

REFORM IN THE NATIONAL PARK SYSTEM: IS VISION 2020 ENOUGH?

*Denise M. Visconti**

TABLE OF CONTENTS

I. INTRODUCTION	409
II. HISTORICAL BACKGROUND	413
III. LEGISLATIVE HISTORY.....	417
IV. VISION 2020	424
V. ANALYSIS	429
VI. CONCLUSION	439

*"Thus always does history... end in paradox.
[A]ll conservation of wilderness is self-defeating,
for to cherish we must see and fondle,
and when enough have seen and fondled,
there is no wilderness left to cherish."¹*

I. Introduction

In October 1991, in celebration of its seventy-fifth

* B.S., M.S., Applied History, Carnegie Mellon University (1989, 1991); J.D., Seton Hall University School of Law, anticipated May 2000.

¹ ALDO LEOPOLD, *Wisconsin*, in *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 95, 101 (1949).

anniversary, the National Park Service ("NPS") sponsored a Seventy-Fifth Anniversary Symposium in Vail, Colorado² called "Our National Parks: Challenges and Strategies for the 21st Century." The participants of the Anniversary Symposium³ reviewed the National Park Service's existing policies and procedures and prepared recommendations⁴ for the Service's perpetuation into the next century.⁵ Describing the National Park Service as "compromised," and thus, unable to achieve even the most fundamental aspects of its mission,⁶ the Symposium's more than seven-hundred participants promulgated a set of recommendations ("The Vail Agenda")⁷ designed to promote

² The National Park Service ("NPS") sponsored a year-long self-examination and review. See NATIONAL PARK SERVICE, NATIONAL PARKS FOR THE 21ST CENTURY: THE VAIL AGENDA 4 (1998). Directed by a Steering Committee, the NPS conducted this self-evaluation using internal groups of Park Service employees, the John F. Kennedy School of Government of Harvard University, the World Wildlife Fund/Conservation Foundation, and the National Park Foundation. See *id.* at 5. During this year-long period of review, four working groups met on two successive occasions to formulate preliminary reports, which served as the basis for discussion at the 75th Anniversary Symposium. See *id.* at 6.

³ The Steering Committee, as well as the organizers of the symposium, envisioned a working "congress" format for the symposium, whereby participants would review all of the issues currently facing the Park Service, discuss options and potential solutions, and suggest ways in which the NPS might address its problems. See *id.* at 5.

⁴ At the conclusion of the 75th Anniversary Symposium, the working groups finalized their reports, and submitted them to the Steering Committee for compilation. See NATIONAL PARK SERVICE, *supra* note 2, at 7. The Steering Committee's final report included a series of recommendations to the Director of the National Park Service. See *id.*

⁵ Although the Park Service finds that its staff is dedicated, that the resources it manages are of extreme national significance, and that the American public supports its ideals, the future of the Service is, nevertheless, tenuous. See NATIONAL PARK SERVICE, *supra* note 2, at 2. Among other factors, increasing responsibilities imposed by Congress in an era of stagnant financial support, a backlog of infrastructure repairs, declining staff morale, incompatible external development, pollution and rapid increase in visitation levels, have placed the National Park System in peril. See 143 CONG. REC. S7650-03 (1997), available in 1997 WL 399747 (Cong. Rec.) (statement of Sen. Dale Bumpers (D-AR), "Deterioration of U.S. National Parks"). See also NATURAL RESOURCES DEFENSE COUNCIL AND THE NATIONAL TRUST FOR HISTORIC PRESERVATION, RECLAIMING OUR HERITAGE: WHAT WE NEED TO DO TO PRESERVE AMERICA'S NATIONAL PARKS 6-7 (1997) [hereinafter RECLAIMING OUR HERITAGE]; Michael Satchell, *Parks in Peril*, U.S. NEWS AND WORLD REPORT, July 21, 1997, at 24-28.

⁶ See NATIONAL PARK SERVICE, *supra* note 2, at 12.

⁷ The report which has come to be known as the "Vail Agenda" includes six strategic objectives, under which multiple recommendations have been subsumed.

individual park resource management and preservation, and, thereby, enhance the National Park System as a whole.⁸

Congressional reaction to The Vail Agenda, while largely positive and, at times, urgent, has resulted in only three pieces of legislation in the eight years since the Vail Symposium.⁹ In its most recent attempt at implementing the Vail Agenda, Congress passed S. 1693, entitled "Vision 2020: National Parks Restoration Act," ("Vision 2020") in October 1998.¹⁰

Vision 2020 included an array of measures aimed at ensuring the long-term viability of the National Park Service and the parks under its superintendence.¹¹ It has largely been heralded as a

See NATIONAL PARK SERVICE, *supra* note 2, at 13-39. These six objectives include the following: resource stewardship and protection, access and enjoyment, education and interpretation, proactive leadership, science and research, and professionalism. *See id.* Collectively, these objectives and recommendations mandate a course of action for the National Park Service. *See id.* at 7.

⁸ The Vail Agenda recognized the diverse nature of the current responsibilities expected of the National Park Service. *See* NATIONAL PARK SERVICE, *supra* note 2, at 9. As such, by likening the role of the NPS to that of a "portfolio manager" faced with a breadth of responsibilities, the Vail Agenda attempted to fashion a set of recommendations which were specific enough to be functional, yet flexible enough to be applicable to the multitude of management situations with which the NPS is faced. *See id.* at 10.

⁹ In particular, in 1992, Congress promulgated new concessions contract policies for the NPS, for which the former Secretary of the Interior Manuel Lujan issued new regulations. *See* S. REP. NO. 105-202, at 27 (1998). These regulations standardized concessions contract language, thereby encouraging higher financial return on such contracts. *See id.*

Also, in 1996 Congress authorized the National Park Service (along with the three other federal land management agencies: the Bureau of Land Management, the U.S. Fish and Wildlife Service, and the U.S.D.A. Forest Service) to establish higher entrance and user fees in a subset of one hundred parks in the System. *See* Recreational Demonstration Fee Program, Department of Interior and Related Agencies Appropriations Act of 1996 § 315, 16 U.S.C. § 4601-6a note (1996).

The final piece of legislation, Vision 2020: National Parks Restoration Act, is the subject of the remainder of this note. *See* National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391 (1998) [hereinafter NPOMA].

¹⁰ As passed in the Senate, S. 1693 was entitled, "Vision 2020: National Parks Restoration Act." *See* 144 CONG. REC. S6268 (1998) (statement of Presiding Officer). The title to this legislation, as passed in the House, was changed to the "National Parks Omnibus Management Act of 1998: A bill to provide for improved management and increased accountability for certain National Park Service programs, and for other purposes." *See* NPOMA, *supra* note 9, § 1(a).

¹¹ The bill itself included eight main sections, Titles I-VIII. *See* NPOMA, *supra* note 9, §§ 101-802. Titles I-III contained management directives for the National Park Service, some of which were derived directly from The Vail Agenda. *See id.* §§

“landmark piece of legislation,”¹² whose sweeping and systematic approach will result in a “National Park System that is healthy, vibrant and alive.”¹³ Yet, although its aim is extensive, Vision 2020 ultimately provides a \$38 million panacea¹⁴ to an estimated \$8 billion crisis.¹⁵ The fundamental problems plaguing the National

101-303. The remaining five titles effectively confer authority on the National Park Service to utilize a variety of mechanisms to raise and retain fee revenues. *See id.* §§ 401-802.

¹² 144 CONG. REC. S6270 (1998) (statement of Sen. Craig Thomas (R-WY)) (announcing passage of Vision 2020, which he originally introduced in the Senate in February 1998).

¹³ *Id.* Senator Thomas, from Wyoming, spent two years traveling across the country, speaking to groups interested in saving the parks, and holding committee hearings in Washington in an effort to investigate and evaluate means by which the National Park System could be improved. 144 CONG. REC. S6270 (1998) (statement of Sen. Thomas) (thanking his fellow committee members for their work on Vision 2020).

¹⁴ Initial estimates by National Park Service officials expected proposed fee increases to net \$140 million over three years. *See National Park System User Fees: Hearing Before the Senate Subcomm. on National Parks, Historic Preservation, and Recreation of the Senate Comm. on Energy and Natural Resources*, 105th Cong. 18 (1997) [hereinafter *June 1997 Hearing*] (statement of Denis P. Galvin, Acting Director, National Park Service, Department of the Interior). Vision 2020 was supposed to allow the NPS to raise fees above the previously set statutory maximums for a period of six years, through September 30, 2005, *see* S. REP. NO. 105-202, at 27 (1998), resulting in at least \$280 million in fee revenues for the nation's parks. The law which President Clinton ultimately signed, however, confers no such authority on the NPS, *see* NPOMA, *supra* note 9, § 501, making concessions contracts the only potential source of revenue from Vision 2020. *See id.* § 401 et seq. Hence, the Congressional Budget Office estimates that Vision 2020 will result in a total net increase of \$38 million for the NPS through 2003. *See* H.R. REP. NO. 105-767, at 55 (1998).

¹⁵ Assessments of the financial crisis facing the National Park Service range from a low of \$6 billion to a high of nearly \$9 billion. *See, e.g.* 143 CONG. REC. S3233-04, *S3234 (1997), *available in* 1997 WL 182397 (CONG. REC.) (statement of Sen. Thomas) (total unfunded backlog in maintenance, resource stabilization, infrastructure repair, and repair to employee housing at \$8.7 billion); 139 CONG. REC. E791-04 (1993), *available in* 1993 WL 89476 (CONG. REC.) (statement of Rep. Joel Hefley (R-CO)) (backlog on construction, maintenance and acquisition estimated at \$6 billion by National Park Service).

More specifically, according to Park Service estimates provided to the Natural Resources Defense Council, capital construction needs are currently at \$5.6 billion. *See* RECLAIMING OUR HERITAGE, *supra* note 5, at 13. This figure included infrastructure repairs, building and land restoration, improvements to employee housing, and repairs to utilities. *See id.* In addition to needed physical repairs, the NPS estimated funding needs for natural resource protection to be \$823 million. *See id.* Cultural resource management needs, such as preservation and cataloging of museum collections, archeological surveys, and ethnographic studies, were placed at

Park Service, including Park Service culture¹⁶ and the underlying Congressional appropriation process,¹⁷ remain beyond the scope of Vision 2020.¹⁸

Part II of this note will examine the legislative and political framework which, in trying to preserve the nation's natural resources, orchestrated the current state of degradation in which we find our system of national parks.¹⁹ In addition, Part III will discuss the multitude of attempts by Congress to correct the National Park Service's trajectory.²⁰ After an explanation of the key provisions of Vision 2020 in Part IV, Part V will analyze whether or not Congress' most recent initiative will fulfill its promoters' lofty prognostications.²¹ Finally, this note will conclude with some thoughts on the future of the National Park Service and the role that Congress and the public must play therein.

