski areas either lose money or struggle to break even.

It is also worth noting that ski areas are not exclusive users of the land they lease, nor do they extract a resource from the land. Rather, skiing is a non-consumptive use which frequently shares the land with hunters and fisherman, livestock grazers, off road vehicles, hikers, cross-country skiers, mountain bikers, utility rights of way, communications facilities and numerous other uses. In addition, at many ski areas, lift operations together with road and trail networks provide the public with far greater access to, and the use and enjoyment of, National Forest lands than would occur in their absence.

Need For a New Fee System

The National Ski Areas Association has taken the lead in seeking introduction and enactment of H.R. 1527. We feel a change in the way ski areas pay rent for the use of National Forest System land is warranted because the existing Graduated Rate Fee System, also known as GRFS, has become too complex and cumbersome.

As the Subcommittee may be aware, GRFS was initiated by the Forest Service in the early 1970s to capture a fair market value leasing fee for the United States. In general, we believe it has done that remarkably well, and the fee for national forest ski areas is indeed significantly higher than most other private or government ski area lease rates, as will be discussed later in the testimony of Sno-Engineering Inc..

However, by its very nature, GRFS is complex, because: 1. it relies on different break even points for various aspects of a ski area's income; 2. it uses calculations of gross fixed assets which have become increasingly subject to varying interpretation; 3. it contains difficult definitions as to what lands or activities should be subject to the fee; 4. it raises debates over "gratuities" given to employees and/or the public, and other complexities.

The ski industry has spent several years, hundreds of hours, and considerable money attempting to resolve these issues with the Forest Service administratively. These efforts have not met with success. Therefore, the ski industry believes it is time to change the fee formula legislatively and boil it down to a simple percentage of gross sales system.

The calculation of rent for the use of National Forest land should not require a forty page, plus, document. Nor should the Forest Service be permitted to assess rent against private land that it does not manage for the citizens of the United States. Those are the two underlying tenets of H.R.1527 - simplicity, and the elimination of private land assessments.

The General Accounting Office and the Forest Service have made numerous estimates of the national average of rent paid by ski

areas expressed as a percentage of ski area gross revenue. These percentages have ranged from 2.2% to 2.5% of ski area gross revenue as defined by the Graduated Rate Fee System (GRFS). Keep in mind that GRFS includes revenue attributed to the cost of free lift tickets given to ski area employees as well as revenue of businesses on private land not owned or operated by the ski area permittee. As an example of the impact of the inclusion of these items in revenue, the GAO's April 1993 report entitled "Little Assurance That Fair Market Value Fees are Collected From Ski Areas", estimates ski area revenue as calculated under GRFS to be \$737,000,000.00. GAO discounts the amount by \$122,000,000.00 to \$615,000,000.00 in an effort to remove revenues they determined to more closely reflect the actual revenue of the ski areas studied.

Regardless of which percentage is used as an estimate of the ski industries national average of Forest Service fees paid as a percentage of gross revenue, the following facts should be understood:

1. Ski areas on federal land pay more than ski areas on private or state land for land rent.
2. The Urban Land Institute index on rents for commercial operations demonstrates that 1.8% of gross revenue for land rents is the high end for land rents for commercial projects such as regional shopping centers.

Advantages of the New System

The new system we are supporting in H.R. 1527 almost exactly follows the Office of Management and Budget recommendations contained in the GAO's 1988 report on ski area fees. It recommended that a new system should be based on a percentage of gross revenues and the rate should be progressive so that larger areas will pay a higher relative fee. As GAO stated on page 51 of that report, the advantages of a percentage of gross system are :

".... a (flat) percentage of sales system's simplicity thus reduces the administrative burden for both landlord and permittee. Another advantage is that a percentage of sales system is widely used by other entities...calculating the fee using progressive rates is also simple..."

As applied directly to ski areas using National Forest System land, the new system proposed in H.R. 1527 will have the following major advantages:

1. It will greatly reduce the amount of bookkeeping, and the Forest Service audits of ski area permittee books. In particular, it will eliminate the concept of "gross fixed assets" (GFA) from the fee calculation. As set forth in GRFS, the gross fixed assets concept was in theory an inducement for ski areas to make improvements to their operations by adding new lifts, restaurants, snowmaking equipment, and similar investments. While the theory is

appreciated by the ski industry, it has major problems....foremost of which is that under GRFS the assets schedule required to be kept is by definition different, and far more complex, than schedules used for tax purposes. Ski areas and Forest Service auditors spend inordinate amounts of time and effort attempting to determine percentages of assets used for ski operations or to support other activities such as summer operations on private lands owned by the ski area. Although it may be hard to believe, discussions with auditors on GFA can center around what percentage of an individual backhoe, conference table, computer terminal, camera system or other asset is used to support skiing versus other aspects of a ski company's operation. Significant problems also arise reevaluating assets when an area is sold.

2. The new formula will limit the assessment of fees to activities which are physically located on National Forest System land. As the Chairman is well aware, the Forest Service has become increasingly aggressive in attempting to capture private land revenues under the GRFS definition of assessable revenue. Examples range from assessments or attempted assessments of buildings on private land at Telluride, Steamboat, Aspen and Monarch Pass in Colorado to discussions with auditors as to whether revenues from pay phones and automatic teller machines in buildings on private land at Snowbird, Utah should be included in the fee.

Our problem with private land assessment is twofold. First, it is a time consuming and costly debate. More importantly, we believe it is completely unfair for the Forest Service to charge rent against land it does not manage, or against buildings or activities which are not on National Forest land. Private land buildings and operations already pay income taxes to the Federal government and State and local property, meals and lodging, income and other taxes. We believe it is unprecedented for a government agency to charge a rental fee against private land businesses under the "but for" theory that such businesses would not exist without the nearby Federal lands lease. While the "but for" theory may be true, its application could have no limits.

For example, should a timber company or mineral processing mill on private land pay a commission to the federal government because the Federal lands supply the raw material to keep the mill running? Should the numerous communities and businesses which spring up around National Parks pay a fee to the Park Service? Should fast food restaurants outside the gates of military bases pay a commission to the Department of Defense?

The answer to these questions is obviously "no".

