Protecting and Preserving Our National Parks in the Twenty First Century: Are Additional Reforms Needed above and beyond the Requirements of the 1998 National Parks Omnibus Management Act?

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PROTECTING AND PRESERVING OUR NATIONAL PARKS IN THE TWENTY FIRST CENTURY: ARE ADDITIONAL REFORMS NEEDED ABOVE AND BEYOND THE REQUIREMENTS OF THE 1998 NATIONAL PARKS OMNIBUS MANAGEMENT ACT?

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I. INTRODUCTION

Imagine yourself at Glacier National Park. You have been walking along a trail. You come to a pristine blue lake and decide to rest. You sit down on a gnarled snag of fir, shoes off, feet touching a lake so cold that it makes you shiver. Indeed, chunks of ice still float in the water. But the sun is high,
warming the back of your neck, and the trail you have followed is blazed with beautiful alpine flowers. You are a summer visitor in a place that was sculpted by mother nature’s vicious winters, a landscape that was carved and molded by ice.

You begin to walk along the trail again. When you look around, you can see a shimmering expanse of prairie, evergreen forests with their stately boughs, glimmering lakes set into mountain crowns, high meadow gardens, and snow banks blanketing the alpine tundra. Every turn of the trail beckons you into the heart of the wilderness. Each discovery, whether of glacier lilies blooming on top of a snow patch or a sweeping vista of glistening mountaintops, propels you to the next. It even seems as if Glacier’s peaks are attainable.

Glacier, like many other national parks, provides its visitors with a panorama of beautiful scenery. Our national park system, which was created in 1916, protects and preserves these beautiful lands for the future enjoyment of all Americans. Our parks - 379 at last count – encompass some of our nation’s most spectacular landscapes as well as some of our historical achievements and sorrows. As such, our national parks embody and symbolize our country’s rich heritage.

Yet, in many ways, our nation has let this legacy crumble. Indeed, our parks are afflicted with decaying infrastructures, overcrowding, encroaching development, and air pollution. In short, our parks are no longer the pristine paradises they once were. For instance, Glacier National Park, whose scenic beauty


In all, the creation of the national park system has been seen by many as one of last century’s greatest gifts to the American people. Winks, supra note 1, at 575.

5. See, e.g., Cat Lazaroff, Yellowstone Tops List Of America’s 10 Most Endangered Parks, ENVTL. NEWS SERV., April 5, 2000, available in 2000 WL 7838502.
6. Our national parks’ failings have been well documented. See, e.g., Michael Satchell, Parks in Peril: The Views are Still Spectacular, the Wildlife Abundant. Everybody Loves America’s National Parks. So Why are They Under Siege?, U.S. NEWS & WORLD REP., July 21, 1997, at 22, available in 1997 WL 8332361; Carol Estes, A Culture
is beyond compare, is in need of a large number of infrastructure repairs. Due to the imminent need for infrastructure improvements, the 106th Congress debated a bill that would allow Glacier National Park to rebuild Going-to-the-Sun Road and various historic hotels; to purchase new tourist buses, and to construct new utility systems. Unfortunately, the Glacier National Park bill has stalled in Congress. Like Glacier, most of our parks have a need of some kind, whether it is additional funding for infrastructure repairs, for scientific research, for more staff, or for building new structures, and, like Glacier, most of our parks have not had their funding requests fully granted.

This lack of Congressional funding raises an obvious question. Why has Congress not appropriated sufficient monies needed to adequately protect and preserve our national parks? The answer is two fold. First, Congress, throughout the 1970s, 1980s, and early 1990s, allowed our national parks to incur a $3.5 billion backlog in maintenance projects. During this time, Congress failed to adequately fund the Park Service's current needs. Instead, Congress approved monies for a number of "park pork" projects that the Park Service deemed were either

in Ruins: Across the Nation, Thousands of Historic Sites and Objects are Succumbing to Inadequate Funding and Misplaced Priorities, NAT'L PARKS, May 1, 1997, at 34, available in 1997 WL 9300292.

7 Going-to-the-Sun Road is a 51-mile road completed in 1933 after a heroic construction and engineering effort. Tom Kenworthy, Glacier National Park Is Crumbling: From Rocky Roads To A Sagging Hotel, Repairs Are Needed BADLY, USA TODAY, July 12, 2000, at 3A, available in 2000 WL 5783563. Three years ago the road was designated a National Historic Landmark. Id. Park officials estimate that it will cost at least $200 million to reconstruct the road. Id.

8. It is estimated that it will cost $65 million to repair Glacier hotel. Kenworthy, supra note 7.

9. Currently, Glacier National Park has 33 bright red, canvas-topped buses that have been used since the 1930s. See Kenworthy, supra note 7.


The legislation would authorize nearly $240 million to facilitate all of the needed improvements. Kenwroty, supra note 7. Other crown jewel parks, such as Yellowstone, Yosemite, or Grand Canyon, need repairs as well; however, these parks, unlike Glacier, have received additional funding over the past decade. Id.

11. See, e.g., Lazaroff, supra note 5. See also Kenworthy, supra note 7.

12. See, e.g., Kenworthy, supra note 7.

13. See, e.g., Satchell, supra note 6; Estes, supra note 6.
unnecessary or too expensive. Additionally, Congress also approved monies to establish 125 new parks, most of which were created solely because Congressional members wanted a new park in their district.

Second, the National Park Service has misappropriated numerous funds on extravagantly overpriced construction projects. One of the most publicized funding misappropriations occurred at Delaware Gap National Recreation Area in Pennsylvania where the Park Service built a two-toilet state-of-the-art outhouse for $333,000. Unfortunately, this was not the Park Service’s only snafu. Elsewhere, the Park Service spent $8 million on a new civic center in Seward, Alaska; $1 million on an outhouse in Glacier; and $584,000 per new employee housing unit in Yosemite.

Fortunately, since the mid-1990s, Congress has begun addressing our Park Service’s problems by enacting legislation that both provides our parks with more monies and reforms our parks’ operating procedures. For instance, in 1996, Congress enacted the fee demonstration program, which allowed 100 of the 375 parks to charge higher fees and keep eighty percent of the revenues. This program was adopted to provide parks with supplemental funding. In all, this program has increased funding by tens of millions of dollars and has helped parks fund many necessary maintenance and renovation plans.

15. See, e.g., Satchell, supra note 6; Estes, supra note 6.
17. Id. at 21. See also NBC News at Sunrise: Critics Call the National Park Service’s Newest Attraction a Fleecing of America, (NBC television broadcast, Oct. 10, 1997), available in 1997 WL 14582729. The outhouse was beautiful. It had a gabled roof made of Vermont slate, a cobblestone foundation to withstand earthquakes, and porch railings made from quarried Indian limestone. Ansson I, supra note 3, at 21.
21. Id.
Congress has also enacted legislation designed to reform the national park system.\textsuperscript{23} Thanks in large part to U.S. Senator Craig Thomas (R-Wyo.), Congress passed the National Parks Omnibus Act of 1998,\textsuperscript{24} which provided for concessions reform, higher fees on larger concessionaires, park and budget reforms, increased and updated training for park officials, and a less political system for evaluating potential additions to the National Park System.\textsuperscript{25}

Unfortunately, the recent funding and park operating reforms have not proven to be sufficient. As such, further reforms are necessary. Currently, debate is being waged as to how to better fund our parks and how to better reform the concessions industry. This Article will briefly review the National Parks Omnibus Act, and discuss why additional reforms are needed to ensure that our national parks are properly protected throughout the Twenty-First Century.

Part II of this Article will review the history of our national parks, will detail some of the problems that have confronted our parks in recent years, and will briefly discuss some of the reforms that have been enacted by Congress. Part III will examine reforms made to the concessions industry by the 1998 Omnibus Act and will also address further reformation of the concessions industry. Part IV will analyze the funding of our national parks and the admittance of new parks. This section will evaluate the reforms made to these areas by the 1998 Omnibus Act and will also address further reforms that should be made to these areas. Finally, Part V of this Article will conclude by urging Congress to continue funding and reforming our National Park Service so that our parks can be properly maintained for generations to come.


\textsuperscript{25} Id.; See also President Hails Effort, supra note 23.
II. OUR NATIONAL PARKS

A. The History of the Park Service

In 1872, Congress designated Yellowstone as this country's first national park. Throughout the remainder of the nineteenth century, Yellowstone and other newly established parks were under the direct authority of the Secretary of the Interior. During this time, the Secretary of the Interior had difficulties protecting the parks from various abuses. Preservationists, however, did not push for park management reforms until the loss of the spectacular Hetch Hetchy Valley in Yosemite National Park. In 1913, Congress passed legislation that allowed Hetch Hetchy Valley to be dammed to provide water and power to San Francisco. Those that supported the bill explained that only a few thousand people visited the Valley while nearly 500,000 people needed the water the Valley could provide. As a result of this bill’s passage, preservationists realized that they had to increase support for parks, and in so doing, they began to champion the creation of a comprehensive park management scheme to help increase the ability of the parks to attract more visitors.

The preservationists were successful in this endeavor. Indeed, by 1916, Congress passed and President Woodrow Wilson signed the Organic Act, which established the National Park Service. Under the Act, Congress charged the National Park Service with managing the nation's parks in a manner that:

[C]onserve the scenery and the natural and historic objects and the wild life therein and... provide for the enjoyment of the same

27. Id. See also NATIONAL PARKS AND CONSERVATION ASSOCIATION, OUR ENDANGERED PARKS 1, 21 (1994) [hereinafter OUR ENDANGERED PARKS].
28. OUR ENDANGERED PARKS, supra note 27, at 21.
29. See, e.g., Dennis J. Herman, Loving Them to Death: Legal Control on the Type and Scale of Development in the National Parks, 11 STAN. ENVTL. L.J. 3, 6-7 (1992); Michael Mantell, Preservation and Use: Concessions In the National Parks, 8 ECOLOGY L.Q. 1, 11-13 (1979). See also Wilkinson, supra note 26, at 130.
30. See Mantell, supra note 29, at 11-12.
31. Id.
32. Id. at 12-13.
34. For a detailed analysis of the Organic Act, see Winks, supra note 1, at 583-616.
in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 35

Additionally, the Organic Act gave the Secretary of the Interior the authority to make such rules and regulations as necessary for the use and administration of areas under the National Park Service. 36 Finally, the Act gave the Secretary the power to develop various visitor facilities in the parks through concessionaire leases. 37

One of the first policies that came to govern the Park Service was first written in a letter on May 13, 1918, from Secretary of the Interior Franklin K. Lane to Stephen Mather. 38 The letter stated that the national parks must be maintained unimpaired; that the parks are set apart for the use and pleasure of the people; and that the national interest must dictate all decisions affecting public or private enterprises within the national parks. 39 Additionally, Lane emphasized, among other things, the educational as well as recreational use of the parks; the need for low priced concessionaires; the need to harmonize construction with the landscape; and the desire to expand the park system to include areas of supreme and distinctive quality. 40

As the park system has grown, 41 these policy ideas have remained in place. Preservationists recognized early on that they required the support of park visitors if they were to succeed in their mission. 42 Thus, beginning as early as 1916, they supported aggressive efforts to increase park visitation. 43 By the end of World War II, annual park visitation had exceeded all expectations. 44 In fact, the Park Service found that it was unable to provide sufficient amenities to accommodate all of its

36. Id.
37. Id.
38. Our Endangered Parks, supra note 27, at 21-22.
39. Id. at 22.
40. Id.
41. Initially, the Park Service was charged with managing 14 national parks and 21 national monuments. Id. Over the next fifteen years, Congress created a number of parks. Id. at 23. Some of these parks were not scenic wonders. Id. For instance, Everglades National Park was added to the park system because of its unique ecosystem. Id. In 1933, the Park Service was charged with managing 60 monument areas. Id. Since this time, the park system has continued to grow. Id.
42. Ansson I, supra note 3, at 4-5.
43. Id. at 6.
44. Id.
new guests.\textsuperscript{45} In an effort to deal with this problem, the Eisenhower Administration launched a 10-year, $1 billion improvement program designed to improve food services, campground, and parking facilities.\textsuperscript{46}

The National Park Concessions Policy Act of 1965 (Concessions Policy Act) represented Congress's efforts to enunciate a coherent, preservation-based policy with regard to the provision of park amenities. To that end, Congress said:

\begin{quote}
[A]ccommodations, ... should be provided only under carefully controlled safeguards against unregulated and indiscriminate use. ... It is the policy of Congress that the development of public accommodations ... shall be limited to those that ... are necessary and appropriate for public use and enjoyment... and are consistent to the highest practicable degree with the preservation and conservation of the areas.\textsuperscript{47}
\end{quote}

The Concessions Policy Act, among other things, provided intrepid businesses with incentives such as long-term contracts, exclusivity, bidding advantages and the opportunity to profit from any expenditures made on park facilities if they entered into concessions with the Park Service.\textsuperscript{48} These incentives were necessary, at the time, because conducting an enterprise in the park system could prove to be extremely risky business.\textsuperscript{49} The remoteness of most parks, the difficulties in gaining access and the resulting paucity of visitors were more than enough to chill the interest of all but the bravest entrepreneurs.\textsuperscript{50} The Concessions Policy Act proved to be a very effective tool in encouraging concessionaire investment. The result of the policy is the booming concessions industry of today which earned nearly $800 million in 1998 alone.\textsuperscript{51}

Implementation of the Concessions Policy Act has brought to light many of the challenges involved in balancing the Park Service's need to provide adequate recreational opportunities for park supporters, while still protecting the parks for the

\textsuperscript{45} Id.  
\textsuperscript{46} Id. See also Kenworthy, supra note 7.  
\textsuperscript{47} 16 U.S.C.A. § 5951(a), (b) (1998).  
\textsuperscript{48} Ansson II, supra note 19, at 15.  
\textsuperscript{49} Id.  
\textsuperscript{50} Id. at 14.  
enjoyment of future generations. The essence of this quandary was captured, in full, by one commentator who noted: “To exclude people, whatever the means, risk[s] loss of support for the national park idea; to accept more people as the price of support jeopardize[s] the parks themselves.”