II. Historical Background

Since 1916, with the passage of the National Park Service Act of 1916 (the "Organic Act"),²² the National Park Service has served

\$360 million. *See id.* Finally, to complete its outstanding land acquisition obligations, the NPS may require at least \$1.5 billion. *See id.* at 14.

¹⁶ The National Park Service has created a culture aimed at facilitating public access and use of the parks, often at the expense of long-term preservation. *See* Richard West Sellars, *Science or Tradition? (What Should Be Emphasized in Park Service Management)*, NATIONAL PARKS, Jan./Feb. 1998, at 39. *See also infra* Part V.

¹⁷ The legislative process by which annual fiscal appropriations are determined has become exceedingly politicized, often driving funding allocations at the expense of Park Service planning priorities. *See* Wendy Mitman Clarke, *Insufficient Funds: Appropriations Have Not Kept Pace With Park Visitation and Expansion*, NATIONAL PARKS, July/Aug., 1997, at 26. *See also* Jeffrey P. Cohn, *Parks in Peril*, GOVERNMENT EXECUTIVE, ¶ 10, May 1, 1998, available in 1998 WL 10314931, GOVNEWS Database; 138 CONG. REC. E2776-03, *E2777 (1992), available in 1992 WL 234860 (CONG. REC.) (statement of Rep. Robert J. Lagomarsino (R-CA)) (recognizing that funding priorities tend to be weighted in favor of low-priority Congressional preferences, as opposed to that specified as most pressing by the NPS). *See generally infra* Part V.

¹⁸ *See supra* text accompanying note 11.

¹⁹ *See infra* Part II.

²⁰ *See infra* Part III.

²¹ *See infra* Part V.

²² A four year campaign to create a parks bureau resulted in the National Park Service Act, signed by President Woodrow Wilson on August 25, 1916. *See* 16 U.S.C.

as the administrative body of the individual units belonging to the National Park System.²³ From the very first House Committee debate over the Organic Act,²⁴ Congress worried about how to financially support a parks bureau.²⁵ Convinced, nonetheless, that a park service could benefit both private citizens and the government,²⁶ the Committee excluded an individual park fee structure from the final bill that it sent to the floor.²⁷ In fact, until

§ 1 (1994).

²³ Currently there are twenty-one types of units within the system. See NATIONAL PARK SERVICE, *supra* note 2, at 9. They include the following: national battlefield, national battlefield site, national battlefield park, national historical park, national historic site, national lakeshore, national monument, national memorial, national military park, national park, national preserve, national river, wild and scenic riverway, national recreation area, national seashore, national scenic trail, international historic site, national heritage corridor, and national parkway. See *id.*

²⁴ The Park Service enabling statute was originally referred to the House Committee on Public Lands, which debated two different bills on April 5 and 6, 1916. See *Bills to Establish a National Park Service and for Other Purposes: Hearing on H.R. 434 and H.R. 8668 Before the House Comm. on the Public Lands*, 64th Cong., 1st Sess. 3 (1916) [hereinafter *1916 Hearing*]. The two bills, one introduced by Rep. Kent, H.R. 8668, and the other by Rep. Raker, H.R. 434, were combined into one final piece of legislation and reported to the full House for approval. See H.R. REP. NO. 700, at 1 (1916).

²⁵ See *1916 Hearing*, *supra* note 24, at 19, 25, 28 (indicating that federal appropriations would be used solely for general administrative purposes, and questioning whether or not subsequent yearly requests would ask for increasingly more employees) and 75, 77 (expressing concerns about the necessity of large appropriations to sustain a large bureaucratic structure).

²⁶ See *1916 Hearing*, *supra* note 24, at 8 (statement of Richard B. Watrous, Secretary of the American Civic Association) (quoting from the Report of the Commissioner of Dominion Parks of Canada, to the effect that the national park system of Canada provides not only, "unequaled means of recreation in the out-of-doors under the best possible conditions," but also, "produc[es] for the country an ever increasing revenue from tourist traffic and tourist traffic is one of the largest and most satisfactory means of revenue a nation can have."); see also *id.* at 37-38 (statement of Mr. Stephen T. Mather, Assistant to the Secretary of the Interior) (indicating the economic potential offered by national parks, of which many private citizens hoped to take advantage through partnering with the government vis-a-vis concessions).

²⁷ The Committee briefly discussed charging user fees to defer the cost of maintaining the parks, as opposed to the desirability of creating a park system independent of visitor fees for its long-term sustenance. See *1916 Hearing*, *supra* note 24, at 76, 80-81 (statement of Rep. Kent) (indicating the desire to keep at a minimum the public burden of supporting the park system). The Committee was apparently encouraged by the Canadian experience, and the promise that consolidation of the administration of all parks under one bureau would lend itself not to additional expenditure by the federal government but, rather, savings thereof. See H.R. REP. NO. 700, at 5 (1916) (statement of Franklin K. Lane, Secretary

passage of the Land and Water Conservation Fund Act ("LWCFA") in 1965,²⁸ the National Park Service derived its budget primarily from yearly Congressional appropriations,²⁹ supplemented only sporadically by user fees at some parks and monuments.³⁰

While the LWCFA effectively maintained National Park user fee rates for over thirty years,³¹ annual Park Service funding

of the Interior). Hence, the bill presented to the House floor contained no provisions for charging fees within the individual parks. *See id.* at 5 (indicating that the creation of a National Park Service would "tend more and more to make the parks self-sustaining, without extortion or unreasonable charge on the traveling public.").

²⁸ The Land and Water Conservation Fund Act (the "LWCFA") was largely the work of the Outdoor Recreation Resources Review Commission, a presidential advisory commission which operated during the late 1950's and early 1960's. *See* Will Nixon, *History of the LWCF*, E-AMICUS, ¶ 2 (Spring 1998) <<http://www.nrdc.org/eamicus/98spr/losthi.html/>>. Created largely to fund both federal and state acquisition and maintenance of parks and recreation lands, the LWCFA derived its primary proceeds from offshore oil and gas wells in federal waters. *See* 16 U.S.C.A. § 4601-5(c)(2) (1998). Although the wells produce in excess of \$3 billion each year, the LWCFA's annual income is limited to \$900 million, which is to be spent on outdoor recreation resources. *See* Will Nixon, *Paradise Lost?*, E-AMICUS ¶ 2 (Spring 1998) <<http://www.nrdc.org/eamicus/98spr/wnlost1.html/>>. *See also* 16 U.S.C.A. § 4601-4-5(c)(1).

²⁹ *See* 16 U.S.C. § 1d. (1992) (authorizing appropriations to the Department of the Interior for operation of the National Park Service).

³⁰ The history of fees in the National Parks can only be defined as sporadic. The first known fees were collected at Mount Rainier, beginning in 1908, with the introduction of automobiles to the park. *See June 1997 Hearing, supra* note 14, at 3. By the time of the passage of the Organic Act in 1916, motorists were being charged fees in the following parks: Mount Rainier, \$5; Yosemite, \$5 round trip; Crater Lake, \$5 season permit; Sequoia, \$5 single round trip; General Grant, \$1 round trip; Mesa Verde, \$1 round trip; Glacier, \$5 season permit. *See* H.R. REP. NO. 700, at 50 (1916).

Initial evidence of a system-wide fee program dates from 1939, when Secretary of the Interior Harold Ickes announced fees for the parks. *See June 1997 Hearing, supra* note 14, at 3. Notwithstanding, it took another twenty-five years before a comprehensive fee structure for the parks, the LWCFA, was outlined. *See* 16 U.S.C.A. § 4601-6a. Even after the LWCFA passed, however, all parks were required to return all fee revenues to the Treasury of the United States for general reappropriation through the yearly budgeting process. *See id.* § 4601-5(c)(1), as amended, Pub. L. No. 100-203, tit. V, § 5201(f)(1), 101 Stat. 1330-267 (1987).

³¹ The LWCFA set strict parameters on what fees could be collected, in which parks they could be collected, and capped maximum allowable entrance fees in all units of the National Park System at \$5 per automobile and \$3 per person. *See* 16 U.S.C.A. § 4601-6a (B)(2). Such fees allowed each visitor unlimited reentry during a single visit, defined as a continuous stay within a designated area for up to fifteen days. *See id.*

This provision of the LWCFA was not substantively amended until Congress

steadily declined.³² At the same time, the number of visitors to national parks soared.³³ Almost simultaneously, Congress initiated a land acquisition frenzy unparalleled in the National Park Service's history.³⁴ As a result, today there are three-hundred seventy-six units within the National Park System,³⁵ spanning more

authorized the Recreational Fee Demonstration Program ("RFDP") in 1996. See Department of Interior and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-134, tit. I, § 101(c), 110 Stat. 1321-200 (1996) (renumbered Pub. L. No. 104-140, tit. I, § 1(a), 110 Stat. 1327 (1996)), as amended, Pub. L. No. 104-208, Div. A, tit. I, § 101(d), 110 Stat. 3009-181, 3009-223 (1996) (extending program past original expiration date of September 30, 1998 to September 30, 1999), as amended, Pub. L. No. 105-18, tit. II, § 5001, 111 Stat. 181 (1997) (removing FY 1994 base year requirement) (codified as amended at 16 U.S.C. § 46046a note).

The RFDP allowed the National Park Service to test new fee structures in a subset of 100 of its parks. See Department of Interior and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-134, tit. I, § 101(c), 110 Stat. 1321-200 (1996) (renumbered Pub. L. No. 104-140, tit. I, § 1(a), 110 Stat. 1327 (1996) (codified as amended at 16 U.S.C. § 46046a note):

(a) The Secretary of the Interior (acting through the Bureau of Land Management, the National Park Service and the United States Fish and Wildlife Service) and the Secretary of Agriculture (acting through the Forest Service) shall each implement a fee program to demonstrate the feasibility of user-generated cost recovery for the operation and maintenance of recreation areas or sites and habitat enhancement projects on Federal lands.

(b) In carrying out the pilot program established pursuant to this section, the appropriate Secretary shall select from areas under the jurisdiction of each of the four agencies referred to in subsection (a) . . . for fee demonstration.

110 Stat. 1321-200, § 315(a), (b). The Park Service was to originally retain all revenues raised beyond a base figure, which was set at the FY 1994 appropriation for that particular park. See *id.* § 315(c). The base year requirement was subsequently removed in 1997. See 1997 Emergency Supplemental Appropriation Act, Pub. L. No. 105-18, tit. II, § 5001, 111 Stat. 181 (1997). See also *infra* Part IV.

³² While annual Congressional appropriations since 1977 doubled to their current level of nearly \$1.6 billion, when adjusted for inflation, funding actually declined by over \$600 million in that same period. See RECLAIMING OUR HERITAGE, *supra* note 5, at 17.

³³ For example, between 1984 and 1994, the number of visitors increased twenty-five percent overall, rising from 208 million to 269 million. See *id.* at 6.