3. The new formula will eliminate disputes over so-called "gratuities". Examples of what the Forest Service may consider as "gratuities" (depending on the Forest, Region, or auditor involved) are passes given to employees or the public, promotional programs, ski instructor or ski patrol passes, and the like. Once again, discussions with the auditors on this issue can involve how many

ski instructors/patrol are necessary or appropriate? Should the ability to use the pass on a day off be considered a gratuity? Is it "essential" for an employee to use his pass to get up on the mountain as part of his job, and if so, how many days a week is it necessary? We have even discussed whether hamburgers given to employees at a discount (on or off Forest Service managed lands) should generate a fee to the Forest Service.

As can be readily seen, the "gratuities" policy can entail a great deal of recordkeeping and, once again, time of lawyers, accountants and other specialists working with Forest Service auditors.

4.The new formula will put all areas on an even footing by eliminating the uneven application of GFA, private land, and "gratuities" policies. At the same time, it will adopt OMB's recommendation that larger areas pay a higher percentage of gross. Increases in the fee charged on Forest Service lands will offset those fees now being charged on private land.

5.The new formula will provide some relief for the smaller and typically less capitalized ski areas because the graduated rate of H.R. 1527 will shift more of the burden to the larger areas who are generally better able to pay. The reduction of recordkeeping and audits required under the new system will also be particularly helpful to the smaller areas.

6.The new formula will enable ski areas to more readily plan and budget for their future fee expenses. Predictability of costs is important to business planning, particularly in this seasonal, high risk business.

7.The simplicity of the new formula will greatly reduce future appeals and litigation. In addition, it will establish a uniform, nationwide system that is far less subject, due to its simplicity, to uneven interpretation and application by various, Forests, regions or auditors.

Previous Efforts to Reform the Ski Area Fee System

In 1992, the ski industry supported legislation identical to H.R.1527 which passed the Senate and was reported out of the House Agriculture Committee. Subsequent to the introduction of that legislation in 1992, the Forest Service announced that it would undertake a study to ultimately develop a new fee system administratively. That 1992 Forest Service study was concluded in 1994. Late last year, the Forest Service abandoned the study and its findings. This year the Forest Service announced that it would undertake another study which we understand is now in progress. It appears that after more than three years, the Forest Service is no further along on this issue than it was in early 1992. The ski industry has concluded that the Forest Service will not resolve this issue administratively and therefore legislation is necessary.

In 1992, the Congressional Budget Office rated legislation identical to H.R.1527 as being revenue positive to the Federal government.

Mr. Chairman, it is time to resolve this issue and allow the ski industry and the Forest Service to move forward with a new and reasonable fee system.

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Testimony of Timothy H. Beck, Sno.engineering, Inc.
 concerning H.R. 1527
 before
 National Parks, Forests and Land Subcommittee

July 25, 1995

USA

LITTLETON, NH

FRISCO, CO

BELLEVUE, WA

CANADA

WHISTLER, BC

JAPAN

TOKYO

Mr. Chairmen and Members of the Subcommittee:

My name is Timothy Beck and I am the President of Sno.engineering Inc., headquartered in Littleton, New Hampshire. We also have offices in Bellevue, Washington; Frisco, Colorado; Whistler, British Columbia; and Tokyo, Japan. Since our inception in 1958, we have worked on over 1,000 projects involving all phases of ski area development including feasibility, mountain and land planning, environmental permitting, appraisals, construction and operation consulting. We are the largest mountain resort planning firm in North America and we have significant expertise in mountain appraisals.

I appear before you today to address issues relating to whether the ski area fee formula contained in H.R. 1527 and/or the existing Graduated Rate Fee System achieves a fair market value rental return to the United States.

This question is complicated by the fact that ski areas are a relatively unique use of the public lands. Unlike many other uses such as mining, oil and gas development, timber harvest and livestock grazing, the ski industry does not extract a renewable or non-renewable commodity from the land. Instead, what the ski industry does is essentially lease raw, undeveloped land, install all improvements on the land, and then use those improvements to attract business and provide recreational and mixed use opportunities to the public.

While National Parks and other high visitation Federal lands attract the public because of pre-existing values, ski areas attract the public largely because of the private capital which is invested on the mountain. In short, it is not the commodity provided by the government (land) that draws the public to ski areas, but rather the quality of the lifts, trails, snowmaking, ski schools and other facilities which the ski area places on the land entirely at its own expense.



In analyzing whether a rental fee returns fair market value to the landlord, several standard evaluation or appraisal techniques can be used. My testimony will focus on the three approaches which the 1988 General Accounting Office (GAO) fee report to Senator Metzenbaum suggested might be the most accurate indicators of fair market value:

Percent of net profits paid in rent

The 1988 General Accounting Office report to Senator Metzenbaum described several studies which suggested that a fee system which captured 10 to 24 percent of an operator's profit would achieve fair market value.

We submit that both the existing GRFS and the proposed new formula of H.R. 1527 do far better than that.

For example, a 1989 University of Colorado study (the so-called Goeldner study) , revealed that average ski area profits before taxes were 3.5% of revenues. For the same year, 1989:

- the Forest Service told Congressman Synar's Government Operations Subcommittee that ski areas paid an average of 2.4% of revenues in rental fees;
- A 1989 survey by the National Ski Areas Association (NSAA) of its members indicated an average of 2.89% of revenues was paid in fees.

Using these alternate figures, it can be readily determined that the average rental fee equals from between 69% to 83% of annual profits, which is many times higher than the 10 to 24% recommendations discussed in the GAO study.

Despite the fact that the ski industry is already exceeding the percent of profitability test cited by GAO, Sno.engineering believes there are drawbacks to its use if revenue neutrality is of concern to the United States. That is because in any given year the Goeldner study and others have estimated that approximately one-third to one-half of ski areas only break even, or lose money, and therefore have little or no profit and would pay no rent. Switching to a percent of profits test, therefore, could significantly reduce revenues to the United States from current levels.



Rates paid for ski area use of other Federal, State or private lands

The "comparability" or "comparable sales" approach to market evaluation is the method generally preferred by appraisers to provide the most accurate indication of whether fair market value is being realized for real estate sales.

Finding "comparables" for ski mountain rentals is not as easy as it is for other leasing situations because the vast majority of ski areas in North America that are not on government land, own their own land and do not pay rent.

However, the ski industry has conducted a thorough survey of ski areas in the United States and Canada and has assembled information on areas which do lease government or private lands. The findings of this survey, which we believe covers every larger size, non-National Forest ski area in the North America, are contained in Appendix A to this testimony.

