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Our National Parks--Overcrowded, Underfunded, and Besieged with a Myriad of Vexing Problems: How Can We Best Fund Out Imperiled National Park System?

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OUR NATIONAL PARKS—OVERCROWDED,
UNDERFUNDED, AND BESIEGED WITH A MYRIAD
OF VEXING PROBLEMS: HOW CAN WE BEST FUND
OUR IMPERILED NATIONAL PARK SYSTEM?

RICHARD J. ANSSON, JR.*

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I. INTRODUCTION

One hundred and twenty-six years ago, Congress established Yellowstone as this country's first national park.¹ By 1916, thirty-seven national parks had been established, and in that same year, Congress created the National Park Service to supervise and maintain these parks.² Congress mandated that the Park Service preserve each park's scenery, natural and historic objects, and wildlife for both present and future generations.³ Since 1916, the national park

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1. See William Andrew Shutkin, *The National Park Service Act Revisited*, 10 VA. ENVTL. L.J. 345, 352 (1991).

2. See Robin W. Winks, *The National Park Service Act of 1916: "A Contradictory Mandate"?*, 74 DENV. U. L. REV. 575, 583 (1997).

3. See 16 U.S.C. § 1 (1998).

system has grown to include over 376 units.⁴ The National Park Service's holdings are remarkably diverse and include wilderness preserves, wild rivers, seashores, archaeological ruins, and historic sites.⁵

Throughout this century, our national parks have come to embody and symbolize our country's rich cultural heritage. Our park system protects and preserves our historic and natural treasures. These parks encompass historic battlefields such as Gettysburg National Military Park and archaeological treasures such as Mesa Verde National Park. They encompass wild rivers such as the Buffalo National River and pristine seashores such as Gulf Islands National Seashore. In essence, our national parks have come to represent who we are as a nation and whence we came. Indeed, from the grandeur of El Capitan in Yosemite to the vastness of the Grand Canyon to the splendor of the Grand Tetons, our national parks epitomize the character of our nation and have come to embody the raw, unencumbered spirit of our youthful nation.

However, the grandeur of our national parks—and the character of our nation—is currently at stake as our parks have been subjected to a myriad of vexing problems. The National Park Service presently has a cumulative monetary shortfall of approximately \$11.1 billion.⁶ This shortfall, which has accumulated over the years, has arisen from a backlog of unfunded operations, construction projects, land acquisitions, and resource protection projects.⁷ Because of this monetary shortfall, the Park Service is presently impoverished, mired in political squabbling, and beset with troubles from both within and without.

Throughout the park system, the monetary shortfall has thwarted the Park Service's ability to prevent the steady deterioration of roads, buildings, sewers, and other infrastructure.⁸ Additionally, the park

4. See *FY99 Interior Appropriations: Hearings Before the Subcommittee on Interior and Related Agencies, Committee on Appropriations, House of Representatives, 105th Cong.* (1998) (statement of Barry T. Hill, Associate Director, Energy, Resources, and Science Issues), available in 1998 WL 8991529 [hereinafter *FY99 Interior Appropriations*].

5. See Winks, *supra* note 2, at 576.

6. See 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., Jul. 21, 1997, available in 1997 WL 8332361.

7. See *Park Project Financing: Hearings Before the Subcommittee on National Parks, Historic Preservation and Recreation, United States Senate, on Revenue Bonds to Finance Capital Projects in National Parks*, 105th Cong. (1997) (statement of Albert C. Eisenberg, Deputy Director of Conservation Policy for the National Parks and Conservation Association), available in 1997 WL 14152141 [hereinafter *Park Project Financing*].

8. See Satchell, *supra* note 6. For example, the wastewater treatment center at Kings Canyon has fallen out of compliance with state standards. See Donald R. Leal & Holly Lippke

system has been forced to close campgrounds, shorten operating hours, eliminate many interpretive programs, and lay off many seasonal rangers.⁹ The lack of funds has also hampered the Park Service's ability to adequately care for its priceless natural, cultural, and historical assets.¹⁰ Finally, the funding shortage has forced the Park Service to eliminate many of the parks' scientific studies programs.¹¹

If our nation is to preserve and maintain our national parks for this generation and future generations, the Park Service must obtain appropriate levels of funding. The Park Service has traditionally relied upon congressional appropriations. However, Congress has not allocated the Park Service enough funds to adequately care for our national parks.¹² This article, after analyzing the numerous problems confronting the Park Service, examines the many supplemental funding measures that Congress is currently considering.

Section II discusses the National Park Service and its congressional mandate. Section III details the Park Service's recent monetary problems and documents the myriad of vexing problems

Fretwell, *National Treasures: The Way to Rescue Imperiled National Parks is by Returning to a Pay-for-use System*, SAN DIEGO UNION-TRIB., Oct. 12, 1997, at G1, available in 1997 WL 14529179.

9. See Leal & Fretwell, *supra* note 8. For instance, in Yellowstone, the Park Service closed Norris Historic Museum and a major campground. See *NBC Nightly News: United States National Parks Overcrowded and Lacking Services Due to a Lack of Funding* (NBC television broadcast, May 27, 1996), available in 1996 WL 10301785 [hereinafter *National Parks Overcrowded*]. These shutdowns came just as a recent Consumer Report survey found that the most common visitor complaints about Yellowstone were its overcrowded conditions and its lack of adequate visitor facilities. See Leal & Fretwell, *supra* note 8.

10. See Carol Estes, *A Culture in Ruins: Across the Nation, Thousands of Historic Sites and Objects are Succumbing to Inadequate Funding and Misplaced Priorities*, 71 NAT'L PARKS 34, May 1, 1997, available in 1997 WL 9300292. For example, at Mesa Verde, the Park Service has not had enough money to repair fallen roofs and collapsed walls. See Christopher Smith, *New Hope for the Ancient Sites of the West; Ruins in Need of a Rescue*, SALT LAKE TRIB., Mar. 28, 1997, at A1, available in 1997 WL 3398376. At Chaco Canyon National Historic Park, the Park Service has had to deal with overvisitation and abuse to the Indian ruins. See NRDC Pro: *Reclaiming Our Heritage—Chaco Culture National Historical Park* (visited Feb. 2, 1998) <<http://www.org/nrdcpro/roh/chaco.html>> [hereinafter *NRDC Pro: Reclaiming Our Heritage*].

Today, when new Indian ruins are found, the National Park Service keeps their locations secret to protect the sites from unwanted degradation. Although keeping the sites safe, this plan also denies everyone the opportunity to view these treasures. See *NBC Nightly News: Increase in Vandalism in National Parks Continuing Problem as Government has no Funds to Control the Problem* (NBC television broadcast, Aug. 25, 1997), available in 1997 WL 11357789.

11. See *NBC Nightly News: National Park Service Hoping for More Funding to Maintain Quality and Fix Damages in Nation's Parks* (NBC television broadcast, Sept. 21, 1997), available in 1997 WL 11358145. For instance, the research program that studied endangered species at Yellowstone National Park was eliminated, and such cuts directly threaten the well-being of Yellowstone's grizzlies and bald eagles. See *id.*

12. Conventional preservationists and market-oriented environmentalists have acknowledged that traditional funding sources are inadequate to meet the growing monetary needs of our national park system. See Rick Henderson, *Let Private Funds Help Pay for National Parks*, SALT LAKE TRIB., Oct. 5, 1997, at AA5, available in 1997 WL 3428579.

confronting the national park system. Section IV analyzes the many supplemental funding options currently being considered by Congress. Section V concludes by advocating that Congress must embrace unique funding initiatives and, in so doing, must also ensure that any newly adopted funding initiatives do not compromise the integrity of the national parks.

II. OUR NATIONAL PARKS

Many proponents of America's national parks have often stated that their creation must have been the best idea the United States Congress has ever had.¹³ Congress, in part, created individual national parks in the late-19th and early-20th centuries to preserve our natural wonders' splendid grandeur and to protect these wonders from the type of commercial exploitation that had beset Niagara Falls by the 1830s.¹⁴ Indeed, as one commentator aptly noted, Congress, in part, set aside these lands to serve as "America's answer to the great antiquities of the Old World [because they] provid[ed] the cultural validation needed, at least in the minds of its citizens, to put the fledgling country on a par with its European rivals."¹⁵

Although initial park efforts were opposed by logging and mining interests, support for the creation of national parks came largely from preservationists and great rail barons.¹⁶ The preservationists wanted to preserve the natural beauty of the land.¹⁷ The barons wanted to set aside this land because they saw the parks as profitable endeavors in which their westward bound rail lines would carry Eastern tourists.¹⁸ Indeed, Yellowstone National Park—the first park established by Congress—was created as a result of lobbying by preservationists who wanted to preserve the land and railroad owners who were eager to transport tourists.¹⁹ Establishment of national parks might not have been possible without the tourist

13. See, e.g., DAVID J. SIMON, PREFACE TO OUR COMMON LANDS: DEFENDING THE NATIONAL PARKS xii (David J. Simon ed., 1988).

14. See Dennis J. Herman, *Loving Them to Death: Legal Controls on the Type and Scale of Development in the National Parks*, 11 STAN. ENVTL. L.J. 3, 6 (1992).

15. *Id.*

16. See *id.* See also George Cameron Coggins & Robert L. Glicksman, *Concessions Law and Policy in the National Park System*, 74 DENV. U. L. REV. 729, 731 (1997) (citing ALFRED RUNTE, JR., *TRAINS OF DISCOVERY, WESTERN RAILROADS AND THE NATIONAL PARKS* 19 (rev. ed. 1990)).

17. See Herman, *supra* note 14; see also Coggins & Glicksman, *supra* note 16, at 731.

18. See Coggins & Glicksman, *supra* note 16, at 731.

19. See Satchell, *supra* note 6.

industry, and this informal alliance between the preservationists and the tourist industry has endured ever since.²⁰

By 1900, Congress had established five more national parks, and in 1906, Congress passed legislation that empowered the President to designate areas as national monuments.²¹ In most circumstances, national park creation had become popular with local constituencies because those citizens realized that park designation usually resulted in increased economic activity near the park area.²² However, preservationists and tourist enthusiasts were unable to prevent legislation that adversely affected a park when the land was seen as too valuable to be set aside.

For example, in 1913, Congress passed legislation that allowed for the Yosemite's Hetch Hetchy Valley to be dammed to provide power and water to the City of San Francisco.²³ The supporters of the bill had argued that only a few thousand people visited Hetch Hetchy each year while in San Francisco nearly 500,000 needed the water the Valley could provide.²⁴ After this loss, preservationists understood that they had to increase public support for the parks by increasing the number of people that used these parks for recreational use.²⁵ Indeed, preservationists realized that "[a]dditional roads, hotels, and other visitor facilities seemed more tolerable than dams or aqueducts."²⁶ As a result, preservationists concluded that aesthetic preservation had to be compromised to counter the Hetch Hetchy argument.²⁷

Following the Hetch Hetchy incident, many park supporters also lobbied for the creation of a comprehensive park management scheme to help facilitate the parks' ability to adequately attract more visitors.²⁸ Shortly thereafter, Congress created the National Park Service in 1916 and empowered it to promote and regulate national park lands.²⁹ The Act further provided that the National Park Service must "conserve the scenery and the natural and historic objects and the wild life therein and [must] provide for the enjoyment of the same in such manner and by such means as will

20. See Coggins & Glicksman, *supra* note 16, at 731. See also Michael Mantell, *Preservation and Use: Concessions in the National Parks*, *ECOLOGY L.Q.* 1, 6-7 (1979).

21. See Coggins & Glicksman, *supra* note 16, at 731.

22. See *id.*

23. See Mantell, *supra* note 20, at 11-12.

24. See *id.*

25. See Herman, *supra* note 14, at 7. See also Mantell, *supra* note 20, at 12.

26. Mantell, *supra* note 20, at 12-13.

27. See *id.*

28. See *id.*

29. For a thorough discussion on the history of the Act, see Winks, *supra* note 2, at 583-616.

leave them unimpaired for the enjoyment of future generations."³⁰ Hence, the mission of the Park Service, as declared by the 1916 Act, is to ensure that present generations enjoy and have access to National Park Service holdings as long as such access does not impair the park's natural and historic resources for the enjoyment of future generations.³¹

From 1916 through WWII, park directors aggressively sought to increase tourism in the parks as the Park Service continued to be "persuaded that the economics of tourism gained for the parks more support than their pristine beauty"³² This aggressive push to increase tourism succeeded beyond all expectations.³³ As a result, early park preservationists began to encounter the classic dilemma that still bedevils the Park Service today: "To exclude people, whatever the means, risked loss of support for the national park idea; to accept more people as the price of support jeopardized the parks themselves."³⁴

After WWII, the number of tourists visiting the parks dramatically increased, and the Park Service was unable to adequately accommodate all the tourists because the parks lacked an adequate number of campground facilities, food services, and parking facilities.³⁵ During the 1950s and 1960s, Congress provided the Park Service over \$1 billion to provide for the increased number of visitors. By 1965, Congress had stated that the Park Service should only allow accommodations and concessions within parks if they were consistent with preservation of park values.³⁶ In the National Park System Concessions Policy Act of 1965, Congress stated:

Congress hereby finds that the preservation of park values requires that such public accommodations, facilities, and services as have to be provided . . . should be provided only under carefully controlled safeguards against unregulated and indiscriminate use It is the policy of Congress that such development shall be limited to those that are necessary and appropriate for public use and enjoyment . . .

30. 16 U.S.C. § 1 (1998).

31. See, e.g., Winks, *supra* note 2, at 623; Robert B. Keiter, *National Park Protection: Putting the Organic Act to Work*, OUR COMMON LANDS 75 (David Simon ed. 1988). This mission has been reaffirmed and reinforced by subsequent legislation in 1970 and 1978. See 16 U.S.C. § 1 (1998).

32. Herman, *supra* note 14, at 8. See also Mantell, *supra* note 20, at 13-18.

33. See Herman, *supra* note 14, at 8.

34. *Id.*

35. See Mantell, *supra* note 20, at 17.

36. 16 U.S.C. § 20 (1998).

and that are consistent to the highest practicable degree with the preservation and conservation of the areas.³⁷

Since 1965, the number of tourists visiting our national parks has continued to escalate.³⁸ Many of our most popular national parks have become flooded with restaurants, shops, campgrounds, boat docks, ski areas, roads, and lodges. Visitors have also increasingly sought to use these parks for outdoor recreational use.³⁹ The recreational use of our national parks has long-term management implications because preservation of our parks for future generations may be jeopardized if recreational use is allowed to adversely impact a park's well-being.⁴⁰

Over the past twenty years, our parks have also been beset by numerous other problems caused by increased visitation. Such problems include: increased pollution; encroaching commercial development both within and outside the parks' borders; and excessive visitation to many of our fragile natural, historical, and cultural treasures.⁴¹ Unfortunately, the Park Service has been unable to adequately confront these problems because it has either failed to receive enough funding or it has mismanaged the funding that it has received.⁴² As a result, the Park Service once again faces the critical dilemma which has bedeviled it since its inception: "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."⁴³ Hence, the Park Service—to prevent the loss of support for the national park idea and to properly preserve the parks for present and future generations—must receive appropriate levels of funding from traditional sources, must properly manage the funding it receives, and must find supplemental funding sources which do not compromise the integrity of the park system.

III. OUR NATIONAL PARKS AND THEIR FINANCIAL QUANDARY

Virtually all of the park system's units have either failed to receive an appropriate level of funding or have mismanaged the funds that they have received. As such, the Park Service has been unable to adequately preserve our parks for present and future generations.

37. *Id.*

38. *See, e.g.,* Herman, *supra* note 14, at 9.

39. *See* Jan G. Laitos, *National Parks and the Recreation Resource*, 74 DENV. U. L. REV. 847, 847 (1997).

40. *See id.*

41. *See id.*

42. *See id.*

43. Herman, *supra* note 14, at 8.

Additionally, our national parks have faced a barrage of well-documented threats on issues ranging from high levels of pollution to an excessive number of visitors. For example, Yellowstone National Park—which has an estimated \$600 million backlog in infrastructure⁴⁴—does not have enough funding to repair a leaky sewage treatment plant that threatens Old Faithful.⁴⁵ At Mesa Verde National Park, the cliff dwellings are slowly deteriorating. Sagging roofs, eroding masonry, and missing plaster currently threatens to destroy the 585 pre-Columbian cliff dwellings of the Anasazi.⁴⁶ Unfortunately, Mesa Verde National Park, which was established to protect and preserve the Anasazi's dwellings,⁴⁷ has been unable to carry out its mission, and at the current rate, the Park Service will be unable to properly preserve these ancient ruins for future generations.

