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Funding Our National Parks in the 21st Century: Will We Be Able to Preserve and Protect Our Embattled National Parks

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ARTICLE

FUNDING OUR NATIONAL PARKS IN THE 21ST CENTURY: WILL WE BE ABLE TO PRESERVE AND PROTECT OUR EMBATTLED NATIONAL PARKS?

*Richard J. Ansson, Jr.**

INTRODUCTION[1]

Towering falls, ancient sequoias, and the world's most famous sheer rock outcroppings attract millions of visitors to Yosemite National Park. Unfortunately, when visitors arrive they encounter traffic gridlock, pine scent smothered by exhaust, sold-out campgrounds, and long lines to buy food, catch a shuttle ride, or ride a horse.[2]

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1. I recently authored an article entitled *Our National Parks - Overcrowded, Underfunded, and Besieged With a Myriad of Vexing Problems: How Can We Best Fund Our Imperiled National Park System?*, 14 J. LAND USE & ENVTL. L. 1 (1998). In the 1998 article, I discussed the numerous problems confronting national parks and the many funding options available. Since then, Congress has adopted a number of funding proposals designed to provide supplemental funding to national parks. Further, Congress has proposed several new supplemental funding measures. This Article discusses the newly-adopted funding provisions and the proposed supplemental funding provisions.

2. *See, e.g.*, Wendy Mitman Clarke, *After the Flood*, NAT'L PARKS, Mar.-Apr. 1999, at 22. Katurah Mackay, *Yosemite Flood*

On peak summer weekends in Yosemite Valley, the park's scenic heart, it is common to see rangers directing traffic and rows of tour buses idling at top attractions.[3] It is also common to see cars endlessly circling jammed parking lots, shuttles filled to standing room only, and highways littered with cars lined bumper-to-bumper.[4] These conditions leave many visitors feeling disappointed. The pristine, peaceful park they hoped to visit is no different from the noise and pollution they had hoped to escape.

Traffic jams are not unique to Yosemite. Other crown jewels of the National Park System - Grand Canyon, Zion, Glacier, and Yellowstone – also suffer from congestion too,[5] as visitation has nearly doubled in the last thirty years from 151 million in 1968 to 287 million in 1998.[6] It is imperative to begin a comprehensive natural resource management effort aimed at effectively preserving and protecting parks as a legacy for future generations. To achieve this, the American people, Congress, and the National Park Service ("NPS") must embark on an unprecedented re-examination of our role in nature preservation in America.

National parks are no longer isolated. They are increasingly crowded and many of them are now impaired remnants of primitive America in a fragmented landscape.[7] The major threats to national parks include: invasion by exotic plant and animal species, pollution, commercial development at park boundaries, and in-

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Initiates Facelift: Relocation of Park Facilities Allows Native Habitat to Return, NAT'L PARKS, Jan.-Feb. 1998, at 12.

3. *See* Clarke, *supra* note 2; Mackay, *supra* note 2.

4. *See* Clarke, *supra* note 2; Mackay, *supra* note 2.

5. *See, e.g.*, David Whitman, *The Grand Parking Lot? New Ways to Control Traffic Jams at the Nation's Parks*, U.S. NEWS & WORLD REP., June 21, 1999, at 18.

6. Brian Knowlton, *A Grand Canyon Railway Will Give Tourists a Break*, INT'L HERALD TRIB., June 23, 1999, at 3; Whitman, *supra* note 5, at 18.

7. *See, e.g.*, Whitman, *supra* note 5, at 18.

creased use of motorized recreational vehicles within the parks.[8] National parks, however, are still the best hope for preserving the genetic and biological diversity of animal and plant life in America. They are the best places for Americans to learn about our national heritage and about nature, while remaining vacation destinations. It is thus imperative to find ways to combat the many problems affecting the national parks.

Adequate funding may ensure the protection of the national parks' pristine environments. In recent years, the NPS has amassed an estimated funding deficit of $9.1 billion.[9] This lack of funding has impeded the NPS' ability to adequately care for its priceless natural, historic, and cultural assets.[10] Thanks in large part to Sen. Craig Thomas (R-Wyo.),[11] Congress recently enacted legislation designed to provide parks with more funding. In 1997, Sen. Thomas launched his "Vision 2020" legislation, a comprehensive funding strategy designed to enrich and expand the National Park System into the next century.[12] Under this bill, national parks would receive supplemental funding from additional sources such as higher entrance fees, the issuance of bonds, private donations, corporate partnerships, higher fees on larger concessionaires, and fees on movies and tele-

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8. *See, e.g.*, Thomas C. Kiernan, *A Difficult Choice*, NAT'L PARKS, May-June 1999, at 6; William J. Chandler, *The Preservation Challenge*, NAT'L PARKS, Mar.-Apr. 1999, at 40.