They confirm, in our opinion, that the Forest Service has been a fairly tough negotiator and has set rental fees that are significantly higher than most other government or private rates. For example, in the most significant cases we could find involving larger ski areas which lease lands from State or private landowners:

- 25 areas in British Columbia, Canada, including the two largest areas in all of Canada, Whistler Mountain and Blackcomb, are located on provincial land and pay a flat fee of 2% of lift revenues (approximately 1.4% of gross revenues) to the Provincial government. In many areas, the government has also financed roads and other infrastructure and makes the lease even more attractive by selling valuable base property to the developer at raw land costs.
- 5 areas in British Columbia located on Park land pay a fee of 2% of gross revenues
- 4 areas in Alberta, Canada, located on National Park land pay 2% of gross revenues to the Crown
- the Mt. Tremblant ski area in Quebec, one of the oldest in North America, pays a flat rate of \$5,000 per year to the province, which amounts to a mere 7/100ths of one percent of gross revenues. In recognition of this low flat rate, the area invested \$21,000,000 in capital improvements.



In British Columbia, the fees are paid on lift revenues only. No fees are paid on ski school, restaurant, ski shop, and other nonlift revenues which typically average about 30% of gross income. Thus when compared to GRFS or the new formula proposed in H.R. 1527, the effective British Columbia provincial rate is only 1.4% of gross revenues.

In the United States fewer comparables exist, but for those that do exist:

- the Alpine Meadows ski area in California, which is located in a checkerboard land ownership area, pays the same proportionate rent to the Nature Conservancy as it does to the Forest Service;
- Wachusett Mountain in Massachusetts, which is located on Commonwealth land, pays 2% of gross revenues to the State;
- Deer Valley, one of the newest resorts in North America, located in Park City, Utah, pays a combined rate of 1.25% of net lift ticket sales to private lessors;
- a very large New England ski area owns its base facilities but pays 2% of its ski-related gross revenues to a private lessor;
- the Silver Mountain ski area in Idaho pays one dollar per year to lease its 1,500 acre mountain from a private corporation; and,
- several smaller size areas pay rates either equal to, or less than, they would pay if located on National Forest land.

To summarize, the following list compares how Forest Service fees under either GRFS or H.R. 1527 stack up against other government or private rates where the lessor does not build or finance facilities.



<u>lessor/area</u>	<u>average effective gross lease rent</u>
GRFS	2.4%
H.R. 1527	2.4%
British Columbia province (25 areas)	1.4%
British Columbia Parks (5 areas)	2.0%
Alberta National Parks (4 areas)	2.0%
Mt. Tremblant - Quebec Province	0.07%
Silver Mountain (Idaho)	0.0%
Wachusett Mountain, Massachusetts	2%
New England (anonymous)	2.0%
Deer Valley (Utah)	1.25% of lifts only
Sundance (Utah)	GRFS

As you can see, the rates Proposed by H.R. 1527 are significantly higher than any "comparable" we could find where the lessor does not own or invest in the mountain or base facilities. Further, as ski area revenue growth nationwide has been exceeding the annual Consumer Price Index, and is expected to continue to do so, more and more ski areas will enter into the 2.75% and 4% brackets, so the effective rate should increase above the current 2.4% estimate.

The only lease situations we could find where effective rates were slightly higher than GRFS were one area in Washington State and several areas in Vermont. However, in both those cases the State builds or owns buildings, parking lots, roads or other facilities which are part of the lease arrangement. In short, more than a raw land lease is involved. Further, the lease tenure in Vermont is 60-99 years versus 30-40 years with the Forest Service, and is a true lease which is freely transferrable and not revocable. In addition, the fee rate is a contractual item which cannot be changed by the Legislature until the leases expire, which in most cases runs well into the middle of the next century.

It is also worthwhile to note that many States and communities, and to a lesser degree, private corporations, make their land available for skiing at a subsidized, or heavily discounted rate. And, as previously mentioned, some States and units of local government own and operate their ski facilities... usually at a loss or break even scenario, at best.

These State and private subsidies indicate that arguments can be made that public land should be made available for skiing free of charge. While we are not advocating such a position, and are indeed proposing fees that are higher than most



prevailing lease rates on State or private land, we do believe that it is another indication that both GRFS and H.R. 1527 will achieve "fair market value."

Comparison to land holding costs

Another valid means of determining fair market value is to compare the annual rental fee to what it would cost a ski area to finance a mortgage if it owned the land itself. Such a comparison is logical because most ski areas in the United States do own their own land and compete directly with areas located on National Forest land. If this approach is utilized on either a nationwide or local basis, both GRFS and the proposed new formula look very favorable to the United States.

The average cost of undeveloped mountain real estate in the west, where most National Forest ski areas are located, can run from below \$200 to as high as \$1,500 per acre, depending on factors such as elevation, access, proximity to established communities, etc. An example of the lower end of the spectrum with which the Committee may be familiar is the Cherokee Park project in Colorado, where the Administration purchased 18,000+ acres of mountainous land north of Rocky Mountain National Park at a cost of \$139 per acre. Numerous other examples abound. Even in the Mining Districts around Aspen, Colorado, which has one of the hottest real estate markets in the nation, high elevation lands of the type generally developed for skiing, rarely exceed \$1,300 per acre.

Perhaps even more on point, in 1990 the Forest Service completed an appraisal of the land value for a proposed ski area in Idaho called Valbois. That appraisal, which is the most current western example we could find, valued the 2,800 acres of National Forest land at \$632 per acre. Incidentally, Valbois is located in a heavily traveled recreation corridor, borders a reservoir, and is within approximately 1 1/2 hours drive of Idaho's major population center in Boise, so land values are somewhat typical of many major ski areas.

Sno.engineering is also familiar with the following recent sales of land in or adjacent to existing or proposed ski areas:



<u>Area/State</u>	<u>Acres sold</u>	<u>Date of sale</u>	<u>Price/acre</u>
Wisp, MD	2,383	May 1989	\$1274/acre
Silver Creek, WV	2,027	October 1989	\$641/acre
Tory, WV	1,664	1982/83	\$811/acre
Freyburg, ME (Shawnee Mt.)	1,918	October 1990	\$473/acre
Conway, NH (Mt. Cranmore)	2,800	August 1990	\$260/acre
Winhall, VT	7,065	February 1990	\$312/acre
Sugarloaf Ski Area, ME	1,648	December 1990	\$228/acre
Major New England Area	7,250	March 1994	\$200/acre
Dartmouth Skiway/Lyme, NH	600	March 1992	\$530/acre
Deer Valley, UT	70	October 1990	\$1,143/acre
Deer Valley, UT	430	November 1990	\$1,070/acre
Snow Basin, UT	7,300	October 1984	\$346/acre

The point is that mountain real estate of the type leased for skiing has a very low value. This should not be surprising, because ski terrain is largely located in remote, steep, high elevation terrain where few other valuable land uses are possible.