Visitation of our parks continues to grow annually. As a result of this growth and the Park Service’s attempts to accommodate visitor needs, many parks have been inundated with concessions including lodging, restaurants, shopping, campgrounds and recreational outfitters of all types. With these amenities come more users and more problems for park managers. Hanging in the balance, however, are historical, natural, and cultural treasures that face serious threats from commercial encroachment, pollution, and immoderate visitation.

As a result of the Concessions Policy Act, concessionaires have been granted virtual monopolies since 1965. However, today’s concessionaires are no longer engaged in a risky business as they enjoy extremely favorable economic positions. Many make enormous profits. Yet, the Park Service has historically received little benefit at all from these one-sided arrangements. In fact, the royalties that the Park Service has received, until very recently, have been pitifully small, averaging about 1 to 2 percent. In all, this has caused the Park Service to lose a substantial amount of additional funds.

This loss of revenue becomes even more significant when one considers that, while park visitation has doubled in the last thirty years, the National Park Service has suffered a $202 million dollar reduction in revenue between 1977 and 1997. Additionally, during this same time, more than 120 new parks have been added to the system bringing the total number of parks to 379. The admission of new parks to the system

52. Herman, supra note 29, at 8, (quoting Alfred Runte, National Parks: The American Experience, 172-73 (2d. ed. 1987)).
54. Id.
56. Ansson II, supra note 19, at 15.
57. Id. at 16.
58. Concessions on Concessions, supra note 55.
59. Ansson I, supra note 3, at 9. This loss of revenue is measured in terms of constant dollars. Id.
60. Wilkinson, supra note 2.
represents a victory for preservationists at large, but these additions presented the National Park Service with a host of financial and logistical challenges.\textsuperscript{61} Many of these new park projects have been forced upon the park system, even though park officials have deemed them to be "unnecessary or too expensive."\textsuperscript{62} These park additions, commonly called "park pork" by some, are more often based on a particular Congressional member's desire to establish lucrative or prestigious new parks for the benefit of their home district than a need to preserve any rare historical, cultural, or geological treasure for the sake of our posterity.\textsuperscript{63} These pet projects siphon billions of dollars of funding away from legitimate Park Service projects. The result of these practices was that fewer and fewer dollars were being spent on complying with the simple mandate of the Organic Act - the protection of our national treasures for future generations.\textsuperscript{64}

\textbf{B. Reforming the Park Service}

With the Park Service mired in an array of vexing problems, U.S. Senator Craig Thomas (R-WY) introduced legislation in the 105\textsuperscript{th} Congress designed to reform many regulations governing our parks.\textsuperscript{65} Shortly thereafter, Congress enacted the National Parks Omnibus Management Act of 1998 (Omnibus Act).\textsuperscript{66} The Omnibus Act included provisions designed to reform the concessions industry, promote local fund raising activities, demand fiscal accountability by park managers, encourage cooperative agreements with universities and the scientific community, and establish new criteria for the admission of new

\begin{itemize}
\item \textsuperscript{61} Ansson II, \textit{supra} note 19, at 26.
\item \textsuperscript{62} Ansson I, \textit{supra} note 3, at 19.
\item \textsuperscript{63} See, e.g., Satchell, \textit{supra} note 6; Estes, \textit{supra} note 6.
\item \textsuperscript{64} 16 U.S.C. § 1 (1998).
\item \textsuperscript{65} \textit{Concessions on Concessions, supra} note 55.
\item \textsuperscript{66} Ansson II, \textit{supra} note 19, at 20. The passage of the Act was the culmination of the efforts of national park advocacy groups whom felt that major reforms were necessary to ensure our parks a healthy future. \textit{Id.} Indeed, many credit the National Parks Conservation Association, the nation's only private non-profit organization dedicated solely to park issues, with securing the passage of this legislation. \textit{See Concessions: Before the Senate Subcomm. on National Parks, Natural Historic Preservation and Recreation, Energy, and Natural Resources Comm., 106th Cong. (2000) (statement of Philip H. Voorhees, Senior Director, Park Funding and Management, National Parks Conservation Association), available in 2000 WL 19305012 [hereinafter Concessions: Statement of Voorhees].
\end{itemize}
The passage of the Omnibus Act had a dramatic impact on the concessions industry. Indeed, the Act virtually ended all of the preferential rights concessionaires had enjoyed under the Concessions Policy Act. The Act also authorized the parks to retain concession fees for use in the park in which they were collected, rather than turning them over to the general treasury fund as required under the old regime. Thus, the Omnibus Act removed anti-competitive barriers while at the same time giving park officials incentive to obtain more reasonable concessions fees.

These important changes have not, however, rendered our National Parks problem free. Indeed, numerous problems still plague the Park Service. For instance, an overabundance of tourists at our parks has caused an abnormally high amount of wear and tear, as well as other problems such as traffic jams, pollution from snowmobiles, and pollution from scenic overflights. Last year, our parks had 287 million visitors.

68. Concessions on Concessions, supra note 55. As might be expected, concessionaires were largely opposed to the reform. Concessions: Statement of Voorhees, supra note 66.
69. Concessions on Concessions, supra note 55.
70. Some of the problems that plague our parks are not system wide problems. Rather, they are problems that affect individual parks. For instance, Mojave National Preserve may need specific Congressional legislation to prevent a California company from pumping 30,000 acre-feet of water from an aquifer under the Preserve. Elizabeth G. Daerr, Regional Report: On NPCA's Work In The Parks, NAT'L PARKS, July 1, 2000, at 20, available in 2000 WL 9265421. The company and the Metropolitan Water District of Southern California would replace this water during years of heavy rainfall with water from the Colorado River and would drain water from the aquifer in years of drought. Id.
The National Park Service, the Environmental Protection Agency, and the U.S. Geological Survey have all found that the project may harm desert plants and animals, including desert bighorn sheep that depend on many natural springs and seeps. Id.
71. Park overcrowding has even begun to affect National Parks in Alaska, such as Katmai National Park. Bill Sherwonit, Too Close For Comfort, NAT'L PARKS, Sept. 1, 2000, at 32, available in 2000 WL 9265445.
72. Satchell, supra note 6.

With more tourists comes the need for more employees. Currently, our parks are suffering from a lack of employees. Glenn Ruffenach, Park-Time Jobs, WALL ST. J. June 5, 2000, at J4, available in 2000 WL-WSJ 3031635. Park concessionaires are actively soliciting the business of early retirees. Id. Hamilton Stores Inc., which operates 14 stores throughout Yellowstone National Park, stated: "There's more
and many of our more popular parks, such as Great Smoky Mountains National Park, Grand Canyon National Park, and Yellowstone National Park, had record numbers of visitors.\textsuperscript{74} The high visitation levels have caused some parks, like Grand Canyon National Park and Zion National Park, to prohibit automobiles in an effort to reduce both congestion and pollution.\textsuperscript{75} In the future, the Park Service may place additional automobile bans on other popular parks, such as Great Smoky Mountain National Park.\textsuperscript{76}

The Park Service has also decided to ban snowmobile usage in Yellowstone and Grand Teton National Park due to the harmful affects these recreational vehicles have had on the park's environment.\textsuperscript{77} Indeed, prior to the ban's enactment, Park Service officials estimated that as many as 1,000 snowmobiles a day were entering Yellowstone National Park, emitting nitrous oxide and hydrocarbons equivalent to the tailpipe emissions of 1.7 million cars.\textsuperscript{78} After conducting several studies, the Park Service found that the snowmobiles harmed the wildlife, the air quality, and the natural quiet of these parks.

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\textsuperscript{75} Ansson II, \textit{supra} note 19, at 30. The ban at Zion National Park, which was implemented in the summer of 2000, prevented 4,000 cars per day from entering the park. James Rainey, \textit{California and the West Yosemite Valley Plan Seen As a Quest for Beauty and Balance Recreation: Babbitt says Funding and an Alliance of Environmental Groups will Ensure the Success of the Blueprint for Restoring Natural Settings. But Costs, and Conflicts over the Park's Evolution, Will Be Ongoing}, L.A. TIMES, November 15, 2000, at A3, available in 2000 WL 25918181. For more on the car ban at Zion National Park, see Brent Israelsen, \textit{Quiet Reigns In Zion Park, Sans Cars}, SALT LAKE TRIB., May 24, 2000, at A1, available in 2000 WL 3764641.

\textsuperscript{76} The park is currently looking at other forms of transportation, such as buses, light rail, and trolleys. \textit{Smokies Park Officials Seek To Alleviate Traffic}, AUGUSTA CHRON., November 20, 2000, at B4, available in 2000 WL 28328337. See also Lois Thomas, \textit{Cove Showing Wear and Tear From So Many Visits}, KNOXVILLE NEWS-SENTINEL, April 12, 2000, at S7, available in 2000 WL 7314978.

\textsuperscript{77} Theo Stein, \textit{Snowmobile Ban Set For 2003 at Two Parks}, DENVER POST, November 23, 2000, at B1, available in 2000 WL 25835250. The ban would not officially go into effect at Yellowstone and Grand Teton National Parks until 2003. \textit{Id.} The National Park Service also recently banned snowmobiles in Denali's 2-million-acre wilderness. Daerr, \textit{supra} note 70, at 20. However, even with this restriction, 95 percent of the public lands in south central Alaska are open for snowmobile use. \textit{Id.}

and should, therefore, be banned. When the ban is officially in place, the Park Service will only allow winter tourists to enter the park via multi-passenger snow coaches, snowshoes, or skis.

Finally, Congress, in conjunction with the Park Service, has recently enacted legislation that will ban tourist over flights in one park and limit, if not eliminate, them in others. After conducting a number of hearings, Congress found that these scenic over flights, just like snowmobile outings, harm our parks' air quality and natural quiet. The new law, which was actively supported by U.S. Senator John McCain (R-Ariz.) and U.S. Representative John Duncan (R-Tenn.), provides for the following:

- bans tourist flights over Rocky Mountain National Park;
- requires all parks subject to flights to complete air tour management plans specifying when, where, how, and how often flights can occur; and
- requires the Federal Aviation Administration (FAA) to cooperate with the National Park Service on protection of the quiet of national parks' skies.

80. Id. The Park Service's decision to ban snowmobiles in Yellowstone and Grand Teton National Parks has met with a lot of opposition. Indeed, many have argued that the Park Service did not need to ban snowmobiles because the noise and emissions problems could be solved by sound and emission controls. Snowmobile Ban: Before the Subcomm. on National Parks and Public Lands, 106th Cong. (2000) (testimony of Clyde Seely), available in 2000 WL 19304326. Additionally, U.S. Senator Craig Thomas (R-WY) is considering legislation that would delay the ban, and in a related matter, give snowmobile makers three years to meet emissions standards developed by the Environmental Protection Agency. Stein, supra note 77, at B1. Senator Thomas is concerned that eliminating the snowmobile industry in Yellowstone and Grand Teton National Parks would cost neighboring communities, such as West Yellowstone, 1,000 jobs and $100 million a year in tourism. Id.

Moreover, at least one off-road-vehicle group is considering challenging the decision in federal court. Id. Other recreational groups may also challenge this pronouncement because such groups annually challenge Park Service regulations. See, e.g., River Runners and Conservation Groups Sue National Park Service Over Wilderness/River Plan Termination PR NEWSWIRE, July 6, 2000, (recreational group challenging Grand Canyon National Park's decision to halt work on a wilderness plan and a revised Colorado River management plan).


83. Updike, supra note 81, at 14. This law does not affect Alaska. Id. In addition to the bill, President Clinton also capped the number of over flights at Grand Canyon to 90,000 per year. Id.
Hopefully, the passage of this legislation will help reduce noise and air pollution in our parks, thereby preserving many of our parks' peaceful surroundings and natural beauty.

By enacting measures that regulate the passage of snowmobiles, automobiles, and aircraft, the Park Service and Congress have protected our parks from unneeded degradation. Unfortunately, many other problems still affect our parks nationwide. To ensure that our parks are properly preserved for this and future generations, Congress must enact additional legislation to protect our parks from environmental degradation. Additionally, Congress must pass legislation that will reform regulations governing our parks. Finally, Congress must ratify legislation that will further reform regulations governing our parks' concessionaires.

III. THE NEED FOR ADDITIONAL CONCESSIONS REFORM

A. Concessions Reforms Set Forth Under the 1998 Omnibus Act

The concessions industry developed out of the simple notion that parks need visitors in order to survive and that those visitors need, or at least want, reasonable and affordable accommodations. As of 1998, there were 630 concessionaires doing business with the National Park Service. Concessionaires serve a "captive" audience and, as such, play a huge role in the overall experience of those who visit our nation's parks. These private businesses provide numerous services including: food, merchandise, transportation, guide services, and the king of all concessions, lodging. In fact, while only 73 concessionaires provide lodging services nationally, they earned a whopping 63% of all the concessions revenues generated in 1998.

While the types of concessions provided vary, the National Park Service only offers three primary types of concessions contracts. These three types of operations include operations with more than $500,000 in annual gross revenue, operations

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84. Concessions of National Parks: Testimony of Hill, supra note 51.
86. Id.
87. Id.
that gross less than $500,000 annually, and incidental business permits. The issuance of incidental business permits, all of which must be renewed annually, comprises the bulk of the concessions contracts awarded by the National Park Service. For example, at Katmai National Park in Alaska, incidental business permits include air taxi, fishing, and tour operations. Concession contracts that gross less than $500,000 receive limited permits that extend for five years or less. Finally, concession contracts that gross over $500,000 are awarded long-term contracts.