9. *See* Michael Satchell, *Parks in Peril: The Views are Still Spectacular, the Wildlife Abundant. Everybody Loves America's National Parks. So Why are They Under Siege?*, U.S. NEWS & WORLD REP., July 21, 1997, at 22.

10. *See generally* Kiernan, *supra* note 8, at 6; Chandler, *supra* note 8, at 40; Satchell, *supra* note 9; and *infra* Part I.

11. For his efforts, Sen. Thomas recently received the National Park Conservation Association's 1999 William Penn Mott, Jr. Leadership Award. *See* Elizabeth G. Daerr, *Senator Honored For Park Protection*, NAT'L PARKS, May-June 1999, at 51.

12. *See, e.g., Spotlight Story National Parks: Key Senator to Introduce Reform Bill*, American Political Network Greenwire, Feb. 25, 1998, *available in* WESTLAW, 2/25/98 APN - GR4.

vision shows filmed on national park lands.[13] In October 1998, Congress passed the National Parks Omnibus Management Act of 1998 ("1998 Act")[14] which provided for, among other things, higher fees on larger concessionaires.[15] Since then, Congress has also enacted legislation providing for higher entrance fees through 2001.[16]

This Article will review the recently-enacted funding legislation, detail current legislative funding proposals before Congress, and discuss how these various funding proposals will help supplement the national parks' respective budgets. Part I of this Article reviews the nu-

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13. *See id.*; *NPCA Praises Intent Questions Specifics of Park Restoration Bill*, U.S. Newswire, Feb. 27, 1998, *available in* 1998 WL 5683401; *Senate Committee Approves Thomas' Filming Fee Bill*, Associated Press Newswire, May 19, 1999, *available in* APWIRESPLUS File. *See also H.R. 15, a Bill to Designate a Portion of the Otay Mountain Region of California as Wilderness; H.R. 150, a Bill to Amend the Act Popularly Known as the Recreation and Public Purposes Act to Authorize Disposal of Certain Public Lands or National Forest Lands to Local Education Agencies for Use for Elementary or Secondary Schools, Including Public Charter Schools, and for Other Purposes; H.R. 154, a Bill to Provide for the Collection of Fees for the Making of Motion Pictures, Television Productions, and Sound Tracks in National Park System and National Wildlife Refuge System Units, and for Other Purposes: Hearing Before the Subcomm. on Nat'l Parks and Public Lands of the House of Representatives Comm. on Resources*, 106th Cong. 39 (1999) [hereinafter *H.R. 154 Hearings*] (statement of Philip H. Voorhees, Director of National Programs, National Parks and Conservation Association).

14. National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391, 112 Stat. 3497 (1998). The President signed the bill on November 13, 1998. *See, e.g., Statement on Signing the National Parks Omnibus Management Act of 1998*, 34 WEEKLY COMP. PRES. DOC. 2311 (Nov. 16, 1998).

15. Other reforms in the bill include: park and budget reforms; increased and updated training for park officials; and a revised, less political, system for evaluating potential additions to the National Park System. *See, e.g., Government Press Release: President Hails Effort as "Major Victory for Cultural and Natural Resources,"* Nov. 16, 1998, *available in* 1998 WL 19793573.

16. *See* Daniel B. Wood, *Fee Hikes Pay Off*, CHRISTIAN SCI. MONITOR, July 1, 1999, at 1.

merous problems confronting national parks. Part II examines and critiques the funding initiatives enacted by Congress during the previous year and details how these funding initiatives will help imperiled national parks. Part III discusses and analyzes the funding initiatives that are currently before Congress and examines how these additional funds might be used. Finally, this Article concludes by urging Congress and the American people to continue searching for and enacting unique funding measures for national parks, thereby ensuring that they will receive sufficient levels of funding throughout the twenty-first century.

I. THE CURRENT STATE OF NATIONAL PARKS

National parks are fundamentally important resources for all in this country. America's 345 parks are as varied as her people, her history, and her landscape.[17] The American National Park System ("National Park System" or "park system") includes wildlife parks such as Denali, Yellowstone, Yosemite, and the Everglades; historic and cultural parks such as Gila Cliff Dwellings, Gettsyburg, and Ellis Island; urban parks such as Rock Creek in Washington, D.C., Golden Gate in San Francisco, and Gateway in New York City; remote parks such as Gates of the Arctic and Big Bend; and lesser known, yet significant parks such as Pictured Rocks National Lakeshore and the John Muir National Historic Site. The common thread that weaves through all of these parks is their importance to the American heritage for reasons as diverse as the parks themselves. However, the continued vitality of the parks that make up the National Park System is now in danger.