³⁴ Beginning with the passage of President Kennedy's Cape Cod National Seashore Act of 1961, see 16 U.S.C. § 459b (1992), Congress began spending millions of dollars annually on the acquisition of land, for which the Department of Interior and, thus, the National Park Service, was made responsible. See Nixon, *Paradise Lost?*, *supra* note 28, ¶ 1. For example, between 1965 and 1998, Congress designated one hundred seventy-three new National Park units. See *id.*

³⁵ See H.R. REP. NO. 105-767, at 28 (1998).

than eighty-three million acres in forty-nine states and four U.S. territories,³⁶ for which the National Park Service is ill-equipped to care.³⁷ This dichotomous evolution led to The Vail Agenda, and, ultimately, to Vision 2020 and Congress' attempt to resuscitate the nation's system of parks.

III. Legislative History

Initially, The Vail Agenda spawned a stream of public³⁸ as well as legislative reactions,³⁹ all of which suggested the need to save

³⁶ See RECLAIMING OUR HERITAGE, *supra* note 5, at 2.

³⁷ Former Director of the National Park Service, Roger Kennedy, summarized the situation in this way: "the appropriated budget, \$1.6 billion, is just about enough to sustain the current rate of rot." See *Improvements to the National Park System: Hearings Before the Subcommittee on National Parks, Historic Preservation, and Recreation of the Senate Committee on Energy and Natural Resources*, 105th Cong. 13 (1997) (quoted in statement of W. James Host, Executive Vice President, National Tour Association, Lexington, KY) [hereinafter *March 1997 Hearings*].

³⁸ See, e.g., Cohn, *supra* note 17, ¶ 1-39; Sellars, *Science or Tradition?*, *supra* note 16, at 39-40; Satchell, *supra* note 5, at 23-28; Clarke, *supra* note 17, at 26-29; Daniel Glick and Andrew Murr, *On the Brink: National Parks Management*, NEWSWEEK, June 23, 1997, at 60-61; Bruce F. Vento, *Dollars and Sense: Changes in Policy on National Park Entrance Fees May be a Hardship and Limit the Number of Future Visitors*, NATIONAL PARKS, Nov./Dec. 1996, at 49-50; Jack Goldsmith, *Designing for Diversity*, NATIONAL PARKS, May/June 1994, at 20-21; John G. Mitchell, *Our National Parks*, NATIONAL GEOGRAPHIC MAGAZINE, Oct. 1994, at 2-55. See also Kamron Keele, Comment, *Preservation and Use: Road Building, Overcrowding, and the Future of Our National Parks*, 11 TUL. ENVTL. L. J. 441 (1998) (discussing the paradoxical mission of the National Park Service and its implication on the development of transportation systems within the parks); Symposium, *The National Park System*, 74 DENV. U. L. REV. 569 (1997).

³⁹ See, e.g., 143 CONG. REC. E2210-03 (1997), available in 1997 WL 692562 (CONG. REC.) (H.R. 2853, National Park Capital Improvement Fund); 143 CONG. REC. E280-01 (1997), available in 1997 WL 60386 (CONG. REC.) (National Parks Checkoff Act); 143 CONG. REC. E9 (1997), available in 1997 WL 5004 (CONG. REC.) (H.R. 142, Crown Jewel Act); 143 CONG. REC. S1234-36 (1997), available in Statements on Introduced Bills and Joint Resolutions (Senate - Feb. 11, 1997) <<http://thomas.loc.gov/>> (S. 301, National Parks Capital Improvement Act); 141 CONG. REC. S9002-04 (1995), available in Statements on Introduced Bills and Joint Resolutions (Senate - June 23, 1995) <<http://thomas.loc.gov/>> (S. 964, Park Renewal Fund Act); 140 CONG. REC. H6410-13 (1994), available in 1994 WL 393221 (CONG. REC.) (H. Res. 492, To approve S. 208: NPS Concession Policy Reform); 140 CONG. REC. E1119-01 (1994), available in 1994 WL 225292 (CONG. REC.) (H.R. 4533, National Park Service Entrepreneurial Management Reform); 139 CONG. REC. E234-35 (1993), available in 1993 WL 21922 (CONG. REC.) (H.R. 743, National Park Revitalization Act).

the National Parks.⁴⁰ Public interest groups, such as the Natural Resources Defense Council⁴¹ and the National Trust for Historic Preservation,⁴² employed the use of both mainstream⁴³ and special interest media⁴⁴ in an attempt to rally public support for the cause.⁴⁵ These groups mounted, and sustained, a grass roots campaign to lobby elected officials in an attempt to force legislative change⁴⁶ toward much needed financial support of the

⁴⁰ See, e.g., Satchell, *supra* note 5, at 23 (reporting the parks as, “[i]mpoverished, mired in political gamesmanship, and beset by troubles within and without . . . [and] fac[ing] an uncertain future.”).

⁴¹ The Natural Resources Defense Council (“NRDC”) is a non-profit organization of more than 400,000 members nationwide. See NRDC, *Mission* (visited Feb. 20, 1999) <<http://www.nrdc.org/comm/fnintr.html/>>. According to the NRDC, it uses law, science and the support of its members to “protect the planet’s wildlife and wild places to ensure a safe and healthy environment for all living things.” *Id.*

⁴² The National Trust for Historic Preservation (“NTHP”), chartered by Congress in 1949, is a non-profit membership organization, currently boasting a membership role of 275,000. See NTHP, *About the Trust-The National Trust for Historic Preservation: Mission Statement* (visited Mar. 6, 1999) <<http://www.nthp.org/main/abouttrust/mission.htm>>. The mission of the NTHP is to fight, through education and advocacy, to save historic buildings and the neighborhoods and the landscapes they anchor. See *id.*

⁴³ Articles have appeared in NEWSWEEK and NATIONAL GEOGRAPHIC, for example, which enjoy newsstand circulation, regarding the current state of the parks. See *supra* text accompanying note 38.

⁴⁴ Compare *supra* note 43 and accompanying text with articles in NATIONAL PARKS and GOVERNMENT EXECUTIVE, *supra* note 38, whose circulation is much more limited.

⁴⁵ NRDC’s Campaign to Save Our Parks, for instance, included a concentrated effort to rejuvenate the National Park Service without using taxpayer money to do so. See NRDC, *NRDC’s Campaign to Save Our Parks*, (visited Feb. 20, 1999) <<http://www.nrdc.org/brie/fbintr.html/>>. As such, the NRDC attempted to focus national attention on the plight of the National Parks by sponsoring a “media spotlight” on the issues facing the NPS, as well as disseminating information over its website and through mailings to its members. See *id.* As a corollary, the NRDC mounted a similar campaign to improve the air quality within the nation’s parks, using calls to action and aggressive advocacy tactics designed to stimulate public interest and, hence, support. See *id.*

⁴⁶ The NRDC, for example, identifies areas of environmental concern and works to “foster the fundamental right of all people to have a voice in decisions that affect their environment.” NRDC, *Mission*, *supra* note 41. As such, it fomented a letter writing campaign to both the Secretary of the Interior Bruce Babbitt and to individual elected representatives encouraging co-sponsorship to urge support for legislation pending before Congress. See, e.g., NRDC, *NRDC Briefing on National Parks* (visited Feb. 20, 1999) <<http://www.nrdc.org/brie/fbintr.html/>>. The NRDC also engaged in intensive lobbying efforts on Capitol Hill in an attempt to secure additional funding for National Park Service sites. See NRDC, *NRDC Campaign to Save Our Parks* (visited Feb. 20, 1999) <<http://www.nrdc.org/brie/fbintr.html/>>.

National Park Service.⁴⁷

Congressional sympathy for the current plight of the National Parks has been well-documented.⁴⁸ Indeed, in September 1994, Congressman Hansen remarked on the House floor that, “[H]ardly a week goes by in the House during which we are not considering some legislation [relating to the National Park Service].”⁴⁹

Legislative initiatives in both the House and the Senate, largely aimed at addressing the financial needs of the National Park Service, have had two primary purposes: increasing funding to meet the demands and needs of the National Park Service⁵⁰ or,

Largely due to such efforts, Congress voted to raise the National Park Service appropriation levels by \$211 million, raising its total budget to \$1.6 billion, for FY 1998. See Will Nixon, *The Practical Activist*, E-AMICUS, ¶ 3 (Spring 1998) <<http://www.nrdc.org/eamicus/98spr/activist.html/>>.

⁴⁷ See *supra* text accompanying note 15.

⁴⁸ See 144 CONG. REC. E413-01 (1998), *available in* 1998 WL 119238 (CONG. REC.) (statement of Rep. Lee H. Hamilton (D-IN)) (report on the challenges facing the National Park Service and the possible solutions thereof); 143 CONG. REC. S12074-03 (1997), *available in* 1997 WL 692670 (CONG. REC.) (statement of Sen. Thomas) (speaking during closing activities of Congress’ first session about a new era for the National Parks); 143 CONG. REC. S7650-03 (1997), *available in* 1997 WL 399747 (CONG. REC.) (statement of Sen. Bumpers) (rising in support of a new concessions policy to address the current dangers facing the Park System); 138 CONG. REC. E2776-03 (1992), *available in* 1992 WL 234860 (CONG. REC.) (statement of Rep. Lagomarsino) (as longest serving member on the House subcommittee having jurisdiction over the National Park Service, on strategies for improving the direction of the NPS).

⁴⁹ 140 CONG. REC. H9873-01, *H9875 (1994), *available in* 1994 WL 526876 (CONG. REC.) (statement of Rep. James V. Hansen (R-UT)).

⁵⁰ Such measures have included the following: increasing Department of the Interior FY appropriation levels; raising entrance and user fees charged at individual parks; raising funds through other mechanisms such as bonding and income tax refund contributions; raising franchise fees on concessionaires operating within the parks; cooperatively bundling park admission fees and marketing them to target populations. See, e.g., 143 CONG. REC. E1799-01 (1997), *available in* 1997 WL 577949 (CONG. REC.) (statement of Rep. Duncan) (sponsoring the National Park Fee Equity Act, which would have allowed those parks unable to charge entrance fees to retain other revenues instead of returning them to the Treasury); 140 CONG. REC. H10802-01 (1994), *available in* 1994 WL 545790 (CONG. REC.) (statement of Rep. Bruce F. Vento (D-MN)) (introducing the National Park Service Entrepreneurial Management Reform Act of 1994, which would raise the statutory maximums stipulated in the LWCFA); 138 CONG. REC. E276-01 (1992), *available in* 1992 WL 23719 (CONG. REC.) (statement of Rep. Lagomarsino) (proposing the America the Beautiful Passport Bill, which would amend the LWCFA by expanding the authority to charge fees and create a new twelve month admission permit for federal recreation areas; the permit would have been marketed through public-private

conversely, decreasing NPS responsibilities.⁵¹ Ways of increasing funding to the Park Service have been varied and, at times, creative.⁵² For example, legislators have repeatedly proposed, albeit to little avail, amendments to the LWCFR which would convey to individual parks the ability to increase entrance fees.⁵³ Similar measures authorizing the National Park Service to retain monies it collected in the parks have, likewise, been rejected.⁵⁴ Proposed public-private cooperative arrangements to market the Park System⁵⁵ and permit corporate⁵⁶ or private⁵⁷ sponsorship of

partnerships, which would have received a commission from permit sales).

