

STATEMENT OF A. DURAND JONES, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, BEFORE THE SENATE SUBCOMMITTEE ON NATIONAL PARKS OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES, REGARDING THE STATUS OF THE NATIONAL PARK SERVICE CONCESSIONS MANAGEMENT PROGRAM.

APRIL 8, 2004

Mr. Chairman, thank you for the opportunity to update you on the ongoing efforts and accomplishments by the National Park Service (NPS) in implementing the National Park Service Concession Management Improvement Act, Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105-391). We are pleased to report on specific issues you asked about, including our success in recent contracting actions; the makeup and work of the National Park Service Concessions Management Advisory Board; the process for valuing possessory interest and the transition to leasehold surrender interest; incentives for preventive maintenance; management issues relating to regulations and any needed regulatory changes; and the issue of preferential renewal of concession contracts.

Contract Actions Since Passage of 1998 Law

The National Park Service concession program administers 590 concession contracts in 126 parks. These contracts generate over \$818 million in annual revenues. Since the passage of P.L.105-391, we have issued 106 concession prospectuses seeking competitive offers, and awarded 255 new contracts. Of these new contracts, 229 (90 percent) have been competitively awarded to incumbent concessioners. We still have approximately 256 contracts under temporary extensions, but we anticipate having 78 prospectuses issued this year covering 118 of these extended and other contracts.

We continue to make progress towards replacing the number of expired and expiring contracts with new competitive opportunities and contract awards under the terms of P.L. 105-391.

Shortly after enactment, the NPS contracted with professional firms in the financial and hospitality industry to provide us with a review of the NPS concession program, among other assistance. We have since divided concession contracts into two categories: those with gross receipts totaling over \$3 million annually, and those with less than \$3 million. Of the 590 concession contracts in 126 parks, approximately 52 currently gross above \$3 million. These relatively high-dollar contracts represent about 80 percent of the more than \$818 million concession revenues generated annually servicewide. Due to the complexity of these over-\$3 million operations, NPS has by policy required that all prospectuses developed for soliciting new contracts be prepared with the assistance of our outside contracting firms.

As the result of a competitive contracting action recently taken, we now have four professional firms under our Indefinite Delivery/Indefinite Quantities (IDIQ) contracting authority that are available to us for professional assistance – not only for the over-\$3 million category, but for all contracting actions. Working with these firms (Pricewaterhouse Coopers, Economic Research Associates, Booz Allen Hamilton, and Dornbush Associates) and their subcontractors, the NPS has focused on developing professional and competitive prospectus documents that present the business opportunities for visitor services that exist in the national parks. All contracting actions over \$3 million receive both regional and Washington office approval before their release. Of the 52 operations currently grossing over \$3 million in revenues, five are operating under newly awarded contracts, 17 have not yet reached their original expiration date, and 30 are currently operating under contractual or regulatory extensions (that is, their original expiration date has

passed). To date, we have awarded five of these contracts, at Crater Lake, Grand Canyon, Denali, Glacier Bay, and Yellowstone. We have released prospectuses for two others —Mount Rushmore and Carlsbad—and we anticipate releasing eight additional prospectuses this year at Lake Mead, Death Valley, Olympic, Golden Gate, Grand Tetons, and Rocky Mountain. Finally, preparation has begun this year under the new IDIQ contracting authority for the development of seven prospectuses proposed for release in FY 2005.

Composition and Role of the Advisory Board

P.L. 105-391 established the National Park Service Concessions Management Advisory Board. The role of the Advisory Board is to advise the Secretary and the National Park Service on matters relating to the management of concessions, including policies and procedures, and ways to make National Park Service concession programs more cost-effective, efficient, and less burdensome. The Board also makes recommendations to the Secretary regarding the timeliness of reviews of concessioner rates and charges to the public; the nature and scope of products that qualify as Indian, Alaska Native, and native Hawaiian handicrafts; and the allocation of concession fees.

The Advisory Board is comprised of seven non-Federal individuals appointed by the Secretary of the Interior, none of whom have a current business interest in any NPS concession. The statute specifies that appointees represent various aspects of the concessions industry or have a particular expertise related to concessions.

Key issues that the Advisory Board continues to advise us on are:

- (1) The concessioner evaluation and rate approval programs;
- (2) The Indian, Alaska Native, and Native Hawaiian handicrafts program, including the development of handicraft regulations (which were published in the Federal Register on March 25, 2004, for public comment);
- (3) Leasehold surrender interest;
- (4) Assignments, sales and transfers; and
- (5) Encumbrances/cross-collateralization issues.