The mission of the NPS is to protect and preserve scenic, natural, and historic resources for enjoyment by

17. *See* Bob Graham, *Restoring the Glades*, SUN-SENTINEL, Apr. 27, 1999, at 13A.

present and future generations.[18] As a result, the NPS has been directed "to conserve the scenery and the natural and 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."[19] This mandate clearly makes the protection of park resources the NPS' highest priority.[20] Further, this mandate encourages visitor use, but only to the extent that it leaves park resources unimpaired.[21]

The NPS currently faces many obstacles that have prevented it from fulfilling its mandate. Numerous articles over the years have detailed the plight of the park system and the threats and challenges it faces, both from within and without the park system's borders.[22] These threats include: 1) noise pollution; 2) commercial development; 3) off-road vehicle use; 4) degradation of scenic resources; and 5) invasion by exotic species.[23] All of these threats directly impact the quality of the national park experience and the NPS' ability to protect and manage park resources. Even the best known national parks are not immune to the threats and problems of the National Park System. Three of the nation's

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18. *See, e.g.*, Robin W. Winks, *The National Park Service Act of 1916: "A Contradictory Mandate?"*, 74 DENV. U. L. REV. 575, 623 (1997); Robert B. Keiter, *National Park Protection: Putting the Organic Act to Work, in* OUR COMMON LANDS 75, 75 (David J. Simon ed., 1988). The NPS was created in 1916. *See* Winks *supra*, at 575. The NPS' mission has been reaffirmed and reinforced by subsequent legislation in 1970 and 1978. *See id.* at 577.

19. 16 U.S.C.A. § 1 (1998).

20. *See* Keiter, *supra* note 18, at 75.

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

22. *See generally* Kiernan, *supra* note 8, at 6; Jan G. Laitos, *National Parks and the Recreation Resource*, 74 DENV. U. L. REV. 847, 847 (1997).

23. *See* Kiernan, *supra* note 8, at 6; *The Wilderness Society Issues 15 Most Endangered Wild Lands' 1999 Report*, U.S. Newswire, June 21, 1999, *available in* 1999 WL 4636978.

best known and loved parks - Yellowstone, the Grand Canyon, and Yosemite - face a number of pressing management and resource protection problems, including overuse, air and noise pollution, and infrastructure deterioration.[24]

In June of 1999, the National Parks and Conservation Association (NPCA) published its annual list documenting the threats facing the ten most endangered parks.[25] The 1999 NPCA report states that the ten most endangered parks include: Chaco Culture National Historic Park; Denali National Park; Everglades, Biscayne National Park and Cypress National Preserve; Gettysburg National Military Park; Grand Canyon National Park; Great Smoky Mountains National Park; Haleakala National Park; Mojave National Preserve; Voyageurs National Park; and Yellowstone National Park ("Yellowstone").[26] The condition of these parks, which face an array of problems ranging from traffic congestion to air pollution to poor maintenance, reflect many of the problems threatening all of the national parks.[27] The problems confronting the ten most endangered parks are:

> Chaco Culture National Historic Park, New Mexico: Historic ruins have been severely damaged because of lack of maintenance, exposure to weather, tourism, vandals and looting.[28]

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24. *See, e.g.*, Bob Moen, *'Geyser' of Effluent Strains Yellowstone's Budget*, L.A. TIMES, July 11, 1999, at B1; Clarke, *supra* note 2, at 22; Whitman, *supra* note 5, at 18.

25. *Parks in Jeopardy: NPCA's 1999 List of 10 Most Endangered National Parks*, National Parks and Conservation Association (visited Dec. 5, 1999) <http://www.npca.org/readaboutit/topten.html> [hereinafter *NPCA List*].

26. *Id.*

27. H. Josef Hebert, *Environmentalists Sound Alarm Over Threat to National Parks*, Associated Press Newswires, Apr. 21, 1999, *available in* WESTLAW, APWIRESPLUS File.

28. *NPCA List*, *supra* note 25. Chaco Canyon is representative of 41 other parks in the Southwest. *See* Leslie Linthicum, *Group: Chaco Canyon Endangered*, ALBUQUERQUE J., Apr. 21, 1999, at C3.

Denali National Park, Alaska: A proposed eighty-mile northern access road is costly, unnecessary for park access, and would threaten wildlife and habitat.[29]

Everglades, Biscayne National Park and Big Cypress National Preserve, Florida: Decades of development has reduced and polluted the waters and caused a decline in wildlife and wildlife habitat. A restoration project is under way, but environmentalists are concerned about redevelopment of a nearby former air base.[30]

Chaco Canyon, home of beautiful and mystical Anasazi ruins, attracts approximately 90,000 visitors each year. *See id.* The park sprawls across 34,000 acres of remote northwestern New Mexico, and within its boundaries, are 1,200 thirteenth-century Anasazi structures. For more on Chaco Canyon and the other 41 parks in the Southwest, see Ansson, *supra* note 1, at 41-43.