⁵¹ Although extremely controversial, legislators have frequently proposed the evaluation and subsequent elimination of certain parks from the Park System as a means by which to lessen the burden on the NPS as a whole. See, e.g., 140 CONG. REC. H9873-01 (1994), available in 1994 WL 526876 (CONG. REC.) (statement of Rep. Vento) (introducing the National Park System Reform Act of 1994, which would allow the Secretary of the Interior to review the existing units within the National Park System and, if appropriate, recommend alternative non-federal management arrangements for them); 139 CONG. REC. E791-04, *E792 (1993), available in 1993 WL 89476 (CONG. REC.) (statement of Rep. Hefley) (introducing the National Park System Reformation Act of 1993, which would have created a thirteen-member commission to prepare a report on those areas under National Park Service management which were considered non-essential and, thus, recommended for termination); 138 CONG. REC. E2776-03, *E2777 (1992), available in 1992 WL 23719 (CONG. REC.) (statement of Rep. Lagomarsino) (proposing the National Park Reformation Act of 1992, which called for the elimination of units within the Park System not warranting continued federal management).

⁵² Beyond simply suggesting higher yearly appropriation levels, legislators have attempted to amend other government agencies' enabling statutes, such as the IRS, and thereby divert funding to the NPS. See, e.g., 143 CONG. REC. E280-01 (1997), available in 1997 WL 60386 (CONG. REC.) (statement of Rep. John J. Duncan, Jr. (R-TN)) (introducing The National Parks Checkoff Act of 1997, which would have placed a line on income tax forms and allow taxpayers to donate portions of their tax refunds to the NPS). Measures granting the National Park Service more authority to keep the revenues it collected were, likewise, introduced to increase park funding. See, e.g., 143 CONG. REC. E1799-01 (1997), available in 1997 WL 577949 (CONG. REC.) (statement of Rep. Duncan) (sponsoring the National Park Fee Equity Act, which would have allowed those parks unable to charge entrance fees to retain other revenues instead of returning them to the Treasury).

⁵³ See *supra* text accompanying note 50.

⁵⁴ See *supra* text accompanying note 50.

⁵⁵ See *supra* text accompanying note 50.

⁵⁶ While critics have advanced a variety of objections to this type of legislation, the most salient has included the inherent inconsistency with the fundamental ideal of the National Parks as a respite from such commercialism. See *March 1997 Hearings, supra* note 37, at 29 (prepared statement of Charles M. Clusen, Senior Policy Analyst, Natural Resources Defense Council). Other objections have included the inherent conflict of interest in having the Secretary of Interior as both

infrastructure upgrades have also failed in both houses of Congress.⁵⁸

National Park Service concession policies⁵⁹ have also been targeted as an area ripe for raising revenues for the parks.⁶⁰

solicitor of corporate sponsorship and regulator of such corporate interests on public lands. *See id.* Additionally, the mandate to the Secretary to evaluate the "appropriateness" of promotional activities in relation to the desired image of the NPS is seemingly incompatible with corporate sponsorship. *See id.*

⁵⁷ While private sources have often been a lucrative source of financial support for the parks, there are inherent dangers in soliciting such funding. *See* Clarke, *supra* note 17, at 29. Private donors, for example, have expected greater control over internal park matters, or special privileges by park service concessioners, in return for their contributions. *See id.*

⁵⁸ *See, e.g.*, 142 CONG. REC. S3698 (1996), *available in* In The Spirit of Earth Day (Senate - Apr. 19, 1996) <<http://thomas.loc.gov/>> (statement of Sen. Frank Murkowski (R-AK)) (proposing S. 1703, which would establish a Corporate Sponsorship program for the National Park System; opposed and subsequently defeated by a coalition of over 20 environmental groups); 139 CONG. REC. E3121-02, *E3122 (1993), *available in* 1993 WL 493992 (CONG. REC.) (statement of Rep. Vento) (introducing a bill to create the National Parks and Landmarks Conservation, which would have enabled partnering between the NPS and private organizations and individuals for the purposes of conservation; the bill languished in committee without being enacted); 138 CONG. REC. E276-01 (1992), *available in* 1992 WL 23719 (CONG. REC.) (statement of Rep. Lagomarsino) (introducing amendments to the LWCF, which would have used creative marketing techniques to sell special 12 month park user permits; the bill was tabled and never enacted).

⁵⁹ Prior to Vision 2020, concessions were governed by the National Park System Concessions Policy Act of 1965. *See* National Park System Concessions Policy Act of 1965, Pub. L. No. 89-249, 79 Stat. 969 (1965) (codified as amended at 16 U.S.C. §§ 20-20g (1991), which provided that:

[T]he Secretary of the Interior shall take such action as may be appropriate to encourage and enable private persons and corporations.... to provide and operate facilities and services which he deems desirable for the accommodation of visitors in areas administered by the National Park Service.

16 U.S.C. § 20a.

⁶⁰ This is largely due to the franchise fee and permit structure established by the National Park System Concessions Policy Act of 1965, which allowed concessioners to pay a minimal fee for the privilege of operating within a park while retaining nearly ninety-seven percent of the profits made. *See id.* In 1992, for example, concessioners in the parks took in an estimated \$650 million in gross revenues. *See* 140 CONG. REC. S3311-01, *S3318 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Bumpers) (debating NPS concession reform). Of that \$650 million, concessioners returned 2.7%, or \$18 million, to the federal government for reappropriation. *See id.* Many legislators argue the federal government ought to reap more benefit from park concessions contracts. *See* 140 CONG. REC. S3311-01, *S3316 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Robert Bennett (R-UT)).

Nevertheless, because the policies regarding Park Service concessions reflect a much deeper and ongoing debate about the fundamental purpose of the NPS itself,⁶¹ concession reform has

⁶¹ Opponents to concession reform have argued that critics of the National Park System Concessions Policy Act of 1965 attack the very reason behind its original enactment. *See* 140 CONG. REC. S3311-01, *S3312 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Malcolm Wallop (R-WY)). As such, retention of the monies earned by concessioners and the subsequent use of that money to build lodging and eating establishments, gift shops, etc., as opposed to taxpayer expenditures, was the very design of the concession policies enacted during the 1960's. *See id.* Such arguments have suggested that the federal policy in 1965, which was aimed at encouraging the private sector to provide much of the visitor services within the parks, *see supra* note 59, should be maintained. *See* 140 CONG. REC. S3311-01, *S3312 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Wallop). To upset this system, alternatively, would lead to a disruption of services on which taxpayers have come to depend. *See id.* More importantly, to place the collection of revenue ahead of constituent concerns, such as reasonable rates and continuity of services, diminishes the parks from national treasures to "cash registers for the Federal Government." 140 CONG. REC. S3311-01, *S3312 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Wallop).

Proponents of reform, on the other hand, have argued that the conditions under which the National Park Service operates have changed considerably since implementation of the National Park System Concessions Policy Act of 1965. *See* 140 CONG. REC. S3311-01, *S3316 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Bennett). Citing the increase in number of visitors and, hence, the greater demand for services, those in favor of reform have suggested that the policies advanced in the 1960's to secure concession contracts for the parks are no longer necessary given the attractiveness of the park concessions business. *See id.*

For example, the National Park System Concessions Policy Act of 1965 gave existing concessionaires, when their contract expired, the right to match any offer by a competitor attempting to take over their business. *See* National Park System Concessions Policy Act of 1965, 16 U.S.C. § 20d (1991), which read:

The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts to the concessioners who have performed their obligations under prior contracts or permits.

16 U.S.C. § 20d.

Likewise, the Act gave licensed concessionaires a possessory interest in any improvements they made to their concession area. *See id.* § 20b, which read:

[T]he Secretary may include in contracts for the providing of facilities and services such terms and conditions as . . . are required to assure the concessioner of adequate protection against loss of investment in structures, fixtures, improvements, equipment, supplies, and other tangible property provided by him for the purposes of the contract.

16 U.S.C. § 20b. This provision required potential competitors to reimburse existing concessionaires for any improvements the concessionaire made. *See id.* This reimbursement requirement worked to ensure existing concessionaires would not

been largely unsuccessful as well.⁶²

The alternative to raising NPS funding levels, decreasing the number of Park Service commitments, has often been raised as an option by legislators.⁶³ Such initiatives, introduced largely in response to the recent massive park land acquisition by Congress,⁶⁴ have typically been vehemently opposed,⁶⁵ and subsequently defeated.⁶⁶ Even efforts by Congress to impose criteria on itself⁶⁷ to limit its ability to arbitrarily add new demands on the over-taxed Park Service⁶⁸ have failed in both the Senate and the House.⁶⁹

Consequently, concrete legislative results, particularly prior to

be outbid for a contract, *see id.*, effectively giving current concessionaires a lifetime contract. *See* 140 CONG. REC. S3311-01, *S3316 (1994), *available in* 1994 WL 89674 (CONG. REC.) (statement of Sen. Bennett). Consequently, critics argue that existing Park Service policies, and not the proposed changes, pose the most danger to constituents by giving concessioners a monopoly. *See id.*

⁶² *See supra* text accompanying note 58. All measures were tabled, or languished in committee, without being enacted. *See id.*

⁶³ *See supra* text accompanying note 51.

⁶⁴ *See supra* note 34, regarding the rapidity with which Congress recently added lands to the National Park Service. Congress' penchant for spending money to acquire additional lands without bothering to take care of existing Park Service commitments has been referred to as "thinning the blood" of both the quality of the Park System and the quantity of Park Service resources available to spend on individual parks. *See id.* (statement of James M. Ridenour Director, Eppley Institute for Parks and Public Lands, Indiana University).

⁶⁵ *See, e.g.,* Patricia Byrnes, *The Ten Worst Ideas Congress Ever Had*, WILDERNESS, Fall 1995, at 5. (Quoting the incredulous statement of Rep. James Hansen, that, "[i]f you've been there once, you don't need to go again.") The creation of a commission to recommend National Parks for closure topped the list. *See id.*

⁶⁶ *See supra* text accompanying note 63. All measures were tabled, or languished in committee, without being enacted. *See id.*

⁶⁷ *See, e.g.,* 140 CONG. REC. H9873-01 (1994), *available in* 1994 WL 526876 (CONG. REC.) (statement of Rep. Vento) (introducing H.R. 4476, the National Park Service Reform Act of 1994, which would have created detailed criteria by which to determine whether or not new areas were worthy of Park Service status); 139 CONG. REC. E3121-02 (1993), *available in* 1993 WL 493992 (CONG. REC.) (statement of Rep. Vento) (introducing the National Park Service New Area Study Reform Act to change the process by which new areas are considered for addition to the Park Service); 139 CONG. REC. E791-04, *E792 (1993), *available in* 1993 WL 89476 (CONG. REC.) (statement of Rep. Hefley) (introducing the National Park System Reformation Act of 1993, which established criterion by which to evaluate areas suggested for Park Service inclusion).