The 250 archaeological, cultural, and historic sites within the purview of the Park Service have also come under siege.⁴⁸ Many of our most important prehistoric treasures have gone unprotected.⁴⁹ For instance, at Chaco Cultural National Historic Park, nine of the thirteen major pre-Columbian Anasazi Puebloan ruins are collapsing⁵⁰—including the 35-foot tall ancient Indian great house.⁵¹ Further, many of these ruins have succumbed to overvisitation.⁵²

Numerous examples of neglect can also be found at our national historic and military sites. The Park Service has indicated that of the 17,436 historic structures surveyed, more than 53.9 percent of them were in fair or poor condition.⁵³ For instance, three wooden landmark boats are rotting at San Francisco Maritime National Historic Park, and it will cost the Park Service at least \$10.3 million to restore these boats.⁵⁴ Thousands of wax cylinder recordings are cracking and crumbling at Thomas Edison National Historic Site in New

44. See *Park Project Financing*, *supra* note 7.

45. See *NBC Nightly News: Park-service Projects Cost Taxpayers More Because for Every Project Approved Congress Approves Two Unrelated State Projects* (NBC television broadcast, Jan. 14, 1998), available in 1998 WL 5278743 [hereinafter *Park-service Projects Cost Taxpayers*].

46. See Smith, *supra* note 10, at A1.

47. See OUR NATIONAL PARKS: AMERICA'S SPECTACULAR WILDERNESS HERITAGE 201 (Susan J. Wernert ed., 1989).

48. See Satchell, *supra* note 6.

49. See Estes, *supra* note 10.

50. See NRDC *Pro: Reclaiming Our Heritage*, *supra* note 10. For an excellent discussion on Chaco Canyon, see John W. Ragsdale, Jr., *The Rise and Fall of the Chacoan State*, 64 UMKC L. REV. 485 (1996).

51. See Satchell, *supra* note 6; *Park Project Financing*, *supra* note 7.

52. See NRDC *Pro: Reclaiming Our Heritage*, *supra* note 10.

53. See *Park Project Financing*, *supra* note 7.

54. See Estes, *supra* note 10.

Jersey.⁵⁵ While at Gettysburg National Military Park, the largest collection of Civil War memorabilia is being destroyed by a leaking roof on the archives building.⁵⁶ Additionally, over 350,000 documents—including battlefield reports, maps, and photographs—have been housed in a storage room with no humidity controls or sprinkler system.⁵⁷

The Park Service has also estimated that sixteen percent of the National Historic Landmarks across the country are endangered or threatened.⁵⁸ Some of the landmarks that have been listed as endangered include Alcatraz Island in Golden Gate National Recreation Area and Shiloh Indian Mounds in Shiloh National Military Park.⁵⁹ In all, the Park Service's units are in grave danger, and the National Park Service has been unable to properly preserve our natural, cultural, and historical treasures. But why? What has caused the Park Service to allow our national treasures to come under such disrepair? First, the Park Service has not received an adequate level of funding. Second, the Park Service has mismanaged the funds it has received. Third, the Park Service has continued to gain more and more units. Finally, the Park Service has been overwhelmed by an ever-rising number of visitors.

Without proper funding, the Park Service has been unable to maintain our parks and has also been unable to confront the many vexing problems before it. The next several subsections document the problems confronting the Park Service. The following section details the current supplemental funding proposals before Congress and advocates that we must properly fund our parks so that we can preserve our nation's natural, cultural, and historic treasures for our generation and future generations.

A. More People and Less Money

In the last thirty years, the number of people visiting our national parks has doubled from 133 million to 269 million.⁶⁰ Yet, since 1977, the Park Service has seen a \$202 million decline in revenue when counted in constant dollars.⁶¹ This monetary shortfall has led to

55. See Satchell, *supra* note 6; see also *Park Project Financing*, *supra* note 7.

56. See Satchell, *supra* note 6.

57. See *Park Project Financing*, *supra* note 7.

58. See Estes, *supra* note 10.

59. See *id.* The overwhelming majority of landmarks are privately owned—such as the Empire State Building and George Washington's estate at Mount Vernon. See *id.*

60. See *id.*

61. See Satchell, *supra* note 6.

approximately a fourteen percent decline in revenue.⁶² Such a decline in revenue, coupled with a rise in visitors, has had an adverse affect on our parks.

For instance, in the last five years, staff has been cut by more than ten percent.⁶³ This has lead to fewer rangers—one ranger for each 80,000 park visitors.⁶⁴ Additionally, the parks have been unable to provide visitors with all of the services their respective parks have to offer.⁶⁵ For example, at Great Smoky Mountains National Park, several campgrounds and picnic areas have been closed,⁶⁶ and at Arches National Park, interpretive programs have been reduced.⁶⁷

Even Yellowstone National Park—the crown jewel of the national parks system—has experienced conditions similar to those at the Great Smoky Mountains and Arches national parks. Three million people visit Yellowstone each year.⁶⁸ These tourists see the world's finest geothermal activity, the nation's most varied and abundant wildlife, and scenery that leaves one breathless. However, they also encounter an overcrowded park that has reduced many of its services due to funding cuts. Indeed, Yellowstone's annual budget of \$20 million has been cut over the past two years by \$2.2 million in 1996 and by \$3 million in 1997.⁶⁹ As a result, Yellowstone has had to shut down a 116-space campground, close Norris History Museum, and discontinue many of the parks' information programs.⁷⁰

Many additional problems also confront Yellowstone National Park as a result of the funding shortage—problems that visitors might not readily detect.⁷¹ One such problem includes the park's

62. See Wendy Mitman Clarke, *Insufficient Funds: Appropriations have not Kept Pace with Park Visitation and Expansion. Faced with Shifting Priorities and a Growing Maintenance Backlog the Park Service is Struggling to Make Ends Meet*, 71 NAT'L PARKS 26, Jul. 17, 1997, available in 1997 WL 9300274.

63. See *id.*

64. See Estes, *supra* note 10.

65. See *United States National Parks Overcrowded*, *supra* note 9.

66. See *id.*

67. See *id.*

68. See *Government Press Release: Thomas Prods Park Service on Improving Relationship With Local Communities*, 105th Cong. (1997) (statement of Senator Craig Thomas R-WY), available in 1997 WL 12104987 [hereinafter *Thomas Prods Park Service*].

69. See Satchell, *supra* note 6.

70. See *National Parks Overcrowded*, *supra* note 9.

71. It should also be noted that timber harvesting and mineral extraction threaten the Park's well-being. For example, in national forests around Yellowstone, the Forest Service has leased 2.7 million national forest acres for oil and gas development. See Satchell, *supra* note 6. Recently, the park's well-being was spared when a company intending to mine gold on Yellowstone's northern border at Montana's Henderson Mountain was bought by the United States government. The mine had the potential to pollute the scenic rivers in Yellowstone. See *NBC Nightly News: President Clinton Announces a Stop to Gold Mine to be Built in Yellowstone Park* (NBC television broadcast, Aug. 12, 1996), available in 1996 WL 10302768.

decision to discontinue several research programs. First, the park decided to cancel a research program which studied how to prevent the infiltration of damaging species. The cancellation of this research program endangers the well-being of the park's grizzlies, bald eagles, and bison.⁷² Without this program, voracious lake trout threaten to wipe out native cutthroat trout, which are a vital seasonal subsistence for grizzlies, bald eagles, and white pelicans.⁷³ Second, the park discontinued several research programs that monitored geothermal activity and tracked the condition of wildlife and vegetation.⁷⁴

B. More Problems and Less Money

1. Gateway Communities and the National Parks

The growth of communities surrounding many of our national parks has also contributed to the rising number of tourists. These gateway communities include towns like Jackson, Estes Park, Cody, Red Lodge, Gatlinburg, St. George, Kalispell, Crescent City, Port Angeles, Tusayan and Hood River. Over the years, these communities have served as places for tourists to purchase basic supplies for seasonally-related tourism activities.⁷⁵ However, within the past thirty years, these communities have grown at unprecedented rates and have come to serve as full time homes for groups as diverse as computer moguls, movie stars, trust-fund cowboys, and well-off retirees.⁷⁶

I visited many of these communities throughout the 1980s and 1990s with my adventuring family, and I have witnessed first-hand their unprecedented growth. For instance, when I first visited Jackson in 1981, the town was confined within a rather small geographic location. Today, the town has sprawled along U.S. Highway 89/189/191 to the north and south and along State Highway 22 to the west as subdivisions and ranchettes have popped up on just about every available private landholding.

Like Jackson, many other gateway communities are booming, and their growth has likewise contributed to the number of tourists that visit our national parks. Many additional problems also face our parks as a result of the gateway communities' rapid growth. These

72. NBC Nightly News: *National Parks Overcrowded*, *supra* note 9.

73. See Satchell, *supra* note 6.

74. See *id.*

75. See John W. Ragsdale, Jr., *Balancing Nature and Commerce in Gateway Communities*, 30 URB. LAW. 293, 293 (1998) (book review).

76. See *id.* at 295-97.

communities bring smog, pollution, and other urban problems right to a park's doorstep.⁷⁷ For example, air pollution in many of our parks is extremely high as automobiles, snowmobiles, jet skis, terrain vehicles, and airplane/helicopter oversights emit nitrous oxide and hydrocarbons. Air pollution in some of the western parks have reached levels as high as those experienced in Los Angeles.⁷⁸

Such pollution has impaired the scenic beauty of the parks and disrupted animal and plant life. As a result, if the Park Service is to maintain and preserve our parks for this generation and future generations, it must study the impacts of pollution, and it must facilitate plans that will eliminate or lessen the impact of the pollution. To do such, the Park Service must have appropriate levels of funding—funding they do not currently have.

Recently, the Park Service, in an effort to prevent continued air pollution, decided to ban cars completely from Grand Canyon, Zion, and Yellowstone national parks by 2002.⁷⁹ In so doing, the Park Service appropriated enough funds to implement a new transportation system which will allow tourists to visit these parks via light rail, buses powered by natural gas or electricity, natural trails, or bicycle paths.⁸⁰ The Park Service's decision will drastically reduce the air pollution emitted at these parks. However, the decision will also shift the pollution problems to the gateway communities and help facilitate their continued growth.

Indeed, at Grand Canyon National Park, the park's 4.5 million visitors would leave their cars near the southern entrance at Tusayan and ride the shuttles into the park.⁸¹ Since this announcement, Canyon Forest Village Company has actively sought to develop land on the north side of Tusayan near the proposed rail/bus terminal.⁸²

77. See *id.* at 294.

78. See *Park Project Financing*, *supra* note 7.

79. See *National Parks: From member station KNAU in Arizona*, Mike Lamp reports cars and buses will soon be banned from national parks such as the Grand Canyon (National Public Radio broadcast, Dec. 23, 1997), available in 1997 WL 12824267 [hereinafter *National Parks: From member station KNAU in Arizona*].

Senator Paul Sarbanes (D-MD) has recently proposed appropriating \$250 million over the next five years to buy shuttle buses and build light-rail systems at popular parks and historic areas. See *National Resources National Parks: Bill Seeks to Improve Parks for Visitors* (American Political Network Greenwire, May 1, 1998).

80. See *National Parks: From member station KNAU in Arizona*, *supra* note 77.

81. See *id.* It should also be noted that the banning of automobiles drives existing tour companies out of business—one such company transports 60,000 people to the park each year. See *id.*

82. See *Signs Protest Babbitt, Hotel Development Targeting Interior Chief is Called Dishonest*, DALLAS MORNING NEWS, Apr. 29, 1998, at 20A, available in 1998 WL 2531894 [hereinafter *Signs Protest Babbitt*]. This development arose as part of a land exchange deal between Canyon Forest Village Company and the forest service. Under the deal, Canyon Forest exchanged 2,184 acres of rangeland it owned inside Kaibab National Forest for a parcel of land owned by

This development, if approved, may include 3,000 hotel rooms, 425,000 square feet of retail space, and 2,600 homes.⁸³ Even if this particular development is not approved, Grand Canyon's new transportation plan, in time, will greatly contribute to Tusayan's growth.⁸⁴

Acadia National Park has also decided to ban cars from its park as early as next year. Roughly three million people visit the 41,000 acre park per year, making it the second most visited national park per acre.⁸⁵ To alleviate pollution problems and traffic congestion, the park has decided to implement a shuttle bus system.⁸⁶

The Great Smoky Mountain National Park has also considered implementing a shuttle bus system to prevent traffic congestion and to alleviate pollution problems.⁸⁷ In the summer, pollution generated in the area generally reduces the summer visibility from sixty-five miles to twelve miles.⁸⁸ More than nine million tourists visit the park and surrounding attractions—such as Dolly Parton's Dollywood theme park.⁸⁹ The Park Service expects that number to rise

the forest service on the north side of Tusayan. See, e.g., Steward Udall, *Canyon Forest Village Best Hope for Grand Canyon's Future*, ARIZ. REPUBLIC, Oct. 21, 1997, at B6, available in 1997 WL 8401351; *New plan may speed up Grand Canyon rail system*, LAS VEGAS REVIEW-JOURNAL, Feb. 6, 1998, at 11B, available in 1998 WL 7208566.

As illustrated by Canyon Forest's proposed land exchange deal, land exchanges and planning have become an important method of securing land for private concerns in gateway communities. For a good discussion on land exchanges and planning in gateway communities, see Kurt Culbertson, *National Park or Bust: Gateway Communities Cope with Crowds*, 63 PLANNING No. 11, Nov. 1, 1997, at 4, available in 1997 WL 10256092 (includes related article on park planning).

83. See Satchell, *supra* note 6; *Signs Protest Babbitt*, *supra* note 82. This project has come under exacting scrutiny from local Tusayan businessmen and from the Havasupai Indian Tribe. The businessmen have opposed the development and complained that Secretary of Interior Babbitt will benefit if the plan is approved because Babbitt's family business is a partner in the project and because he has lobbied on behalf of Canyon Forest Village. See *Signs Protest Babbitt*, *supra* note 82. The Havasupai Indian tribe has also expressed concern that groundwater pumped by the new development will reduce the flow of water and disrupt a waterfall that is sacred to the tribe. See Gordon Smith, *National Park at a Cross Roads; Curbing Grand Canyon's Traffic*, SAN DIEGO UNION-TRIBUNE, Apr. 26, 1998, at A1, available in 1998 WL 4005524.

84. See *National Parks: From member station KNAU in Arizona*, *supra* note 79.

85. See Peter Pochra, *Question of Preservation Acadia National Park Remains a Spectacular Spot, but Congestion has some People Worrying about the Future*, PORTLAND PRESS HERALD, May 10, 1998, at 14D, available in 1998 WL 2490220.

86. See *id.* The park has already received eight 28-passenger propane-powered buses from the state of Maine. The park expects to transport 2,600 passengers a day. The Maine Transportation Department paid \$870,000 for the buses. See *id.*

87. See Marti Davis, *Are Buses Headed to Cades Cove? Mass Transport Eyed as Option to Autos*, KNOXVILLE NEWS-SENTINEL, May 1, 1998, at B1, available in 1998 WL 8573783.

88. See Satchell, *supra* note 6.

89. See *id.* Other national parks have also experienced resort-oriented development encroaching their borders. See *infra* note 338.

after Harrah's new \$82 million casino opens near Gatlinburg on the Cherokee Indian Reservation.⁹⁰

The encroaching developments surrounding Great Smoky Mountain National Park may also signal a further urbanization of the gateway communities. Indeed, gateway communities are prone to additional resort-oriented developments such as theme parks, casinos, and live entertainment. For instance, in Cedar City, Utah—which is approximately sixty miles from Zion National Park and within 150 miles of many other national parks—a company intends to build a 20,000 acre international airport, an Old West-style theme park, and a commerce center.⁹¹ It is thought that these attractions would bring approximately 17,000 visitors a day,⁹² and the FAA has stated that the airport would handle approximately two million people per year starting in the fall of 2000.⁹³

2. *The Gateway Communities and Yellowstone*

Gateway communities do not simply beset our parks with more visitors and more problems. On the contrary, parks rely on gateway communities to provide many—if not most—of the tourists with lodging, food, and other general conveniences. Likewise, gateway communities rely on the park to provide tourists with the services the park customarily affords its visitors. In many ways, the national parks and their gateway communities have been wed by time and necessity, and the importance of their relationship should not be underestimated.

Like other national parks and their respective gateway communities, Yellowstone and its gateway communities have developed an integral relationship over the years. Indeed, after years of coexistence, the communities and the park have developed an ebb and flow relationship—with each entity's decisions affecting the other. The gateway communities surrounding Yellowstone, like those surrounding other national parks, have experienced rapid and largely uncontrolled development in the past fifteen years.⁹⁴ Within the 18

90. See Satchell, *supra* note 6. The casino is anticipating four million gamblers each year. See *id.*

91. See Lucinda Dillon & Joel Campbell, *Utah Firm has Big Plans and Iffy Past*, DESERET NEWS, May 5, 1998, at A1, available in 1998 WL 11248034; Lucinda Dillon, *Will Huge Park Lure Millions to Cedar City?*, DESERET NEWS, May 4, 1998, available in 1998 WL 11247757.

92. See Dillon, *supra* note 89, at A1. See also Steven Oberbeck, *Desert Dream or a Mirage?; Vivid Pictures of S. Utah Project Emerges, But Officials Take Wait-and-See Attitude; Desert Dream or a Mirage in Southern Utah*, SALT LAKE TRIB., May 6, 1998, at A1, available in 1998 WL 4051587.