With so many types of services being provided, it is important that park managers bear in mind the importance of preservation and the protection of park resources and values. The 1998 Omnibus Act represents an attempt by Congress to reinforce these values, while completely overhauling the way in which the National Park Service interacts with the businesses who provide concessions at our nation’s parks. It demonstrates that body’s recognition that the regime established by the 1965 Omnibus Act is inconsistent with, if not detrimental to, the goal of preserving our parks for future generations. Indeed, as a result of the Omnibus Act, the National Park Service failed to obtain fair franchise fees from concessionaires and was unable to reap benefits from open competitive bidding practices. Thus, a key function of the 1998 Act was to revoke the hobbling requirements of the 1965 Act.

The 1998 Omnibus Act, among other things, precludes National Park Service officials from authorizing more concessions than are consistent with the Park Service’s overall mission of preserving the integrity of our national parks for this and future generations. More than just instructing park


89. Id.

90. Id.

91. Id. This type of contract is the most lucrative and usually involves the most risk. Id. As such, the Concessions Policy Act intentionally offered these long-term and lucrative business deals to offset the substantial risk of operating in the parks. Ansson II, supra note 19, at 15.


93. Id.

94. Id.

95. National Park Service Ponders Limits on Katmai Concessionaires, supra note...
officials to keep a focus on the Park Service's primary mission, however, the Act provides specific measures to both help improve the park system's business skills and to help capitalize more effectively on the unique opportunities that the system can offer to concessionaires.96 Additionally, the Act ensures open competitive bidding on nearly all contracts.97 Finally, the Act increases the amount of royalties concessionaires pay back to the Park Service and, more importantly, it allows parks to retain the fees they earn rather than turning them over to the federal government's general fund.98

A particularly counter-productive feature of the Concessions Policy Act was that in addition to providing concessionaires with many advantages during the life of the contract, it also authorized long-term contracts for thirty or more years.99 Combined with preferential rights of renewal, these excessively long contracts served to all but kill any chance for competition.100 Fortunately, the 1998 Omnibus Act shortens the length of the contracts to a maximum of ten years.101

The Omnibus Act also provides a new formula for calculating fair compensation for concessionaires who make capital investments in park facilities.102 Under the old regime, park officials often accepted capital improvements in lieu of higher franchise fees even though all of the benefits of these compromises inured to the concessionaires.103 Thankfully, the new Act, by changing the formula for calculating fair compensation, serves to level the playing field.

Finally, the Omnibus Act established an advisory board to provide assistance to the Secretary of Interior.104 The seven-member board has representatives with backgrounds in accounting, tourism, lodging, outfitting, concessions, arts, and

88. 96. After all, the National Parks offer concessionaires a rare opportunity to serve a captive audience. See Park and Land Bills Statement of Galvin, supra note 85.
97. Concessions on Concessions, supra note 55.
98. Concessions at National Parks Statement of Devaney, supra note 92.
100. Id.
103. Concessions at National Parks Statement of Devaney, supra note 92.
104. Ansson II, supra note 19, at 19.
recreation programs.\(^\text{105}\) These experts are appointed by the Secretary and serve at his pleasure for a term not to exceed four years.\(^\text{106}\) While serving on the board, these members are expected to provide the Secretary with advice on concessions issues including resource allocation, impact mitigation and concession management.\(^\text{107}\)

The 1998 reforms have not been greeted with universal approval. Concessionaires continue to balk at the sudden loss of their statutory advantages. For instance, two Yellowstone concessionaires, Amfac Parks & Resorts (Amfac) and Hamilton Stores, Inc. (Hamilton), have brought suit against the Park Service to challenge the 1998 Act.\(^\text{108}\) Amfac and Hamilton will presumably argue that the repeal of their right to match the best offer will cause harm to their financial interests.\(^\text{109}\)

Moreover, while the 1998 reforms were intended to reach all concessions contracts, a recent bill seeks to cut out an exception for concessions at Glacier National Park in Montana. The bill will, among other things,\(^\text{110}\) allow that park’s concessionaire to

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106. Id.

107. Unfortunately, as will be discussed more fully in Part III. B., the advice of the experts and the advice of others has not being heeded.


109. Id. See also Concessions on Concessions, supra note 55.

110. The bill would appropriate $220 million for infrastructure repair at Glacier National Park. Greg Wright, *Bill for Montana Hotel Renovation Faces Criticism*, GANNET NEWS SERVICE, May 24, 2000, available in 2000 WL 4400007. The lion's share of the rehabilitation funds, a total of $200 million, will go toward repairing the park's 68 year-old Going-to-the-Sun highway. Id. The bill would also require the Department of Interior to develop a financing method and then require them to demonstrate its feasibleness via a detailed analytical report. *Committee Clears Bill Without Financing Provision*, ASSOCIATED PRESS NEWSWIRES, July 27, 2000. Finally, the bill would require a commercial services plan and a draft environmental impact statement. Id.

One essential component of the bill is the repair of the Going-to-the-Sun highway and the park's utilities system. *National Parks and Heritage Areas: Before the House Comm. on the Budget*, 106th Cong. (2000) (testimony of Joseph K. Fassler, President and Chief Executive Officer, ProDine, Inc.), available in 2000 WL 23831005 [hereinafter *National Parks and Heritage Areas Testimony of Fassler*]. Glacier Parks, Inc, the park's concessionaire, characterizes the infrastructure repair as a necessary first step, which must be finished before the hotels and other facilities can be built. Id. There is rather broad support for this portion of the bill. Don Barry, Assistant Secretary for Fish and Wildlife and Parks, expressed appreciation for congressional recognition of the significance of Glacier Park's historic infrastructure and only proposed minor, clarification amendments. *National Parks and Heritage Areas: Before the House Comm. on Resources*, 106th Cong. (2000) (testimony of Donald J. Barry, Assistant Secretary for
hold a contract in excess of twenty years and will extend the park’s operating season by three months.111 The bill, supported by U.S. Representative Rick Hill (R-Mont.) and U.S. Senator Conrad Burns (R-Mont.), was co-authored by officers of the Arizona-based concessionaire Glacier Park Inc. (GPI).112 Because GPI currently operates concessions at Glacier Park, some critics view the legislation as a “sweetheart deal” designed specifically to benefit the company.113 GPI executives along with U.S. Representative Hill argue that this is not the case, however, because the concessions contract will be awarded through a competitive bidding process, and GPI may not win.114

U.S. Senator Max Baucus (D-Mont.) stated that U.S. Rep. Hill had deviated from the financing approach advocated by the National Park Service.115 Additionally, Senator Baucus noted that U.S. Rep. Hill also departed from the financing agreement that had been reached by their two offices, the Trust for Historic Preservation and the NPCA.116 Under this agreement, Glacier’s hotels would have been renovated under an innovative financing approach that would have involved one entity acting as a concessions contractor and the other entity acting as the contractor in charge of financing the restoration work.117

U.S. Rep. Hill claimed that potential investors would not be attracted to this previously agreed upon approach because there would be hidden costs and because the government would have to buy out some interest in Glacier’s historic properties.118 As such, the bill incorporated many of the risk mitigating strategies that the company argued was essential to support private sector investment in the park.119 Finally, the bill also eliminated several problematic provisions that had drawn criticism from


111. Wright, supra note 110. See also Daerr, supra note 70, at 20. It is interesting to note that extending the hotel season by several months may affect wildlife as the hotels are in critical fall and spring ranges. Id.

112. Wright, supra note 110.

113. Id.

114. Id.


116. Id.

117. Id.

118. Id.

numerous Congressmen.\textsuperscript{120} U.S. Rep. Hill's Glacier bill has been subjected to much criticism. For instance, the National Parks Conservation Association has argued that lawmakers have placed the concessionaire at the drivers seat instead of the National Park Service. Officials at GPI have countered that the special considerations are necessary in light of the fact that operating in Glacier National Park is risky.\textsuperscript{121} Unpersuaded, NPCA officials have continued to insist that the approach taken by U.S. Rep. Hill will encourage other concessionaires to seek the same exemption and, as such, warn that the bill "opens a door on a very dark place."\textsuperscript{122}

In all, the passage of this bill could seriously undermine the reforms enacted by the Omnibus Act. In the near future, other concession problems could also threaten to undo many of the recently enacted reforms. To ensure that this does not occur, Congress and the Park Service must continue to reform the concessions industry.

\textbf{B. The Need For Further Concessions Reform}

The changes made by the Omnibus Act represent sweeping reforms of the foundational policy guiding the National Park Service's relations with concessions providers. However, these reforms, as illustrated by the proposed Glacier concessions bill, do not represent utopia. As such, the changes made pursuant to the Act should only be viewed as the beginning. Ultimately, concessions reform is "at least a two step process."\textsuperscript{123} The removal of the legislative barriers to effective concessions management only revealed the host of internal problems, which must be remedied before the Park Service can fully realize its mission. The rest of the task will prove to be much like peeling an onion, where the scope and depth of needed reform will be discovered as Congress examines each and every one of the Park Service's governing layers.

The National Park Service has been called its "own worse

\begin{footnotes}
\footnote{120. Jamison, \textit{supra} note 10, at B1. The eliminated provisions included: eliminating tax credits, partnerships with Montana universities and colleges, and public involvement in developing financing schemes. \textit{Id}.}
\footnote{121. \textit{National Parks Conservation Association Says No to Glacier Hotel Rehabilitation, supra} note 110.}
\footnote{122. \textit{Id}.}
\footnote{123. \textit{Concessions Statement of Voorhees, supra} note 66.}
\end{footnotes}
enemy” in regard to its concessions program.124 Critics including the National Parks Conservation Association, the General Accounting Office (GAO), and the Inspector General of the Department of the Interior have all produced voluminous reports cataloging failings within the agency that directly affect the Park Service’s ability to adequately manage concession activities at our national parks.125 Nonetheless, the agency seems to be extremely sluggish in responding to these concerns. Clearly annoyed by the agency’s non-responsiveness, U.S. Senator Craig Thomas (R-WY) opened hearings on the GAO’s recent report with the following statement: “... [M]ake no mistake,” he warned, “this program is going to change.... I am going to watch this program very carefully, and I expect to see positive progress in the operation of concessions programs.”126

In March 2000, the GAO released its audit report entitled, “Park Service: Need To Address Management Problems That Plague the Concessions Program.”127 Therein, the GAO identified three major areas in which the National Park Service officials needed to improve. These include: concessions staff qualifications and training; out-dated contracting practices and backlog; and the utter lack of accountability for concessions program results.128 The National Park Service must face each of these challenges head-on if it is ever to effectively manage the concessions program, and if it fails to correct these areas, then Congress must enact legislation directing the Park Service to reform these areas.

1. Concessions Staff Qualifications and Training

The concessions industry has become overwhelmingly more corporate in the past thirty years.129 The largest concessions contracts are held by very large conglomerates.130 These

125. Id.
127. Concessions at National Parks: Testimony of Devaney, supra note 92.
128. Concessions Statement of Senator Thomas, supra note 126.
129. Concessions Statement of Voorhees, supra note 66.
130. Amfac Parks & Resorts, for example operates concessions at Mt. Rushmore, Everglades, Petrified Forest, Zion, Bryce, Death Valley, Yellowstone, and Grand Canyon National Park, and is the largest park and resort manager in the nation.

High Gas Prices, Weak Euro Result in Room Available, Less Crowded Facilities At
corporations recruit and employ professionals with strong business backgrounds. They are highly trained and able to negotiate shrewdly in order to attain the most favorable concessions contract terms for their employers.\textsuperscript{131} The Park Service, conversely, has changed little since the days when most deals were struck by a gentlemen’s agreement and a handshake.\textsuperscript{132} Concessions work is primarily handled by staff who have little or no business background.\textsuperscript{133} Consequently, the Park Service is finding itself outgunned at the bargaining table.\textsuperscript{134}

Part of this problem stems from the Park Service’s hiring practices which involve, to a large degree, transfers from other departments.\textsuperscript{135} These employees, who often have naturalist or law enforcement backgrounds, receive little training when placed into the concessions program.\textsuperscript{136} In fact, other federal employees who work in procurement receive training that is far superior to those who work in the concessions program.\textsuperscript{137}

Upon careful review of this situation, the GAO recommended that the Park Service “professionalize” its concessions staff by training its current staff in the areas of business, finance, accounting, and hospitality, and by recruiting new employees with backgrounds in these areas. The Park Service’s attitude, that “anyone can do concessions,” however, has been a huge obstruction to reform in this area.\textsuperscript{138} Park Service Associate Director Maureen Finnerty epitomized this attitude when she argued that the GAO had “understat[ed]” the value of concessions staff who had broad experience in other park system activities while at the same time “over-emphasiz[ing]” the importance of specialized business
backgrounds. In support of her conclusion, Finnerty noted that employees with weak hospitality backgrounds administer the "outstanding" programs at Zion and Bryce Canyons in Utah. These isolated successes, however, cannot affect the reality that change is necessary if the Park Service is to take advantage of the potential for positive change created by the 1998 Omnibus Act.

The lack of qualified staff is exasperated by a very competitive job market, and by the Park Service's failure to recruit from universities with strong business and hospitality programs. Another impediment is the Park Service's notoriously slow personnel system. The result is that the rare applicant with an appropriate background is likely to accept a position elsewhere before the Park Service can make an offer. While the agency has had some small successes with programs such as the National Parks Business Initiative Plan (BPI), Congress must carefully examine the situation in order to remove the cultural and institutional barriers within the Park Service, which stifle reforms in this area.