⁶⁸ *See supra* note 67.

⁶⁹ *See supra* note 67 and accompanying text. None such measures were successful. *See id.*

enactment of Vision 2020, have been desultory at best.⁷⁰ Indeed, the two other laws passed following the Vail Symposium,⁷¹ which were limited in both scope and impact,⁷² contributed little to the achievement of long-term National Park Service viability⁷³ or the implementation of the Vail Agenda's recommendations.⁷⁴

IV. *Vision 2020*

Vision 2020 represents the culmination of, and hence compromise between, previous efforts to enact Park Service reform.⁷⁵ As a result, an important component of Vision 2020 is the revision of NPS concessions policies.⁷⁶ This provision effectively repeals much of the law governing concessionaires

⁷⁰ See *supra* note 9 and accompanying text.

⁷¹ See *supra* note 9, excepting Vision 2020. See also S. REP. NO. 105-202, at 27 (describing the Department of Interior's new regulations, which incorporated Congress' new policies regarding appropriate concessions contract language in 1992); Recreational Demonstration Fee Program, Department of Interior and Related Agencies Appropriations Act of 1996 § 315, 16 U.S.C. § 4601-6a note (1996) (authorizing a pilot fee program in a subset of national parks).

⁷² The new concessions contract regulations implemented by the Secretary of the Interior in 1992, see *id.*, focused solely on concessions policy, representing an extremely narrow attempt at reform. Cf., e.g., note 11 and accompanying text. Likewise, although the Recreational Demonstration Fee Program allowed considerable expansion in the ranges of fees the NPS could charge, and promoted the initiation of new and innovative approaches to fee collection, the fundamental reality is that the scope of this legislation was limited primarily to that which the NPS charged the visitor for either entering a park or using a service. See Recreational Demonstration Fee Program, Department of Interior and Related Agencies Appropriations Act of 1996 § 315, 16 U.S.C. § 4601-6a note (1996). While the RFDP admittedly expected to raise \$140 million in much needed revenues for the parks, fees represent only a small part of the total need for reform. See *June 1997 Hearing, supra* note 14, at 19, 28. (discussing fees as only part of the solution to the NPS' funding problems).

⁷³ See *supra* notes 14-15 and accompanying text.

⁷⁴ See *supra* note 7 and accompanying text.

⁷⁵ While Vision 2020 incorporated several of the recommendations of the Vail Agenda, see *supra* text accompanying note 11, it also addressed many of the concerns of legislators highlighted by the hearings held throughout 1997 and 1998 and embodied suggestions made therein. See H.R. REP. NO. 105-767, at 27 (1998). See also *supra* Part III.

⁷⁶ See NPOMA, *supra* note 9, § 401 et seq.

operating within National Park Service sites.⁷⁷ While these measures remove many of the concessionaire and consumer protections built into the National Park System Concessions Policy Act of 1965,⁷⁸ which Congress had purposely included to minimize concessionaire turnover and ensure continuity of services to visitors,⁷⁹ current legislators, nevertheless, seized an opportunity to

⁷⁷ See S. REP. NO. 105-202, at 29 (1998) (indicating that S. 1693 makes not only significant changes to NPS concession policies but also repeals the National Park System Concessions Policy Act of 1965). Compare NPOMA:

[C]oncessions contracts shall be awarded as follows:

(1) Competitive selection process.-[A]ll proposed concessions contracts shall be awarded by the Secretary to the... entity submitting the best proposal.

* * *

(5) Selection of the best proposal.- (A) In selecting the best proposal, the Secretary shall consider the following principle factors:

(i) The responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

(ii) The experience and related background of the... entity submitting the proposal, including the past performance and expertise of such... entity in providing the same or similar facilities or services.

(iii) The financial capability of the... entity submitting the proposal.

(iv) The proposed franchise fee, except that consideration of revenue to the United States shall be subordinate to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities to the public at reasonable rates.

(B) The Secretary may also consider such secondary factors as the Secretary deems appropriate.

NPOMA, *supra* note 9, § 40, with *supra* text accompanying note 61 discussing the automatic right to renewal of existing concessionaires under the National Park System Concessions Policy Act of 1965.

⁷⁸ See *supra* note 61 and accompanying text regarding concessionaires' preferential right to renew and retention of possessory interest in improvements made to park property.

⁷⁹ See 140 CONG. REC. S3311-01, *S3312 (1994), available in 1994 WL 89674 (CONG. REC.) (statement of Sen. Wallop) (arguing against concession reform in

increase NPS revenue.⁸⁰

Vision 2020 also devotes a portion of its mandate to enhancing the management, interpretation, and protection of the resources administered by the National Park System⁸¹ by increasing the professionalism of NPS management and personnel.⁸² According to Congress, this general mandate to the Secretary of the Interior to train Park Service employees will lead to better conditions for the parks and the natural resources therein.⁸³

Additionally, in an attempt to reassert the consistently ignored portion of the Park Service's original mission,⁸⁴ which

favor of maintaining current policies so that "continuity of services at reasonable rates to . . . park visitors," continued to take precedence over the collection of revenue).

⁸⁰ See *supra* note 77 and accompanying text. See also S. REP. NO. 105-202, at 29 (1998) (Expressing the hope to use Vision 2020 to improve on the increases already realized through legislation passed in 1992, which "emphasize[d] a higher financial return to the federal government.").

⁸¹ See NPOMA, *supra* note 9, § 101. The statute provides:

Recognizing the ever increasing societal pressures being placed upon America's unique natural and cultural resources contained in the National Park System, the Secretary shall continually improve the ability of the National Park Service to provide state-of-the-art management, protection, and interpretation of and research on the resources of the National Park System.

Id.

⁸² See S. REP. NO. 105-202, at 27 (1998). Vision 2020 attempts to implement the Vail Agenda's final strategic objective, which directs the NPS to "create and maintain a highly professional organization and work force." NATIONAL PARK SERVICE, *supra* note 2, at 30.

⁸³ See NPOMA, *supra* note 9, § 102. Under Vision 2020, the Secretary of the Interior is to:

[D]evelop a comprehensive training program for employees in all professional careers in . . . the National Park Service for the purpose of assuring that the work force has available the best, up-to-date knowledge, skills and abilities with which to manage, interpret and protect the resources of the National Park System.

Id.

⁸⁴ See 16 U.S.C. § 1 (1994). The mission of Park Service reads as follows:

[The National Park Service] shall promote and regulate . . . national parks, monuments, and reservations . . . by such means and measures as conform to the fundamental purpose of the said parks, . . . which purpose is to conserve the scenery and the natural and

mandated preservation of park resources,⁸⁵ Congress provided for the establishment of a scientific research program by the NPS in Vision 2020.⁸⁶ Envisioning that the availability of natural resource documentation and scientific information would be used by National Park Service managers to make sound resource management decisions,⁸⁷ Congress hoped to enable the Service to meet its "resource stewardship responsibilities."⁸⁸

The final, and perhaps most unique, feature of Vision 2020 lies in what it lacks: Park Service authority over park entrance

historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Id.

⁸⁵ See 16 U.S.C. § 1 (1994).

⁸⁶ See NPOMA, *supra* note 9, § 204. The statute specifically provides that:

The Secretary shall undertake a program of inventory and monitoring of National Park System resources to establish baseline information and to provide information on the long-term trends in the condition of National Park System resources.

Id.

⁸⁷ See S. REP. NO. 105-202, at 28 (1998).

⁸⁸ NPOMA, *supra* note 9, § 204. The provision in Vision 2020 itself reads that by facilitating the scientific study of NPS park units, *see id.* § 205 (a), the NPS would be able:

- (1) to more effectively achieve the mission of the National Park Service;
- (2) to enhance management and protection of national park resources by providing clear authority and direction for the conduct of scientific study in the National Park System and to use the information gathered for management purposes;
- (3) to ensure appropriate documentation of resource conditions in the National Park System;
- (4) to encourage others to use the National Park System for study to the benefit of park management as well as broader scientific value, where such study is consistent with the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. § 1 et seq.); and
- (5) to encourage the publication and dissemination of information derived from studies in the National Park System.

NPOMA, *supra* note 9, § 201.

fees.⁸⁹ While money alone is hardly the solution to the dire condition of the National Parks,⁹⁰ one of the key components to Congress' original version of Vision 2020 was the extension of the Recreation Fee Demonstration Program⁹¹ ("RFDP"), enacted by Congress in 1996.⁹² In the final version of Vision 2020 signed into law, however, there appears only a short, and exceedingly vague, fee provision which permits the Park Service to charge for transportation into the parks.⁹³

⁸⁹ See NPOMA, *supra* note 9, § 501 et seq.

⁹⁰ Money, for example, cannot reprioritize for Congress or the National Park Service the importance of resource preservation, the substance of the first "Strategic Objective" recommended in the Vail Agenda. See NATIONAL PARK SERVICE, *supra* note 2, at 15. ("The primary responsibility of the National Park Service must be protection of park resources from internal and external impairment."). Funding is, likewise, somewhat irrelevant to the attitude of Park Service managers, and their adoption of a proactive stance vis-a-vis park affairs. See *id.* at 24. (The fourth strategic objective promulgated by The Vail Agenda challenged the National Park Service to, "be a leader in local, national, and international park affairs, actively pursuing the mission of the national park system and assisting others in managing their park resources and values.").

⁹¹ See H.R. REP. NO. 105-767, at 21-22 (1998). The statute states that:

(a) Authority.-The authority provided to the National Park Service under the Recreational Fee Demonstration Program authorized by section 315 of the Department of Interior and Related Agencies Appropriations Act, 1996 (section 101(c) of Public Law 104-134; 16 U.S.C. 46016a note)-

(1) is extended through September 30, 2005; and

(2) shall be available for all units of the National Park System, and
for system-wide fee programs.

(b) Use of Fees.-Fees collected by the National Park Service under such Recreational Fee Demonstration Program shall be used in the National Park System in the manner provided in section 315 (c)(3) of the Department of the Interior and Related Agencies Appropriations Act, 1996 (section 101(c) of Public Law 104-134; 16 U.S.C. 46016a note).

Id. See also *supra* note 31 and accompanying text, regarding the RFDP.

⁹² The RFDP was originally enacted for a three year period, and was due to expire in 1999. See Department of Interior and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-134, tit. I, § 1(c), 110 Stat. 1321-200 (1996) (renumbered Pub. L. No. 104-140, tit. I, § 1(a), 110 Stat. 1327 (1996)). Vision 2020 originally proposed to extend the Program through September 30, 2005. See H.R. REP. NO. 105-767, at 21-22 (1998).