93. See Dillon & Campbell, *supra* note 91.

94. See Satchell, *supra* note 6.

million-acre Greater Yellowstone Ecosystem,⁹⁵ the population has increased by over twelve percent since 1990 to more than 322,000 people.⁹⁶ In all, these communities have become urban in nature and now include commercial strips, motels, golf courses, galleries, state-of-the-art recreational centers, and high-priced ranchettes.⁹⁷

With these developments, the Yellowstone region has obviously encountered numerous problems associated with urbanization such as pollution, smog, crime, and overcrowded conditions.⁹⁸ The developments have had an adverse impact on the park's wildlife and have also posed a long-term threat to the geothermal activity in the region.⁹⁹ However, due to a lack of funding, the park has been unable to adequately address these problems because it eliminated scientific programs that had monitored geothermal, wildlife and vegetation activity.¹⁰⁰

The gateway communities within the Yellowstone region have also affected the park's internal environmental planning decisions. For example, the park decided to close snowmobiling and snow-coach roads within Yellowstone as a result of a court settlement.¹⁰¹ Biodiversity Legal Foundation and Fund for Animals brought suit against the park to effectuate closure of the roads.¹⁰² The groups wanted the roads closed to reduce the movement of bison outside of the Park and thereby curtail the number of buffaloes that could potentially be slaughtered by Montana riflemen.¹⁰³

The closure of roads caused many to cancel their plans to travel to the gateway communities.¹⁰⁴ Gateway community members worried that the continued closure of the park's roads would have a devastating impact on the local economy during the winter

95. See *id.* The Yellowstone buffer zone region "includes Grand Teton National Park, seven national forests, three national wildlife refuges, and more than 3 million acres of private land." *Id.*

96. See *id.* This area will continue to grow as eight ski resorts surrounding the park are currently expanding their facilities. See *id.*

97. See Ragsdale, *supra* note 75, at 294.

98. See Satchell, *supra* note 6.

99. See *id.* With increased development comes increased water usage. If the water table is lowered by increased water usage, the geysers could dry up. See *id.*

100. See *supra* note 11 and accompanying text.

101. See NPCA Supports Yellowstone Postponement of Road Closing, U.S. NEWSWIRE, Jan. 16, 1998, available in 1998 WL 5682295.

102. See *id.*

103. See *id.* Since the mid-1980s, Montana ranchers, afraid of the diseases buffalo may carry, have herded up and shot any buffalo that wander out of Yellowstone. See, e.g., *Buffalo of Yellowstone National Park Face Mass Slaughter by Montana Ranchers Afraid of Disease; Indian Tribes Vow to Save Them* (NBC television broadcast, Jan. 22, 1997), available in 1997 WL 5385237; *Bison in Yellowstone May now be Allowed to Roam out of the Park and be Subject to a Hunting Season* (NBC television broadcast, Jul. 23, 1997), available in 1997 WL 11357392.

104. See, e.g., Thomas Prods Park Service, *supra* note 68.

season.¹⁰⁵ Because of these fears, members of the federal government, state government, and gateway communities met with Yellowstone officials, and, after their meeting, the Park Service decided it would reopen the roads.¹⁰⁶

With the roads reopened, the park has decided to study the effects of winter use¹⁰⁷ over the next two winters and then develop a comprehensive plan.¹⁰⁸ It has been estimated that as many as 1,000 snowmobiles enter the park each day and emit nitrous oxide and hydrocarbons equivalent to the tailpipe emissions of 1.7 million cars.¹⁰⁹ It will cost the park approximately \$1.5 million over a three-to-five year period to expand research and monitoring of wildlife movements and collect information on weather patterns, snow conditions, and visitor-use patterns; after two years of research and monitoring, the results will be analyzed and a determination made on whether the park will limit any winter use activities.¹¹⁰

In response to the entanglement between the Park Service and gateway communities in Yellowstone, Senator Craig Thomas (R-WY) has emphasized that both groups communicate because such communication helps to both "plan for the future and address local issues before they become large scale problems;" Thomas feels the national parks cannot function as islands because the economics, the jobs, and the culture of our national parks and their gateway communities are intertwined.¹¹¹ Indeed, our parks are not islands, and the Park Service will have to work with these communities to address the problems that confront their respective regions.

This presents our underfunded national parks with two problems. First, studies will have to be funded to determine how each national park is being affected by increased visitation or increased pollution; second, the parks will have to implement and fund a plan to correct or alleviate the problem. As a result, the Park Service and Congress will have to find a way to properly fund our parks before their essence is jeopardized and their treasures are forever lost.

105. *See id.*

106. *See id.*

107. Winter use includes snowmobiling, cross-country skiing, snowshoe hiking, snow-coach riding, and any other winter-related activities. *See NPCA Supports Yellowstone Postponement of Road Closing*, *supra* note 101.

108. *See id.*

109. *See Satchell*, *supra* note 6.

110. *See NPCA Supports Yellowstone Postponement of Road Closing*, *supra* note 101.

111. *Government Press Release: Thomas Prods Park Service*, *supra* note 68.

3. *City Growth and The National Parks*

In other areas, city growth is gradually encroaching our parks' borders. These communities include cities like Albuquerque, Miami, and New Orleans. However, these cities differ from the gateway communities in that these cities have grown to the parks' borders due to suburban sprawl associated with business growth. By contrast, gateway communities have grown solely to accommodate visitors to the parks.¹¹²

Suburban sprawl presents our parks with many unique problems—some of which may not be curable. For example, a new airport is being built near the Everglades and Biscayne national parks.¹¹³ The noise and pollution from the planes will obviously have an adverse impact on the parks, and the Park Service will be forced to fund studies and develop programs that best mitigate the adverse impacts caused by the development. Likewise, in Albuquerque, a six-lane highway is proposed to be built through Petroglyph National Monument.¹¹⁴ This highway, which is expected to carry 24,000 vehicles a day,¹¹⁵ will have an adverse effect on the park's serenity and will obviously increase the pollution in the park. Once again, the Park Service will be faced with expending money to remedy a problem caused by suburban sprawl.

In New Orleans, housing developments encroach Jean Lafitte National Historical Park on its northeastern and eastern boundaries. Lafitte was created in 1978 and includes a 20,000-acre wetlands preserve near Marrero, Louisiana.¹¹⁶ I am particularly familiar with this park because I lived in Marrero from 1974 through 1993. I not only witnessed the creation of the park, but I observed its development.

112. See Ragsdale, *supra* note 75, at 295. In reviewing a book discussing gateway communities, Ragsdale adeptly took the book's authors to task for their inaccurate portrayal of what constituted a gateway city. The authors had identified such established urban centers as Denver, Tucson, and Reno as gateway communities. Ragsdale concisely explained that "[t]hese places do have the common denominator of rapid growth, but the immediate presence of national parks, national forests, or wildlife areas is a secondary reason for the existence, economic focus, and expansion of the communities." *Id.* at 295.

113. See Satchell, *supra* note 6.

114. See Doug Johnson, *Highway May Bisect Petroglyphs for Monument, Bill Would Mean a Road Runs Through It*, ROCKY MOUNTAIN NEWS, Mar. 15, 1998, at 14A, available in 1998 WL 7931242. On April 8, 1998, Congress passed a bill sponsored by Senator Pete Domenici (R-N.M.) that would withdraw 8.5 acres from Petroglyph National Monument in order to facilitate highway construction. See *Environmental Coalition Urges Clinton Veto of Road Building Assault on National Parks*, U.S. NEWswire, Apr. 8, 1998, available in 1998 WL 5684675.

115. See Johnson, *supra* note 114.

116. See Sandra Barbier, *Banquet to Honor Father of the Park*, NEW ORLEANS TIMES-PICAYUNE, Sep. 14, 1997, at F2, available in 1997 WL 12666359. The only national park in Louisiana, Lafitte has approximately 800,000 visitors per year. See *id.*

Indeed, I watched as the Park Service built a visitor's center and numerous trails throughout the park during the mid-1980s.

When the park was completed, I visited it quite often and walked on the trails and boardwalks that twist and turn through the swamplands of southern Louisiana. The park has approximately eight miles of boardwalk and hard-surfaced trails that meander through maple forests, cypress swamps, and fresh water marshes. The easiest place to observe the park's natural beauty is on the Palmetto Trail, which starts at the visitor center.

The Palmetto Trail, which is about a mile in length, is shaded by swamp maple and bald cypress. As visitors walk along the trail, they see wide, flat fronds of bushy palmetto plants. At the end of the Palmetto Trail, visitors can continue hiking on the mile-long Bayou Coquille Trail. This trail takes visitors on boardwalks to the Kenta Canal, where they can view alligators, nutria, pelicans, snakes, and other swamp wildlife.¹¹⁷

During the 1980s and 1990s, housing developments gradually grew to the park's northeastern and eastern boundaries. In 1980, the subdivision in which I lived was the second-to-last development on Louisiana Highway 45 (LA 45) before the park entrance. The town of Lafitte, a sleepy little trawling community of 5,000, was more than twenty miles to the south. Between the two lay nothing but swamp land. The park is located on the west side of LA 45, and the land along the east side is primarily privately owned.

Throughout the 1980s, developers gradually began draining the swamps and developing land on the northeast side of the park. Developers have recently begun developing all the land east of LA 45—approximately 31,800 acres.¹¹⁸ Urban planners estimate that in future years, the area's population will probably more than double.¹¹⁹

As the population grows in the region, the number of people visiting the park will increase, and the amount of pollution affecting the park will increase. Additional development in the area will also reduce the number of alligators, nutria, pelicans, and other swamp

117. For boating enthusiasts, the park has over thirty miles of available waterways. The park also offers canoe tours of the swamp. Most are conducted during the day, but the park offers night tours on the eve of, and on the night of, a full moon.

118. See Joanna Weiss, *Councilman Orders Study on Land Use; Homes, Offices Compete for Acreage in West Jeff*, NEW ORLEANS TIMES-PICAYUNE, Jan. 24, 1997, available in 1997 WL 4200998 [hereinafter *Study on Land Use*]; Joanna Weiss, *Study Intended to Avert Sprawl: Planners Watch West Bank Grow*, NEW ORLEANS TIMES-PICAYUNE, Jun. 21, 1997, at B1, available in 1997 WL 4228065 [hereinafter *Study Intended to Avert Sprawl*]; Joanna Weiss, *Harvey-Marrero Primed for Growth: UNO Points to Need for Park, School Sites*, NEW ORLEANS TIMES-PICAYUNE, Sep. 23, 1997, at B1, available in 1997 WL 12667840 [hereinafter *Harvey-Marrero primed for growth*].

119. See Weiss, *Study Intended to Avert Sprawl*, *supra* note 118.

wildlife that reside in the park. The park rangers will have a difficult time maintaining the natural beauty of the park without adequate funding. This park annually operates on a shoestring budget, and without additional funds, park rangers will be unable to protect the park for this generation or future generations.¹²⁰

C. More Parks and Less Money

In the last thirty years, the number of park sites under the control of the National Park Service has risen from 259 to 374.¹²¹ The vast majority of these new parks have been established at the insistence of Congress members who have wanted to procure a national park for their home districts.¹²² For example, Representative Ralph Regula (R-OH), who recently had \$20 million appropriated for Cuyahoga Valley Park, stated that it is every Congress member's responsibility to support and pass projects for their home district's benefit.¹²³ Indeed, with national parks currently pumping \$10 billion annually into local economies,¹²⁴ many Congress members view procuring a park for their home district as important as procuring a government facility or installation.¹²⁵

By and large, the Park Service has deemed that many of these "park pork" projects are either unnecessary or too expensive.¹²⁶ For instance, Senator Robert Byrd (D-WV) recently had the National Park Service renovate a train station and establish a visitor's center for \$2.5 million in an old mining boomtown in Thurmond, West Virginia.¹²⁷ However, the train does not even stop at Thurmond because it only has seven residents.¹²⁸ Nevertheless, Senator Byrd wanted to restore the town to its glory days and plans to appropriate more money so the Park Service can renovate the downtown area.¹²⁹

120. For example, many of the trails in the park come to an abrupt end, and this is not by design. In most circumstances, the park simply ran out of money and was unable to complete the trail. The Bayou Coquille Trail—the parks' most popular trail—is one such example; it comes to an end after the massive bridge that crosses Kenta Canal. The trail was supposed to continue on for another three miles, cross back over Kenta Canal, and end at the visitor's center. However, due lack of funding, the trail remains uncompleted.

121. See Estes, *supra* note 10.

122. See Satchell, *supra* note 6.

123. See *Park-service Projects Cost Taxpayers*, *supra* note 45.

124. See Satchell, *supra* note 6.

125. For example, one congressman was able to secure \$66 million to create Steamtown National Historic Site in Scranton, Pennsylvania. See *id.* Although the park was supposed to attract up to 500,000 visitors per year and revitalize the rust belt, only 200,000 people visited the site last year. See *id.*

126. See Clarke, *supra* note 62; Satchell, *supra* note 6.

127. See *Park-Service Projects Cost Taxpayers*, *supra* note 45.

128. See *id.*

129. See *id.*

The Park Service also deemed that the creation of Boston Harbor Islands National Recreation Area for \$40 million was unnecessary and too expensive.¹³⁰ This project was enacted by the Massachusetts delegation as a farewell tribute to retiring Congressman Gerry Studds (D-MA).¹³¹

Other Congress members appropriate funds for construction projects in parks that lie in their home district. These Congress members usually want to appropriate an excessive amount of money to build, for example, a new visitor's center.¹³² On other occasions, Congress members want to play park ranger and appropriate money for construction projects that run counter to the Park Service's management plans. For instance, Senator Frank Murkowski (R-AK) recently proposed that Denali National Park should build a \$100 million, 80-mile gravel road along the park's northern rim.¹³³ Park ranger Murkowski sought this funding because he believes automobiles should be allowed in the park.¹³⁴ The park has never allowed automobiles within its borders and has successfully transported its visitors into the park via shuttles and tour buses.¹³⁵

Park officials have been reluctant to oppose many of these projects because they do not want to bite the congressional hands that feed them, and Congress has taken advantage of the situation.¹³⁶ In the past twelve years, Congress has approved two pet congressional projects for every one Park Service project—which has amounted to \$1.7 billion appropriated for congressional projects and \$800 million appropriated for Park Service projects.¹³⁷ For example, in 1985, the National Park Service requested \$61.7 million for sixteen projects, and Congress appropriated nearly \$93 million for thirty projects.¹³⁸

Over the past thirty years, the appropriation of funding for pet congressional parks and construction projects has diminished the Park Service's ability to adequately care for its parks. Congress must

130. See Satchell, *supra* note 6.

131. See *id.*

132. See Clarke, *supra* note 62.

133. See *Senator Proposes Road for Denali: Alaskan Park Project Could Cost \$100 Million*, ST. LOUIS POST-DISPATCH, Nov. 2, 1997, at 7A, available in 1997 WL 3375523. The Park Service noted that the cost of the new project is equal to the amount the Park Service had planned to spend for improvements at all of Alaska's national parks over the next fifteen years. See *id.*

134. See *id.*

135. See *id.* Further, this legislation is in stark contrast to the Park Service's recent initiatives to ban automobiles in our national parks. See *id.*

136. See Clarke, *supra* note 62.

137. See *Park-Service Projects Cost Taxpayers*, *supra* note 45.

138. See Clarke, *supra* note 62. The biggest disparity came in fiscal year 1992 when \$84 million was requested for twenty-two projects, and Congress appropriated \$217 million for eighty-seven projects. See *id.*

not foolishly waste limited appropriations on pet congressional parks or construction projects. Instead, Congress must appropriate the necessary funds to preserve the parks we presently have for this generation and future generations. Only after our current parks have been properly funded should Congress consider appropriating funding for additional parks or for useful construction projects.

D. Park Service Mismanagement and Less Money

Congress, however, has not been the only branch of government that has foolishly spent limited funding on construction projects. Unfortunately, the Park Service itself has misused many of the funds appropriated to it. Indeed, the Park Service annually spends over ninety percent of its funds on construction projects and less than ten percent of its budget on resource management—which is supposed to be the primary purpose of the National Park Service.¹³⁹ This has led to increased deterioration or degradation of our natural, historic, and cultural treasures. For example, at Casa Grande Ruins National Monument in New Mexico, the Park Service recently funded the construction of a new interpretive center and maintenance building but failed to fund the maintenance projects needed to preserve and protect Casa Grande ruin—a massive four-story building constructed more than 600 years ago by Native Americans.¹⁴⁰

The Park Service has also foolishly wasted its funds on over-priced construction projects. For instance, at Delaware Gap National Recreation Area in Pennsylvania, the Park Service recently built a state-of-the-art \$333,000 outhouse.¹⁴¹ The two-toilet outhouse has a gabled roof made of Vermont slate, a cobblestone foundation built to withstand earthquakes, and porch railings made from quarried Indiana limestone.¹⁴² Moreover, the two toilets have been deemed environmentally friendly as they can work without running water and produce compost, which the park can later use for fertilizer.¹⁴³ Elsewhere, the Park Service built a \$1 million outhouse in Glacier Park, constructed an \$8 million civic center in tiny Seward, Alaska,¹⁴⁴ and built numerous new employee housing units in Yosemite at \$584,000 per unit.¹⁴⁵

139. *See id.*

140. *See Estes, supra* note 10.