If an average value of \$200-\$1,300 per acre is used for mountain real estate, the annual carrying costs for a 10%, 30 year mortgage rate on the 190,000 acres of National Forest land currently under permit would be as follows:

<u>Average land value</u>	<u>carrying cost for 190,000 acres</u>
\$ 200/acre	\$3,970,000
\$ 500/acre	\$9,920,000
\$ 1,300/acre	\$25,800,000

Only at around \$900 to \$1,000 per acre, or almost 1.5 to 1.6 times the value of the Valbois appraisal, would the carrying cost for 190,000 acres be equivalent to the \$18 to \$20 million currently paid in fees under GRFS or the proposed new formula.

We analyzed this approach because the vast majority of ski areas in the United States that are not on National Forest land own their own land. The carrying costs of such ownership are significantly less than the fee that would have to be paid if the land were owned by the Forest Service and leased pursuant to GRFS or H.R. 1527. Put another way, a proposed resort like Valbois would be far better off financially to purchase its land from the Forest Service at the outset, if it could, than to pay rent under GRFS or the formula contained in H.R. 1527. We fully realize that such purchase of the land is not possible, nor do we advocate it, but it is a valid test for measuring fair market value.



In summary, Mr. Chairman, it is our belief, as supported by the data recited herein, that the leasing fee proposed in H.R. 1527 uncatagorically obtains a fair market value return to the United States for the use of the land.

This concludes my testimony. Thank you for the opportunity to testify. I would be happy to answer any questions the Subcommittee may have.



APPENDIX A
(Sno. engineering testimony on H.R. 1527)

Larger Size** North American Ski Areas on State or Private Land

(shown by State, with indication of comparability/non-comparability (comp) to National Forest permit fee issue and explanatory notes; ** certain areas shown are not large size by national standards but are large for their State and/or involve a lease or government ownership. Unless otherwise indicated, source of information is from the ski area operator by telephone interview)

<u>State/area</u>	<u>comp</u>	<u>Reason for comp/non-comp & comments</u>
ALASKA:		
- Hilltop	yes	leased from City of Anchorage, no rental fee
CALIF:		
- Alpine Meadows	yes	leases on private land use same proportionate rate as GRFS (source: letter from ski area)
- Mt. Shasta	no	shareholder owns land, no formal lease arrangement
- Northstar	no	owns its land
- Squaw Valley	no	owns its land
- Sugar Bowl	no	owns its land



CANADA:

- British Columbia	yes	25 ski areas operate on Provincial land under a 20-30 year lease. They pay a flat annual rental fee of 2% of lift revenues only (ski school, food, ski shop and other non-lift revenues are excluded). The areas may also purchase their base lands at raw land value (generally \$3,500-10,000/ acre, depending on location). (Source: BC Ministry of Lands; Canada West Ski Assn)
- Blackcomb		lease under above 2% of lift formula and base (largest BC area)land purchase option; government also built base water & sewer systems and a 2km access road and bridge (source: letter from ski area)
- Alberta	yes	4 ski areas (Mt. Norquay, Sunshine, Lake Louise & Marmot Basin) are on National Park land. They pay a rent equal to 2% of gross revenues (source: letter from Banff National Park Superintendent's office)
- Quebec Mt. Tremblant	yes	pays flat \$5,000 per year to lease the mountain from the Province; rate equals 7/100ths of 1% of gross revenue (source: letter from ski area operator)
anonymous	yes	a large area in Canada was built at government expense and is owned by government. It is leased to a private company for 5% of gross (lift, food, ski school & shops) operating revenues

COLORADO:

- Aspen Ajax Mtn.	no	owns 80% of land; rest is USFS
- Silver Creek	yes	portion on BLM land; pays BLM \$800 rental fee per year for 11.5 acres (\$70/acre); rest of area privately owned)

IDAHO:

- Silver Mtn.	yes	1500 acre ski mountain leased from Bunker Ltd. Partnership for 30 years at \$1/year. Low lease rate is part of community-wide effort at economic revival
- Schweitzer Basin	no	owns its land with affiliated company

MAINE:

- Camden Snow Bowl	no	owned and operated by Town of Camden
- Sugarloaf	no	owns its land

MASSACHUSETTS:

- Wachusett Mt.	yes	pays 2% of gross revenues to Commonwealth
- Butternut Basin	yes	pays 2.25% of 65% of lift revenues to Commonwealth

MICHIGAN:

- Boyne Mtn	no	owns its land
- Nubs Nob	no	owns its land

MINNESOTA:

- Afton Alps	no	owns its land
- Como	no	owned & operated by St. Paul Parks
- Giants Ridge	no	owned and operated by State of Minnesota
- Lutsen	no	owns its land
- Worth Park	no	owned & operated by Minneapolis Parks & Recreation Board

MONTANA:

- Big Sky	no	owns its land
- Marshall Ski Area	yes	pays \$10/acre to Champion International to lease 160 acres; paid \$22/acre to Forest Service in 1991 under GRS to lease 50 acres

NEW ENGLAND:

- anonymous	yes	a very large ski area owns its base, but pays 2% of ski related revenues (lift tickets" ski school & food service) to a private landowner to lease the ski mountain
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NEW HAMPSHIRE:

- Cannon Mountain	no	State owned and operated
- Dartmouth Skiway	no	College owned and operated
- Gunstock	no	County owned and operated
- Mt. Sunapee	no	State owned and operated

NEW YORK:

- Gore Mountain	no	State owned and operated by Olympic Regional Authority
- Hunter Mountain	no	owns its land
- Whiteface	no	State owned and operated by Olympic Regional Authority
- Belleayre	no	State owned and operated by Department of Environmental Conservation

PENNSYLVANIA:

- Ski Liberty	no	owns its land
- Whitetail	no	owns its land

UTAH:

- | | | |
|---------------|-----|--|
| - Deer Valley | yes | owns base land, but leases mountain from two separate lessors for 1.25% of net lift revenues (source:letter from ski area) |
| - Sundance | yes | leases land from affiliated corporation at same rate as GRFS formula |

VERMONT (information is from State Forests & Parks Dept. and has also been confirmed with each area)

7 areas, 5 of which (Killington, Stowe, Jay Peak, Okemo and Smugglers' Notch) are larger size areas, currently operate partially on State land. Lease terms vary significantly, but in general, the rent is 5% of lift ticket sales reduced by the % of lift footage on State land. At at least 1 area only 2.5% of gross is paid on new lifts for the first 5 years. Food, ski shop and ski school revenue is assessed at 2.5% of gross, or 3% of gross if the restaurant/shop is in a State owned building. Ski school revenues are excluded from fee at all areas except Smugglers Notch.