Accomplishments of the Advisory Board to date include:

- Recommended the establishment of, and subsequently participated as members in, an evaluation and rate approval task force to review the rate approval process;
- Established a native handicraft work group that made recommendations for the recently published proposed rulemaking regarding native handicrafts;
- Recommended the need for ongoing asset management support, which has resulted in the establishment of a permanent asset manager position in the concessions program;
- Supported implementation of training programs, including the contract with Northern Arizona University for hospitality certification, as well as training programs for prospectus development offered to the public;
- Established a work group to look at regulatory and process issues regarding the tracking of leasehold surrender interest, cross-collateralization of contracts, and other program issues, in order to make a recommendation from the Advisory Board to the National Park Service;

- Established a work group to review comments received by the National Park Service on proposed regulations regarding commercial use authorizations (CUAs); and
- Assisted in the simplification of the contract language for small concession contracts (Category III contracts).

The Advisory Board meets three times annually. Its next meeting will be early this summer (2004). As in the past, the Advisory Board will hold all but one of its public meetings in the field so smaller concessioners and others will have a better opportunity to attend. Once a year it meets here in Washington, D.C., which occurred this year in early March.

Process for Valuing Possessory Interest/Transition from Possessory Interest to Leasehold

Surrender Interest

Possessory interest (PI) was the term used in concession contracts issued under the previous concession law, P.L. 89-249, to provide a contractual right of compensation to park concessioners for improvements to facilities they acquired or constructed for use by their businesses. Individual contract language defines the method by which PI is valued, and provides for a value determination process similar to arbitration—in most cases binding, but in some cases advisory to the Secretary of the Interior—to settle differences either between the previous concessioner and a new concessioner, or between the United States and the new concessioner.

P.L. 105-391 introduced the concept of leasehold surrender interest (LSI) to provide a contractual right of compensation for capital improvements made by concessioners under a concessions contract. The value of LSI in a capital improvement is the amount equal to the initial

value of the construction cost of the capital improvement, adjusted by changes in the Consumer Price Index, minus depreciation of the capital improvement. In a “Special Rule for Existing Possessory Interest,” P.L. 105-391 also provided that a concessioner that obtained a PI under the terms of a concessions contract is entitled to receive compensation for such PI improvements as provided in the concessions contract. This amount carries over into a new concession contract as the initial value of such LSI.

In practice, we have seen both binding value determination processes and negotiations between the current and new concessioner establish the ending PI value (and, hence, the initial LSI value). For example, binding value determination processes were used at Grand Canyon and Yellowstone, and the negotiations between a current and new concessioner were used at Crater Lake. Both processes required NPS review and approval pursuant to regulations.

Recently, several concessioners have requested a negotiation with the NPS to determine PI value prior to the release of a prospectus. One successful negotiation was recently completed for Trail Ridge Store at Rocky Mountain National Park. Several others are in process. The NPS is looking at requests for similar mutual negotiations in other areas. Although existing concession contracts do not provide for the NPS to require negotiations, we can choose to enter into such negotiations if requested by the current concessioner.

We are supportive of this process whenever possible. It helps to provide more certainty for both the NPS and current concessioner, and helps provide a clearer offer in the prospectus. It also has

the potential of saving time and money for both the concessioner and the NPS by avoiding costly and time-consuming arbitrations with unpredictable outcomes.

The NPS has been successful in negotiating with a current concessioner on the value of PI in the following cases: Katmailand at Katmai; Glacier Bay Park Concessions; Estey Corporation at Oregon Caves and at Crater Lake; Marinas of the Future, Franca Foods, and Jamaica Bay Riding Academy, all at Gateway; Trail Ridge at Rocky Mountain; Grand Teton Lodge; Carlsbad Caverns; and Death Valley. Other negotiations have been requested by concessioners, but have not yet been consummated.

Leasehold Surrender Interest

The NPS is continuing to focus on the importance of not only establishing initial LSI value, but also tracking the value of LSI through the term of the contract. This will, among other things, probably involve some management revisions, including possible changes in the so-called 50 percent rule. This rule, codified in regulations at 36 CFR § 51.51 states, in part, that “Major Rehabilitation means a planned, comprehensive rehabilitation of an existing structure . . . the construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.”

Although subsequent litigation on the final regulations upheld this definition, the NPS has agreed to administratively review this rule to determine ways in which it can be revised to accomplish the broader intent of providing for reasonable compensation in LSI value at the end of the contract term, while maintaining the competitiveness of future contracts.