2. Out-Dated Contracting Practices and Backlog

The GAO and others have also found very serious problems in the way the National Park Service handles its contracts including the employment of "out-of-date" contracting systems and a "chronic backlog" of expired contracts. These problems can be traced to a lack of training and accountability. The result of these problems is lost opportunity and revenue for the Park Service.

140. Id.
141. Davidson, supra note 124, at A01.
142. Id.
143. Id.
144. The BPI is a program developed in partnership with the National Parks Conservation Association designed to increase the quality of organization and financial management throughout the park system. The program uses graduate-level interns from business schools who work with park managers to develop business plans. This program has yielded four new hires for the park system, two of which work in the concessions program. See Concessions Statement of Voorhees, supra note 66.
145. Concessions at National Parks Testimony of Hill, supra note 51.
One might assume that the National Park Service's contracting short-comings simply reflect one of the limitations of the bureaucratic system, but this conclusion is belied by the fact that the National Park Service's contracting practices fail to meet even the best practices of the federal government. The Department of Defense and other agencies use "performance-based contracting" in their operations. Performance-based contracts contain incentives for good performance and deterrents to discourage sub-par performance by concessionaires. The Park Service, however, has not been using performance-based contracts and reportedly has, "no plans to do so." The direct result of this attitude is "loose contracts" which fail to adequately specify simple things like facilities maintenance schedules and responsibilities. The current state of disrepair of so many of our national parks' concessions facilities is directly attributable to these failings. In an effort to explain her agency's failure to use performance-based contracts, Maureen Finnerty asserts that there are important differences between procurement and concessions contracting. She notes that while many contracting policies focus on the lowest cost bidder, concessions contracts, "must have as its [sic] primary goal the protection of park resources."

The National Park Service is also faced with a huge backlog of expired contracts. According to Maureen Finnerty, "approximately 280 contracts are presently operating as extensions." Each of these extension contracts represents a loss of potential revenue because they simply extend the disadvantageous terms that were established prior to the adoption of the sweeping reforms of the 1998 Omnibus Act. Moreover, extension contracts contribute to the current state of disrepair of park facilities because concessionaires operating under short-term extensions are unlikely to invest large sums of money in facilities. There were approximately 112 contracts up for renewal in 2000 alone, and as of that time, the National

146. Concessions at National Parks Statement of Devaney, supra note 92.
147. Concessions at National Parks Testimony of Hill, supra note 51.
148. Id.
149. Concessions Statement of Voorhees, supra note 66.
150. Id.
151. GAO Report on NPS Concessions Management, supra note 139.
152. Id.
153. Id.
Park Service's only concrete plan was to "continue to investigate mechanisms, such as performance-based contracting ...."\textsuperscript{155} Clearly, more than investigation is required. The National Park Service must take affirmative steps to rectify these problems.

In addition to failing to procure new contracts with more favorable contract terms, the National Park Service has failed to properly manage existing concessions contracts in accordance with their terms. For example, a 1997 report by the Inspector General of the Department of the Interior noted that the Park Service, "allowed concessioners to operate at facilities that were not authorized under a concession contract" and "did not ensure that concessioners implemented adequate controls over the revenues on which franchise fees are based."\textsuperscript{156} As a result of this inadequate oversight, monies that should have gone to the park system have instead gone to concessionaires.\textsuperscript{157}

If the Park Service does not correct its contracting practices, Congress must enact legislation that provides the Park Service with a set of mandatory contracting guidelines. When enacting such guidelines, Congress should, among other things, require that Park Service officials use performance-based contracting, expedite contracting procedures to ensure that contracts do not expire, and enforce contracts in accordance with their agreed upon terms. Congress needs to enact provisions such as these to ensure that the Park Service's contracting procedures are in line with other federal agencies and, more importantly, with standard modern day business practices.

3. The Utter Lack of Accountability for Concessions Programs

One of the biggest problems identified by the GAO report is a lack of accountability for the concessions program within the National Park Service.\textsuperscript{158} This failing is a major barrier to the agency realizing the benefits of the 1998 policy reforms. In fact, the concession program management structure is abysmal.\textsuperscript{159} The Park Service has problems with organizational and individual accountability, and the result of these deficiencies is ineffective management of the concessions program.\textsuperscript{160}

\textsuperscript{155} GAO Report on NPS Concessions Management, supra note 139.
\textsuperscript{156} Concessions at National Parks Statement of Devaney, supra note 92.
\textsuperscript{157} Concessions Statement of Voorhees, supra note 66.
\textsuperscript{158} Concessions of National Parks Testimony of Hill, supra note 51.
\textsuperscript{159} Id.
\textsuperscript{160} Concessions at National Parks Statement of Devaney, supra note 92.
Members of the concessions field staff report to as many as 200 separate park superintendents. The managers, in turn, report to seven different regional managers. The Chief of Concessions has no direct-line authority over the regional managers, and is disconnected from the whole mess. Because concessions management is headquartered in Washington and Denver they are separated from the day-to-day issues affecting concessions. As a result of this confusion, no one is in a position to effectively manage the program and the Chief of Concessions can only fight fires after the fact.

Another factor contributing to the lack of accountability in the park system is the fact that employees assigned to the concessions program are rarely able to dedicate their full attention to managing concessions contracts. In fact, the employees who manage twenty percent of the largest concessions contracts only handle concessions as a collateral duty. Further, the superintendents who direct the work of concessions staff are not evaluated with regard the performance of concessions under their control. The systemic lack of attention and accountability serve to explain all of the other problems the Park Service is having with its concessions program. Put another way, no one is watching the store.

i. Concessions Management at Kings Canyon National Park

An illustration of the effects that the Park Service’s mismanagement can have on concessions can be found in the experiences of Kings Canyon Park Service (KCPS). KCPS entered into a concessions contract in 1996 to operate lodging and other facilities at Kings Canyon National Park. KCPS claims that it entered into the contract based upon the understanding that it would be able to demolish old, dilapidated facilities and erect new ones. However, KCPS charges that it has been unable to turn a profit due to continued construction

161. Concessions Statement of Voorhees, supra note 66.
162. Concessions of National Parks Testimony of Hill, supra note 51.
163. Concessions Statement of Voorhees, supra note 66.
164. GAO Report on NPS Concessions Management, supra note 139.
165. Id.
166. Concessions of National Parks Testimony of Hill, supra note 51.
168. Id.
delays and other failings in National Park Service management of the contract.\textsuperscript{169}

According to KCPS, the National Park Service acknowledged that construction on the new facilities has been halted because the agency does not have the staff necessary to complete a review of an environmental analysis required by the National Environmental Policy Act.\textsuperscript{170} Moreover, KCPS had to complete the environmental analysis at its own cost because the National Park Service had neither the funds nor the staff to do so.\textsuperscript{171} This condition has resulted in an unexpected loss of revenue, which threatens the continued viability of the small family-owned business.\textsuperscript{172}

KCPS also believes that construction and facility inspections conducted by the National Park Service are “slow, inconsistent, and expensive.”\textsuperscript{173} Facilities at the park must be inspected to ensure that they are in compliance with various regulations and contract terms.\textsuperscript{174} According to KCPS, however, the inspectors are untrained and inconsistent, and inspection results vary from inspector to inspector.\textsuperscript{175} Sometimes, the same inspector will generate inconsistent ratings for the same facility even though the conditions at the facility remain constant.\textsuperscript{176}

In its written statement to the House Committee on the Budget, KCPS expressed appreciation for the congressional efforts to address the problems in the National Park Service.\textsuperscript{177} The concessionaire “pray[ed],” however, that Congress would take additional steps to ensure that park officials are held accountable for their management of the concessions program. The problems faced by KCPS are not isolated; other concessionaires face equally challenging difficulties as a result of the mismanagement of the concessions program.

\textit{ii. Concessions Reform}

The GAO and others have offered several interim corrective measures until long-term solutions to the Park Service’s

\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
concessions crisis can be found. Proposed solutions include contracting out certain activities and developing an in-house inspection team. The outsourcing plan is a flexible option that would give the Park Service instant access to a qualified workforce. The inspection team plan would entail the creation of one team, which would visit all of the parks and report directly to the Chief of Concessions. The plan would allow the Park Service to quickly "professionalize" its own staff and inject some much-needed consistency into the concessions program.

In addition to these proposals, other legislation require park officials to take responsibility for their actions. The Government Performance and Results Act, for example, requires all government agencies to improve accountability by developing five-year strategic plans which establish specific and measurable goals. If the Park Service were to come into compliance with this legislation, it would bring much needed stability and consistency to the concessions program.

The Park Service, however, has not been particularly receptive to any proposals that change the way it operates the concessions business. Officials argue that they already outsource amenable activities such as financial analysis and appraisals. They claim that certain functions relating to the fundamental mission of the National Park Service "should not be contracted out." This statement gives the impression that the National Park Service officials would prefer the status quo to any real changes. True to form, the only resolution made by Maureen Finnerty was that the Park Service would explore the

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178. Concessions at National Parks: Testimony of Hill, supra note 51; Concessions Statement of Voorhees, supra note 66.
179. Concessions of National Parks Testimony of Hill, supra note 51.
180. Concessions Statement of Voorhees, supra note 66.
181. Co-author Dalton Hooks worked on and helped implement this legislation.
182. GAO Report on NPS Concessions Management, supra note 139.
183. Id. The National Park Service has contracted with Pricewaterhouse Coopers to provide recommendations on a "possible restructuring of the program." Id. It seems the eight or so reports filed by the Department of the Interior, the GAO, and the National Park Service have not provided sufficient data. Id.
184. Id. It should be noted that Park Service officials are dedicated, and it would be patently unfair to characterize these officials as anything but. Indeed, Philip Voorhees of the National Parks Conservation Association stated "nowhere in the federal government will you find more committed, more sincere managers and staff than in the National Park Service." See Concessions Statement of Voorhees, supra note 66. Nonetheless, as Voorhees acknowledged, "sincerity and commitment" are not a substitute for skill and training. Id. As such, Park Service officials should consider contracting out projects where they do not have the necessary skills or training to adequately complete said projects.
possibility of outsourcing other functions. In light of the current state of affairs, this response is simply inadequate.

If the Park Service does not reform the way it operates the concessions business, Congress must enact legislation designed to make the Park Service accountable, both from an organizational and an individual standpoint. Congress should enact legislation that requires the centralization of the concessions management staff, directs the Park Service to hire individuals to work solely on concessions, and develops an in-house national inspection team. Congress needs to enact provisions such as these to ensure that the Park Service manages the concessions industry such that the right people are accountable.

iii. After Concessions Reform

As the Park Service becomes more businesslike, other problems may develop. For instance, in a case where the Park Service tried its best to proactively advocate accountability, a concessionaire subsequently challenged the Park Service mandate in the courts and later in Congress. The events culminating in the recent introduction of H.R. 3241 provide an excellent case study of why the Park Service should advocate accountability and why Congress should be careful not to thwart the Park Service's decisions.

Sponsored by U.S. Senator Ernest Hollings (D-S.C.), H.R. 3241 orders the Secretary of the Interior to recalculate the concessions fees owned by Fort Sumter Tours, Inc. (FST). FST provides transportation via boat from Charleston to Mount Pleasant, South Carolina to the Fort Sumter National Monument. The controversy arose when the Park Service recalculated the franchise fee for the contract and determined that FST's fee should be 12% of gross receipts instead of 4.25%. As a result of this recalculation, FST was determined to owe the Park Service over $2.2 million. While the Park Service claims that the new figure is fair, George Canipsen, Jr.,

185. GAO Report on NPS Concessions Management, supra note 139.
187. Id.
188. Parks and Land Bill Statement of Galvin, supra note 85.
189. Id.
founder and President of FST, claims that the fee is based on erroneous data and will put him out of business.\textsuperscript{190}

Under its first contract with the Park Service, which was executed in 1962, FST operated two vessels and paid a fee of 3.25\%.\textsuperscript{191} In 1986, FST entered into a 15-year contract with the Park Service to continue existing services to Fort Sumter and to add a new vessel and dock.\textsuperscript{192} The franchise fee for the 1986 contract was set at 4.25\%.\textsuperscript{193} Because a provision of the Concessions Policy Act required the NPS to review concessions fees every five years, a fee analysis was conducted in 1991.\textsuperscript{194} Upon reviewing the franchise fee, the National Park Service determined that the value of FST's contract was such that the company would have a "reasonable opportunity for profit" even if they were required to pay a concessions fee of 12\%.\textsuperscript{195}

FST believed that the Park Service's decision was arbitrary and capricious.\textsuperscript{196} Moreover, initial requests from FST to receive copies of the data used by the National Park Service to determine the franchise fees were inexplicably denied.\textsuperscript{197} FST claims, among other things, that the fees were based on unreliable statistical data and erroneous assumptions about its operations.\textsuperscript{198} The National Park Service, for its part, claims that the decision was proper, noting that its fees "must, as a matter of law, allow a concessioner a reasonable opportunity for profit."\textsuperscript{199}

FST filed suit against the National Park Service in 1993 to oppose the imposition of the unilateral increase.\textsuperscript{200} Since then, a total of five courts have reviewed the matter.\textsuperscript{201} All five courts which heard the matter held against FST, and the Supreme Court refused to hear the case.\textsuperscript{202} Feeling that justice had not been served, FST sought congressional help and found a
sympathetic ear in Senator Hollings.