141. *See 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.

142. *See id.*

143. *See id.*

144. *See Park-Service Projects Cost Taxpayers, supra* note 45.

145. *See Frank Greve, Park Service-Officials Say They'll Flush Out Pricey Construction*, DAYTON DAILY NEWS, Nov. 2, 1997, at 6AA, available in 1997 WL 11438308.

After the Delaware Gap National Recreation Area debacle, the Park Service adopted a value analysis program.¹⁴⁶ Under this program, each park construction project will be scrutinized by the Park Service.¹⁴⁷ Further, the Park Service has complied with Representative Regula's request to have an outside contractor review the agency's planning, design and construction operations at the agency's Denver Service Center.¹⁴⁸ The center employs a staff of more than 500 and has operating costs that range between 25 and 30 percent of total Park Service construction costs.¹⁴⁹ By contrast, the Bureau of Land Management and the Fish and Wildlife Service each employ a staff of about fifty at similar centers, they usually contract out construction work, and they have much lower construction costs than the Park Service.¹⁵⁰

The Park Service has also failed to compile information that accurately reflects the maintenance needs of the park system. Instead, the Park Service has been relying on information compiled by the service four years ago.¹⁵¹ Recently, new accounting and management standards have been imposed on federal agencies by the Government Performance and Results Act, which could help the Park Service accurately detail its maintenance backlog.¹⁵²

Further, Senator Michael Enzi (R-WY), who is also a licensed accountant, has advocated that the Park Service should use a financing technique known as capital budgeting to ensure that money is spent more efficiently.¹⁵³ Under the current system, our parks have failed to develop sufficient plans and clear goals on how to appropriately manage funding for large capital expenditures. For example, Yellowstone National Park needed \$5 million for a sewer facility; however, the park failed to request the money in a timely manner.¹⁵⁴

146. See Christopher Smith, *Park Service Boss Wants Building Budget Doubled; NPS Boss Seeks Doubling Funds For Park Service*, SALT LAKE TRIB., Nov. 2, 1997, at A1, available in 1997 WL 15234129.

147. See *Id.*

148. See Greve, *supra* note 145.

149. See *id.*

150. See *id.*

151. See FY99 Interior Appropriations, *supra* note 4. In January 1997, the Park Service estimated that its maintenance backlog was about \$6.1 billion. See *id.* Of this amount, about ninety-two percent were construction projects, and of that amount, over twenty-one percent reflected the construction costs of new facilities. See *id.* Some examples are \$16.6 million for a new visitor center and park entrance at Acadia National Park and \$24 million for a bike path at Colonial National Historic Park in Virginia. See *id.* Including the new construction costs in the overall figure of backlog costs is not appropriate because it goes beyond what could reasonably be seen as maintenance costs. See *id.*

152. See *id.*

153. See Government Press Release: *Enzi Lends Budgeting Knowledge to Presidential Commission*, Jan. 30, 1998, available in 1998 WL 7321397.

154. See *id.*

If the park had employed capital budgeting, it would have developed sufficient plans and clear goals so that it could appropriately budget for large capital expenditures.¹⁵⁵ Under this system, each park would be able to appropriately budget for large capital projects and prepare for the future by setting "aside money for capital needs, tangible assets an agency must purchase (i.e. vehicles, buildings) on an irregular basis, and using a strategic plan of measurable goals as a guide . . ."¹⁵⁶

Using capital budgeting, the Park Service could have taken full advantage of the highway funds provided to it under the 1991 Intermodal Surface Transportation Efficiency Act (ISTEA). The Park Service received \$84 million a year for five years through the federal highway budget under ISTEA to repair its roads or to create alternative transportation modes such as visitor transport systems and trails.¹⁵⁷ The parks are also able to receive funding under ISTEA to repair any existing roads that pass through parks that have been deemed to possess outstanding scenic, recreational, historic, and cultural value.¹⁵⁸ However, because the parks have failed to develop sufficient plans and clear goals, many have not requested funding for road repairs. The parks must rectify this problem because they will be eligible to receive more funding under ISTEA-2.¹⁵⁹

IV. FUNDING OUR NATIONAL PARKS: FROM WHERE WILL THE FUNDS COME?

Congress must find supplemental revenue sources to assist the National Park Service in protecting our parks. Last year Congress

155. *See id.*

156. *Id.*

157. *See* Todd Wilkinson, *Road Block Ahead? (The Intermodal Surface Transportation Efficiency Act of 1991 is Up for Reauthorization Fall 1997: ISTEA Affects All Surface Transportation Except Rail and Water)*, 71 NAT'L PARKS 22, Sep. 19, 1997, available in 1997 WL 9300286. Prior to ISTEA, only \$40 million of the federal highway budget had been spent on national park roads between 1975 and 1991. *See id.*

158. *See id.* Scenic byways that have received over \$80 million in repairs include the Blue Ridge Parkway in Virginia and North Carolina, Trail Ridge Road in Rocky Mountain National Park in Colorado, Going to the Sun Road in Glacier National Park in Montana, and the Beartooth Scenic Byway in Montana and Wyoming leading into Yellowstone National Park. *See id.*

159. *See* Edwin Chen, *Senate Fattens Its 'Ice Tea' With Porky Politics*, LOS ANGELES TIMES, Mar. 10, 1998, at A1, available in 1998 WL 2406541; Tom Ichniowski, *Panel Adds \$26 Billion to ISTEA-2*, 240 ENGINEERING NEWS-RECORD 16, Mar. 9, 1998, available in 1998 WL 8134751. Persuaded by Senators Phil Gramm (R-Tex.) and Robert C. Byrd (D-W.Va.), the current ISTEA bill was written to include \$850 million for five years for roads through national parks, Indian reservations, and wildlife refuges. *See id.* In all, Gramm and Byrd, who have been commonly called the two legendary practitioners of pork-barrel politics, persuaded the Senate to add \$26 billion to ISTEA-2, including an extra \$1.7 billion for Texas roads and \$1.8 billion for roads in West Virginia. *See* Chen, *supra*

approved a three-year pilot program designed to raise fees at one hundred parks. This program is expected to generate over \$48 million.¹⁶⁰ Congress, under the leadership of Senator John McCain (R-AZ) and Senator Ted Stevens (R-AK), established the National Parks and Environmental Improvement Fund.¹⁶¹ The fund would contain \$800 million,¹⁶² and the Park Service would receive approximately \$10 million per year in interest from the fund.¹⁶³ But much more money is needed to alleviate the current problems in the parks, and new revenue sources like these must be secured in order to assist our national parks in fulfilling their congressionally-mandated mission of protecting our parks for this generation and future generations. Consequently, it is incumbent upon Congress to enact legislation that can provide additional funding to supplement current congressional appropriations.

Senator Thomas has recently proposed a host of supplemental funding initiatives in his bill for the Vision 2020 National Parks Restoration Act.¹⁶⁴ This bill incorporates numerous funding proposals that have been evaluated by Congress over the past several years. Under Senator Thomas' bill, our national parks would receive supplemental funding from higher entrance fees, the issuance of bonds, private donations, corporate partnerships, and higher fees on larger concessionaires.¹⁶⁵ These proposals, many of which have been hotly debated in Congress, would provide needed supplemental funding for our national parks. The next several subsections will discuss and critique these supplemental funding proposals.

160. See Clarke, *supra* note 62.

161. See Deborah Frazier, *Parks Need \$5 Billion in Fix-up Funds; Senator Solicits Views on Restoration Plan*, ROCKY MOUNTAIN NEWS, Nov. 18, 1997, at 21A, available in 1997 WL 14972325.

162. See *id.* The Federal Treasury received the \$800 million from oil and gas revenue awarded to the federal government by the United States Supreme Court earlier this year. See *id.* The oil lease revenue was derived from wells on lands underlying tidal waters off Alaska's North Slope. See *id.* Ownership of the lands had been the subject of dispute between the federal government and the State of Alaska. See *id.*

163. See *id.* The Fund will generate \$50 million per year. \$40 million will be equally divided between the national parks, fish and wildlife refuges, national forests, and the Bureau of Land Management. See *id.* \$10 million will be used for marine research in the North Pacific Arctic Ocean and Bering Sea. See *id.*

164. See *Spotlight Story National Parks: Key Senator to Introduce Reform Bill* (American Political Network, Feb. 25, 1998) [hereinafter *Spotlight Story National Parks*]; *NPCA Praises Intent, Questions Specifics of Park Restoration Bill* (U.S. Newswire, Feb. 27, 1998), available in 1998 WL 5683401 [hereinafter *NPCA Praises Intent*].

165. See *Spotlight Story National Parks*, *supra* note 164. The bill would also allow the Park Service to charge fees for the use of parks in filming movies or television. See *id.*

A. Funds Raised from Higher User Fees

Our national parks were originally allowed to keep the profits derived from the fees they charged.¹⁶⁶ In 1918, however, Congress required that any profits derived from park fees revert to the federal treasury.¹⁶⁷ With fee proceeds flowing into the federal treasury, revenue generated from the fees does not revert back to the park of origin, and, in many instances, the fees collected do not return to any national park because funds in the general treasury can be appropriated for any governmental purpose.¹⁶⁸

Beginning in 1997, Congress enacted a three-year fee demonstration program to allow 100 out of the 375 parks to charge higher fees and keep eighty percent of the revenues.¹⁶⁹ This program was adopted to provide supplemental funding to our national parks.¹⁷⁰ Under the bill proposed by Senator Thomas, the pilot program would be extended through 2004, would allow more parks to participate, and would allow the parks to retain one-hundred percent of the revenues collected.¹⁷¹

The current funding program has generated tens of millions of dollars for the parks.¹⁷² Under the program, many parks have instituted new fees while others have doubled or tripled existing fees.¹⁷³ In all, such hikes have increased revenue by fifty-seven percent for participating parks and have helped the parks fund many necessary maintenance and renovation plans.¹⁷⁴ For example, at Colorado's Rocky Mountain National Park, the park doubled entrance fees from \$5 to \$10; as a result, the park will receive an additional \$6.5 million

166. See Leal & Fretwell, *supra* note 8. Parks such as Yellowstone and Yosemite were operationally self-sufficient by 1916. See *id.* In 1916, at least seven parks charged seasonal auto fees, which in today's dollars would range between \$26 and \$135. See *Impact of Entrance Fees on National Parks: Statement for the Subcommittee on Parks and Public Lands*, 105th Cong. (1998) (statement of Holly Lippke Fretwell), available in 1998 WL 8993632 [hereinafter *Impact of Entrance Fees*].

167. See *Impact of Entrance Fees* (statement of Fretwell), *supra* note 166.

168. See William R. Lowry, *State Parks: Laboratories for Innovation*, USA TODAY (MAGAZINE), Sep. 1, 1997, at 16, available in 1997 WL 9308452.

169. See *Spotlight Story National Parks*, *supra* note 164.

170. See *id.*

171. See *id.*

172. See Michael Romano, *Delay Sought for National Parks Fee Hike*, ROCKY MOUNTAIN NEWS, Feb. 28, 1998, at A28, available in 1998 WL 7928605.

173. See *id.* See also Lee Davidson, *Raises in Park Entrance Fees May Soon Become Permanent*, DESERET NEWS, Feb. 27, 1998, at A12, available in 1998 WL 2940937. In Utah, entrance prices doubled at Bryce Canyon, Arches, Canyonlands, and Zion national parks from \$5 a car to \$10. See *id.* At Hovenweep National Monument, the park began charging a \$6 fee per car, and at Natural Bridges National Monument, the park raised fees from \$4 to \$6 per car. See *id.* Glen Canyon National Recreation Area has also begun charging \$5 per car and \$5 per boat. See *id.*

174. See *id.*

in revenues during the life of the three-year program.¹⁷⁵ Park officials have stated that the extra funds will be used entirely for projects that directly benefit the visiting public, including a major overhaul of Trail Ridge Road.¹⁷⁶

The recreational fee demonstration program has also successfully alleviated backlogged projects at other parks. For instance, at Yellowstone, the Park Service has used the funds to rehabilitate deteriorated electronic infrastructure, repair utility systems, replace deteriorated docks, restore Turbid Lake roads, rehabilitate trails and campsites, repair overlooks, and restore interpretive exhibits.¹⁷⁷ In Alaska, the Park Service has used fees to make major repairs and improvements at all of Alaska's national parks.¹⁷⁸ In Denali National Park, the park, which has received an additional \$2 million in fee money, will use the funds to repair Riley Creek Campground, replace broken and outdated audio-visual equipment in the park auditorium, repair three trails, paint visitor centers near the park entrance, and repair deteriorated interpretive displays along the park road and entrance trails.¹⁷⁹ In addition to work at Denali, Glacier Bay National Park will use the \$3 million it has received from fees to finance several projects—including several marine resource studies.¹⁸⁰

The fee demonstration program has proved so successful in alleviating backlogged construction and maintenance repairs that Congress members from Tennessee and North Carolina have recently sought to have legislation enacted which would allow Great Smoky Mountain National Park to charge entrance fees.¹⁸¹ The park is one of only two that have not been permitted to charge entrance

175. See Romano, *supra* note 172. Vehicle fees have also risen from \$5 to \$10 at other national parks in Colorado, including Mesa Verde National Park and Dinosaur National Monument. See *id.*

176. See *id.*

177. See *Impact of Entrance Fees on National Parks: Hearings Before the Subcommittee on National Parks and Public Lands, House Committee on Resources, Regarding the Recreation Fee Demonstration Program*, 105th Cong. (1998) (testimony of John Berry, Assistant Secretary for Policy, Management and Budget), available in 1998 WL 8993624 [hereinafter *Impact of Entrance Fees*].

178. See *Trails, Campground Repairs Top Denali Fee Spending; Glacier Bay Research, Trail Work and Utility Improvements Set* (Department of the Interior, Dec. 17, 1997), available in 1997 WL 779153. Denali charges entrance fees of \$5 per person or \$10 per family. See *id.* Glacier Bay charges \$5 per cruise ship or tour boat. See *id.* At Klondike Gold Rush, visitors touring the historic Moore house pay \$2, and in Sitka, visitors touring the Russian Bishop's House exhibits pay \$2. See *id.* Finally, visitors to Brooks Camp pay \$10 per day, per person, in Katmai. See *id.*

179. See *id.*

180. See *id.*

181. See Penny Bender, *Great Smokies Get Caucus on Capitol Hill*, GANNET NEWS SERVICE, May 6, 1998, available in 1998 WL 5626779.

fees.¹⁸² Congress members and park officials maintain that allowing the park to assess access fees would better help it repair aging resources and accommodate the ten million people who visit the park each year.¹⁸³

Additionally, even with higher fee rates, visitation to the parks has remained high.¹⁸⁴ For example, at Rocky Mountain National Park, visitors increased by 18,000 to a total of 3,133,000 visitors.¹⁸⁵ Further, park officials at Rocky Mountain noted that they had not received many complaints regarding the fee increases.¹⁸⁶ Indeed, a park-wide survey found that eighty-three percent of national park visitors were either satisfied with the fees they paid or thought the fees were too low.¹⁸⁷

Due to the success of the fee demonstration programs and the need for supplemental funding, Senator Thomas has proposed extending the fee demonstration program through 2004; and the vast majority of Congress members, park advocates, and interested parties have supported the fee demonstration program and favor extending it through 2004.¹⁸⁸ Most of the park advocates and

182. *See id.*

183. *See id.*

184. *See Davidson, supra note 173.* Increased fees may also have contributed to a reduction of crime at parks that raised their fees. *See id.* For example, at Lake Powell's Lone Rock Campground, assaults dropped by seventy-one percent and disorderly conduct by eighty-eight percent in one year. *See id.* Additionally, park officials maintained that littering decreased, quiet hours were quiet, and more families used the campground. *See id.*

185. *See Romano, supra note 172.* Rocky Mountain National Park, which is approximately one-eighth the size of Yellowstone, attracts about the same number of visitors as Yellowstone. *See id.*

186. *See id.*

187. *See Impact of Entrance Fees, supra note 177.*

188. *See id.* Several Congress members and government officials have even advocated making the experimental fees permanent because they feel the recreational fee program is the most fair and realistic way of addressing our parks' maintenance and repair backlog. *See Davidson, supra note 173.* However, several have expressed displeasure with the fee demonstration. *See id.* For instance, Rep. Peter DeFazio (D-OR), unhappy with a newly imposed \$3 parking fee at Oregon Dunes National Recreation Area, introduced legislation that would repeal the new recreational fee program. *See Defazio Bill Replaces New Park Fee with Mining Royalty* (Government Press Release of Rep. Peter DeFazio), Nov. 5, 1997, available in 1997 WL 12104709. DeFazio's bill would replace the recreational fee with a five percent royalty on minerals mined on public land. *See id.* The Congressional Budget Office estimates this royalty would generate at least \$50 million annually. *See id.*

Federal lands are currently governed by an arcane 1872 mining law, which allows miners to claim public land for as little as \$2.50 an acre. *See id.* Between January 1995 and April 1997, the federal government validated gold claims on 3,200 acres of federal land, containing an estimated \$5.9 billion in gold reserves, for only \$12,183. *See id.* Most agree that the mining law should be changed; however, since 1970, Congress has unsuccessfully tried to rewrite the mining law more than twenty times—primarily due to wrangling over how much miners should have to pay for minerals they take. *See NBC Nightly News: Mining Companies Get Good Deals at Taxpayers' Expense* (NBC television broadcast, Jul. 19, 1995), available in 1995 WL 8690942.

interested parties have maintained that the current fee program has been very successful because it has allowed revenues to stay in their park of origin, because the fees have not been used to offset congressional appropriations, and because the parks have used the fees to fund backlogged maintenance projects.¹⁸⁹

However, before new legislation is enacted, park advocates and interested parties have headed some observations and warnings based on the lessons learned from the current fee program.¹⁹⁰ These groups have all specified that the fees must be equitable; the fee system must be efficient; the fees must be convenient for the recreationist; the fees must continue to be used for on-site backlogged maintenance; and the fee system must be coherent, flexible, and integrated, so that overlapping charges are minimized and federal, state, and local fees are integrated where appropriate.¹⁹¹

Additionally, park advocates and interested parties insist that the parks be careful not to raise fees so high as to eliminate or discourage access for Americans with lower incomes.¹⁹² Since the advent of the our national park system, fees and charges have generally been held down by a widespread feeling that parks should serve all classes of people, including those at the lowest socioeconomic levels who are too poor to pay for many other forms of entertainment.¹⁹³ However, under the current fee program, multiple layers of fees and per-head, per-day fees may discourage lower-income Americans from visiting our national parks.¹⁹⁴ To ensure fees enacted by our national parks do not eliminate or discourage access for lower income Americans,

189. See *Impact of Entrance Fees on National Parks: Oversight Hearing on the Recreational Fee Demonstration Program*, Subcommittee on National Parks and Public Lands, 105th Cong. (1998) (statement of Mary Margaret Sloan, Conservation Director, American Hiking Society), available in 1998 WL 8993628.