⁹³ Compare NPOMA, *supra* note 9, § 501, which states, "Notwithstanding any other provision of law, . . . the Secretary may impose a reasonable and appropriate charge

V. Analysis

The deletion by Congress of the Recreation Fee Demonstration Program extension occurred as a result of a compromise in the House to facilitate passage of the bill.⁹⁴ This deletion of the RFDP extension ensures that the Park Service will retain only temporary authority to control its own revenues⁹⁵

to the public for the use of such transportation services in addition to any admission fee required to be paid," with H.R. REP. NO. 105-767, *supra* note 91.

⁹⁴ According to Senator Thomas' legislative aid, the bill was reported out of the House Committee on Resources very near the end of the congressional session and, to procure its passage in the 105th Congress, the Senator agreed to enter negotiations. See Telephone Interview with Dan Naatz, Legislative Aid, Senator Craig Thomas (Apr. 7, 1999). Senator Thomas met with Senator Dale Bumpers; Representatives Don Young and George Miller; and Secretary of the Interior Bruce Babbitt, to resolve the differences in the House and Senate versions of the bill, thereby forging the consensus by which it passed. See *id.*; see also Statement by President William J. Clinton Upon Signing S. 1693, 1998 U.S.C.C.A.N. 835. It was during this negotiation process that Senator Thomas agreed to delete the extension of the RFDP from Vision 2020 in exchange for expedited passage of the bill. See Telephone Interview with Dan Naatz, Legislative Aid, Senator Craig Thomas (Apr. 7, 1999). See generally ABNER J. MIKVA AND ERIC LANE, AN INTRODUCTION TO STATUTORY INTERPRETATION AND THE LEGISLATIVE PROCESS 136-37 (1997) (describing the conference process, which is used to resolve any differences in bills passed by both houses of Congress; it is often during this process that issues not originally in dispute may, nevertheless, be raised).

⁹⁵ The National Park Service has repeatedly lobbied Congress for permanent fee authority to ensure that higher fee revenues realized from the Recreational Fee Demonstration Program continue. See *June 1997 Hearing, supra* note 14, at 9-10. See also U.S. DEP'T. OF THE INTERIOR AND U.S. DEP'T. OF AGRICULTURE, NATIONAL PARK SERVICE, U.S. FISH AND WILDLIFE SERVICE, BUREAU OF LAND MANAGEMENT, FOREST SERVICE, RECREATIONAL FEE DEMONSTRATION PROGRAM: PROGRESS REPORT TO CONGRESS, 37 (1998) (In concluding their progress report to Congress, the four land management agencies benefiting from the RFDP proposed a series of legislative and management strategies, including vesting permanent fee authority within these agencies. Only when Congress has granted such authority, they argued, would the maintenance backlog begin to decline through appropriate long-term planning and inter-agency cooperation.)

Although President Clinton's FY 1999 Budget supported vesting permanent fee authority in all of the land management agencies, such as the National Park Service and the National Forest Service, which would allow for such agencies to collect and use those fees which they collect, Congress proposed, through Vision 2020, to limit this authority to six years. See S. REP. NO. 105-202, at 27 (1998). The final version of the bill, however, as signed by the President, appears not to extend the RFDP at all. See NPOMA, *supra* note 9, § 501. See also *supra* note 80.

where long-term management and planning initiatives are clearly

The uncertain status of this program alludes to a continuing debate as fundamental to the National Park System as the natural resources themselves: whether or not parks ought to charge their visitors. See *June 1997 Hearing, supra* note 14, at 20-24 (statement of Denis P. Galvin, Acting Director, National Park Service) (discussing the competing policies of a self-sustaining park service versus equity of access to the parks).

On the one hand, the notion of the Parks as an important national resource in need of being preserved lends justification to the significant annual capital outlay by Congress. See Clarke, *supra* note 17, at 29. This impetus also supports the charging of fees at park gates to support the services of which visitors take advantage. See *1916 Hearing, supra* note 24, at 19-22 (statement of Stephen T. Mather, Assistant to the Secretary of the Interior) (discussing the desirability of keeping the parks free, and being able to do so for pedestrians entering the park, but nevertheless having to charge automobiles to help with maintenance of park roads); see also *June 1997 Hearing, supra* note 14, at 3 (statement of Denis P. Galvin, Acting Director, National Park Service) (discussing the necessity of user fees in the parks; quoting former Secretary of the Interior Harold Ickes as stating that "those who actually visit national parks and monuments should make small contributions to their upkeep, for services those visitors receive.").

The contrary argument, however, recognizes the already substantial contribution of taxpayers to the national Treasury and, hence, the National Parks. See Nixon, *The Practical Activist, supra* note 46, ¶ 3 (the National Park Service's total appropriated budget for FY 1998 was \$1.6 billion). As such, acquisition of natural resources for the purposes of public enjoyment as a national asset militates against placing the burden of supporting the National Park Service on the subset of individuals who happen to visit the parks themselves. See *June 1997 Hearing, supra* note 14, at 32 (prepared statement of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association) (describing the educational and preservational value of the national parks, as distinguishable from other entertainment outlets such as Disney World or a Hollywood film). The desirability of allowing, and indeed encouraging, widespread access to the parks lend credence to those who argue for minimizing entrance fees, or dispensing with them entirely. See *id.* at 21 (statement of Denis P. Galvin, Acting Director, National Park Service) (discussing the original impetus behind the creation of certain urban parks so as to make access more equitable).

Vision 2020, which was supposed to permit the Park Service to raise the statutory maximum fees allowed in the National Parks, was enacted with this tension as a backdrop. See *June 1997 Hearing, supra* note 14, at 32 (prepared statement of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association) (urging careful Congressional oversight of the Recreational Fee Demonstration Program). While recognizing the financial realities facing today's Park System, see *id.* at 18 (statement of Denis P. Galvin, Acting Director, National Park Service) (discussing the potential impact of increasing recreation fees with Senator Thomas, who replied, "when you look at this thing from a management standpoint . . . the real question is how are we going to fund 400 parks."), Congress, in the end, failed to enact any substantive fee reform. See NPOMA, *supra* note 9, § 501.

needed.⁹⁶ In the interim, while the RFDP is in effect, the absence of limitations on park fees similar to those previously imposed by the LWCF⁹⁷ potentially jeopardizes⁹⁸ the National Park Service's principle of broad access to its parks.⁹⁹

More fundamentally, the remaining measures and mandates offered in Vision 2020 are largely insufficient¹⁰⁰ to solve the NPS' current budgetary crisis.¹⁰¹ For example, in an effort to increase revenues to the Park Service,¹⁰² Vision 2020's proposed concessions management provisions represent a substantial portion of this legislation.¹⁰³ Although these measures are ambitious, they only begin to address the current funding backlog facing the NPS.¹⁰⁴ Moreover, while Vision 2020 purports to repeal the previous concessions policy of possessory interest¹⁰⁵ by

⁹⁶ See *supra* note 95 and accompanying text. See also *June 1997 Hearing, supra* note 14, at 9-10, 18.

⁹⁷ See Recreational Demonstration Fee Program, Department of Interior and Related Agencies Appropriations Act of 1996 § 315(d)(2), which states, "Fees charged pursuant to this section shall be in lieu of fees charged under any other provision of law." 110 Stat. 1321-202, 16 U.S.C. § 4601-6a note (Recreational Fee Demonstration Program, § (d)(2)).

⁹⁸ See *id.* Critics charge that this provision provides the park service with unfettered discretion to move from a system charging nominal fees, to that which immediately attempts to recover all costs associated with the use of services. See *June 1997 Hearing, supra* note 14, at 32 (prepared statement of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association). The dangers of the NPS attempting to maximize the benefits of the RFDP during the limited window of opportunity in which to do so are obvious. See 16 U.S.C. § 4601-6a note (Recreational Fee Demonstration Program, (f), which terminates the current program on September 30, 2001).

Others have expressed concern that Congress was attempting to rewrite entirely the authority of the NPS. See *June 1997 Hearing, supra* note 14, at 25 (Sen. Thomas, in response to statement of Sen. Rod Grams (R-MN)).

⁹⁹ See text accompanying note 95, regarding arguments against charging entrance fees at parks. See also Vento, *supra* note 38, at 50 (arguing the need to place dollar limitations on entrance fees, the absence of which would allow admission prices to "escalate to a level that could become exclusive.").

¹⁰⁰ See Clarke, *supra* note 17, at 29. (arguing that, "even if Congress approves all of the new funding ideas, these will not immediately make up for decades of shortfalls.")

¹⁰¹ See *supra* notes 14-15 and accompanying text.

¹⁰² See *supra* note 77 and accompanying text.

¹⁰³ See NPOMA, *supra* note 9, tit. IV, §§ 401 et seq.

¹⁰⁴ See *supra* note 15 and accompanying text.

¹⁰⁵ See *supra* note 61 and accompanying text, describing the National Park System Concession Policy Act of 1965 provisions for possessory interest of concessionaires.

implementing competitive bidding for concessions contracts,¹⁰⁶ it effectively replaces this "outdated policy"¹⁰⁷ with the markedly similar policy of leasehold surrender interest.¹⁰⁸ At the same time,

¹⁰⁶ See *supra* note 77 and accompanying text.

¹⁰⁷ See *supra* note 61, regarding the arguments for concessions reform, describing the changed conditions of the National Park Service and the dangers of the 1965 policies.

¹⁰⁸ See NPOMA, *supra* note 9, § 405. The statute provides that:

(a) Leasehold Surrender Interest Under New Concessions Contracts.—On or after the date of the enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concessions contract shall have a leasehold surrender interest in such capital improvement subject to the following terms and conditions:

(1) A concessioner shall have a leasehold surrender interest in each capital improvement constructed by a concessioner under a concessions contract, consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender in the capital improvement.

(2) A leasehold surrender interest—

(A) may be pledged as security for financing of a capital improvement or the acquisition of a concessions contract when approved by the Secretary pursuant to this title;

(B) shall be transferred by the concessioner in connection with any transfer of the concessions contract . . . ; and

(C) shall not be extinguished by the expiration or other termination of a concessions contract and may not be taken for public use except on payment of just compensation.

(3) The value of a leasehold surrender interest in a capital improvement shall be an amount equal to the initial value (construction cost of the capital improvement), increased (or decreased) in the same percentage increase (decrease) as the percentage increase (decrease) in the Consumer Price Index, from the date of making the investment in the capital improvement by the concessioner to the date of payment of value of the leasehold surrender interest, less depreciation of the capital improvement.