The National Park Service strongly opposes H.R. 3241, charging that the bill will undermine the federal judiciary’s authority and send a message to concessionaires that “no legal dispute with the United States Government is over, even if all judicial remedies have been exhausted.” 203 FST sees congressional intervention as its “very last hope.” 204 Meanwhile, this three-way battle depletes resources and distracts park officials from their true mission. When this occurs, the true losers are park visitors and taxpayers. Unfortunately, legal disputes like this one are likely to become more prevalent as the Park Service tries to operate in a more businesslike manner.

IV. THE NEED FOR ADDITIONAL PARK ADMITTANCE AND FUNDING REFORMS

The 1998 Omnibus Act provided our parks with guidelines designed to establish park budget accountability, additional funding sources, and new park admittance standards. 205 Since the Act’s passage, the National Park Service has developed a 5-year priority list that funds projects which address our parks’ most critical health and safety needs, and which protect our parks’ natural and cultural resources. 206 Further, the Park Service has benefited from monies received from new funding sources. 207 Finally, the Park Service has begun adhering to new park admittance guidelines that require officials to conform to rigorous park admittance standards. 208

The 1998 Omnibus Act has provided a good start; however, more must be done. Currently, our parks are suffering from a tremendous backlog of construction and maintenance projects. To remedy this problem, Congress must provide more funding for these projects and must refrain from allocating monies to unneeded “park pork” projects. 209 Additionally, when the Park

203. Id.
204. National Parks and Monuments Bill Testimony of Canipsen, supra note 186.
206. National Park Service Budget, supra note 73.
207. Id. For instance, the Park Service estimates that it will receive $12 million from the National Park Pass Program that was authorized by Title VI of the 1998 Omnibus Act. Id.
208. Ansson II, supra note 19, at 26-29.
209. For more, see infra Part IV.A. It should be noted that over the past several years, Congress has channeled the largest infusion of money into the National Park Service since the Eisenhower Administration launched a 10-year, $1 billion improvement program. Kenworthy, supra note 7.
Service does receive more funding, it must better determine which natural and cultural resources need protection, and it must allocate monies to protect those resources.\textsuperscript{210} Finally, with an overall shortage of monetary funding, the Park Service must be exceptionally careful when it admits new parks, especially new, low-profile, parks which may require substantial amounts of funding.\textsuperscript{211}

\textit{A. The Need For Congress to Provide More Funding}

\textbf{1. General Services}

Two-thirds of the National Park Service's budget has usually been expended upon services, programs, and activities essential to the day-to-day operations of the Park Service.\textsuperscript{212} Unfortunately, Congress has failed to provide a sufficient level of monies to adequately fund all these activities. Additionally, the Park Service has failed to expend the monies it has received on critical programs that are necessary to ensure that our parks are properly managed. For example, the Park Service has failed to appropriate a sufficient level of funds needed to employ a sufficient number of park police.\textsuperscript{213} This has directly resulted in the inability of parks to prevent stealing, looting, and dumping.\textsuperscript{214}

Since 1998, looting and stealing of fossils, pottery, relics, plants, and animals has risen 46 percent to nearly 20,000 known violations.\textsuperscript{215} For instance, looting has become so bad at Petrified Forest National Park in Arizona, that the National Parks and Conservation Association added the park to its list of

\begin{itemize}
\item \textsuperscript{210} For more, see infra Part IV.A.
\item \textsuperscript{211} For more, see infra Part IV.C.
\item \textsuperscript{212} \textit{National Park Service Budget}, supra note 73.
\item \textsuperscript{213} The Park Service is short by 150 officers, and by next year, the Park Service could be short by 250 officers. Candace E. Smith, \textit{U.S. Park Police Sound Alarm Over Staffing Shortages} (Associated Press Newswires, September 22, 2000). U.S. Representative Connie Morella (R-Md) has introduced a bill to increase the pay for park police. \textit{Id}.
\end{itemize}
the ten most endangered parks.\textsuperscript{216} At Mammoth Cave National Park in Kentucky and Fredericksburg-Spotsylvania National Battlefield in Virginia, a number of irreplaceable artifacts have been stolen.\textsuperscript{217} Finally, at Death Valley National Park and Mojave National Preserve, industrial wastes have been dumped from factories and methamphetamine drug labs.\textsuperscript{218}

Funding is also needed to ensure that Park Service buildings meet modern day safety requirements, as many Park Service buildings lack fire detection monitors and sprinklers. For instance, at Yosemite National Park, the Park Service has failed to replace defective sprinklers that have been recalled nationally.\textsuperscript{219} Likewise, in Virginia at Prince William Forest, the Park Service has failed to place smoke detectors and fire extinguishers in 115 wooden cabins.\textsuperscript{220} Finally, at Sequoia-Kings Canyon National Park, the Park Service has never formally inspected 250 buildings for fire-safety purposes.\textsuperscript{221}

To ensure that natural resources and Park Service buildings within our parks are properly protected, Congress must appropriate, and the Park Service must direct, more monies to adequately fund these areas. Over the past six years, Congress has continually appropriated more monies to the Park Service. Indeed, this past year Congress decided to appropriate $1.6 billion to our national parks, with an aspirational provision that would provide parks with $2.4 billion by 2006.\textsuperscript{222} In the coming


\textsuperscript{218} \textit{Id.}


\textsuperscript{220} \textit{Id.}

\textsuperscript{221} \textit{Id.}

years, the Park Service must make sure that it uses these additional appropriations to ensure that our parks' resources, visitors, and employees are adequately protected.223

2. Maintenance Repairs

Congress needs to better fund maintenance projects at our parks. The National Park Service has estimated that there is a $3.5 billion backlog in deferred maintenance projects.224 However, this estimate, according to U.S. Representative Ralph Regula (R-Ohio), is “probably too low.”225 Indeed, numerous others have concluded that the Park Service has a $4 to $5 billion maintenance and construction backlog,226 and the Government Accounting Office has even concluded that the Park Service has an $8 billion backlog.227

This maintenance backlog has resulted in the loss of many cultural and natural resources within our parks. For instance, at Gettysburg National Military Park, many valuable civil war artifacts – uniforms, maps, guns, swords, photographs and saddles – have been damaged or destroyed by rain leaking through the Archives building’s roof.228 Additionally, the backlog of maintenance projects has prevented many parks from

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223. In the future, the Park Service may not have to appropriate these monies for routine maintenance or scientific research. Indeed, President George W. Bush, during his campaign, promised to provide $4.9 billion over the next five years to fix leaky buildings, crumbling roads, and other problems. Cat Lazaroff, Bush Pledges Billions For National Parks (Environmental News Service, September 13, 2000). Additionally, he stated that he would provide $100 million over the next five years to employ more scientists in an attempt to improve natural science management. Id. Finally, he pledged to provide $20 million for scientific research, including inventories of plant and animal species native to our parks. Id. These funds are needed as our parks have failed to document all of the plants, animals, archeological treasures, or historical documents our parks contain. Thomas C. Kiernan, Resources Challenged, NAT'L PARKS, July-August 2000, at 4, available in 2000 WL 9265410; Thomas C. Kiernan, Funds For Research, NAT'L PARKS, Nov.-Dec. 2000, at 4, available in 2000 WL 9265456.


225. Id. U.S. Representative Regula (R-Ohio) is chairman of the appropriations subcommittee that oversees national park funding. Id.


228. Ansson II, supra note 19, at 53.
adequately providing facilities to their visitors and employees. In all, numerous backlogged projects abound, including:

- At Yosemite National Park, the bill for creating livable park employee housing is estimated at $100 million.
- At Grand Canyon National Park, replacing the aging water system for the North Rim will cost nearly $12 million.
- At Acadia National Park, a new visitors center and park entrance are needed, which will cost more than $16 million.
- At San Francisco Maritime National Historic Park, the 19th Century Schooner C.A. Thayer is leaking so badly that bilge pumps run 24 hours a day to keep it afloat while officials wait for the $6.5 million needed to mend it.
- At Wupatki National Monument in Arizona, sewer lagoons regularly overflow, which creates a health risk for visitors and contaminates prehistoric Ruins.

Even with this enormous backlog, Congress only appropriated $223 million for maintenance repairs in fiscal year 2000. Congress, however, is not fully at fault in its failure to provide more monies for maintenance repairs because no one, with the exception of park advocate groups, has actually requested more monies. Indeed, both the Park Service and the executive branch have not only failed to request more monies for maintenance repair, but they have actually asked for maintenance funding reductions. For instance, the Park Service asked Congress to reduce maintenance funding to our parks by $43 million for fiscal year 2001 and the Clinton administration echoed this notion by proposing a $45 million reduction.

Even though more monies were not requested, Congress authorized $242 million in funding, an increase of $19 million, for fiscal year 2001. In addition, Congress provided the Park Service with $165 million from the Department of Transportation for road improvements. Finally, Congress stated that the Park Service would receive an estimated $148

229. See infra note 230 and accompanying text.
230. Kenworthy, supra note 7. See also Kilian, supra note 74, at 1.
231. Kenworthy, supra note 7.
232. National Park Service Budget, supra note 73.
234. Kilian, supra note 74, at 1.
235. National Park Service Budget, supra note 73.
million from the Fee Demonstration Program.\textsuperscript{236}

Even though the level of maintenance funding will increase next year, our parks need more monies. To ensure that this occurs, the Park Service must identify and request more funding for maintenance projects.\textsuperscript{237} Additionally, the Park Service needs to reevaluate its 5-year priority list to ensure that our parks’ most pressing needs are being alleviated.\textsuperscript{238} Next, the Executive Branch must recommend funding maintenance projects that are identified by the Park Service, even if this means providing less funding to other preservationist measures.\textsuperscript{239} Finally, Congress must appropriate monies that fund the Park Service’s pressing projects, even if this means that individual Congressmen cannot fund their own pork barrel park projects.\textsuperscript{240}

\textbf{a. The Park Service Needs to Request More Monies for Maintenance Projects}

When the National Park Service seeks funding for backlogged maintenance repairs, it must, as directed by the 1998 Omnibus Act, fund projects that are at the top of its 5-year priority list.\textsuperscript{241} Projects that should be at the top of the list are those that provide funding for critical health and safety needs of...
the park, or those that provide funding for the protection of high-priority natural and cultural resources. However, the Park Service has failed to adequately identify high-priority projects that need immediate funding.

For instance, Pecos National Historic Park, which is literally falling apart, is not on the Park Service’s priority list. This park was created to protect years of Native American, Spanish, American pioneer, and Civil War history. However, due to nonexistent building and storage facilities, the supervisor of the park was forced to store a 300,000-piece collection of ancient artifacts outside, allowing those artifacts to succumb to deterioration.

This park badly needs funds appropriated to house these ancient artifacts. Yet, even with these artifacts deteriorating, the Park Service failed to identify this project as a high priority. There is no reason why the Park Service should not have identified this as a high-priority project. Indeed, to not identify this as a high-priority project runs counter to the mandate of the Omnibus Act, which requires the Park Service to develop a five-year plan to identify, and then protect, our parks’ natural and cultural heritage. Further, the failure of the Park Service to adequately protect natural and cultural materials violates the Organic Act. In the future, the Park Service must better identify high-priority projects to ensure that our parks’ natural and cultural resources are protected for this generation and future generations to come.

Even when the Park Service has identified high-priority projects, it has failed to adequately fund them. For instance, Congress recently provided $3.4 million to the Vanishing Treasures Initiative. This Initiative was created to help prevent the imminent deterioration of prehistoric sites and structures in the Southwest. However, at this rate of funding,

242. Id.
244. Id. When asked, “how this could happen?”, the supervisor responded, “It’s part of the Park Service’s add-a-shack program.” Id.

Preserving artifacts is an expensive and time-consuming task. For more on the preservation of artifacts, see Phyllis McIntosh, Keeping History Intact, NAT’L PARKS, July-August 2000, at 26, available in 2000 WL 9265423.


246. National Park Service Budget, supra note 73. The goal of the Initiative was to
a Park Service official has estimated that it will take 15 years and $60 million to accomplish what had been intended to take 10 years. Because of this reduced level of funding and the need to save these sites for future generations, the Park Service has actually begun reburying some of the ruins so that the ruins will be protected until adequate funding is available to restore them.

While the Park Service should be commended for their attempts to protect these sites by reburying them, this should never have had to happen. The Park Service should have requested the proper amount of funding so these sites could have been immediately repaired. By not properly preserving them now, the Park Service is preventing current visitors from experiencing the treasures that these parks bear. Isn't this mind-boggling? After all, isn't the Park Service supposed to preserve and protect its cultural resources for current generations as well as future generations? In the future, the Park Service needs to request the necessary amount of funding for high-priority maintenance projects to ensure that our parks' resources are enjoyed by both current and future visitors.

b. The Executive Branch Needs to Request More Monies for Maintenance Projects

Over the last eight years, the Clinton administration has failed to request sufficient monies for repair and maintenance funding at our parks. Instead, the administration has chosen to bring these sites and structures to a level where they can be preserved by routine maintenance activities. To achieve this, the initiative strives to hire and train individuals in skills needed to preserve these resources. For instance, Pompeii's 1,500 buildings and 215,000 square feet of frescoed walls have been deteriorating from exposure to sun and rain and excessive visitation by 2 million people. Mike Toner, *Tourism Takes Its Toll: The Past in Peril*, THE ATLANTA CONSTITUTION, April 2, 2000, at G1, available in 2000 WL 5449810. As the ruins have deteriorated, officials have closed 75% of the ruins, leaving only 14 houses open. The superintendent of archaeology estimates that it could cost $300 million to repair the city's structures. This ancient city's problems are not unique. Indeed, similar archaeological sites around the world, such as the tombs in Egypt's Valley of the Kings or the prehistoric Anasazi pueblos of the southwestern United States, are plagued with similar problems.