190. See Davidson, *supra* note 173.

191. See, e.g., *Impact of Entrance Fees on National Parks: Oversight Hearing on the Recreational Fee Demonstration Program* Subcommittee on National Parks and Public Lands, 105th Cong. (1998) (statement of Derrick Crandall, President, American Recreation Coalition), available in 1998 WL 8993633; *Impact of Entrance Fees* (testimony of Berry), *supra* note 177; *Impact of Entrance Fees* (statement of Sloan), *supra* note 189.

192. See, e.g., Romano, *supra* note 172 (stating the National Parks and Conservation Association wants Congress to study the effect of fees on the poor); *Impact of Entrance Fees* (statement of Sloan), *supra* note 189; *Impact of Entrance Fees on National Parks: Hearing before Subcommittee on National Parks and Public Lands Committee on Resources*, 105th Cong. (1998) (statement of Craig W. Mackey, Public Policy Liaison, Outward Bound USA), available in 1998 WL 8993629.

193. See Sonya Senkowsky, *Pricing Our Parks: User Fees Anger Some, But Officials Say There's No Alternative*, ANCHORAGE DAILY NEWS, Apr. 12, 1998, at J1, available in 1998 WL 5456054.

194. See *Impact of Entrance Fees* (statement of Sloan), *supra* note 189; *Impact of Entrance Fees* (statement of Mackey), *supra* note 192.

Congress, the agencies, and the public must work collaboratively to determine what portion of the burden visitors can equitably bear.¹⁹⁵

Finally, the fees assessed by our parks must only be used as a supplemental means of funding. Presently, the national parks raise less than ten percent of their revenue from fees and charges.¹⁹⁶ Many state parks during the 1980s, feeling the same financial crunch that our national parks are currently bearing, chose to rely on fees as a general means of obtaining new revenue.¹⁹⁷ Prior to the 1980s, relatively few state park systems charged entrance fees; however, by 1984, thirty-three state parks charged entrance fees, and by the early 1990s, more than thirty-nine state parks charged entrance fees.¹⁹⁸ During this time, more than sixteen state park systems have come to rely on fees to generate more than half of their operating costs.¹⁹⁹ However, the focus on raising revenue by internal means has caused many state parks to charge relatively high fees and has also forced many state parks to focus on the parks' recreational opportunities.²⁰⁰ If our national park system were to do this, it would prevent many lower-income Americans from visiting our parks, and it would compromise the duty to preserve our parks for current and future generations.

For example, Texas State parks enacted the entrepreneurial budgeting system, or EBS, in 1991.²⁰¹ Under EBS, the park manager

195. See *Impact of Entrance Fees* (statement of Mackey), *supra* note 190. Several commentators have advocated various programs that might offset per-day, per-person fees and multiple layers of fees. For example, Derrick Crandall, president of the American Recreation Association, has asserted that our parks should experiment with "'free days' to ensure access for the poor; us[e] different fees for peak and non-peak periods; and encourage certain activities—such as ranger hikes—by offering fee discounts for attendance." Davidson, *supra* note 173.

196. See *Future of National Parks: Hearing Before the Senate Subcommittee on National Parks, Historic Preservation and Recreation*, 105th Cong. (1997) (statement of James M. Ridenour, Director, Epply Institute for Parks and Public Lands, Indiana University), available in 1997 WL 8220207.

197. See Leal & Fretwell, *supra* note 8.

198. See Lowry, *supra* note 168. Most recently, Alaska began charging entrance fees. In all, Alaska will now collect less than forty percent of its park revenue through fees and charges. See Senkowsky, *supra* note 193.

199. See *Impact of Entrance Fees* (statement of Fretwell), *supra* note 166. These states now include New Hampshire, Alabama, Arkansas, Colorado, Kentucky, Michigan, Nebraska, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Indiana, West Virginia, Wisconsin, and Vermont. See Donald R. Leal & Holly Lippke Fretwell, *Users Must Pay to Save Our National Parks*, 80 CONSUMERS' RES. MAG. No. 8, Aug. 1, 1997, at 16, available in 1997 WL 10128590 [hereinafter *Users Must Pay*]. In all, reliance on user fees collected by all state parks has risen from \$181.7 million, or seventeen percent of funding, in 1980 to \$637.9 million, or thirty-three percent, in 1994. See *id.*

200. See, e.g., Lowry, *supra* note 168; Senkowsky, *supra* note 193.

201. See *Impact of Entrance Fees* (statement of Fretwell), *supra* note 166. Texas parks did not receive any other state funding except for a small tax on recreation equipment sales designated for state parks. See *id.* Prior to 1991, state appropriations constituted sixty percent of the system's operating budget. See *id.*

must meet certain performance standards, including a pending-limit goal; in return, if the manager spends less than the goal, department officials will allot the park those savings for the next year.²⁰² To achieve this, many park officials raised their fees to extremely high levels. For instance, a \$50 pass is required for back-country hiking or camping.²⁰³

In California, the state park system had a \$181 million operating budget for the 1996-97 fiscal year, and thirty-five percent of this total came from user fees.²⁰⁴ Tax-based support for California's parks has diminished from nearly eighty percent in the early 1980s to thirty-six percent this past year.²⁰⁵ As a result, California has had to raise their entrance fees drastically, and its state parks currently charge per-vehicle, per-person, and even per-dog fees.²⁰⁶

Parks elsewhere, in addition to having user fees, have had to rely upon private entities and corporations to supply the funding state legislatures no longer provide.²⁰⁷ For example, New Hampshire mandated that its park system be self-supporting and its parks finance all of its nearly \$5 million operating budget from visitor fees.²⁰⁸ The Park Service charges between \$12 and \$30 for campsites and an entry fee of \$2.50 per person.²⁰⁹ The current backlog of maintenance costs has averaged \$330,000 per park and is growing.²¹⁰ Consequently, the park system has turned to corporate partnerships and private donors in an attempt to make ends meet.²¹¹

202. See Leal & Fretwell, *supra* note 8.

203. See Senkowsky, *supra* note 193. See also Leal & Fretwell, *supra* note 8. The state deemed the program highly successful, and in Fiscal Year 1995, park systems achieved a cost-savings of \$685,000. See *id.*

204. See *Jurisdiction Over Park Management Oversight Hearing Before House Committee on Resources; Subcommittee on National Parks and Public Lands*, 105th Cong. (1997) (statement of Kenneth B. Jones, Deputy Director for Park Stewardship, California Department of Parks and Recreation), available in 1997 WL 11234624. California's state park system manages 264 parks on 1.3 million acres. See *id.* These parks receive seventy million visitors per year and have over 3,000 miles of trails, 280 miles of coastline, 17,500 campsites, and 11,000 picnic sites. See *id.* The parks are also diverse, spanning from beaches to redwood forests to deserts. See *id.*

205. See *id.* Additionally, the parks have recently adopted a five-year initiative to decrease their dependence on the general fund by \$19 million by embracing corporate partnerships and privatization of park services. See *id.*

206. See Senkowsky, *supra* note 193.

207. See *id.*

208. See *Users Must Pay*, *supra* note 197. New Hampshire, which operates eighty-nine state parks covering 75,000 acres, receives 1.2 million visitors per year. See *id.*

209. See *id.* An annual pass costs \$35. See *id.* Further, children under twelve and adults over sixty-five are admitted for free. See *id.* New Hampshire was the first park system to charge per person and was the first park system to implement different prices for different campsites. See *id.*

210. See *id.*

211. See *id.*

Additionally, parks forced to raise revenue have increasingly relied on offering visitors recreational opportunities within the park.²¹² For instance, Alabama state parks earn most of their money from golf courses and lodges built in state parks.²¹³ Oklahoma's most popular and profitable state park—Lake Texoma State Park—does the same.²¹⁴ Nearly all of the park directors have acknowledged that heightened reliance on internal revenue generation increases the potential for greater emphasis on recreation, with the degree of recreational emphasis hinged on the degree of dependence upon internal revenue generation. Thus, these parks have moved away from preservation and conservation and moved toward a recreational focus.²¹⁵

B. Funds Raised from Higher Concessionaires' Fees

Congress adopted the 1965 Concession Policy Act to entice business entities to locate to our national parks and provide the growing number of visitors with needed services and accommodations.²¹⁶ At the time, businesses viewed such a proposition as a substantial business risk because the business community still considered the national parks as remote outposts not readily accessible either by road or plane.²¹⁷ In passing the Concession Policy Act, Congress sought to lure businesses to the parks by offsetting the substantial risk of locating to the park with very generous contractual terms.²¹⁸ Indeed, Congress offered these businesses exclusivity, long contract terms, preferential right of renewal,²¹⁹ and the opportunity to profit from investments in buildings and other

212. See Lowry, *supra* note 168.

213. See Senkowsky, *supra* note 193.

214. The state park caters to visitors from the Dallas-Fort Worth metropolitan area, which is only sixty miles away and has become a recreational paradise. The park has a renowned golf course, luxurious lodging, and a variety of boating activities. See *id.*

215. See Lowry, *supra* note 168.

216. See Mantell, *supra* note 20, at 28-29.

217. See *Oversight of National Park Service Concessions Management: Hearing Before the Senate Subcommittee on Parks, Historic Preservation and Recreation*, 105th Cong. (1997) (statement of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association), available in 1997 WL 11235475. At this time, the interstate highway system was far from complete, and the airline industry was in its infancy. See *id.*

218. See Mantell, *supra* note 20, at 28-29.

219. This provision amounts to an automatic renewal of contracts in almost every circumstance. See *Oversight Hearing on Concessions Reform: Before the House Committee on Resources Subcommittee on National Parks and Public Lands*, 105th Cong. (1998) (statement of William J. Bissett, Vice President Government Affairs, Delaware North Companies, Inc.), available in 1998 WL 8993882.

structures constructed by the concessionaires.²²⁰ Not surprisingly, with these incentives, many businesses located to our national parks.

Today, the business climate in our national parks is very different than it was in 1965. In 1997 alone, these businesses had the opportunity to provide more than 279 million visitors with food, lodging, transportation, recreation, merchandise, outfitting, and guided services.²²¹ The concessions business has become an extremely profitable industry, and in 1996, concessionaires grossed more than \$714 million, with the Park Service receiving an average two percent return.²²²

An industry that was once speculative and risky has developed into one of pure profit. However, due to the 1965 Concessions Act, the concessionaires in the parks still have generous contractual terms, even though the risk of doing business in our national parks is no longer speculative or risky. This has led many to repeatedly implore Congress to reform the 1965 Concessions Policy.²²³

Senator Thomas, in his Vision 2020: The National Park Restoration Plan, has proposed reforming the 1965 Concessions Policy Act. Several of the changes proposed in the bill would increase the amount of revenue concessionaires would provide to our national parks. Under Senator Thomas' bill, concessionaires would have to enter into a competitive bidding process if their business grossed

220. See *Oversight of National Park Service Concessions Management* (statement of Voorhees), *supra* note 217.

221. See *id.*; Coggins & Glicksman, *supra* note 16, at 729; *National Park System Overhaul: Hearing Before the Subcommittee on Parks, Historic Preservation, and Recreation—United States Senate on National Park Service Concessions Reform* S. 624; and S. 1693, 105th Cong. (1998) (testimony of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association), available in 1998 WL 11517350. According to the Park Service, concessionaires operate 132 national park units and have entered into more than 651 contracts with the Park Service. See *id.*

222. See *Government Press Release: Murkowski Supports Parks Concession Reform—Signs-n to Overall NPS Reform Bill*, 105th Cong. (1998) (statement of Senator Frank H. Murkowski R-AK), available in 1998 WL 7323349; Clarke, *supra* note 60. In 1989, concessionaires grossed about \$1.4 billion and paid fees to the government of \$35 million, a 2.4 percent return, in that year. See Coggins & Glicksman, *supra* note 16, at 729.

223. See, e.g., *National Park System Overhaul* (statement of Voorhees), *supra* note 221; *Oversight of National Park Service Concessions Management* (statement of Voorhees), *supra* note 217; *Oversight Hearing on Concessions Reform* (statement of Bissett), *supra* note 219; *Land Bills: Hearing Before the Subcommittee on National Parks and Public Lands Committee on Resources, House Of Representatives*, 105th Cong. (1998) (statement of Stefan J. Jackson, Public Policy Manager, National Outdoor Leadership School, Lander, Wyoming), available in 1998 WL 11516284.

over \$2 million,²²⁴ would have shorter contract terms, and would pay royalty fees to their respective parks.²²⁵

Numerous park advocates and interested parties have sought the implementation of such legislation.²²⁶ When the Concessions Act was passed in 1965, the Park Service was attempting to lure companies to the parks. However, now that the concession business in our parks has become so lucrative and the initial investors have profited immensely, park advocates and interested parties have argued that it is time that the initial Act be reformed to allow the parks to collect more royalties from the concession business.²²⁷

Park advocates and interested parties have maintained that competitive contracting must be allowed for concessionaires grossing over \$2 million and that the contracting period must be reduced from 30 years to 10 or 15 years.²²⁸ The current federal laws give so much protection to existing concessionaires that they create an anti-competitive climate for two reasons. First, when a concessions contract comes up for bid, the current concessions operator has the right to match any proposals.²²⁹ Second, the subsequent concessions operator would have to reimburse their predecessor for the building improvements and investments made over the years.²³⁰ As a result of these two conditions, few concessions contracts have been won by competing concessionaires, which has allowed the percentage of royalties paid to the Park Service to remain at two percent.

Other governments have received much higher rates of return when they have not given preferential treatment to their concessionaires and when they have required their concessionaires to undergo more frequent contract negotiations. For example, Canada, California, Maryland, Michigan, and Missouri receive approximately a

224. All concessionaires earning under \$2 million would still have non-competitive contracts—eighty-five percent of the mom-pop concessionaires. Thus, the bill sponsored by Senator Thomas targets large concessionaires. See *Spotlight Story National Parks*, *supra* note 164.

225. See *id.* Senator Thomas has also proposed creating a single concessions manager to oversee all commercial contracts in the park system. See *id.* Additionally, the bill would require the Park Service and new concessionaires to pay inflated prices to outgoing contractors for equipment and other investments. See *id.*

226. See *supra* note 223. Not surprisingly, numerous concessionaires—those that currently have sweetheart deals—have sought to temper the need for such drastic change. See, e.g., *Land Bills: Oversight Hearings on National Park Concession Policies*, House of Representatives Committee on Resources, Subcommittee on National Parks and Public Lands, 105th Cong. (1998) (statement of Robert Dale Scott, President, Glacier Park, Inc.), available in 1998 WL 8993973.