Vermont leases generally run 60-99 years and guarantee the fee rate for the duration of the lease (i.e. the fee is a contractual item which cannot be changed by the Legislature). The following information summarizes the Vermont picture:

- | | | |
|-----------------|-----|---|
| - Bolton Valley | no | owns its land |
| - Jay Peak | yes | 99 year lease; State built and owns base lodge, parking lots and 0.8 mile road; no fee is paid on ski school revenues |
| - Killington | yes | 99 year lease; State built and owns base lodge; built, owns, maintains, and plows 1.5 mile access road; State also did part of original trail clearing; no fee is paid on ski school revenues |



- Mad River Glen	no	owns its land
- Okemo	yes	60 year lease; lease includes use of 4 mile summer access road and parking lot built and owned by State; no fee paid on ski school revenues
- Smugglers Notch	yes	83 year lease; State built and owns one shelter, road and parking lot
- Stowe	yes	90 year lease; State built and owns base lodge, some parking lots and road; no fee paid on ski school revenues; pays only 2.5% of gross on new lifts for first 5 years
- Stratton	yes	owns most of its land, but 464 acres is leased from Champion Paper Company at 2.25% gross lift receipts

VIRGINIA:

- Wintergreen	no	owned by homeowners association
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WASHINGTON:

- Alpental/Ski	no	owns land & leases from Forest Service under GRFS
- Mt. Spokane	yes	pays 3.7% of gross revenue to Washington State Parks Dept., but rent includes State owned day lodge, parking lot and road; and state does all snow plowing

WEST VIRGINIA:

- Snowshoe	no	owns its land
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WYOMING:

- Hogadon	no	owned and operated by City of Casper
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harbors, flood control, beach erosion, and other water resources development enacted after November 8, 1966, and before January 1, 1987, shall be compiled under the direction of the Secretary and the Chief of Engineers and printed for the use of the Department of the Army, the Congress, and the general public. The Secretary shall reprint the volumes containing such laws enacted before November 8, 1966. In addition, the Secretary shall include an index in each volume so compiled or reprinted. The Secretary shall transmit copies of each such volume to Congress.

(b) The Secretary shall prepare and submit the annual report required by section 8 of the Act of August 11, 1888, in two volumes. Volume I shall consist of a summary and highlights of Corps of Engineers' activities, authorities, and accomplishments. Volume II shall consist of detailed information and field reports on Corps of Engineers' activities. The Secretary shall publish an index with each annual report.

33 USC 556.

(c) The Secretary shall prepare biennially for public information a report for each State containing a description of each water resources project under the jurisdiction of the Secretary in such State and the status of each such project. Each report shall include an index. The report for each State shall be prepared in a separate volume. The reports under this subsection shall be published at the same time and the first such reports shall be published not later than one year after the date of the enactment of this Act.

Public information.

SEC. 926. ACQUISITION OF RECREATION LANDS.

33 USC 2296.

(a) In the case of any water resources project which is authorized to be constructed by the Secretary before, on, or after the date of enactment of this Act, construction of which has not commenced before such date of enactment, and which involves the acquisition of lands or interests in lands for recreation purposes, such lands or interests shall be acquired along with the acquisition of lands and interests in lands for other project purposes.

(b) The Secretary is authorized to acquire real property by condemnation, purchase, donation, exchange, or otherwise, as a part of any water resources development project for use for public park and recreation purposes, including but not limited to, real property not contiguous to the principal part of the project.

SEC. 927. OPERATION AND MAINTENANCE ON RECREATION LANDS.

33 USC 2297.

The Secretary shall not require, under section 4 of the Flood Control Act of December 22, 1944 (58 Stat. 889), and the Federal Water Project Recreation Act, non-Federal interests to assume operation and maintenance of any recreational facility operated by the Secretary at any water resources project as a condition to the construction of new recreational facilities at such project or any other water resources project.

16 USC 460d.
16 USC
4601--12note.

SEC. 928. IMPACT OF PROPOSED PROJECTS ON EXISTING RECREATION FACILITIES.

33 USC 2298.

Any report describing a project having recreation benefits that is submitted after the date of enactment of this Act to the Committee on Environment and Public Works of the Senate or the Committee on Public Works and Transportation of the House of Representatives by the Secretary, or by the Secretary of Agriculture under authority of the Watershed Protection and Flood Protection Act (68 Stat. 666; 16 U.S.C. 1001 et seq.), shall describe the usage of other,

Reports.

My name is William Horn and I want to thank you for the opportunity to submit testimony on H.R. 2028, the Federal Land Management Agency Concessions Reform Act of 1995, on behalf of the Alaska Professional Hunters Association ("APHA").

APHA supports the notion of comprehensive concessions reform and very much welcomes the idea of a uniformed system for all public lands. A consistent practice among the federal land agencies will make it easier for small businesses to operate more efficiently and in compliance with applicable requirements. It also ensures that operators will receive comparable treatment.

APHA strongly applauds the provisions for ten year permits and transferability. The ten year duration of the contract allows a company to establish a reputable operation and then maintain it without the constant threat of a renewal hanging over its head. Moreover, long-term permits ensure that operators will maintain a commitment to resource conservation in addition to quality service.

APHA offers the following specific comments on particular features of the bill:

Classifications

H.R. 2028 has two classifications: concessioners and licensees. APHA suggests splitting concessioners into major and minor. Lumping large and small operators together into a single category troubles APHA as the rules designed for major entities are likely to be difficult for small operations especially in Alaska.

Renewal/Evaluation

APHA supports the evaluation process established in the bill and appreciates the incentive based renewal process outlined in Section 7(d)(2) that rewards those concessioners who perform well. APHA recommends, however, that the percentage figure in Section 7(d)(2)(B) be increased from five to ten percent.

Fees

APHA supports letting each permittee pay a specified amount for each man-day use on the subject federal lands. This enables the federal government to collect an appropriate fee for access to and use of the subject lands. It enables the permittee to pay an easily calculated fee which can be fixed on a unit wide or regional basis ensuring equity among all classes of users.