Id. This provision is fundamentally similar to the previous policy of possessory interest, see *supra* note 61 regarding the possessory interest provision of the National Park System Concessions Policy Act of 1965, in that it requires payment of this

given that franchise fees were raised considerably,¹⁰⁹ the new concessions policies threaten to price visitors out of the parks.¹¹⁰

The remaining provisions of Vision 2020¹¹¹ focus almost solely on improvements to National Park Service management of the parks.¹¹² These vague solutions,¹¹³ however, decline to consider the underlying National Park Service mission¹¹⁴ and Park Service priorities,¹¹⁵ which have proved fundamental to the Park Service's demise.¹¹⁶ As a threshold matter, from the very moment when

interest upon termination of the concessioner's contract. See H.R. REP. NO. 105-767, at 67 (1998). Instead of encouraging competition, it merely perpetuates the existing policy of monopoly-like concessions contracts. See *supra* note 61.

¹⁰⁹ See NPOMA, *supra* note 9, § 403 (5)(iv) (stipulating that the proposed franchise fee should be considered when awarding contracts to concessionaires). See also S. REP. NO. 105-202, at 29 (1998) (emphasizing the importance of enhancing the financial return to the government when granting concessions contracts).

¹¹⁰ Congress did attempt to retain some control over rates and charges for these services. See NPOMA, § 406, which reads:

(a) In General.-Each concessions contract shall permit the concessioner to set reasonable appropriate rates and charges for facilities, goods, and services provided to the public, subject to approval under subsection (b).

(b) Approval by Secretary Required.-A concessioner's rates and charges to the public shall be subject to approval by the Secretary..... [T]he reasonableness and appropriateness of rates and charges shall be determined primarily by comparison with those rates and charges for facilities, goods, and services of comparable character under similar conditions.

NPOMA, *supra* note 9, § 406. Critics, nevertheless, have argued that introducing market competition for concessions contracts would produce the cheapest franchisee whose primary concern would be maximizing his investment through the highest costs possible to park visitors. See 140 CONG. REC. S3311-01, *S3312 (1994), available in 1994 WL 89674 (CONG. REC.) (statement of Sen. Wallop) (arguing against increased competition for concessions contracts).

¹¹¹ See NPOMA, *supra* note 9, tit. I-III.

¹¹² See *supra* notes 81-83, 86, 88 and accompanying text.

¹¹³ See NPOMA, *supra* note 9, § 102. Section 102 provides, in a single sentence, the mandate by which the National Park Service must implement a "comprehensive" employee training program. See *id.*

¹¹⁴ See *supra* note 84.

¹¹⁵ Although charged with fulfilling a dual mission, see *supra* note 84, the Park Service has historically emphasized "tourism and scenery management," over preservation per se. See Sellars, *Science or Tradition?*, *supra* note 16, at 39.

¹¹⁶ The Park Service's chosen emphasis on visitor services, see *supra* note 115, has diverted its attention from issues of long-term planning and preservation. See Satchell, *supra* note 5, at 27. The result has often been poor placement of visitor facilities, which have harmed rather than enhanced park resources and contributed

Congress created the National Park Service,¹¹⁷ the paradoxical nature of the mission with which Congress charged the Service¹¹⁸ was destined to fail.¹¹⁹ Although Vision 2020 provides a general mandate for the development and training of National Park Service management¹²⁰ and enhanced scientific study of park resources¹²¹ to improve the protective nature of the Service,¹²² Vision 2020 provides no more guidance to the National Park Service than did its original 1916 mandate.¹²³ In today's political climate,¹²⁴ particularly in light of the pressure on the Park Service to pursue conservationist agendas,¹²⁵ such discretion has proved debilitating to this government agency.¹²⁶

In addition, despite the pressure to do otherwise,¹²⁷ Park Service priorities have always clearly placed visitor accommodation and tourist amenities ahead of,¹²⁸ and often to the detriment of,

to park overcrowding and traffic congestion. See RECLAIMING OUR HERITAGE, *supra* note 5, at 23.

¹¹⁷ See *supra* note 22 and accompanying text.

¹¹⁸ See *supra* note 84.

¹¹⁹ The mission with which Congress charged the NPS is seemingly internally irreconcilable, mandating both conservation and public use and enjoyment, see *supra* note 84, thereby causing the Service to be uncertain as to the appropriate means of implementation. See NATIONAL PARK SERVICE, *supra* note 2, at 13. See generally Robin W. Winks, *The National Park Service Act of 1916: "A Contradictory Mandate"?*, 74 DENV. U. L. REV. 575 (1997).

¹²⁰ See *supra* note 83.

¹²¹ See *supra* note 86, 88.

¹²² See *supra* notes 83, 86, 88.

¹²³ The breadth of the original National Park Service mandate renders it almost meaningless. See Federico Cheever, *The United States Forest Service and National Park Service: Paradoxical Mandates, Powerful Founders, and the Rise and Fall of Agency Discretion*, 74 DENV. U. L. REV. 625, 638 (1997). Described as almost "carte blanche," Congress dictated for the NPS mandatory obligations, but they were to be achieved with minimal Congressional intervention or direction. See *id.*

¹²⁴ See *supra* note 17 and accompanying text.

¹²⁵ See *supra* notes 41-47 and accompanying text.

¹²⁶ See Cheever, *supra* note 123, at 640 (arguing that unfettered discretion has given rise to frequent court challenges of agency decisions and an overall decline in the agency's decision-making power).

¹²⁷ See *supra* notes 41-47 and accompanying text.

¹²⁸ The National Park Service, as such, spends less than ten percent of its budget on resource management. See Clarke, *supra* note 17, at 27. In fact, the very culture of the Park Service itself evolved as a response to the demands placed on the parks by tourism. See Sellars, *Science or Tradition?*, *supra* note 16, at 40. Landscape architects, typically employed to enhance the scenery of the parks, "became the single most influential profession in the service." *Id.* at 39. Biologists and other

park preservation.¹²⁹ Though these two priorities were historically seen as compatible,¹³⁰ and ultimately dependent upon one another,¹³¹ the Park Service has often gauged its success not by the quality of the resources it has preserved,¹³² but rather, by the quality of the visitors' experience in viewing those resources.¹³³

Even if the National Park Service had, on a theoretical level, cultivated the dual objectives inherent in its mission,¹³⁴ on a

scientists, on the other hand, who advocated sustaining the natural habitats and conditions of the parks, were considered revolutionary as compared to "prevailing Park Service values." *Id.*

¹²⁹ Indeed, given the marked increase in the number of visitors, and their proclivity to stay longer, more staff is needed to provide visitor services, as well as deal with the increase in vandalism and crime that the additional visitors bring. See RECLAIMING OUR HERITAGE, *supra* note 5, at 7. In an era of decreased appropriations and personnel cuts, as staff is increasingly diverted toward visitor services, natural resource protection becomes the casualty. See *id.*

¹³⁰ See 1916 Hearing, *supra* note 24, at 38-39. According to the Secretary of the Interior's 1915 annual report, which he presented to the Committee on the Public Lands during their deliberations over whether or not to create a parks bureau:

the Nation has been saving from its domain the rarest places of grandeur and beauty for the enjoyment of the world. . . . There is no reason why this Nation should not make its public health and scenic domain as available to all its citizens as Switzerland and Italy make theirs. The aim is to open them thoroughly by road and trail and give access and accommodation to every degree of income. In this belief an effort has been made this year as never before to outfit the parks with new hotels which should make the visitor desire to linger rather than hasten on his journey. . . . [so that] year by year these parks will become a more precious possession of the peoples, holding them to the further discovery of America and making them still prouder of its resources.

Id.

¹³¹ John Muir, activist, writer, and founder of the Sierra Club, actually saw tourism in the nation's parks as a means by which to preserve them. See RICHARD WEST SELLARS, PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY 16 (1997). Tourists, according to Muir, were ultimately activists in the making against the destructive use of park resources by loggers and miners. See *id.* To that end, Muir wrote a series of articles describing the parks for the *Atlantic Monthly* during the latter part of the nineteenth century, in an effort to encourage travel to them and promote interest in their well-being. See JOHN MUIR, WILDERNESS ESSAYS xx-xxi (Frank Buske, ed.) (1980).

¹³² Park rangers learned to value park scenery over park ecology, given that the former lent itself more readily to enhancing the visitor experience. See Sellars, *Science or Tradition?*, *supra* note 16, at 39.

¹³³ See *supra* note 132.

¹³⁴ See *supra* note 84.

practical level, given the Service's consistent lack of financial support,¹³⁵ accomplishment of both goals would have been impossible.¹³⁶ Vision 2020 does not even begin to address the fact that Congress has consistently underprioritized the needs of the National Park Service,¹³⁷ even in light of its current interest in the future of the Park System.¹³⁸

Vision 2020 notwithstanding, Congress continues to retain its authority to dedicate more and more land to the public trust¹³⁹ without appropriating enough funds for the Park Service to meet

¹³⁵ See *supra* note 37.

¹³⁶ See *March 1997 Hearings*, *supra* note 37, at 70. According to former Director of the National Park Service, Roger Kennedy:

the role of the National Park Service has evolved . . . to one focused equally on resource preservation [and visitor services] so as to ensure that future generations of Americans, not just the current generation, are able to enjoy the natural wonders and cultural treasures for which our national park areas have been set aside.

Id. Given the financial constraints placed on the National Park Service, however, "we as a nation, have failed to preserve and protect our parks to a degree measured by the backlog of construction and rehabilitation needs." *Id.*

The reality of this impossibility is that, in FY 1997 for example, of the NPS' total \$1.4 billion budget, \$1.2 billion (86%) went to the Park Service's fixed costs. See *RECLAIMING OUR HERITAGE*, *supra* note 5, at 17. This leaves a paltry \$200 million, divided among the 376 Park Service sites, for all other needs combined, including new commitments made by Congress. See *id.* at 18.

¹³⁷ Since 1965, for example, Congress has had at its disposal \$900 million per year for park land acquisition and maintenance, via the Land and Water Conservation Fund. See *supra* note 28 and accompanying text. Congress, however, has never authorized spending anywhere near that level on outdoor recreation, averaging a paltry \$250 million or less for much of the Fund's history. See Nixon, *Paradise Lost?*, *supra* note 28, ¶ 3. Moreover, Congress has consistently diverted those funds meant for parks to other concerns, such as the purchase of military hardware. See *id.*

¹³⁸ This is particularly true given the threat, absent any guarantee to the contrary, that Congress will offset any financial gains in Park Service revenues by decreasing annual Park Service appropriations. See *March 1997 Hearings*, *supra* note 37, at 30. Although legislators deny such a possibility exists, according to some environmental groups, previous entrance fee increases at some parks resulted in that very scenario. See *id.* See also Clarke, *supra* note 17, at 29. (quoting Bob Hansen, Executive Director of The Yosemite Fund, a nonprofit organization which raises money for Yosemite National park, as saying, "[t]he government offset is a potential for disaster.").