227. See *supra* note 223.

228. See *id.*

229. See David Robinson, *A New Model for U.S. Parks: Delaware North Wins Kudos for its Operations in National Parks*, BUFFALO NEWS, Apr. 26, 1998, at B16, available in 1998 WL 6012766.

230. See *id.*

12.7 percent return on their concessions contracts.²³¹ In the past fiscal year, California state parks renegotiated contracts and received approximately \$2 million in higher payments over the previous year.²³² In Ohio, the state parks completed a deal with a concessionaire for a twenty-two percent return on concessions.²³³ This same concessionaire services Sequoia/Kings Canyon National Park and pays only 5.75 percent to the Park Service.²³⁴

With the current legislation in place, the national parks have obviously lost out on a viable means of gaining additional funds. When the National Park Service has had the opportunity, it too has reduced the length of contracting terms and has allowed competitive bidding. For instance, Delaware North Companies, Inc. was awarded the concessions contract at Yosemite National Park in 1992 after the previous concessionaire, Yosemite Park and Curry Company, was bought out by a foreign firm and was summarily disqualified from operating its concession business.²³⁵ Due to this disqualification, the park contract was offered on a competitive basis, and Delaware North won the contract.²³⁶

Delaware North beat out four other companies by pledging to pay 4.5 percent of its gross sales into a capital improvement fund for the park, by buying out Yosemite Park and Curry Company for \$60 million, and by agreeing to clean up twenty-seven leaking underground fuel tanks for \$12 million.²³⁷ In all, the company paid between seventeen percent and twenty percent of its revenues for fees, rights and park improvements.²³⁸ Additionally, Delaware North has agreed to compete head-to-head with other interested parties at the end of its 15-year contractual term.²³⁹ In contrast,

231. See *Oversight of National Park Service Concessions Management* (statement of Voorhees), *supra* note 217. Private concessionaires' revenue fees can reach as high as thirty percent. See Robert A. Erlandson, *Any Budget Increase will be Small. And with a Shortfall of \$653 Million and Repair Backlog of \$6 Billion . . . Our National Parks are Broke*, FLA. TIMES-UNION, at A1, available in 1998 WL 10911932.

232. See *Jurisdiction Over Park Management* (statement of Jones), *supra* note 204.

233. See Lowry, *supra* note 168.

234. See *id.*

235. See *Oversight Hearing on Concessions Reform* (statement of Bissett), *supra* note 219.

236. See *id.*

237. See Robinson, *supra* note 229. The capital improvement fund was established to circumvent existing laws. Under the concessions act, concession returns are deposited directly into the federal treasury. See *Oversight of National Park Service Concessions Management* (statement of Voorhees), *supra* note 217. Under Senator Thomas' bill, concessionaires would pay their return to their respective parks. See *supra* note 223 and accompanying text.

238. See Robinson, *supra* note 229.

239. See *Oversight Hearing on Concessions Reform: Before the Committee on Resources, Subcommittee on National Parks, Preservation, and Recreation*, 105th Cong. (1998) (statement of William J. Bissett, Vice President Government Affairs, Delaware North Companies, Inc.), available in 1998 WL 11517228.

Yosemite Park and Curry Company had provided the government with less than one percent of their \$100 million annual gross revenues, had preferential treatment when their contract came up for renewal, and had a long term contract.²⁴⁰

Since winning the concessions contract at Yosemite, Delaware North has paid more than \$13 million into the capital improvement fund.²⁴¹ The funds have been used to renovate the once-grand Alwahnee Hotel for \$1.5 million, tear down temporary buildings and clean the remains of a burned hotel for \$2.6 million, and, most recently, restore and renovate the scenic Glacier Point overlook for \$3.2 million.²⁴² The National Park Service presented its highest award to the company for its restoration and renovation of Glacier Point,²⁴³ and officials hope it stimulates a trend in other concessions partnerships.²⁴⁴

When it has had the opportunity, the National Park Service has sought to enter into concessions contracts similar to Delaware North's contract. In the past five years, Delaware North has also won contracts at Sequoia National Park,²⁴⁵ the Kennedy Space Center,²⁴⁶ and the United States mint in Denver and Philadelphia.²⁴⁷ By awarding contracts to firms like Delaware North, the Park Service has increased the amount of supplemental funds that our parks receive. However, without legislative reform, concessions agreements like that made with Delaware North will not always be

240. *See id.*

241. *See Robinson, supra note 229.*

242. *See id.*; Mark Grossi, *Glacier Point Cleanup Applauded: Most of the \$3.2 Million Restoration Cost Came from Concession Contract*, FRESNO BEE, Sep. 10, 1997, at B1, available in 1997 WL 3919254.

243. *See Robinson, supra note 229.* The award was also presented to the park and to the non-profit Yosemite Fund. *See id.* The Yosemite Fund, a private organization, donated \$600,000, which was used to pay for vegetation replacement, trail work, and other various jobs. *See Grossi, supra note 242.* National Parks Service Director Robert Stanton stated that the partnership between the park, non-profit Yosemite Fund, and Delaware North was a "model for the kind of cutting edge problem solving I want to see at work in parks nationwide." Robinson, *supra note 229.* This restoration project is the largest project undertaken by a concessionaire, a park, and a non-profit organization. *See Grossi, supra note 240.* (For more on non-profit organizations, *see infra* notes 309-21 and accompanying text.)

244. *See Grossi, supra note 242.*

245. Delaware North plans to make \$11 million in improvements in Sequoia. *See Robinson, supra note 229.*

246. Delaware North has spent \$42 million to expand and improve facilities. These improvements include: a reconstructed Saturn V rocket, movies on the space shuttle and Apollo missions, a walk through mock-up of the planned international space station, and a viewing room to watch NASA workers assembling the space craft. *See id.*

247. *See id.* Delaware North also operates Niagara Reservation State Park in Niagara Falls and three New York state parks on Long Island. In all, Delaware North, with its 3,700 employees, expects more than \$200 million in sales this year from its 1,950 hotel rooms, 30 restaurants, and 37 gift shops. *See id.*

possible due to the preferential right enjoyed by prior concessionaires.²⁴⁸

C. Funding from Bonds

Currently, the National Park Service has over \$5 billion in unfunded projects that involve construction and large scale resource undertakings.²⁴⁹ Congress has recently begun to discuss how some of these projects might be funded through the issuance of bonds, and Senator Thomas' bill has provided for a limited program allowing parks to issue revenue bonds to fund large scale construction projects.²⁵⁰ Bonding proposals of this type can be compared to a small town's issuance of bonds to fund long-term projects such as hospitals, libraries, and sewers.²⁵¹ For example, without bonding, local taxpayers would have to raise \$10 million to build a school.²⁵² However, with bonding, taxes are not raised, and the \$10 million is spread over time between current and future taxpayers.²⁵³ State and local taxpayers' taxes then go to pay for the accrued interest on the outstanding debt and the repayment of the money borrowed.²⁵⁴ As a result, bonds spread the costs of major long-term projects among present and future generations of citizens who will use and benefit from these facilities, thus preventing the tax burden from being carried solely by current taxpayers.²⁵⁵

Bonding does not provide national parks more money to meet capital needs.²⁵⁶ However, it does allow parks to move money

248. For example, the Park Service has considered allowing bidding on concession contracts for Grand Canyon National Park and Wahweap Lodge in Glen Canyon national recreation area. The two parks have a combined revenue of \$100 million. See *Oversight Hearing On Concessions Reform* (statement of Bissett), *supra* note 219. The current concessionaires will probably not be bid against. See *id.* As a result, Grand Canyon and Glen Canyon will lose a substantial amount of supplemental funds. See *id.*

249. See *Government Press Release: Senate Panel Explores Innovative Funding Plans for Parks*, 105th Cong. (1997) (statement of Craig Thomas R-WY), available in 1997 WL 12103601 [hereinafter *Government Press Release*]. Examples include projects like water systems, bridges, and visitor centers. See *id.*

250. See *id.*; *NPCA Praises Intent*, *supra* note 164.

251. See *Government Press Release*, *supra* note 249.

252. See *Park Project Financing: Hearing Before Senate Energy and Natural Resources Committee, Subcommittee on National Parks, Historic Preservation, and Recreation*, 105th Cong. (1997) (statement of Dr. Dennis Zimmerman, Specialist in Public Finance), available in 1997 WL 14152109.

253. See *id.*

254. See *id.* It is interesting to note that the interest income on these bonds is exempt from federal income tax. See *id.* The federal government allows such a subsidy in order to reduce the financing costs of state and local capital facilities. See *id.*

255. See *Park Project Financing: On Revenue Bonds to Finance Capital Projects in National Parks* (statement of Eisenberg), *supra* note 7.

256. See *Park Project Financing: Hearing Before Subcommittee on National Parks, Historic Preservation, and Recreation of the Senate Committee on Energy and Natural Resources*, 105th Cong. (1997)

across time, and this can be very useful under certain conditions.²⁵⁷ For example, Senator John McCain (R-AZ), in testimony before Congress, noted how helpful bonding would be at Grand Canyon National Park. Grand Canyon National Park has over \$350 million in capital improvements and has received only \$15 million for its operations and maintenance.²⁵⁸ Senator McCain advocated using \$2 from each park entrance fee to secure a 20-year bond issue.²⁵⁹ The 20-year bond would immediately raise over \$100 million for the park, enabling the park to fund critically-needed projects.²⁶⁰

The National Parks and Conservation Association (NPCA) has actively supported Congress in its attempt to supplement national park funding with a revenue bond program because NPCA views bonding as a method of providing our parks with significant up-front capital without substantially impacting their budgets.²⁶¹ The NPCA has recommended that bond proceeds be used for priority projects as identified in the general management plans of each park.²⁶² The NPCA has advocated that funds generated by bonding "should be targeted to natural, historical, and cultural resources protection projects, such as historic preservation, pollution control, transportation facilities designed to reduce auto impacts, habitat restoration, protection of collections, and other such projects that are directly related to the visitor experience and the integrity of the parks."²⁶³

Some commentators have expressed concern with financing park bonds by using a \$2 entrance fee because they fear that the new revenue would flow into the budget over a considerable period of years, thereby constraining the amount of construction that could be

(testimony of Henry Lee, Director, Environmental and Natural Resource Program, Harvard), available in 1997 WL 14152059.

257. *See id.*

258. *See Park Project Financing: Hearing On National Park Bonds*, 105th Cong. (1997) (statement of Senator John McCain), available in 1997 WL 14152110. Senator Thomas has argued that "[b]y creating a one time infusion of resources, parks could avoid patchwork repairs and continual upkeep of outdated facilities that drive up the eventual costs of completing essential projects." *Government Press Release*, *supra* note 249.

259. *See id.* Some state park systems have issued bonds financed by park revenue. *See Park Project Financing*, *supra* note 7. State park systems have also financed their park bonds through state lotteries (Oregon and West Virginia), a sales tax on sporting goods (Texas), and a sales tax on cigarettes (Alabama). *See id.* Another commentator has suggested that the national park system finance bonds by placing a surcharge on all concessionaires. *See id.*

260. *See Park Project Financing*, *supra* note 259.

261. *See Park Project Financing*, *supra* note 7. In enacting a bonding program, NPCA has suggested that the revenue bond program be cost-effective and efficient. *See id.* It is estimated that over \$1.2 billion would be generated through bonding. *See Henderson*, *supra* note 12.

262. *See Park Project Financing*, *supra* note 7. The NPCA warned that these bonding proceeds should not be used for routine operations or maintenance. *See id.*

263. *Id.*

immediately undertaken.²⁶⁴ However, such fears may be unfounded because several states have successfully financed park bonds through revenues obtained from entrance fees. For example, Oklahoma state parks have issued bonds financed from revenue generated at all parks, from revenue generated at specific parks, and from revenue generated from particular projects.²⁶⁵ In so doing, Oklahoma state parks have raised sufficient levels of funding to immediately finance construction projects.²⁶⁶

Other commentators have complained that using entrance fees to pay off bonds would divert money now used for operating the parks.²⁶⁷ This argument is also unfounded. Prior to 1997, all fees collected by our national parks flowed to the federal treasury. As a result, our parks were forced to rely solely on congressional appropriations. Since 1997, one hundred of our parks receive eighty percent of the fees they assess, and these fees serve as a supplemental means of revenue. The parks, in an attempt to raise large amounts of supplemental revenue quickly, could obviously use a portion of this revenue—for instance \$2—to secure a bond.

If Congress allows the parks to use a portion of their entrance fees to secure bonds, it must next determine who should be allowed to issue the bonds.²⁶⁸ Senator Thomas has advocated allowing the National Park Service or an affiliated entity to issue bonds.²⁶⁹ The NPCA has suggested that bonds should be publicly placed through a separately-designated, federally-chartered, private non-profit organization.²⁷⁰ The Natural Resources Defense Council and the National Trust for Historic Preservation have advocated allowing the Park Service to borrow money for financing construction under a newly-created National Park Authority.²⁷¹ Former Speaker of the House

264. *See id.*

265. *See id.*

266. *See id.*

267. *See Frazier, supra* note 161.

268. In addition to allowing parks to use fees to secure revenue bonds, other state park systems have used, and other commentators have suggested using, other funding techniques. *See supra* note 259. Congress may want to determine if any of these techniques would be appropriate for the park system. Another commentator has even argued that state-local governments should be allowed to issue tax-exempt bonds on behalf of a nonprofit organization. Hence, if state and local officials believe their local gateway communities are dependent on neighboring parks, they and their local taxpayers might view raising tax-exempt bonds for their respective national parks as a sound investment. *See NRDC Pro: Reclaiming Our Heritage, supra* note 10. The NPCA, however, has argued that local or regional non-profit organizations should not be given authority to issue revenue bonds because these groups might try to construct projects in parks for their own benefit. *See Park Project Financing, supra* note 7.

269. *See Park Project Financing, supra* note 7.

270. *See id.*

271. *See Henderson, supra* note 12.

Newt Gingrich (R-GA) and Senator Thomas have voiced support for this type of endeavor. Such an authority would have the power to issue debt for construction and maintenance projects, much like the Federal Housing Administration or the Tennessee Valley Authority.²⁷²

However, some have been critical of giving one agency the authority to borrow money for all of the parks. These critics worry that well-connected legislators in Congress could exploit the fund and appropriate monies to finance their own pork-barrel projects.²⁷³ Instead of giving one agency the authority to borrow money for all of the parks, these commentators have suggested that each park be allowed to "establish a separate endowment fund for capital improvements, seeded by individual contributions, foundation grants or corporate sponsors."²⁷⁴

Finally, the Treasury Department has advised Congress that the Department would object to any bill that allowed private bonds to be issued on behalf of the national parks.²⁷⁵ The Department explained that long-standing federal financial policy requires that financing for all purposes be undertaken through the Treasury because it is the most efficient market in the world, which results in better borrowing rates to the Treasury and the taxpayers.²⁷⁶ By contrast, any private market bond proposals devised by Congress would be more expensive than financing the bonds through the Interior Department or Treasury Department.²⁷⁷ Additionally, federal financial policy also requires that the Treasury Department avoid having competing Federal securities in the market because these bonds could be viewed as having essentially the same credit quality as Treasury securities.²⁷⁸

D. Funding from the Private Sector

Under the bill proposed by Senator Thomas, our national parks would receive supplemental funding from a provision that would allow the inclusion of a private donation check-off box on tax forms

272. *See id.*

273. *See id.*

274. *Id.* Private donations were used to finance the first Audubon Society wildlife preserves. These commentators have also suggested that the national park endowment funds could be expanded by investing in stocks, bonds or mutual funds. Universities and museums have used their endowment funds in this manner. *See id.*

275. *See Park Project Financing: Hearing Before Senate Committee on Energy and Natural Resources, Subcommittee on National Parks, Historic Preservation, and Recreation, 105th Cong. (1997)* (statement of Mozelle W. Thompson, Treasury Principal Deputy Assistant Secretary), available in 1997 WL 14152055.

276. *See id.*

277. *See id.*

278. *See id.*

and from a provision that would allow increased low-profile corporate sponsorship.²⁷⁹ Through the years, park officials have welcomed additional funds from private donations, private foundations, and public-private partnerships, as long as those donations or partnerships did not compromise the integrity of our national parks. This section will discuss Senator Thomas' proposals as well as other partnerships our national parks have undertaken or are seeking to undertake to raise additional funds.

1. Private Donations

Americans donate \$160 billion a year to schools, universities, charities, hospitals, and churches.²⁸⁰ Over the years, many Americans have found various ways to donate to national parks. For instance, the Rockefeller family donated land from the 1920s through the 1950s to the National Park Service for the establishment of Grand Teton, Acadia, and Virgin Islands national parks.²⁸¹ More recently, David and Lucile Packard of Packard Industries have pledged \$175 million over the next five years to protect and preserve undeveloped land in California.²⁸² The National Park Service has stated the foundation hopes to have 250,000 acres protected by 2002.²⁸³ Private groups also donate land and money to our national parks. For example, Friends of the National Parks at Gettysburg recently bought and donated to the park six wooded acres from a private landowner whose land was inside the boundaries of the park.²⁸⁴

Philanthropic donations from private individuals and groups have always been welcomed by the National Park Service. Senator Thomas has proposed, in his Vision 2020: The National Park Restoration Plan, that the Internal Revenue Code be amended to require federal income tax forms to contain a line which would allow taxpayers to voluntarily contribute even dollar amounts—such as \$1,

279. See *Spotlight Story National Parks*, *supra* note 164.

280. See Frazier, *supra* note 161.

281. See Paul Rogers, *\$175 Million Donation to Guard California Land from Developers*, DALLAS MORNING NEWS, Mar. 15, 1998, at A10, available in 1998 WL 2520404.