APHA is opposed to fee-bidding during the competition for licenses or concession permits as fee-bidding will give an obvious advantage to large operators over their smaller counterparts.

APHA supports action on concessions reform in the 104th Congress. APHA looks forward to working with the National Parks, Forests and Lands Subcommittee of the House Committee on Resources to achieve reform that benefits the public, our natural resources and our members.

Thank you.

F:\B\BCL\LEGIS\JIXE0249



MOAA

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August 20, 1995

The Honorable James V. Hansen
Chairman
Subcommittee on National Parks, Forests, and Lands
812 O'Neill House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

We are writing to ask that these comments be placed in the official hearing record on H.R. 2028, the Federal Land Management Agency Concession Reform Act of 1995.

The Marina Operators Association of America greatly appreciates this opportunity to submit comments for the hearing record. MOAA is the national trade association of small businesses which provide marina services and waterway access to our nation's boaters and anglers. Our members include large multi-marina owned companies, small individually or family owned marinas, dry stack storage facilities, concessionaires on Army Corp of Engineers lakes, marinas managed on behalf of the Department of Interior's National Park Service, service yards, and various support services, such as manufacturers of boat docks, hoists, and access ramps. However, the vast majority of our members are the small, family-owned marinas with fewer than 100 slips.

Boating in America is big business with nearly 75 million people using our nation's waterways each year on over 20 million boats, but the industry is made up primarily of small businesses. In fact, according to a recent study of the industry by the International Marina Institute, 47 per cent of all marinas have fewer than 50 slips, and 71 per cent have fewer than 100 boat slips. Only 6.3 per cent of the marina facilities in our country have 300 or more boat slips. It is estimated that the U.S. has slightly over 10,000 boat berthing facilities with 10 or more boat slips (found in marinas, boat yards, yacht clubs, dockminiums, public parks, and military bases). Our members average fewer than ten full time employees.

Recreation is very important to the American family, and Americans want access to public resources. The nation's parks and recreation areas are among the most popular destinations of Americans. Travel and usage of lands and waters managed by the several responsible government agencies generate retail sales for local communities in the billions of dollars and support hundreds

of thousands of jobs. These impressive figures and the extraordinary growth of recreation on a national scale also generate billions of dollars in tax revenue for Federal, state, and local governments.

We are submitting these comments, because many of our members are small businesses which operate facilities on property owned by the United States government. We are very concerned about any change in current operating procedures, but we are particularly concerned about the potential effects the changes to current contract procedures offered by the key government agencies managing waterfront properties and contained in H.R. 2028.

MOAA's comments focus on three specific issues: 1) Emphasis on satisfaction with current policies of the Corps of Engineers and the National Park Service and differing agency missions, 2) The changes proffered in H.R. 2028 regarding contract renewals and fee structure, and 3) New policies for capital improvements and property appraisals to determine "fair market value."

It should be kept in mind that the large majority of marina concessionaires are small businesses. Many are family owned. Most are not large, sophisticated businesses involved in multi-million dollar operations. Marina concessionaires cannot be compared to concessionaires who operate large lodges in our national parks. We must create a legislative policy that ensures the contributions of small businesses, such as marina concessionaires, to job growth, economic growth, tax revenue growth, and America's prosperity will continue.

In addition, MOAA strongly supports the efforts of the Congress to reduce complexity in the Federal government. We believe H.R. 2028 should support that Congressional goal to make the leasing process less complicated.

Satisfaction with Current Operating Policies

Even though we understand the purpose of the bill is to enhance the role of business in providing for recreation on Federal lands, we are concerned the opposite will actually occur. We believe new market restrictions contained in H.R. 2028 will place small business with a life long commitment to customer satisfaction at a distinct disadvantage with big business. Small businesses will simply not be able to compete with big business due to the restrictive financing associated with short term leases. Our members ask that they be allowed to compete on a level playing field with other business interests.

A lease is a written agreement which conveys a possessory interest in property for a specific period of time. However, the lease may also contain express provisions restricting the usage of the property. H.R. 2028 creates a "concession service agreement." In many ways it is a lease, but it is not defined as such. Concessionaires will propose capital improvements to property

during the lifetime of the lease or agreement that will require financing. The leasehold interest can be used as collateral for the financing. An agreement does not convey the same support for collateral as does a lease. Not having a lease will have a chilling effect on future development. Few marinas have the level of income alone to support financing. Banks want to see a lease as collateral.

In addition, with increased emphasis on a clean environment and compliance to environmental regulations, concessionaires need the ability to borrow funds.

The old saying, "If it ain't broke, don't fix it" may be especially true in this case. Our members report that there are fewer complaints today about concessioner service than any other time. According to our contacts in the Corps and the National Park Service, there is nothing but praise for the work and service of concessionaires. We believe any reform offered by Congress should not jeopardize today's success story.

MOAA understands that H.R. 2028 would create uniform statutory standards for concessionaires on all Federal land management agencies. That intent, itself, is not bad. But, because our members operate facilities on property owned by several government agencies, it is clear to us that there are similarities between concession policies, but there are also considerable differences.

Changes Proffered to Contract Renewals and Fee Structure

MOAA believes concessionaires make a considerable financial investment to operate facilities on Federal lands and assume considerable risk. The primary purpose of concessionaires is to provide a service to visitors to federal recreation areas. Concessionaires provide high quality service including food, lodging, and recreation which enables visitors to take full advantage of the federal lands. These properties would not be utilized if concessionaires had not invested time, sweat, and money to develop the resource for the public. Small businesses did this without the financial help of the federal government. And without the investment of the concessioner, many Americans simply would not visit a lake or federal land. Many of these facilities are in areas that are relatively inaccessible.

Renewable long term contracts are essential for a small business and bank to make the needed financial commitment to improve many of these properties. Our resorts would not have been developed without considerable investment. Banks would not have made the required financial investment without the security of a long term lease agreement. If enacted, MOAA is concerned that bank lending will stop which would not allow concessionaires to take advantage of changing technologies and emphasis on environmental compliance. Without financing being available for small business, only big business will be able to invest in these properties.

MOAA is seriously concerned that many recreational programs will die if long term leases are discontinued, because the financing will not be available to expand or improve a site. Without consistent improvements to a property it will decay and visitors will go elsewhere.

Ten years is clearly not sufficient time for a concessioner lease for a marina. It will not allow for sufficient time to amortize the costs of projects.