247. Toner, supra note 246.

248. Id. For example, at Chaco Canyon National Monument, a 600-room Anasazi complex, known as the Chetro Ketl, has been partially buried for its own protection. Id.

249. Kilian, supra note 74, at 1.
to spend enormous sums of money on acquiring more land.250 These are glamorous preservation-driven acquisitions;251 however, these land additions have prevented the Administration from funding the Park Service’s general operating budget.252

The Bush administration has pledged to provide more monies for construction maintenance. Indeed, during the campaign, President George W. Bush promised that he would eliminate the maintenance backlog at our parks by spending an additional $4.9 billion over five years on park improvements.253 Bush stated that the monies were needed to correct problems such as “raw sewage flowing into lakes and streams at Yellowstone National Park, a leaky roof at the Gettysburg Civil War site, and neglect that threatens ancient Anasazi stone structures at the Chaco Cultural National Historic Park in New Mexico.”254 The new Administration has been true to its promise and has requested $4.9 billion for maintenance and construction improvements.

c. Congress Needs to Appropriate More Monies for Needed Maintenance Projects

Prior to the mid-1990s, Congress continually deferred many of the Park Service’s requests for maintenance expenditures.255 Additionally, during this time, many of the Park Service’s smaller requests for maintenance funding were replaced by unwanted Congressional capital projects.256 Consequently, if the Park Service requested a sewage treatment facility for $5 million and a Congressman instead wanted to build a $5 million visitor center at the same park, the Park Service received $5 million to build a new, although probably unnecessary, visitor

250. Id.

251. Glamorous projects usually will always receive funding before non-glamorous projects. This is why funding of maintenance projects have been so routinely ignored. Indeed, as U.S. Representative Regula (R- Ohio) has noted: “It’s easy to ignore maintenance [because] [there’s no glamour in this stuff.” Kenworthy, supra note 7.

252. These land acquisitions should have been made with monies from the Land and Water Use Conservation Fund, not from the Park Service’s general operating budget. For more on the Land and Water Use Conservation Fund, see infra Part IV.B.


254. Id.

255. Kenworthy, supra note 7.

256. Id.
Even today, Congressmen still dip into the maintenance and construction fund for projects that have little or nothing to do with the Park Service. For instance, when Congress passed the parks appropriations bill for Fiscal Year 2001, U.S. Senate Majority Leader Trent Lott (R- Miss.) received funding for a visitors center in Mississippi and U.S. Senator Dick Durbin (D- Ill.) received $50 million in funding for the Lincoln Library in Springfield, Illinois. The National Park Service specifically objected to using $50 million in federal funds to construct the Lincoln Library. The Park Service stated:

Our position in no way reflects on the merits of an interpretive center on the life of President Abraham Lincoln. Our primary concern is the use of National Park Service appropriations to fund major construction projects for non-Park Service facilities. At a time when the National Park Service has a long list of deferred maintenance and construction projects in the national parks, we are unable to support legislation that would authorize $50 million in grants to a non-Federal entity for the construction of an Abraham Lincoln Interpretive Center. We are open to working with the sponsors to see if there are ways to accomplish this result without the use of National Park Service construction funds and in a manner that provides for suitable Federal participation in the

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257. *Id.* Denis Galvin described this phenomenon when he stated: "No one wants to cut a ribbon on a sewage treatment facility." *Id.*


259. *Id.* The new visitors center will cost $2 million and will be located at the Nuxubee National Wildlife Refuge. *Congressional Conferees Approve Funds To Protect Cat Island, AP Newswires, September 22, 2000.* Sometimes new visitor's centers need to be built. For instance, Hovenweep National Monument in Utah is getting a new 2,000-square-foot, $850,000 visitor center. Tom Wharton, *Hovenweep Monument To Get New Visitor Center, SALT LAKE TRIBUNE, June 6, 2000, at B2, available in 2000 WL 3766649.* The old visitor center, which was a log cabin, was built in 1925. It was moved to Hovenweep in 1952 from Mesa Verde National Park. *Id.*

260. Kilian, *supra* note 74, at 1. The Lincoln Library will receive $10 million from the City of Springfield and $50 million from the state. *Id.*


design and planning of the project.\textsuperscript{262}

Despite the objections made by the Park Service, Congress provided $50 million to fund this project. What is worse is that funding for this project took away monies from other necessary cultural and natural protection programs.\textsuperscript{263} Unfortunately, the inclusion of non-requested funded projects is not unusual. Instead, it is the norm. For instance, if the Park Service asks for $100 million in line-item construction, it comes out with $100 million—some the Park Service asked for and some from various members of Congress.\textsuperscript{264} Indeed, it was in this manner that Congress appropriated federal funding to repair Santa Fe’s Palace of Governors, which is owned by the state of New Mexico.\textsuperscript{265} This is called a budgetary “pass through,” and it is a legislative device that is used when a Congressman is seeking to fund a federal pork project.\textsuperscript{266} This year’s Fiscal Year 2001 Park Service budget is loaded with “park pork” projects, and at least one Congressman, U.S. Senator John McCain (R-Ariz.), has assailed the bill “as the most ‘excessive’ pork barrel spending [he had] seen.”\textsuperscript{267}

In the future, Congressmen must restrain themselves from replacing needed Park Service funding with their own pet

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\textsuperscript{262.} \textit{National Park Bills – Lincoln Library, supra note 261.} The Park Service also stated:

Presently the National Park Service manages five sites that were established to honor President Lincoln. These include: Abraham Lincoln Birthplace National Historic Site, Kentucky; Lincoln Boyhood Home National Memorial, Indiana; Lincoln Home National Historic Site, Illinois; Ford’s Theatre (including the house where Lincoln died); and the Lincoln Memorial, Washington, DC. Other units, including such sites as Mount Rushmore National Memorial; South Dakota and Gettysburg National Military Park, Pennsylvania, also recognize the contributions made by President Lincoln. The National Park Service has significant responsibilities for interpreting the role President Abraham Lincoln played in the history of the United States.

\textit{Id.}

\textsuperscript{263.} Even if the Lincoln Library funding was the only pork funding, it still costs the Park Service approximately $7 million because the Park Service only received $43 million more than it requested. \textit{See} Kenworthy, \textit{supra} note 7.

\textsuperscript{264.} Kilian, \textit{supra} note 74, at 1.

\textsuperscript{265.} \textit{Id.} It will cost $10 million to repair Santa Fe’s Palace of Governors. Coleman, \textit{supra} note 245, at A5.

\textsuperscript{266.} Kilian, \textit{supra} note 74, at 1. Congressmen have also misappropriated offshore oil and gas revenues. \textit{Congress Ensures Offshore Drilling Fees Will Support Parks and Conservation, supra} note 227. These funds should have been used to rehabilitate existing parks and lands. \textit{Id.} However, in recent years, these funds have been used for everything, including paying down the national debt. \textit{Id.}

\textsuperscript{267.} Coleman, \textit{supra} note 245, at A5. McCain noted that there was even a provision that provided thousands of dollars for a reindeer herders group. \textit{Id.}

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projects. Ideally, Congressmen should only fund provisions that address currently backlogged maintenance or construction projects. If Congress does not annually fund backlogged maintenance and construction projects, our parks will develop even more problems. As of late, some of our crown jewel parks, such as Yosemite and Everglades, have had maintenance funding deferred for so many years that Congress has had to consider enacting legislation specifically designed to fund maintenance and construction repairs at these parks.268

When Congress has enacted provisions designed to remedy problems at specific parks, it has had to develop a detailed preservation plan and has also had to appropriate a substantial amount of monies. For instance, Congress recently appropriated almost $8 billion to restore the Everglades.269 For decades, man has messed with the natural plumbing of the miles and miles of swamp to divert water for agriculture and urban development in South Florida.270 During this time, the U.S. Corp of Army Engineers, at the behest of Congress, built man-made canals and waterways to develop farmlands and divert water away from South Florida’s coastal areas to prevent flooding and increase agricultural urban development.271 Over the years, altering the flow of water has meant the disappearance of half of the original Everglades and the loss of indigenous plants, birds, fish, and animals.272

The appropriated monies will be used to help restore the Everglades to their natural state. The bill calls for creating

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268. Interestingly enough, our popular state parks have had similar experiences. For instance, Niagara Reservation State Park in New York is overdue for renewal after suffering through decades of atrophy (mostly under governors prior to George E. Pataki (R)). Andrew Z. Galarneau, Park For Profit – Wonder of the World: How Niagara Fell; The State Has Used the Flow of Cash from Niagara Falls to Improve Other Parks. But When Will This Jewel Get Its Due? BUFFALO NEWS, September 20, 2000, at A1, available in 2000 WL 5693971. The park has received 7.5 million visitors and has taken in 6 million in funds. Id. Yet, over the past five years, the state has only reinvested 8 cents per every dollar taken in. Id. Moreover, of the $25.3 million received over the past five years, only $2 million has been returned to the park for capital improvements. Id.

269. Nancy Klingener, Islands Want U.S. Help to Improve Sewage Systems: Bill Would Allow $100 Million For Cleanup, SOUTH FLORIDA SUN-SENTINEL, December 5, 2000, at 6B, available in 2000 WL 28994533. Citizens in the Florida Keys are currently seeking $100 million in funding to help clean up their waters. Id.


271. Ansson III, supra note 19, at 133.

272. Id.
water storage reservoirs for drinking water, creating wells to capture underground water that is draining into the Atlantic Ocean, and removing canals and levees to restore the natural flow of the water.\textsuperscript{273} Thousands of acres of wetlands also will be established around rivers and estuaries for treating urban and agricultural runoff before it is discharged into natural areas.\textsuperscript{274} Finally, special attention will be paid to Lake Okeechobee, South Florida's main source of drinking water, which over the years has become laden with phosphorous from citrus and sugar crops, as well as cattle and dairy farms.\textsuperscript{275}

Like the Everglades, Yosemite National Park, after eight years of planning by Secretary of the Interior Bruce Babbitt, finally has a plan designed to protect and preserve the park.\textsuperscript{276} The plan attempts to protect and preserve the park while still providing its 4 million annual visitors appropriate public access.\textsuperscript{277} The proposal will cost approximately $442 million,\textsuperscript{278} with $105 million having already been appropriated for flood repairs.\textsuperscript{279} However, Congress will have to appropriate the remaining $337 million for the proposal to receive full funding.\textsuperscript{280} If Congress funds the plan in full, it will, among other things, include:

- Restoring 200 acres of the Valley to a natural state by removing roads and buildings.
- Razing a dam and a bridge to restore some of the natural flow to the Merced River, which flows through the Valley. Most future development would be barred from a 150-foot wide buffer zone along the river.
- Tearing out a 3.2 mile section of one of the main roads through the valley floor and replacing it with a paved foot and bike path.
- Eliminating about two-thirds of the valley's parking spaces. New parking lots will be built at park entrances, where visitors can board an expanded fleet of shuttles to tour the valley.
- Removing a number of structures, including housing for more than 40 percent of Yosemite's employees, who will be relocated outside the park.

\textsuperscript{273} Ansson III, \textit{supra} note 19; Zaneski, \textit{supra} note 270.
\textsuperscript{274} Ansson III, \textit{supra} note 19.
\textsuperscript{275} \textit{Id.}
\textsuperscript{277} \textit{Id.}
\textsuperscript{278} \textit{Id.}
\textsuperscript{279} Rainey, \textit{supra} note 75, at A3.
\textsuperscript{280} \textit{Id.}
- Relocating a commercial horseback stable run by the Yosemite Concession Services to outside the parks boundaries.

- Reducing the valley’s hotel space by one quarter, while adding about 50 new campsites.281

Babbitt’s department contends that the plan will reduce gridlock and automobile congestion by relocating parking to areas outside the park.282 Additionally, the department notes that the plan covers restoration of the areas that were destroyed by the 1997 floods.283 In these areas, man-made structures located in the floodplain will not be restored and many undamaged structures in the floodplain region will be removed.284

Babbitt’s proposed restoration plans have been met with mixed reviews as well as accusations of commercialization.285 Indeed, critics have condemned the plan as a $442 million boost to development.286 As such, critics have noted that the plan would expand hotels, add buildings, add parking areas, expand roadways, expand tour bus concessions, and further congestion within the park.287 Additionally, many critics have noted that implementing a busing system may bring more pollution to the park because diesel buses can pollute more than cars.288 Finally, many critics have alleged that the new development would escalate the cost of visiting Yosemite.289

281. Lazaroff, supra note 276. The private, nonprofit Yosemite Fund has raised $12.5 million to demolish an asphalt parking lot at the base of Yosemite Falls. Rainey, supra note 75, at A3. This organization has stated that it will install interpretive displays. Id.

282. Lazaroff, supra note 276. It will cost Yosemite $7 million a year to operate the bus and shuttle service. Rainey, supra note 75, at A3.

283. Lazaroff, supra note 276.

284. Id.

285. Id. Anytime there is proposed development within our parks charges of commercialization come forward. For instance, the Texas State Park System recently unveiled a plan to construct lodges at six public parks across Texas. Texas Considers Park Lodges, TULSA WORLD, February 20, 2000, available in 2000 WL 6777375. The park system has stated that the six lodge sites would promote ecotourism and encourage city dwellers to visit those parks. Id. However, conservationists and wildlife groups have argued that operating private businesses within the parks could destroy Texas’ few remaining wild areas. Id.

286. Lazaroff, supra note 276.

287. Id. See also Paul Van Slambrouck, New Yosemite has an Old-Fashioned Feel: A Plan Unveiled This Week Would Reduce Car Traffic and Lodging in an Effort to Lessen Human Impact on the Park, CHRISTIAN SCIENCE MONITOR, November 16, 2000, at 3, available in 2000 WL 4432395.