282. See *id.* The Packard family wanted to preserve open land in California because the state's population is expected to grow from today's 33 million to 47.5 million by 2020 (according to state estimates). See *id.*

283. See *id.* The Foundation will purchase properties along the central coast from San Francisco to Santa Barbara, in the Central Valley, and in the Sierra Nevada. See *id.*

284. See Jim Strader, *Gettysburg Park Given Round Top Acreage: Mainers Held Off Enemy at Famous Battle Site*, BANGOR DAILY NEWS, Apr. 27, 1998, available in 1998 WL 3123816. This six-acre site was a crucial part of the Battle of Gettysburg. At this site, Union troops had held off the Confederates and, by so doing, were able to maintain a strategic view of much of the battlefield. See *id.*

\$5, \$10, or more—to the park system.²⁸⁵ It has been estimated that this fund could generate in excess of \$75 million per year.²⁸⁶ A similar provision now on the federal income tax forms—the “Presidential Check-Off”—has generated over \$200 million in three years, or, approximately 66.5 million per year.²⁸⁷ Finally, all funds generated by this provision would be supplemental and not used to offset annual congressional appropriations.²⁸⁸

2. *Initiatives Advanced by the Parks*

The Park Service has also begun to recruit private funding for specific problems unique to two groups of parks within the national park system. First, the Park Service, through the National Historic Landmark Assistance program, has sought to find private funding sources for the ninety-four landmarks it owns in whole or in part.²⁸⁹ The Park Service has had a difficult time managing these properties and guarding them from deterioration.²⁹⁰ Additionally, the Park Service has attempted to find private funding for national landmarks it does not own.²⁹¹ If the Park Service is not successful in finding funding for these private landmarks, these unfunded and unmaintained properties inevitably get placed in the Park Service’s hands.²⁹²

Second, the Park Service, through the Vanishing Treasures Initiative, has sought funding from Congress and private sources for a ten-year program designed to restore forty one²⁹³ cultural and

285. See *Spotlight Story National Parks*, *supra* note 164. Representative John Duncan (R.-TN) initially introduced this provision in the House in the fall of 1997. See *Government Press Release: Parks “Check Off” Bill Approved by Congressional Committee*, Nov. 5, 1997, available in 1997 WL 12104330.

286. See *Government Press Release*, *supra* note 285. Surveys have indicated that eight out of ten people would contribute \$1 to our national parks. See *id.*

287. See *id.*

288. See *id.*

289. See *Estes*, *supra* note 10.

290. See *id.*

291. See *id.* For instance, the Park Service is currently trying to find funding for Seton Village, a privately owned national landmark outside of Santa Fe. Seton Village is considered to be severely damaged. It consists of a forty-five-room stucco castle, a Pueblo kiva, and a Navajo hogan. Currently, the castle roof leaks, threatening a book and picture collection, and the hogan does not have a roof. See *id.*

292. See *id.* The Park Service usually receives properties that have serious problems. For example, it recently received three landmark boats in extremis at the San Francisco Maritime National Historic Park that need \$10.3 million worth of repairs. See *id.*

293. The parks include: Arizona—Canyon de Chelly NM, Casa Grande Ruins NM, Chiricahua NM, Coronado NM, Fort Bowie NHS, Grand Canyon NP, Hubble Trading Post NHS, Montezuma Castle NM, Navajo NM, Organ Pipe Cactus NM, Petrified Forest NP, Tonto NM, Tumacacori NHP, Tuzigoot NM, Walnut Canyon NM, Wupatki NM; Colorado—Bent’s Old Fort HS, Colorado NM, Dinosaur NM, Mesa Verde NP; New Mexico—Aztec Ruins NM, Bandelier NM, Chaco Culture NHP, El Malpais NM, El Morro NM, Fort Union NM, Gila Cliff Dwellings NM, Pecos NHP, Salinas Pueblo Missions NM; Texas—Big Bend NP, Fort Davis

historic parks—which contain over 2,000 prehistoric and historic ruins—in the desert in the Southwest.²⁹⁴ Congress has provided \$1 million in funding for Fiscal Year 1998 and \$3.5 million in funding for Fiscal Year 1999.²⁹⁵ The Vanishing Treasure Initiative was initially formulated to detect and prevent the deterioration inflicted upon the Anasazi and other Native American sites in the Southwest.²⁹⁶ Since then, the Vanishing Treasures Initiative has grown to include both cultural and historical sites.²⁹⁷

Sun, wind, rain, and millions of trampling feet²⁹⁸ have battered our historic and archeological treasures—which range from 800-year-old pueblos to 300-year-old missions to 200-year-old forts.²⁹⁹ The Vanishing Treasures Initiative began with the efforts of several individuals to preserve the Salinas Pueblo Missions National Monument in New Mexico.³⁰⁰ The monument, which had not received any

NHS, San Antonio Missions NHP; Utah—Arches NP, Canyonlands NP, Capitol Reef NP, Glen Canyon NRA, Golden Spike NHS, Hovenweep NM, Natural Bridges NM, Zion NP; Wyoming—Fort Laramie NHS. See *Vanishing Treasures Initiative: 3.5 Million for Ruins Preservation in National Park Service FY 1998 Budget Proposal* (News Release: Department of Interior), Feb. 1997, available in 1997 WL 76549 [hereinafter *Vanishing Treasures Initiative*].

294. See *id.* See also Peter Eichstaedt, *Sun, Wind, Rain Crumble Ruins*, ALBUQUERQUE JOURNAL, Sep. 2, 1997, at 1, available in 1997 WL 18397779.

295. See *Preservation Funds Requested*, ALBUQUERQUE J., Apr. 1, 1998, at C3, available in 1998 WL 11781273.

296. See *FY99 Interior Appropriations: Before the Senate Appropriations Subcommittee on Interior and Related Agencies*, 105th Cong. (1997) (statement of Bruce Babbitt, Secretary of the Interior), available in 1997 WL 10571750.

297. See *Vanishing Treasures Initiative*, *supra* note 293.

298. Nearly 20 million people visited these treasures last year. See Linda Kanamine, *Preserving West's Ruins to Cost Millions: Fate of pueblos, Missions, Forts is at Stake*, USA TODAY, Mar. 27, 1998, at 3A, available in 1997 WL 6998112.

299. See *id.* For instance, at Aztec Ruins National Monument in Aztec, N.M., the Park Service needs \$75,000 to fix ten leaking roofs covering 12th-century pueblos. If they do not receive the funds, the largest collection of pre-colonial wood beams will be ruined by rain. At Wupatki National Monument near Flagstaff, Ariz, 800-year-old ancient village sites are being trampled by tourists climbing and leaning on walls and climbing through the ruins. A real quandary exists at Fort Laramie National Historic Site, Wyo., where bat colonies are roosting in guardhouses. The bat manure and urine are corroding the aging limestone walls, but rangers are unable to remove the bats because they are an endangered species. See *id.*

300. See *id.* Salinas Pueblo Mission National Monument is one of three units based in Mountainair, sixty miles southeast of Albuquerque. See James Abarr, *Miracle in the Wilderness*, ALBUQUERQUE J., Jun. 1, 1997, at 11, available in 1997 WL 18386445. The three units of the park are the Abo mission and its surrounding pueblo, the unexcavated pueblo of Quarai, and Gran Quiviria and its partially excavated pueblo. See *id.* Perhaps as early as 800 years ago, Abo, Quarai, and Gran Quiviria served as major areas of Indian culture and may have been the most populated region in the pueblo world, with over 10,000 people. See *id.* The area boasted such a large population due to the fact that the area lay between two great Indian civilizations—the Mogollon to the south and the Anasazi to the north. See *id.* Additionally, the Rio Grande Pueblos lay to the west, and the Kiowa, Comanche, and Apache tribes to the east. See *id.*

In the late-16th century, this cultural trading center was changed by the arrival of Fray Augustin Rodriguez, a Franciscan priest, and Francisco Sanchez Chamuscado, the commander of a small unit of the Spanish entrada. See *id.* Within fifty years of this arrival, Spanish friars would return to build the great Salinas missions. See *id.*

significant funding for decades, was in terrible condition as wind and rain had eroded the bases of numerous walls.³⁰¹ Moreover, unstable walls and leaking roofs were also threatening to destroy four 17th-century Spanish mission churches.³⁰² These individuals, with the help of the regional Park Service office, designed a strategic plan to restore cultural sites in the area.³⁰³ They hope to restore the cultural sites well enough so that they will be protected by cyclical maintenance in the future.³⁰⁴

Prior to the efforts at Salinas, the Park Service had never effectively identified the preservation needs and priorities of the various cultural and historical treasures in the region.³⁰⁵ Since then, dozens of Park Service personnel have begun cataloging the problems of everything from Anasazi Pueblos to Spanish colonial churches to historic forts.³⁰⁶ Moreover, the Park Service had never identified the resources it would need to adequately preserve their holdings in the region.³⁰⁷ Since then, the needed resources have been identified and secured, and at Native American sites, a mentoring program has been established in which the parks' experienced Native American preservationists can train another generation to properly repair Native American structures.³⁰⁸

3. Funding from Non-Profit Organizations and Foundations

Many of our parks receive donations from non-profit organizations. These organizations raise funds for various park projects. For instance, at Saguaro National Park, Friends of Saguaro National Park—a non-profit, volunteer organization—has raised over \$11,000 in individual and corporate donations since it was formed in late 1996.³⁰⁹ Funds raised by the organization have been used for trail maintenance and construction.³¹⁰

301. See Eichstaedt, *supra* note 294; see also Estes, *supra* note 10.

302. See Kanamine, *supra* note 298; see also Abar, *supra* note 300. Only five 17th-century Spanish mission churches remain in the United States, and four of them are located at Salinas Pueblo Missions National Monument. See Abar, *supra* note 300.

303. See Kanamine, *supra* note 298. One part of the plan includes an apprenticeship program to teach younger generations how to do the specialized repairs since most of the people who had done intermittent repairs are Native American or Hispanic craftspeople over the age of 50. See *id.*

304. See *id.*

305. See *Vanishing Treasures Initiative*, *supra* note 293.

306. See Estes, *supra* note 10.

307. See *Vanishing Treasures Initiative*, *supra* note 293.

308. See Eichstaedt, *supra* note 294.

309. See *Friends Hold Fund-raiser for Saguaro*, ARIZONA DAILY STAR, Apr. 9, 1998, at 1E, available in 1998 WL 6199240.

310. See *id.* Future projects that the organization plans to undertake include adding benches along trails and building trails. See *id.*

Many non-profit organizations have provided our parks with generous donations over the years. These donations have enabled our parks to reserve their resources and provide more services to visitors. For example, the Yosemite Fund, a non-profit foundation, has raised more than \$8.5 million for Yosemite National Park since 1988.³¹¹ The National Park Service recently presented the Yosemite Fund its highest award for donating over \$600,000 to help restore and renovate Glacier Point.³¹² Yosemite used the funds to pay for vegetation replacement and trail construction.³¹³

The restoration of the Statute of Liberty is another successful endeavor made possible through a foundation mechanism. The Ellis Island Foundation was created to help renovate the Statute of Liberty and Ellis Island³¹⁴ and has successfully raised over \$440 million in the last thirteen years.³¹⁵ To date, \$425 million has been spent on restoration.³¹⁶ During this time, the Foundation and Park Service identified projects and planned the scope of the construction projects.³¹⁷ Together, the Park Service and Foundation restored the Statute of Liberty, Liberty Island, and four of the thirty-five buildings on Ellis Island.³¹⁸ Further, the Foundation has paid for a new museum to be built on the base.³¹⁹ The Foundation's current goal is to raise \$15 million to develop an electronic database that will document the journeys taken by the 20 million immigrants who arrived at Ellis Island between 1892 and 1924,³²⁰ and the Foundation has to date raised \$7.8 million toward that goal.³²¹

311. See Clarke, *supra* note 62.

312. See Robinson, *supra* note 229; Grossi, *supra* note 242. See also *supra* notes 241-43 and accompanying text.

313. See *id.*

314. See Clarke, *supra* note 62.

315. See *id.*

316. See Gary M. Pomerantz, *A Heritage in Tatters: The Statute of Liberty Got a Complete Makeover, but some Ellis Island Buildings Were Left in Ruins*, THE ATLANTA J./THE ATLANTA CONST., Feb. 1, 1998, at R1, available in 1998 WL 3674921.

317. See Clarke, *supra* note 62.

318. See *id.* Still more work needs to be done. To restore the last of the five buildings on the north side of Ellis Island, approximately \$60 million is needed. See Pomerantz, *supra* note 316. Additionally, twenty-four buildings on the south side of Ellis Island—including a hospital complex with a contagious-disease ward—needs to be restored. See *id.* The southern portion of Ellis Island is in such a state of disrepair that the National Trust For Historic Preservation recently named it one of "America's 11 Most Endangered Places." See James Toedtman, *\$1 Entry Urged to Aid Ellis I./Fee to Stabilize Rotting Buildings is Hotly Debated*, NEWSDAY, Nov. 30, 1997, at A30, available in 1997 WL 2720189.

319. See Clarke, *supra* note 62.

320. See Mae M. Cheng, *The Manifests' Destinies/Immigrant Records to Get Ellis I. Berth*, NEWSDAY, Feb. 9, 1998, at A18, available in 1998 WL 2657867. Additionally, the Foundation hopes to collect information on all immigrants who arrived at all U.S. ports of entry. See *id.*

321. See *id.*

4. "Low Profile" Non-Profit Foundations and Management

In an effort to properly fund and maintain some low-profile park holdings, the Park Service has allowed several nonprofit corporations to manage Park Service holdings. For example, Fort Mason, which is located within the Golden Gate Recreation Area, has been managed for twenty years by the Fort Mason Foundation.³²² This Foundation was formed to convert a military base into a cultural center and has been self-supporting since its fourth year.³²³ The Foundation successfully funded this endeavor by leasing out 350,000 square feet of office space on thirteen acres.³²⁴ The Foundation earns enough money to manage Fort Mason, to accommodate its annual 1.6 million visitors, and to donate funds to the Golden Gate Recreation Area for other capital projects.³²⁵

Recently, the Park Service created a foundation to manage and preserve the Presidio, also located within Golden Gate Recreation Area.³²⁶ The Presidio was transferred to the Park Service in 1995 when the military closed the base.³²⁷ To adequately maintain the Presidio, the Park Service determined that it would cost \$24 million per year and an additional \$11.5 million for renovations and replacements. The following year Congress adopted legislation proposed by Representative Nancy Pelosi (D-CA), which allowed the National Park Service to relinquish eighty percent of the Presidio to a nonprofit foundation.³²⁸ The director of the new foundation has stated it will rent out 4.2 million square feet for office space, think tanks, foundation centers, residences, and concessions.³²⁹ The

322. See Kerry Drager, *Golden Gate Recreation Area is Feted*, SACRAMENTO BEE, Oct. 1, 1997, at E7, available in 1997 WL 3308745. The park service oversees the Foundation. See *id.*

323. See Clarke, *supra* note 62.

324. See *id.* 550 groups rent office space at Fort Mason, and approximately ninety percent of them are nonprofit organizations. See *id.*

325. See *id.* For instance, the Foundation raised \$1.2 million to create an exhibition hall in the Presidio, which is also under the control of Golden Gate National Recreation Area. See *id.*

326. See *Housing Plan for Presidio Under Fire: Ballot Issue Seeks Space for Homeless*, SACRAMENTO BEE, May 10, 1998, at A3, available in 1998 WL 8821662 [hereinafter *Housing Plan for Presidio Under Fire*].

327. See *id.* The Presidio served as the northernmost military post for Spain in the 18th century. For the next 220 years, the Presidio was home to the Spanish Expeditionary Forces, then the Mexican government, and ultimately the 6th U.S. Army division. See *id.*

328. See *id.*

329. See *A Time for Trust: The 15-Year Plan for a Self-Sustaining Presidio Operation will Preserve Wherry Housing for People Who Work in the Park*, SAN FRANCISCO EXAMINER, May 1, 1998, at A22, available in 1998 WL 5183845.

money generated from rent will adequately pay for annual operating costs and renovations.³³⁰

5. "High Profile" Non-Profit Foundations and Management

Gettysburg National Military Park was established in 1895 to preserve and protect the hallowed ground upon which the battle of Gettysburg was fought.³³¹ But after years of a lack of funding, misuse of park lands,³³² and private exploitation,³³³ the Park Service has decided to protect and preserve Gettysburg National Military Park by allowing a nonprofit foundation to manage and construct several facilities within the park.³³⁴ If the foundation is successful, the national park system is likely to allow more nonprofit foundation endeavors in the future.³³⁵

The park has expressed concern that it has been unable to maintain its aging facilities and properly preserve artifacts.³³⁶ Indeed, the largest collection of Civil War memorabilia is being ruined by rain

330. See *id.* The Presidio will be a city within a city as it becomes a place where 4,800 people work, 1,600 people live, and millions visit. See *Housing Plan for Presidio Under Fire*, *supra* note 326.