Lease terms for marina operations must be a minimum of 25 years. We recommend that the language of H.R. 2028 be amended to specifically mention a minimum 25 year lease should be awarded to a concessioner who has made a significant capital investment and commitment to the recreation area. We do not want to leave flexibility in the legislation to provide for a short lease term to the rulemaking process. We are concerned of inconsistencies among agencies regarding the treatment of lease term.

In addition, banks need business plans and projections of revenue and expense flows for several years into the future to base a financial commitment to a project. It is important to project fees into the future, but as fees go up, a variable is created that the business and bank cannot foresee. We understand the interest for the government to increase revenue. We may not agree with it, but we understand it. The problem is that the costs will have to be passed onto the public. As the costs increase, the marina becomes less stable and visitors may recreate somewhere else. The market generally determines the cost of slip rental, not necessarily the costs of operations. Just because costs increase does not mean that a marina can charge more for slip rentals.

We do not believe fees can be tied directly to inflation rates. An understanding of operating costs, especially labor costs, is most important. And market conditions must be considered in any pricing structure.

The actual fee structure is more complicated than a simple per cent of gross revenue or a set annual fee. Many times the government receives various types of compensation other than cash fees. These types of services include concessioner repairs, maintenance, improvements, or construction of government-owned facilities. These fees are either in addition to or in lieu of cash fees. Applicable government agencies must be given the latitude to utilize this very important optional fee structure. H.R. 2028 must be flexible enough to promote optional fee structures.

MOAA believes the annual evaluation language of H.R. 2028 is inherently subjective by lease administrators. No criteria are established in the bill. We strongly believe our members want to know annually how they are doing, but we are very concerned that an annual scorecard as described in the bill does not provide for

a uniform federal policy. MOAA has serious reservations with Section 8 (c).

New Policies for Capital Improvements and Property Appraisals

Independent appraisals of property and businesses are difficult at best. How do we determine the current market price of a small business? Is it based on the value of fixed assets? Yes. Is it based on past performance and customer goodwill? Yes. Is it based on projected market conditions? Yes. But what formula will the Federal government use? How do you set up Federal rulemakings to determine fair market value that is fair to the seller? Investment capitalists are constantly adjusting the criteria for setting a "price" for a business and then seldom does the business sell for that price.

MOAA believes the requirement for an independent appraisal to determine the fair market value of a small business at a Federal site will be impossible to obtain, will be burdensome, and will be unfair to the selling party. A lack of qualified and knowledgeable marina appraisal firms coupled with a lack of properly established appraisal criteria will cause marina appraisals to be inaccurate and highly subjective.

We ask that H.R. 2028 be amended so that the appraisal will only be one of several tools that can be used to determine fair market value. In the final analysis, the market price will be the selling price and will be the end value of a concessioner's property.

To conclude, MOAA believes that concession policy should enhance the successful partnership between the Federal government and small business. By doing so, small business will continue to provide the capital investment necessary to promote the recreational opportunities of the American public.

MOAA looks forward to working with you and your staff to write legislation which will do just that. Thank you.



Greg Staudt
President

Sincerely,



Phil Keeter
Executive Director

MEMORANDUM OF UNDERSTANDING

between

the

**THE UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

the

**THE UNITED STATES DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers**

and the

**THE UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Land Management
Bureau of Reclamation
Fish and Wildlife Service
National Park Service**

On

CONCESSIONS¹ MANAGEMENT

This Memorandum of Understanding (MOU) is entered into by and among the United States Department of Agriculture, Forest Service; the United States Department of the Army, U.S. Army Corps of Engineers; and the United States Department of the Interior, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, and National Park Service. Collectively, the parties to this MOU shall be referred to as Cooperators.

I. PURPOSE

The purpose of this MOU is to promote interagency consistency and cooperation in concessions management. The Cooperators shall work together to achieve common goals. These goals include:

¹For the purposes of this Memorandum Of Understanding, a concession is the privilege of operating a business for the provision of recreation services, facilities, or activities on Federal lands or waters.

1. Introducing more competition into concessions programs first to improve the quality of services provided to the public and second to ensure a fair return to the Federal government;
2. Improving business relations and fostering interagency cooperation by making concessions policies more uniform; and
3. Making concessions programs more amenable to audit.

In achieving these goals, the Cooperators shall work together to address the recommendations for concessions management reform previously identified by the Congress, the Offices of the Inspector General, the Government Accounting Office, and the Department of the Interior's 1992, "Report of the Concessions Management Task Force Regarding Commercial Recreational Activities on Federal Lands." These recommendations include the following:

1. Form an Interagency Concessions Management Coordinating Group consisting of agency concessions management specialists and appropriate policy officials to review concessions management operations.
2. Each agency should establish and maintain a concessioner database, using a common set of data elements. The data elements for each data base should include, at a minimum, information on the (1) type of agreement; (2) length of agreement; (3) expiration date; (4) services provided; (5) annual gross receipts; (6) fees paid; (7) value of in-kind payments made in lieu of fees; (8) dates of audits; and (9) dates of reviews and evaluations.
3. Each agency should establish and maintain staff skilled in concessions management.
4. To the extent permitted by law and to the extent practicable, develop consistent provisions for concession instruments for the same types of uses.
5. Develop cooperative procedures to facilitate authorization of cross-boundary concessioner uses.
6. To the extent permitted by law, develop consistent policies for setting fees for similar types of concessions.
7. Develop and apply an accurate valuation system and reasonable controls for in-kind payments made in lieu of fees.
8. Develop eligibility and performance standards for all concessions programs.

II. GUIDING PRINCIPLES:

The Cooperators shall use the following principles as a guide in implementing the recommended reforms:

1. Where permitted by law, fees for all concession instruments should be based on fair market value.
2. Using a market-based approach, establish a baseline fee for advertisements, requests for proposals, and negotiations.
3. Where permitted by law, recoup administrative costs for all concession instruments.
4. Where permitted by law, charge a fee based on fair market value for concession instruments with State and local governments that have a subordinate instrument with third parties.
5. Where permitted by law, each agency should limit the length of new concession agreements to the shortest practical period, unless a longer term is determined to be in the public interest.
6. Require agency review and approval for transfers of ownership or control of the concession operation. All concession instruments should provide that when such transfers occur, the terms of the authorization are subject to renegotiation.
7. Agencies having competitive concession opportunities, including reofferings, should advertise widely in appropriate media.
8. Unless required by law, agencies should not grant preferential rights of renewal in concession instruments.
9. Unless required by law, agencies should not grant a possessory interest in improvements covered by concession instruments.
10. Where permitted by law, compensation for a possessory interest in improvements covered by a concession instrument should be based upon book value.