288. Slambrouck, supra note 287, at 3.

289. Lazaroff, supra note 276.
The 107th Congress will have to determine whether it will fund the Yosemite plan. Additionally, the 107th Congress will have to determine whether it will fund a $200 million plan which is designed to repair roads and hotels in Glacier National Park.\(^{290}\) Like Yosemite, Glacier’s roads and buildings have fallen into a miserable state of disrepair.\(^{291}\) Congress must fund these restoration plans to ensure that these parks are adequately protected for future generations to come. To ensure that our parks do not fall into such disrepair in the future, Congress needs to fund maintenance and construction projects in a more consistent manner. It is up to Congress to preserve and protect our parks, and as such, Congress must enact appropriate funding measures to ensure that such a high level of disrepair does not continue to belie our parks.

**B. The Need for Congress to Fund Appropriate Land Acquisitions**

1. History of Funding Land Acquisitions

Congress needs to appropriate more monies to purchase private lands that are either within or surrounding our parks. These lands may need to be acquired for a variety reasons, including: to prevent development of private in-holdings, to prevent development of exterior private land-holdings, to better protect the park, or to better protect ecosystems surrounding the park.

The Park Service has identified millions of acres of private land that it would like to acquire and has estimated that these acquisitions would cost $1.4 billion.\(^{292}\) Unfortunately, with the Park Service’s budget already strained, the Park Service has been unable to secure monies to purchase these additional lands.

To protect our parks, Congress must appropriate the Park Service the monies needed for acquiring these identified parcels of land. Congress can use monies from the Land Use and Conservation Fund to purchase lands. The impetus for the Fund’s creation began in 1958 when President Eisenhower

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\(^{291}\) Kenworthy, *supra* note 7.

\(^{292}\) National Park Service Budget, *supra* note 73.
created the Outdoor Recreation Resources Review Commission to study America's growing outdoor needs. The Commission, among other things, found that the federal government should not allow its land acquisitions program to lag. Six years later, President Lyndon Johnson created the Land and Water Conservation Fund. This Fund would receive monies collected from offshore oil and gas leases, and in turn, Congress could spend these monies on land conservation projects. At first, Congress used this Fund solely for land acquisition projects. Since 1980, however, Congress has routinely plundered the Fund and has used proceeds from the Fund for other types of projects.

Recently, Congress approved a plan that would require a certain amount of monies generated from the Land and Water Conservation Fund to be used solely for land acquisition purposes. Under the agreement, Congress has guaranteed the Park Service $12 billion in funding for six years. If the money is not spent, then the money will be held over until the next year. This is a dramatic change because for years these monies, approximately $4 billion per year, have been appropriated for numerous other non-land related projects.

294. Id.
295. Id.
296. Id. The want to use offshore oil and gas lease monies to fund land use acquisition projects is logical – allow the monies generated from the exploitation of one natural resource to fund land protection projects. Id. Since the fund was created, more than 37,000 projects have been undertaken, with more than 2.3 million acres of state park lands being purchased and 3.4 million acres of federal lands. Id.
297. Id.
298. Id. Congress does appropriate some monies from the Fund for land acquisitions projects. Id. For instance, the National Park Service recently approved over 2.5 million for 17 land acquisition projects. Department of Interior Announces 17 Open Space Protection Grants in California, U.S. NEWswire, September 27, 2000, available in 2000 WL 26848672. Over the past ten years, the Fund has been used to protect Yellowstone National Park from mining, ancient redwoods in California, and Civil War battlefields. Office of the Press Secretary for President Clinton and Vice President Gore: Historic Protection for America's Environment and Cultural Heritage, M2 PRESSWIRE, October 12, 2000.
300. Mapes, supra note 222, at 20. See also Congress Ensures Offshore Drilling Fees Will Support Parks and Conservation, supra note 227.
301. Mapes, supra note 222. Additionally, upon Republican insistence, the agreement creates a category of spending for maintenance at national parks, forests and
By enacting this legislation, Congress took a huge step towards using proceeds from the Land and Water Conservation Fund to purchase lands for the Park Service. However, Congress, however, needs to appropriate more monies from this Fund for land acquisitions; after all, the Fund was created for that sole purpose. The 107th Congress may want to enact a previous proposal known as the Conservation and Reinvestment Act. Under this proposal, the Park Service would have received $450 million annually and upwards of $45 billion over the next 15 years. Due to the Park Service’s vast land acquisition needs, Congress needs to provide our parks more monies for land acquisition.

2. Land Acquisition Projects

Monies from the Land and Water Conservation Fund need to be used to acquire private parcels of land either within or surrounding our parks. These lands usually need to be purchased to ensure that our parks’ natural or cultural resources are not endangered by the potential development on the private lands. For instance, a private parcel of land

wildlife refuges. U.S. Rep. Mac Collins (R-Ga.) helped to lead this charge as he actively campaigned on the proposition that taxes collected for a certain purpose should not be spent elsewhere. Congress Ensures Offshore Drilling Fees Will Support Parks, supra note 227. Congressman Collins has worked on successful legislation to ensure that gasoline taxes collected for transportation needs are spent for transit, highway, and other transportation purposes; has worked on legislation to ensure airport ticket taxes and aviation fuel taxes are used for aviation purposes; and has spearheaded the effort to ensure payroll taxes collected for Social Security are not used to fund other government spending. Id.

302. In the future, these monies may be used to protect Sedona Red Rocks in Arizona, Florida’s Everglades, California’s Big Sur coast, the Lewis and Clark historic trail, and the Tallgrass Prairie in North and South Dakota. Historic Protection of America’s Environment and Cultural Heritage, supra note 298.

303. Id.; See also Kiefer, supra note 299, at 2. For more on the Conservation and Reinvestment Act, see Congress Ensures Offshore Drilling Fees Will Support Parks and Conservation, supra note 227.

304. Id.; See also Kiefer, supra note 299, at 2. For more on the Conservation and Reinvestment Act, see Congress Ensures Offshore Drilling Fees Will Support Parks and Conservation, supra note 227.


Other types of commercial development may also adversely affect parks. For instance, proposed legislation by U.S. Senator Robert Byrd (D-W.V.) would transfer 327 acres of U.S. Department Fish and Wildlife Service land to the Department of the Treasury for the construction of a national firearms training center. Daerr, supra note 70, at 20. This land had been targeted for inclusion in a potential future expansion of...
located outside Ozark National Scenic Riverways in Missouri needs to be purchased to ensure a proposed lead mine in Mark Twain National Forest does not contaminate interior portions of the park.\textsuperscript{306} A bill last year placed a moratorium on withdrawing the mineral rights from national forests, but it is feared that if exploratory drilling finds the ore, the U.S. Forest Service and the Bureau of Land Management will approve the mining.\textsuperscript{307} If mining occurs, the potential runoff could harm the area’s irregular limestone formations with sinks, caverns, and underground streams.\textsuperscript{308} When mining development around a park’s borders threatens the park itself, Congress has been forced to allocate an appropriate level of monies to buy out the proposed mine.\textsuperscript{309}

Congress needs to purchase privately held lands within our parks.\textsuperscript{310} These lands are problematic for the Park Service because private landowners usually need special access or need other rights to accompany the lands.\textsuperscript{311} For example, a private landowner in Montana filed suit against Glacier National Park for denying him winter access to his property by snowmobile, Harpers Ferry National Historic Park in West Virginia. \textit{Id.} The 327-acre parcel of land was a Civil War battle site where more than 11,000 Union troops were captured. \textit{Id.} Here, Congress does not have to appropriate any monies to ensure these lands are adequately protected. All Congress has to do is transfer the land from the U.S. Department of Fish and Wildlife Service to the National Park Service.

\textsuperscript{306} Daerr, supra note 70.

\textsuperscript{307} \textit{Id.}

\textsuperscript{308} \textit{Id.}

\textsuperscript{309} For instance, Congress recently had to purchase the world mine outside of Yellowstone National Park. Ansson I, \textit{supra} note 3, at 10 n. 71. Development affects parks and archeological sites worldwide. For instance, 1,000 archaeological sites may soon be lost in China’s Yangzi Valley when engineers begin filling the reservoir created by the $24.5 billion Three Gorges Dam (soon to be the world’s largest hydroelectric power plant). Michael Toner, \textit{Archaeology Underfoot and in the Way Series: The Past In Peril: Developing Conflicts}, ATLANTA CONSTITUTION, April 23, 2000 at B2, available in 2000 WL 5453533. The situation in China is similar to one that occurred in Egypt 35 years ago. \textit{Id.} In Egypt, Aswan High Dam threatened to flood the stone temple of Abu Simbel, which houses 60-foot statues of Ramses II. \textit{Id.} The international community raised $36 million to move the temple. \textit{Id.} Unfortunately, thousands of smaller artifacts were left behind and remain beneath the waters of Lake Nasser. \textit{Id.}

\textsuperscript{310} Sometimes private landowners own large portions of land. For instance, when Gulf Island National Seashore was created in 1971, it was supposed to include Cat Island. \textit{Congressional Conferes Approve Funds to Protect Cat Island}, \textit{supra} note 259. However, the private landowner did not want to relinquish the land. \textit{Id.} Recently, the private landowners, the Boddie family, agreed to sell all the land, save a 150-acre parcel, to the National Park Service for $2 million. \textit{Id.}

even though the park has prohibited snowmobiles since 1975.\textsuperscript{312} This problem is relatively minor. Major problems can occur when the private landowner wants to develop the land in a way that is harmful to the park.\textsuperscript{313} For instance, at Gettysburg National Military Park, a private landholder built a 390-foot observation tower on private land within the park. This tower, which was built in 1974, has disturbed the park's natural ambiance for years.\textsuperscript{314} In the future, Congress must appropriate the monies necessary to ensure private in-holdings are purchased so private landowners do not have the opportunity to develop their lands in a way that may harm the park.

Sometimes, Congress may also need to purchase some lands around our parks' boundaries if the purchase of those lands will help the park better protect its holdings. For instance, some legislators have introduced a bill to revise the boundaries of the Golden Gate National Recreation Area to better protect important natural and cultural resources in the San Francisco area.\textsuperscript{315} The Recreation Area was created in 1972 to ensure that people in the primarily urban Bay Area would be close to a number of significant natural and cultural resources.\textsuperscript{316} The bill would add approximately 1,216 acres of land to the Recreation Area.\textsuperscript{317} The Recreation Area, encompassing 76,500 acres, is

\textsuperscript{312} Id.

\textsuperscript{313} Id. Another problematic situation can occur when the landowner is leasing land from the Park Service, and when the lease runs out, the landowner refuses to move. Id. In Biscayne National Park in Florida, seven weekend house owners whose leases have just run out want to swap the Park Service 1,200 acres of park waters, which include their lands, for an equal amount outside the park's boundaries. Id. Land swapping is in vogue right now — especially between the Forest Service and private developers. John W. Ragsdale, Jr., National Forest Land Exchanges and the Growth of Vail and Other Gateway Communities, 31 URB. LAW. 1, 2-3 (1999).

In another expired lease situation along the Chesapeake and Ohio National Historic Park in Maryland, the long-term lease holders have petitioned their Congressman, U.S. Rep. Roscoe Bartlett (R-Md), to have a bill passed renewing their leases. Daerr, supra note 311. The Park Service is adamantly opposed to this bill and has even noted that the park's enabling statute does not allow for such an extension. Id.

\textsuperscript{314} The Park Service purchased the land and has condemned this building. Daerr, supra note 311. See also John Switzer, Gettysburg Tower to Come Tumbling Down, COLUMBUS DISPATCH, June 28, 2000, at 12D, available in 2000 WL 21730347.


\textsuperscript{316} Id.

\textsuperscript{317} Id.
Currently one of the largest urban national parks in the world.\textsuperscript{318}

At other times, Congress may also need to purchase some lands around our parks to ensure that their unique ecosystems are protected. For instance, a coalition of eight groups has proposed creating a new national monument, Capital Reef Monument, to protect 150,000 acres of land adjacent to Carlsbad Caverns National Park in New Mexico and Guadalupe Mountains National Park in Texas.\textsuperscript{319} The proposed monument would be under the control of the Bureau of Land Management and the U.S. Forest Service; therefore, local citizens would still have access to hunt and graze on the lands.\textsuperscript{320} The National Park Service would have an advisory role, whereby all the agencies could work in tandem to develop long-term ecosystem protection.\textsuperscript{321}

To ensure that our parks are properly protected, Congress must allocate an appropriate level of funding to purchase needed lands within or surrounding our national parks. Congress, by passing a plan that provides $12 billion over the next 6 years, does provide a fairly substantial amount of funding. However, Congress should consider appropriating more monies from the Land and Water Conservation Fund to allow our Park Service to purchase more private landholdings.\textsuperscript{322}

\textbf{C. The Need for Congress to Adhere to Park Admittance Reforms}

Between the mid-1970s and the mid-1990s, more than 120 new parks were added to the National Park System, bringing the total number of parks to 379.\textsuperscript{323} Many of these new parks

\textsuperscript{318} Id.

\textsuperscript{319} Daerr, supra note 70.

\textsuperscript{320} Id.

\textsuperscript{321} Id.

\textsuperscript{322} Using monies from the Land and Water Conservation Fund to purchase lands can have a significant impact on preservation within our country. For instance, some monies from the Fund were recently used to help purchase a half-million acres in the Mojave Desert. The purchase of this land will help protect the threatened desert tortoise and the pristine wilderness from development. Jennifer Bowles, \textit{Purchase Protects Desert Tortoise: The $20 million Deal Completes the Acquisition of 405,000 Acres in the Mojave}, \textit{PRESS-ENTERPRISE}, MAY 19, 2000, at A1, \textit{available in 2000 WL 19870620}. The Clinton administration provided $10 million from the Land and Water Conservation Fund in 1999. \textit{Id}. In 2000, the Administration provided an additional $5 million and the Wildlands Conservancy provided $15 million. \textit{Id}. \textit{See also California Desert Wilderness Won't Be Lost To Development}, \textit{ARIZONA REPUBLIC}, MAY 19, 2000, at A24, \textit{available in 2000 WL 8032979}.