¹³⁹ Although Vision 2020 requires the Secretary of the Interior to, at the beginning of each calendar year, submit to both houses of Congress a list of new areas recommended for inclusion in the Park System, see NPOMA, *supra* note 9, § 303 (b), Congress nevertheless retained for itself final authority to add new areas to the NPS.

its acquisition commitments,¹⁴⁰ much less continue to maintain those commitments year after year.¹⁴¹ Moreover, the very nature of politics, which allows Congress to increase appropriations to a particular park¹⁴² at the behest of an individual legislator¹⁴³ in spite of specific park needs¹⁴⁴ or overall Park Service priorities,¹⁴⁵ remains untouched by Vision 2020.¹⁴⁶

In addition to these specific limitations, as a general proposition, Vision 2020 focuses almost exclusively on changes required within the National Park Service.¹⁴⁷ In so doing, Vision 2020 fails to address many of the major threats to the resources

¹⁴⁰ See NPOMA, *supra* note 9, § 303 (c). This statute requires the Secretary to consider, "costs associated with acquisition, development and operation." *Id.* Nowhere is Congress required, however, to consider such factors in its final determination as to whether or not to add the area to the NPS. See generally, NPOMA, *supra* note 9.

¹⁴¹ See 138 CONG. REC. E2776-03, *E2777 (1992), available in 1992 WL 23719 (CONG. REC.) (statement of Rep. Lagomarsino) ("Funding of [Congressional] projects, . . . only increases future demands for operational maintenance funding.").

¹⁴² Although the National Park Service submits annually its list of top ten construction priorities, Congress often allocates funding for a new visitor's center for a park not on the NPS' list merely because of its location within a particular legislator's district. See Clarke, *supra* note 17, at 27.

¹⁴³ See 140 CONG. REC. S3311-01, *S3314 (1994), available in 1994 WL 89674 (CONG. REC.) (statement of Sen. Wallop) ("A lot of Americans do not realize that this Congress annually authorizes new parks, many of which have private property holdings. Congress has the biggest appetite in the world for parks. We use it to run for reelection. We use it to say great things about America. But . . . [w]e have not stomach in the world to pay for it.").

¹⁴⁴ See 139 CONG. REC. E3121-02, *E3121 (1993), available in 1993 WL 493992 (CONG. REC.) (statement of Rep. Vento) ("It has been too easy for political considerations to get injected into the . . . process, and recommendations of professional planners are sometimes changed and tailored for political reasons . . . Members of Congress . . . push ahead with legislation to establish a unit when the resource involved might not meet the appropriate criteria or . . . select an inappropriate option.").

¹⁴⁵ See *supra* note 142 and accompanying text. According to the National Parks and Conservation Association's 1998 budget summary, in which it examined actual versus requested NPS construction projects between 1985 and 1997, the yearly Park Service budget increases were often earmarked for specific parks or specific projects. See Clarke, *supra* note 17, at 27. In 1992, for instance, the National Park Service requested \$84 million for twenty-two construction projects. See *id.* Congress responded with \$217 million for eighty-seven projects, often to the exclusion of the original projects on the NPS' list. See *id.*

¹⁴⁶ See *supra* note 11.

¹⁴⁷ See generally NPOMA, *supra* note 9.

the NPS is trying to protect.¹⁴⁸ The record number of visitors coming to the parks each year¹⁴⁹ threaten the very reason parks were created in the first place.¹⁵⁰ Perhaps the deluge of visitors streaming through park gates¹⁵¹ will, at least momentarily, contribute to Park Service coffers.¹⁵² No amount of money in the world, however, can make up for the fact that excessive crowds and T-shirt shops¹⁵³ have replaced the serenity and peace that used to prompt whispers as visitors viewed the sublime.¹⁵⁴ Furthermore, the natural resources that millions of park visitors come to see are deteriorating at a rate so rapid that Park Service employees are unable to keep track.¹⁵⁵ Even when funding does become available, years of neglect have closed the window of opportunity for saving some of these resources, and those which remain salvageable will have to wait until they surface as a priority.¹⁵⁶

Even more problematic than the threats inside the parks are those outside park boundaries, including incompatible development of lands contiguous to the parks, local and regional environmental hazards, and inconsistent land usage by other

¹⁴⁸ In addition to the aforementioned backlog of physical repairs and resource documentation needs, *see supra* note 15, the parks face problems from within their borders as well as from external sources. *See RECLAIMING OUR HERITAGE, supra* note 5, at 5. Such internal threats include overcrowding and invasion of parks by non-native plants and animal species. *See id.* at 6-7. External dangers include incompatible development and use of land adjacent to park lands, pollution, and denigration to park resources by other federal agencies. *See id.* at 10-11.

¹⁴⁹ *See supra* text accompanying note 33.

¹⁵⁰ Although the rationales behind the individual parks vary, the system as a whole has been justified based on the recreational value of parks, and their contributions to the conservation of America's natural and cultural heritage. *See NATIONAL PARK SERVICE, supra* note 2, at 73.

¹⁵¹ *See supra* note 33 and accompanying text. Park attendance is expected to top 300 million by the year 2000. *See Cohn, supra* note 17, ¶ 8.

¹⁵² *See supra* notes 91-92 and accompanying text.

¹⁵³ *See Glick, supra* note 38, at 61 (commenting that "[w]hat the Sierra Club calls a traffic jam looks like a line of customers to the proprietor of a gas station.")

¹⁵⁴ In fact, some of the construction projects in the parks, built to increase park visitor capacity, now obstruct the landscape the visitors came to see. *See RECLAIMING OUR HERITAGE, supra* note 5, at 23-24.

¹⁵⁵ Acid rain, which pits marble statues and corrodes metal monuments, has made inscriptions on them unintelligible and forced rangers to close portions of parks to visitors. *See Satchell, supra* note 5, at 26. All of the mortar from ancient dwellings has eroded, causing their collapse and endangering their very existence. *See Satchell, supra* note 5, at 27.

¹⁵⁶ *See RECLAIMING OUR HERITAGE, supra* note 5, at 26.

federal agencies.¹⁵⁷ To combat such problems, the Park Service must be encouraged to enlist the help of gateway communities if it is to have any hope of stemming the tide of development occurring on lands adjacent to park borders and threatening the parks.¹⁵⁸ Park Service managers must, likewise, work cooperatively with other federal agencies to guard against incompatible use on contiguous federal lands.¹⁵⁹ Finally, the value and fragility of park resources must be conveyed to those who visit the parks if the National Park Service is to make any real strides toward preserving its legacy.¹⁶⁰

VI. Conclusion

The Vail Symposium¹⁶¹ presented the National Park Service with the unique opportunity of introspection and evaluation as a means by which to effect real change within the agency. Nearly a decade has passed, however, and the NPS has moved no closer¹⁶²

¹⁵⁷ See Satchell, *supra* note 5, at 24-25; RECLAIMING OUR HERITAGE, *supra* note 5, at 10-11.

¹⁵⁸ According to the Executive Director of the Greater Yellowstone Coalition, Mike Clark, "[the parks are] being nibbled to death." Satchell, *supra* note 5, at 25. "Ranchettes, subdivisions, motels, commercial strips, golf courses, and tourist attractions sprawl into the lowland stream valleys, robbing bison, elk, antelope, grizzlies, and other wildlife of vital winter habitat." *Id.* at 24. Additionally, environmental dangers such as air pollution, ozone, toxic metals and fecal materials threaten both human and natural resource health in the parks. See RECLAIMING OUR HERITAGE, *supra* note 5, at 10-11.

¹⁵⁹ Other land management agencies have notoriously permitted activities on federal lands, such as coal mining, oil and gas drilling, and clearcutting of trees, which have proved harmful to park resources. See RECLAIMING OUR HERITAGE, *supra* note 5, at 10-11. Similarly, noise from tourist helicopters and propeller planes, for which the FAA grants approval, tends to be incompatible with the natural sound of waterfalls. See Cohn, *supra* note 17, ¶ 15.

¹⁶⁰ Instead of bowing to public pressures for convenient, in-park service facilities such as gas stations and grocery stores, for example, the reasons for their location outside park boundaries must be articulated. See NATIONAL PARK SERVICE, *supra* note 2, at 83.

¹⁶¹ See *supra* note 2 and accompanying text.

¹⁶² The Park Service, to its credit, held a series of leadership seminars between 1995 and 1997 to begin to address two of the Vail Agenda's "Strategic Objectives:" proactive leadership and professionalism. See National Park Service, *Facilitator's Report on the NPS Leadership Seminar Program, Summary 1* (visited Jan. 5, 1999) <<http://www.nps.gov/hdocs3/training/facilitators/page1.htm/>>. The program

toward implementing the recommendations¹⁶³ in the Vail Agenda. Instead, the Park Service has steadily created a monolith which requires more than a billion dollars a year to sustain. Moreover, that which it has built is largely unable and, more importantly, unwilling to adapt to the contemporary exigencies of the parks and their constituents. In the process, the NPS has succeeded in expending billions of dollars annually with little to show but \$8 billion of debt. If Vision 2020, or any piece of legislation, is ultimately to succeed, the Park Service must continue to look inside of itself, and challenge itself to implement some of the suggestions it spent so much money generating.

Congress, likewise, spent nearly as long promulgating legislation comprehensive enough¹⁶⁴ to represent a substantive effort toward addressing the Park Service's current situation.¹⁶⁵ Yet, while Vision 2020 makes significant strides toward addressing the Park Service's backlog of repairs, it nevertheless is, and must be, only the beginning. In times such as this, where the economy is strong, the budget is balanced, and an environmental ally resides in the White House, Congress must dedicate enough of the annual budget to care for the nation's parks. Alternatively, Congress must make the difficult and exceedingly unpopular choice to reduce the level of National Park Service commitments, which no one has yet been willing to make.

Finally, visitors must be willing to play their part as well, far beyond what their wallets can contribute. Tourists who previously insisted on driving through the nation's parks, for example, must be prepared to forfeit their perceived fundamental right to view Yosemite's Half Dome through their windshields.¹⁶⁶ Likewise,

resulted in an extensive report by seminar facilitators, evaluating these seminars. *See id.* The cost of these seminars was \$2,024,400. *See id.*

¹⁶³ *See supra* note 4 and accompanying text.

¹⁶⁴ *See supra* Part IV.

¹⁶⁵ *See supra* note 15.

¹⁶⁶ Traffic jams are one of the most common problems within the parks. *See Cohn, supra* note 17, ¶ 4. In Zion National Park, for example, four hundred parking spaces await the four- to five-thousand cars entering the park each day, leading to frustrating congestion and illegal parking along roadsides. *See id.* ¶ 26. Park Service officials have proposed building transit systems in the more highly visited parks which would transport visitors into the parks from transit centers at park entrances, *see id.* ¶ 24, thereby fundamentally altering the way in which people see and, hence, understand the parks. *See id.* ¶ 26.

when their park of choice is filled to capacity, potential visitors must be willing to make alternative plans so as to limit overcrowding in many of the parks. Only when the visitor experience lends itself not only to panoramic vistas and tawdry souvenirs, but also to education and a more complete understanding of the parks, will the promise of Vision 2020 become a reality.