The guiding principles are not to be considered binding agency policy until such time as adopted by the agencies, pursuant to any necessary procedures under the Administrative Procedure Act.

III. STATEMENT OF MUTUAL BENEFITS AND INTEREST

The Cooperators have a common interest in providing quality visitor services and safe recreational experiences. Customer service and resource stewardship, along with ensuring a fair return to the Federal government, shall guide the Cooperators' efforts. Differences in concessions managed by the Cooperators, such as size and applicable legal requirements, are recognized, and shall be taken into consideration. A brief summary of each party's concessions program follows:

Bureau of Land Management - As a result of the Reclamation Project Act, BLM inherited recreational concession leases and their associated sites from the Bureau of Reclamation. BLM initiated a concession policy of its own in 1989.

Bureau of Reclamation - Of the approximately 250 commercial concessions on Bureau of Reclamation lands, the bureau manages 16 directly. The remainder are managed by other Federal, State, and local agencies.

U.S. Army Corps of Engineers - The primary objective of the Corps' concessions program is to provide services and facilities to meet public recreational demands at reasonable prices.

Forest Service - A large number and variety of commercial recreation concessions operate in the National Forests. Some of these commercial operations include ski areas, outfitting and guiding, and campgrounds.

Fish and Wildlife Service - Twenty concession enterprises are authorized to utilize lands, waters and facilities managed by the Fish and Wildlife Service.

National Park Service - The Concessions Policy Act of 1965 codifies virtually all aspects of concessions management in the National Park Service. Commercial Use Licenses, not under the purview of the Act, are used for services with minor impact on park resources.

IV. IN CONSIDERATION OF THE ABOVE, IT IS MUTUALLY AGREED BY THE PARTIES THAT:

The Cooperators shall endeavor to meet at a frequency necessary to achieve the goals and recommendations outlined in this MOU. In doing so, they shall share information and cooperate in promoting greater consistency in their respective concessions management programs. The following considerations are recognized in implementing this MOU:

1. The public interest shall be the primary consideration of the agencies implementing this MOU.
2. In implementing this MOU, each agency shall be operating under its own laws and

regulations.

3. Nothing in this MOU is intended to alter, limit, or expand the statutory and regulatory authority of the Cooperators.

4. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU shall be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement and printing. Such endeavors shall be outlined in separate written agreements between parties and shall be independently authorized by statute. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

4. This MOU in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals.

5. No member of or delegate to Congress shall benefit from this MOU either directly or indirectly.

6. Any party, in writing, may terminate this MOU in whole or in part at any time before its expiration when the other party has failed to comply with the conditions of this MOU.

7. Modifications to this MOU shall be made in writing and with the consent of the Cooperators and shall be signed and dated by the Cooperators.

8. This MOU shall expire no later than September 30, 1999, at which time it shall be subject to review and renewal or expiration.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last date written below.


 Chief
 U.S. Forest Service

4 May 1995
 Date

Jim Zinsky
 Acting Assistant Secretary
 of the Army
 (Civil Works)

4/17/95
 Date

Mike Dornbech
 Director
 Bureau of Land Management

5/2/95
 Date

David Beaul
 Commissioner
 Bureau of Reclamation

5/2/95
 Date

Jim Pomeroy
 Director
 National Park Service

4/28/95
 Date

Sam E. Hogen
 Director
 U.S. Fish and Wildlife Service

5/2/95
 Date

Committee on Resources
Subcommittee on National Parks, Forests, and Lands
Statement of
Representative David E. Skaggs
on
On H.R. 773 and H.R. 2028
Concessions Reform Legislation

July 25, 1995

Mr. Chairman, as a cosponsor of H.R. 773, I appreciate your courtesy in including this statement in the hearing record. I am glad that the Subcommittee is holding this hearing on the important subject of reforming the laws and policies under which the National Park Service and other Federal land-managing agencies award and manage commercial contracts and licenses for the provision of visitor services.

I was very disappointed that comprehensive reform of National Park System concessions was not achieved last year, especially since the House passed a sound, balanced concessions reform bill by an overwhelming vote only to see the measure die in the Senate's end-of-session gridlock.

I continue to support comprehensive concession reform that will provide for greater competition among potential concessioners where such competition is appropriate, and that will repeal the outdated provisions of current law related to concessioners' preferential rights of renewal and their ability to have an excessive possessory interest in improvements on Federal lands.

In addition, developments since your committee and the House last considered reform of concession legislation have demonstrated that it would be desirable for legislation dealing with visitor services to recognize the authority of the Secretary of the Interior to properly regulate commercial tourist flights over units of the National Park System.

As you know, Mr. Chairman, I have recently introduced a bill (H.R. 1954) that addresses this subject, which is becoming a growing problem at several National Parks. In particular, introduction of the bill was prompted by my concerns about current proposals for helicopter sightseeing at Rocky Mountain National Park, in Colorado, which could seriously compromise enjoyment of the park by visitors on the ground and also could have serious adverse impacts on the resources and values of the park itself.

I believe that the National Park Service has authority to manage commercial air tourism, just as it has with respect to other commercial activities within the parks. But I understand some question that point, so I think Congress should act to remove any doubts about that authority and to make sure that the American people -- who own the National Parks -- receive an appropriate

share of the profits from such operations, through the payment of concession franchise fees. My bill is intended to achieve those goals.

H.R. 1954 is similar to legislation introduced in the 103rd Congress by our colleague from Montana, Mr. Williams. Like H.R. 773 and H.R. 2028, it would amend the 1965 law under which the National Park Service now awards and manages concession contracts. It would provide that commercial sightseeing operations over National Parks System units would have to have been awarded a concession contract for such services. In addition, the bill would require the Secretary of the Interior to develop guidelines for deciding whether or not to award proposed concession contracts for commercial sightseeing flights over National Park System units, taking into consideration the laws, policies, and plans that govern management of the parks.

The increasing frequency of unrestricted commercial airborne tourism in the national parks and the attendant impacts on the experiences of other visitors and on park resources and values helps make the case for the bills being considered today. The need is clear. Concessions reform legislation that will allow the National Park Service to properly manage all commercial activities within National Park System units -- including commercial visitor services involving the use of aircraft -- and that will assure a proper return to the taxpayers from such activities deserves our prompt attention.

Again, Mr. Chairman, I appreciate your courtesy in allowing this statement to be included in the hearing record.



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