P.L. 105-391 provides for LSI when a concessioner “constructs” a capital improvement. It defines capital improvement as “a structure, fixture, or non-removable equipment.” The law does not suggest that the repair or maintenance of an existing structure results in LSI. However, in developing the “50 percent rule”, the NPS considered that providing LSI for the major rehabilitation of an existing structure is permissible, and considered that such major rehabilitation is tantamount to the construction of a new structure in which LSI may be obtained. However, the National Park Service has agreed to look at better ways to credit and depreciate capital improvements to better define over the term of a concession contract the value of LSI.

Working with the Advisory Board, an LSI work group was established to look at this issue, along with several other regulatory issues that the NPS agreed to meet on. This work group, made up of representatives from both large and small concessioners, key interest groups, and key Congressional staff, has met four times in the past 16 months in part to help define clarity in LSI value assignment through the contract term. The goal is to provide an approach consistent with law that is fair, clear and simple to administer, and able to be applied consistently and with certainty through the term of a concession contract.

Although LSI is not a concept found in the private sector, its resulting value would be essentially equivalent to debt owed the concessioner by the NPS. In short, the United States is ultimately deferring debt contractually owed to a third party. Although LSI value, by contract terms, will most often be acquired by any subsequent new concessioner to a contract, nonetheless, LSI represents an obligation of the United States to provide compensation to a concessioner. Consequently, developing a sound method to monitor capital improvements, as well as

preventive maintenance, in order to be able to define clearly LSI value throughout the contract term, is critical for both the concessioner and the NPS.

The LSI work group agreed on draft recommendations in 2003, but upon preparation of the final recommendation package, one of the group members expressed new concerns regarding the agreement. Consequently, the Advisory Board asked that the work group meet again to address these concerns. It is our understanding that the work group plans to make its final recommendation to the Advisory Board in the near future. Once the full board has taken final action, the NPS will evaluate the recommendation and, if it is accepted, determine what programmatic, policy, or regulatory changes would be required to implement it.

Contractually requiring sound preventative maintenance and repair practices, as well as addressing the construction cost of capital improvements, keeps park assets and facilities in good condition, helps provide better visitor services, and contributes towards keeping a concession operation competitive for future contracts. The duties of the newly created permanent asset manager will include coordinating a “centralized, real-time” system using the NPS asset management system to oversee a concessioner’s contractual responsibilities and track the conditions of concessioner-managed assets.

Management Challenges Identified / Regulation Changes

Other issues being addressed by the work group are cross-collateralization (to allow for a concessioner to pledge collateral from one contract for a loan to pay for capital projects in another park); and sale and transfer of contracts (regarding the level at which the NPS needs to

approve transfers, particularly upstream ownership in corporate reorganizations). In both of these cases, we recognize the need to simplify and expedite the review process. The focus of our review is on the aspects of a transaction that would have managerial and financial implications on the underlying operation, the effect or impact a transaction would have on providing quality visitor services, the protection of park resources, and the fiduciary responsibility and accountability of the NPS for concession operations and government assets.

Transition issues between a current and new concessioner, mostly operational in nature, also take resources and careful timing to avoid the interruption of quality visitor services. With the assistance of our outside contractors, and working with current NPS concessioners, we have been looking at actions we can initiate to ease any future transitions between concessioners in those instances where an incumbent concessioner either chooses not to bid, or is not chosen as the new concessioner. We are attempting to allow sufficient time between the selection of a new concessioner and the award of a new contract to allow time for these transition issues to be settled. This requires careful timing of the release of a prospectus prior to an expected award date. As each new contract is issued, we are reviewing “lessons learned” to the preparation of future contracting actions.

Preferential Renewal

P.L 103-391 placed an emphasis on competition for concessions contracts in our national parks. We believe having competition in the renewal of these contracts has been and continues to be a healthy step, and one that benefits the concessioner, the visitor, and the NPS.

However, all incumbents with a satisfactory rating grossing no more than \$500,000 annually, and all outfitters and guides with a satisfactory rating (of which 21 gross more than \$500,000) continue to enjoy a preference in the renewal of their contracts, if they are responsive to the requirements of a prospectus and are willing to meet the terms of a better offer if submitted. While concessioners in this category may account for over 80 percent of the total NPS contracts, all of these operations combined account for less than 6 percent of the total gross revenues of all NPS concessioners. We believe that the preferential renewal exception in the law as written creates a reasonable balance between providing for competition and assuring that visitor services are provided in all of our park areas where these services are necessary and appropriate.

Mr. Chairman, that concludes my statement. I would be happy to respond to any questions you or the other members of the subcommittee may have.