\textsuperscript{323} Wilkinson, supra note 2.
were forced upon the park system, even though park officials had deemed them to be unnecessary. 324 Over the years, these "park pork" projects have siphoned billions of dollars of funding away from legitimate Park Service projects. During this same time, our Park System has experienced a $202 million constant dollar reduction in revenue. 325 In all, the Park Service, with the addition of new parks and the reduction of funding in constant dollars, has been forced to deal with numerous financial and logistical challenges. 326

Fortunately, when Congress passed the Omnibus Act, it provided for rigorous guidelines to ensure that lands receiving park status actually warrant said status. 327 Congress must always be mindful of these provisions, especially those provisions that require careful study of costs associated with the

325. Id.
327. Id. at 27-28. In part, section 303(4) of the 1998 Omnibus Act provides:

(c)(1) The Secretary shall complete the study for each area for potential inclusion in the National Park System within 3 complete fiscal years following the date on which funds are first made available for such purposes. Each study under this section shall be prepared with appropriate opportunity for public involvement, including at least one public meeting in the vicinity of the area under study, and after reasonable efforts to notify potentially affected landowners and State and local governments.

(2) In conducting the study, the Secretary shall consider whether the area under study –

(A) possesses nationally significant natural or cultural resources and represents one of the most important examples of a particular resource type in the country; and

(B) is a suitable and feasible addition to the system.

(3) Each study

(A) shall consider the following factors with regard to the area being studied –

(i) the rarity and integrity of the resources;
(ii) the threats to those resources;
(iii) similar resources are already protected in the national park system of in other public or private ownership;
(iv) the public use potential;
(v) the interpretive and education potential;
(vi) costs associated with acquisition, development, and operation;
(vii) the socioeconomic impacts of any designation;
(viii) the level of local and general public support; and
(ix) whether the area is of appropriate configuration to ensure long-term resource protection and visitor use;

(B) shall consider whether direct National Park Service management or alternative protection by other public agencies or the private sector is appropriate for the area.
acquisition, development, and operation of the park.\textsuperscript{328} These provisions are important because most of the new parks created by Congress have been costly, especially from an operation standpoint.\textsuperscript{329}

Congress must be sure when new parks are added to the system that it will provide sufficient funds to operate these parks. Many of these new parks require substantial funding from Congress primarily because these parks are low profile and, as such, do not generate a lot of revenue. If Congress does not fund these parks, then the natural and cultural resources that they contain usually go unprotected. For instance, Salinas Pueblo Missions National Monument, which can be classified as a relatively new low profile park, has not received any significant funding for years.\textsuperscript{330} This national monument was established to help preserve a number of pueblos as well as several 17th Century Spanish mission churches.\textsuperscript{331} Yet, numerous pueblo walls have been eroded by wind and rain, while unstable walls and leaking roofs have threatened to destroy the mission churches.\textsuperscript{332} To prevent further damage, the Salinas Pueblo sought and received monies from the Vanishing Treasure Initiative.\textsuperscript{333} Congress established this Initiative in an attempt to provide some Southwestern parks with supplemental funding above and beyond general operating costs.

In the future, as Congress adds more new low profile parks to the system, it must provide them with the adequate funding they deserve. Sometimes, the park system may be able to enter

\textsuperscript{328} Id. Groups propose new parks all the time. For instance, a group in Maine has been trying to convince, without any success, its state's congressional delegation to turn 3.2 million acres of woodlands in northern Maine into a national park, denoted as North Woods park. Diana Bowley, \textit{Park Idea Tough Sell for Promoters: Residents at Meeting State Distrust of RESTORE}, BANGOR DAILY NEWS, September 2, 2000, available in 2000 WL 22132964.

\textsuperscript{329} Many new parks, like low profile parks, do not generate much revenue. As such, these parks may need to rely upon other sources of funding. Since 1988, there have been 90 proposed park areas, with 33 units added to the system. Todd Wilkinson, \textit{National Parks: The Next Generation}, NAT'L PARKS, Sept.-Oct. 2000, at 26, available in 2000 WL 9265444 [hereinafter Wilkinson I]. The most recent addition came when Congress added Cuyahoga Valley National Park to the system. Tom Diemer, \textit{An Old Friend Becomes First U.S. Park in Ohio}, PLAIN DEALER, October 6, 2000, at 15A, available in 2000 WL 5189175. This land had formerly been a national recreation area. \textit{Id.}

\textsuperscript{330} Ansson I, supra note 3, at 42-43.

\textsuperscript{331} Id.

\textsuperscript{332} Id.

\textsuperscript{333} Id. This park was instrumental in creating the Vanishing Treasures Initiative and was the first to receive monies from the initiative. \textit{Id.}
into private-public partnerships to ensure that the new parks receive the proper level of funding they deserve. For instance, when Dayton Aviation Park was established in 1992, it was one of the first public-private partnerships parks managed by the National Park Service. This park consists of three non-federal partners and is located in four geographically separate cities. This partnership has worked well because:

To date, the Dayton Community and State of Ohio have directly invested well over $7 million in the park sites. This investment includes acquiring buildings for national park ownership, rehabilitation, and even construction of the East Interpretive Center, and does not include tens of millions of dollars invested in the areas around the park sites. The community’s financial interest began before the park was even established when the Dayton community underwrote all of the costs for the Management Alternatives Study, a first-step toward park creation that is typically funded through federal appropriations. Once the park bill was passed, the local community again stepped up to the plate and paid for a half-year of the first park superintendent’s salary in an effort to begin the park development process as soon as possible. The community will continue to invest its dollars, time, and energy in the [park].

Most of the time, however, Congress will have to provide an adequate level of funding for new park additions. These new low profile parks will protect not only natural wonders, but will also protect cultural and historic treasures. Some of the potential new park additions that protect natural wonders include, among others, the Valles Caldera Park in New


335. Id.

336. *Id.*

337. Another potential addition includes a 200-mile strip of Iowa tall-grass prairie, commonly known as the Loess Hills, fronting the Missouri River. Todd Wilkinson, *America’s Next Generation of National Parks: New Proposal Reflect a Desire to Commemorate Less-Pristine Landscapes, as well as Recognize Overlooked and Ignoble Moments of History*, CHRISTIAN SCIENCE MONITOR, October 3, 2000, at 3, available in 2000 WL 4431409 [hereinafter Wilkinson II]. See also Chris Clayton, *Loess Hills Residents Reassured, Preservationists Say Fears Unfounded, Proposed New National Parks*, OMAHA WORLD-HERALD, June 30, 2000, at 19, available in 2000 WL 4383880. These 200-foot high, glacial silt deposit hills were formed by the wind. Wilkinson I, supra note 329. Formations such as these are rare as the only other known loess site in the world with equal geological and ecological significance is along the Yellow River in Northern China. Id. Additionally, these lands hold cultural significance to American Indians. Id. Finally, these lands represent some of the last fragments of unplowed, mixed-grass prairie land. Id.
Mexico. The Valles Caldera, located in the Jemez Mountains of New Mexico, has numerous geographical, ecological, biological, cultural, and spiritual values. The Valles Caldera is a unique national treasure as its lands contain:

- the world-renowned and extensively studied Valles Caldera (already a designated National Landmark), the 12-15 mile wide collapsed volcano that is a remnant of massive explosions/eruptions that occurred over one million years ago;
- numerous geothermal features associated with the caldera, including hot springs;
- spectacular scenic valleys, including seven lush valleys and forested mountains that rise to over 11,200 feet;
- abundant wildlife, including one of the West's largest elk herds (approximately 6,500 animals), bald and golden eagles, black bear, mountain lion, and habitat for 17 threatened and endangered species;
- 27 miles of fishable, coldwater streams;
- extensive cultural and historic resources, including strong links to nearby Indian Pueblos; and
- superlative year-round recreational resources.

The Valles Caldera has many world-class natural resources, and it is clear that these lands should be preserved for future generations.

Another potential park that would protect natural wonders is the Bioluminescent Bay Park in Puerto Rico. Bioluminescent Bay in Puerto Rico is literally a natural wonder. This bay actually sparkles at night with millions of...
glow-in-the-dark sea creatures.\textsuperscript{344} Shortly after WWII, several unofficial proposals were drafted to protect several glowing bays in Puerto Rico.\textsuperscript{345} Bioluminescent Bay was officially protected in 1980 when it was designated a National Natural Landmark.\textsuperscript{346} Today, Bioluminescent Bay is the last of its kind as other bays in Puerto Rico have become so polluted that the glow-in-the-dark sea creatures have died.\textsuperscript{347}

Other potential additions are sites of cultural shame, such as the World War II internment camps for Japanese Americans\textsuperscript{348} and the boyhood home of an African-American scholar who fought for Civil Rights but fled the country in self-imposed exile.\textsuperscript{349} Further, the list of potential park sites include a number of Civil War battlefields in the Shenandoah Valley of Virginia,\textsuperscript{350} the Erie Canalway in New York,\textsuperscript{351} and the Housatonic River Valley in Connecticut and Massachusetts.\textsuperscript{352}

As the Park Service grows, Congress must provide new parks with adequate levels of funding. Congress may be able to provide monies to new parks through unique private-public partnerships. If Congress is unable to generate monies through private-public partnerships, then it will have to provide new parks with sufficient levels of monies to operate in an adequate

\begin{footnotes}
\item[344.] Wilkinson II, supra note 337.
\item[345.] Wilkinson I, supra note 329.
\item[346.] Id.
\item[347.] Id.
\item[348.] Wilkinson II, supra note 337. For more on the potential inclusion of Rosie the Riveter/ World War II Home Frontier National Historic Park, see National Parks and Monument Bills: Before the Subcomm. on Natural Resources and Energy, 106th Cong. 2000 (statement of Thomas K. Butt, Richmond California City Council), available in 2000 WL 23831621.
\item[350.] Wilkinson I, supra note 329. See also Kevin Collison, Lawmakers Want Erie Canal Added to National Park System, BUFFALO NEWS, November 4, 2000, at B1, available in 2000 WL 5698760.
\item[351.] Wilkinson I, supra note 329, at 26.
\item[352.] Contracting for Federal Construction Projects: Before the Subcomm. on National Parks and Public Lands of the U.S. House of Representatives Comm. on Resources: Hearing on H.R. 4312, 106th Cong. 2000 (Statement of Ronald D. Jones on Behalf of the Upper Housatonic Valley National Heritage Area Study Act of 2000), available in 2000 WL 23831609. This 950 mile river valley, located in northwestern Connecticut and western Massachusetts, has a distinctive history and culture. \textit{Id.} This valley is commonly known as the "Fourteenth Colony". \textit{Id.}
\end{footnotes}
manner. When adding new parks to the park system, Congress must abide by the Omnibus Act and realistically evaluate how much the new park addition will cost. After conducting an evaluation, Congress should only add the park to the system if it is willing to fund the park in years to come.

V. CONCLUSION

The National Parks in the United States are falling apart. While support is strong for preserving more of the nation’s natural treasures, the parks already “saved” are moldering away due to poor maintenance and overuse. Many parks are eroding under the presence of so many tourists and their cars and RVs.

Years of poor funding have allowed the repair and construction backlog to pile up to mountainous levels. Congress must correct the situation. Our parks are in a sorry state. Gettysburg National Military Park is watching Civil War artifacts mildew and rot. In Yellowstone, the sewage plant at Old Faithful is malfunctioning. The Going-to-the-Sun road at Glacier is crumbling apart. In all, our parks need $4 billion in maintenance repairs. To prevent this problem from continuing, Congress must annually appropriate a sufficient level of monies to ensure our parks can maintain their infrastructure.

Members of Congress have contributed to the problem by regularly raiding Park Service funds for their own pet projects. For instance, Congress pushed through $50 million in federal monies for the Lincoln Library in Springfield, Illinois, even though the Park Service had not requested monies for this project. By passing this project through, Congress effectively took $50 million in needed maintenance repair monies from the Park Service. In the future, Congress must restrain itself from enacting unwanted programs.

Moreover, Congress has stretched the National Park System beyond its capacity. Over the years, Congress has added many areas to the national park system. At the same time, Congress has failed to appropriate the level of monies necessary to properly protect these lands. Consequently, the Park Service

354. Id. at 11.
356. Kilian, supra note 74, at 1.
has been unable to adequately protect all of its parks' holdings, including the crown jewel parks such as Yellowstone, Glacier, and Yosemite. To prevent this from continuing to occur, Congressmen must restrain themselves from creating new parks unless, of course, they are willing to adequately fund them.

During this time, the Park Service has also failed to modernize its departments. As such, the Park Service has failed to develop a professional business staff that can adequately conduct business transactions with the concessions industry. As such, the Park Service has lost monies and has allowed backlogs to develop throughout our park system due in large part to expired contracts. The Park Service must professionalize its concessions staff by training them in business, financing, and accounting. Meanwhile, Congress must continue reforming the concessions industry by forcing the Park Service to act in a more accountable and effective manner.

Notwithstanding the many problems that have enveloped the Park Service in recent years, there have been several positive developments for the park system, including the Fee Demonstration Act and the 1998 Omnibus Management Act. However, numerous problems still abound. As such, Congress must continue to fund and reform our national park system so that our parks can be properly maintained for our generation and for generations to come.