331. See *Gettysburg National Military Park: Hearing Before the Subcommittee on National Parks, Historic Preservation, and Recreation, Senate Committee on Energy and Natural Resources*, 105th Cong. (1998) (testimony of Richard Moe, President, National Trust for Historic Preservation on the Visitor Center and Museum Facilities Project at Gettysburg National Military Park), available in 1998 WL 8992350.

332. Since its inception, the park has had profiteers wanting to exploit it for monetary gains. See Edward T. Pound, *Battle of Gettysburg: Profit vs. Preservation; Proposal for Private Development has Critics Up in Arms*, SALT LAKE TRIB., Oct. 5, 1997, at A4, available in 1997 WL 3428540. Over the years, the park has had a huge complex of shops, museums, and restaurants develop around its entrance. Further, private land within the park has been developed for tourism purposes. Currently, preservationists are trying to prevent three large retail developments from being built. One of the proposals includes plans to build a 60,000-square-foot retail development on an eight-acre tract that was part of Camp Letterman. Camp Letterman was the largest general hospital ever established during the Civil War and is the only pristine area left. The park has been viewed by developers as a gold mine because, each year, 1.7 million tourists visit the battlefield and spend about \$105 million. See *id.*

333. See *id.* Preservationists have not just been battling with profiteers but have also been battling with the Park Service's lack of vision. For instance, preservationists were angered when the park entered into a land swap deal with Gettysburg College, which allowed the college to have 7.5 acres of park land on the northern portion of Cemetery Ridge. The College transformed this grassy tree-lined hillside into a rail spur lined by a retaining wall of mesh wire and rocks. See *id.*

334. See *id.*

335. See Olivia Hawkinson, *Park Service Looks at Partner: York County Developer Robert Kinsley Has Proposed Some Building Projects for Gettysburg*, YORK DAILY REC., Mar. 18, 1998, at C1, available in 1998 WL 6212147.

336. See Bob Dart, *Gettysburg Development Plan Sparks War of Ideals*, THE ATLANTA J./THE ATLANTA CONST., Nov. 8, 1997, at A9, available in 1997 WL 4001668.

leaking through the roof of the archives building.³³⁷ Additionally, the artifact collection and documentary history of the Battle of Gettysburg is stored in a complex that lacks a sprinkler system and humidity controls.³³⁸ Finally, exterior attractions are succumbing to Mother Nature as the park's 400 cannons are rusting and the 1,300 stone and metal monuments are corroding.³³⁹

The National Park Service has decided to remedy these problems by entering into a partnership with a private developer.³⁴⁰ Robert Kinsley of Kinsley Equities and National Geographic Television has been selected to build a \$40 million complex.³⁴¹ Kinsley has said that the new complex will have a "new visitors' center, a museum, a bookstore, food shops, a large-format theater, a National Geographic shop, park offices, archives, and the Cyclorama gallery on a 45-acre privately owned site in the park."³⁴² To build this complex, Kinsley has decided to form a nonprofit corporation.³⁴³ The corporation will operate the facilities until the debt is retired and then give them to the Park Service.³⁴⁴ Kinsley estimated that the total projected cost of \$40.4 million will be raised through grants, public donations, and commercial loans, while maintenance expenses will be funded through the rents received from the tenants leasing in the complex.³⁴⁵

337. See Satchell, *supra* note 6. The collection includes 350,000 maps, photographs, military orders, battle reports, letters, and newspaper clippings. These documents are not cataloged, and many are faded and torn. See *id.*

338. See *id.* This collection—which contains flags, banners, uniforms, swords, pistols, long guns, and other items—is worth over \$25 million. Less than ten percent of the artifacts are placed on display at one time. See *id.*

339. See *id.*

340. See Ellen Lyon, *Private-public Gettysburg Proposal Selected // Planned Park Complex to have Stores, Museum, Cinema*, HARRISBURG PATRIOT, Nov. 8, 1997, at A1, available in 1997 WL 7537448. The Park National Service took four bids and rejected the most controversial one, which was proposed by Robert Monahan, a Gettysburg developer who initially approached the Park Service with the idea. See *id.* Robert Monahan proposed a visitor's center at no cost to the government if the government was willing to allow him to build a seven-story Imax movie theater and a Civil War theme village off the site in order to recoup his investment. See Edward T. Pound, *Visitors Center Plan to get Senate Scrutiny*, USA TODAY, Feb. 16, 1998, at A4, available in 1998 WL 5716113. Even after rejection, Monahan has stated he will go ahead with his Imax theater and Civil War theme village on the 288 acres he purchased outside the eastern boundaries of the battlefield. See *id.*

341. See Lyon, *supra* note 340.

342. See *id.*

343. See *id.*

344. See *id.*

345. See Katurah Mackay, *Gettysburg to Have Improved Visitor Facilities: Proposal Offers Restoration of Battle Field and New Services*, Vol. 72 NAT'L PARKS No. 3-4, at 19, Mar. 13, 1998, available in 1998 WL 10865216.

6. Funding From Corporations

a. Corporate Sponsors

Senator Thomas' bill would also allow the Park Service to develop a corporate sponsorship program.³⁴⁶ The Park Service would not allow purely unfettered commercial exploitation of our parks because that would impede the integrity of our national parks; as a result, there is no chance that a corporation could become the official sponsor of a national park—such as McDonald's Grand Canyon National Park or Microsoft's Mount Rainier National Park.³⁴⁷

However, the Park Service might decide to allow a limited form of commercial sponsorship. Last year, legislation allowing a limited form of commercial sponsorship was proposed in Congress, and this legislation has received cautious support from the National Parks and Conservation Association (NPCA).³⁴⁸ This bill would allow corporations to pay a set fee to become officially-licensed sponsors of the Park Service, and the revenues generated from the program would be deposited in the National Park Foundation.³⁴⁹ The National Park Foundation was formed by Congress in 1967 to raise money for the nation's parks.³⁵⁰ Since 1990, the Foundation has raised more than \$15 million in grants from corporations such as American Eagle, Canon U.S.A., and Target Stores.³⁵¹ The bill's sponsors estimated that an elite group of ten sponsors could generate an additional \$8 to \$10 million for the parks each year.³⁵²

In supporting this legislation, the NPCA warned that if a corporate sponsorship program were adopted, the legislation must ensure that funds received from the program would not be used to offset congressional appropriations.³⁵³ Additionally, the corporate sponsorship program must not infringe on the integrity and image of the national parks.³⁵⁴ In all, the NPCA asked that any legislation authorizing corporate sponsorship should³⁵⁵: (1) Make clear that private

346. See *NPCA Praises Intent*, *supra* note 164.

347. See *Clarke*, *supra* note 62.

348. See *Corporate Sponsorship Program for National Parks Must Maintain Park Integrity*, Says NPCA: *Park Funding Proposal Must be Tightened to Prevent Commercial Intrusions* (visited Jan. 15, 1998) <<http://www.npca.org/pr/s1703.html>> [hereinafter *Corporate Sponsorship Program*]. The bill before Congress was S. 1703. See *id.*

349. See *id.*

350. See *Clarke*, *supra* note 62.

351. See *id.*

352. See Linda Kanamine, *Parks are Seeking a Corporate Boost*, USA TODAY, Feb. 7, 1997, at 3A, available in 1997 WL 6993895.

353. See *Corporate Sponsorship Program*, *supra* note 348.

354. See *id.*

355. See *id.*

funds are not intended to reduce federal funding for parks; (2) protect the image and management practices of the National Park Service by prohibiting commercial advertising in parks, prohibiting the designation of "official" products or services, and allowing the Secretary of Interior to approve all sponsor advertisements to assure that they are consistent with park policies and standards; (3) include specific criteria about how corporate sponsors are to be selected; (4) protect existing trademarks and logos associated with national parks; (5) specify that sponsorship revenues be expended in accordance with National Park Service policies and priorities; (6) allow other corporate funding relationships to continue so as not to hamper the efforts of park support groups by limiting their ability to solicit support from local businesses; and (7) have a five-year sunset provision to allow the program to be terminated or revised if abuses occur.³⁵⁶

Recently, corporations have also begun to sponsor projects within our state and national parks. For instance, Yosemite National Park has allowed corporations to sponsor trees, with their corporate names on nearby plaques.³⁵⁷ California state parks are considering trying something similar.³⁵⁸ In New Hampshire, the state park system allowed PepsiCo to sell its products in their parks for five years in exchange for funding and educational materials.³⁵⁹ Finally, in Maryland, corporations have been allowed to sponsor beaches and trail heads.³⁶⁰

b. Corporate Donors

Some corporations have also helped our national parks by donating funds and materials. For instance, Georgia-Pacific Corporation and the National Parks and Conservation Association recently announced that their organizations would team up for the third consecutive year to fund improvement projects at national parks around the country.³⁶¹ Under the "Partnership for Parks" plan,

356. *See id.*

357. *See Senkowsky, supra* note 193.

358. *See id.*

359. *See id.*

360. *See Lowry, supra* note 168.

361. *See Cumberland Island to Benefit from NPCA/Georgia Pacific Partnership* (U.S. Newswire, Apr. 22, 1998), available in 1998 WL 5685024. NPCA and Georgia-Pacific teamed up in 1996 and developed a pilot program that would provide funds and building materials to national parks. *See id.* In 1996, the program funded projects at national parks in Georgia, North Carolina, Tennessee, Virginia, and the U.S. Virgin Islands. *See Forest Products Company Donates More Than \$200,000 for National Parks* (U.S. Newswire, Apr. 22, 1998), available in 1998 WL 5685024 [hereinafter *Forest Products*]. In 1997, the program funded projects in Maine, Florida, Michigan, Mississippi, North Carolina, and California. *See id.*

Georgia-Pacific Corporation will donate more than \$200,000 in cash grants and construction materials for improvement projects at national parks in California, Arkansas, Virginia, Georgia, and Washington, D.C.³⁶² Robert Stanton, director of the National Park Service, stated that "[o]ur national parks benefit from the power of partnerships such as this one. By combining the resources of the private sector, the Park Service, local park support groups, and national citizen groups like NPCA, we can make our national parks better places for everyone."³⁶³

At Cumberland Island National Seashore, the park has received \$50,000 in cash and construction materials from Georgia-Pacific to construct a new salt marsh boardwalk that will open the biologically-diverse ecosystem to park visitors.³⁶⁴ The park was asked to submit a one-paragraph proposal and was fortunately chosen as one of the six projects that received funding.³⁶⁵ The boardwalk will be nearly a third of a mile long and will have exhibits placed along the boardwalk explaining the seashore's features.³⁶⁶ Cumberland Island officials are currently seeking \$30,000 from the Park Service's Challenge Cost Sharing Program to pay for equipment and maintenance labor for the boardwalk project.³⁶⁷ This program was created to help pay for projects partially funded by corporate donations.³⁶⁸

Georgia-Pacific awarded the grant to a "friends-of-the-park" group—Eastern Parks and History Association—under the

362. See *Forest Products*, *supra* note 361. Parks receiving donations are: (1) New Columbia Audubon Society/Kenilworth Park, Washington, D.C.—funds have been pledged, contingent on full government support, to help construct the Kenilworth Marsh Interpretive Boardwalk; (2) Association for the Preservation of Virginia Antiquities Freeman Branch/Richmond National Battlefield Park—funds/materials for a new pedestrian bridge and trail system that will cross Beaver Dam Creek and join both sides of the battlefield; (3) Eastern Parks and History Association Inc./Cumberland Island National Seashore, Ga.—grant of money/supplies will allow for construction of a new salt marsh boardwalk; (4) Friends of the Fordyce and Hot Springs National Park/Hot Springs National Park, Ark.—resurface and restore the Tufa Terrace Trail and Fountain Walk, the two most heavily used trails; (5) Redwood Natural History Association/Redwood National Park, Calif.—grant of funds and material to construct a new bridge with an observation deck to link the national park with Prairie Creek Redwoods State Park; (6) Sequoia and Kings Canyon National Parks Foundation/Kings Canyon National Park, Calif.—construction of a rail fence along the General Grant Tree Trail to preserve and protect a threatened grove of Giant Sequoia trees, including General Grant Sequoia, the third largest tree in the world. See *id.*

363. *Id.*

364. See *Local News: Where You Live: Consultants Complete Plan to Close Cobb Landfill . . . Old Fayetteville Home May Get New Lease on Life . . . Lawrencevillian is Finalist in National Car Pooling Competition*, THE ATLANTA J./THE ATLANTA CONST., Apr. 27, 1998, at C02, available in 1998 WL 3690176.

365. See Gordon Jackson, *Boardwalk Planned for Cumberland*, FLA. TIMES-UNION, May 8, 1998, at B1, available in 1998 WL 6192694.

366. See *id.*

367. See *id.*

368. See *id.*

Partnership for Parks program, which is a joint effort undertaken by the NCPA and Georgia-Pacific.³⁶⁹ NPCA has stated that friends groups usually lack the financial resources to undertake major projects; however, with the help of Georgia-Pacific, friends groups have the opportunity to help parks in a substantial way.³⁷⁰

V. CONCLUSION

Our national parks are gradually deteriorating due to a lack of funding, mismanagement of current funding, and an increase in users. The national park system has an annual monetary shortfall of \$653 million,³⁷¹ and it has a cumulative monetary shortfall of \$11.1 billion.³⁷² These shortfalls have resulted from a backlog of un- or under-funded general operations, construction, land acquisitions, and resource protection projects.³⁷³ This backlog of unmet capital needs compromises the Park Service's duty under the National Park Organic Act to protect our precious park resources for future generations and fails to allow it to adequately accommodate the needs of current visitors.³⁷⁴ Congress must find new and creative ways to fund our national parks so that the Park Service can fulfill its stewardship responsibilities.³⁷⁵

To its credit, Congress has been exploring new sources of revenue necessary to supplement the embattled park system. For example, Congress established an oil and gas leasing trust fund, which is expected to provide the Park Service with approximately \$10 million per year earmarked for priority capital projects.³⁷⁶ Additionally, Congress allowed parks to increase entrance fees at nearly one hundred parks and keep eighty percent of the proceeds derived therefrom.³⁷⁷ The experimental fee program has raised annual fee revenues from \$77.69 million to more than \$128 million.³⁷⁸ However, to adequately fund the park system, Congress will have to do much, much more, and the longer Congress waits, the more expensive it will be to remedy the problems.

369. See *Local News*, *supra* note 364.

370. See *Forest Products*, *supra* note 361.

371. See *Corporate Sponsorship Program*, *supra* note 348.

372. See *Park Project Financing*, *supra* note 7.

373. See *id.*

374. See *Park Project Financing*, *supra* note 256.

375. See *id.*

376. See *Park Project Financing*, *supra* note 7.

377. See *id.*

378. See *id.*

Congress is currently exploring funding through commercial sponsorship, revenue bonds, entrance fees, and concessions fees.³⁷⁹ But will this be enough? Congress must continue to find creative methods to supplement the level of funding appropriated to our national parks because more money will be needed in the future as our parks accommodate more visitors, conduct additional scientific studies, and construct additional facilities.

Our parks must actively embrace these new initiatives and actively pursue the different funding mechanisms made available to them. For instance, in Jean Lafitte National Historic Park, many of the trails come to an abrupt end because the park did not have sufficient funds to complete the trails.³⁸⁰ If the park wanted to have the trails completed, the park could currently pursue numerous supplemental funding venues. For example, the park could solicit funds from Friends of Jean Lafitte National Historic Park. The park could seek corporate donations from companies in the New Orleans metropolitan area. Further, the park could seek donations of cash grants and construction materials from several of the large lumber companies in the region. In the future, our parks must explore all of their supplemental funding opportunities so they can properly preserve and protect our natural, historic, and cultural treasures, and so our parks can also accommodate those who wish to visit them.

If our national parks do not receive proper funding or do not take advantage of supplemental funding venues, their future seems bleak. Our parks will be dirtier, noisier, and more crowded. The Park Service will be severely restricted in its ability to properly accommodate its visitors. More importantly, the Park Service will be unable to adequately protect and preserve its parks. Our national parks are our cultural treasures. We must protect and preserve our parks. If we do not, our national parks will be ruined, and many of our famed treasures lost forever. To prevent this, it is incumbent upon Congress and the American people to provide the funds necessary to ensure that our grand cultural assets are not lost forever.

379. See Satchell, *supra* note 6.

380. See *supra* note 118.