29. *NPCA List*, *supra* note 25. *See also* Katurah Mackay, *Transportation Act Improves Park Access*, NAT'L PARKS, Sept.-Oct. 1998, at 18; Ansson, *supra* note 1, at 20.

30. *NPCA List*, *supra* note 25. *See* Hebert, *supra* note 27. The Everglades water quality and water availability has been severely impacted over the last 50 years by the manipulation of the natural hydrologic system. *See* Graham, *supra* note 17, at A13. For Congressional testimony discussing the Florida Everglades Restoration Initiative, see *Issues Regarding Everglades National Park and Surrounding Areas Impacted by Management of the Everglades: Oversight Hearing Before the Subcomm. on Nat'l Parks and Pub. Lands of the House of Representatives Comm. on Resources*, 106th Cong. 1 (1999) (statement of James V. Hansen, R-Utah, Chairman); *Issues Regarding Everglades National Park and Surrounding Areas Impacted by Management of the Everglades: Oversight Hearing Before the Subcomm. on Nat'l Parks and Pub. Lands of the House of Representatives Comm. on Resources*, 106th Cong. 55 (1999) (statement of Thomas K. MacVicar, President of Federico & Lamb, Inc.); *Everglades Nat'l Park: Hearings Before the Subcomm. on Nat'l Parks and Pub. Lands*, 106th Cong. (1999) (statement of Victor S. Rezendes, Director, Energy, Resources, and Science Issues, Resources, Community and Economic Development Division), *available in* 1999 WL 16947041. For an article detailing the Florida Everglades Restoration Initiative, see Richard J. Ansson, Jr., *Protecting and Preserving Our National Parks: The Everglades National Park Restoration Project*, VA. Envtl. L.J. (forthcoming Spring 2000).

Gettysburg National Military Park, Pennsylvania: Civil War uniforms, guns, swords, saddles and photographs have been damaged by mold, rust, and rot.[31]

Grand Canyon National Park, Arizona: It is beset by an overflow of visitors, traffic congestion, air pollution, noise from tour overflights, and wilderness impacts.[32]

Great Smoky Mountains National Park, Tennessee and North Carolina: Severe air pollution reflected in change of average view during the summer of twelve miles, compared with sixty miles fifty years ago. Pollution has also damaged thirty species of plants.[33]

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31. *NPCA List*, *supra* note 25. *See also infra* Part III; Ansson, *supra* note 1, at 46-47.

32. *NPCA List*, *supra* note 25. For more on overflight problems, see John McCain, *Overflight Oversight*, NAT'L PARKS, Sept.-Oct. 1997, at 41; Kim A. O'Connell, *Overflights Rule Not Tough Enough*, NAT'L PARKS, Nov.-Dec. 1996, at 15; David Lee, *Breaking the Sound Barrier: The Rapidly Growing Air Industry is Generating Unacceptable Noise Levels in Some of Our Most Treasured National Parks*, NAT'L PARKS, July-Aug. 1994, at 24; Ansson, *supra* note 1, at 12.

One of the most serious threats to the natural environment of the park is the degradation of natural quiet and opportunities for solitude caused by tour flights over the canyon. Views of the Grand Canyon's spectacular scenery are also severely threatened by air pollution. The Mojave power plant, 50 miles upwind from the canyon in Laughlin, Nevada, is the largest single source of sulfur dioxide emissions in Nevada. The Mojave plant delivers significant air pollutants to the canyon under prevailing westerly wind conditions. *See generally* Frank Clifford, *Power Plant is Cultural Lifeline, Ecological Disaster*, THE SEATTLE TIMES, Mar. 15, 1998, at A8. In addition, air pollution from as far away as Los Angeles and Phoenix, as well as vehicle emissions in the park, reduce air quality and visibility at the park. *See generally Natural Resources Grand Canyon: Alternative Fuel Vehicles Being Considered*, Americal Political Greenwire, Mar. 2, 1999, *available in* WESTLAW, 3/2/99 APN-GR 17. On July 1, 1999, the EPA proposed a controversial plan to reduce haze at Grand Canyon. *Oh, Say, Can You See . . .?*, 21 AMICUS J. 3 (1999).

33. *NPCA List*, *supra* note 25. *See also* Ansson, *supra* note 1, at 13.

> Haleakala National Park, Hawaii: Many native species have been driven to extinction because of invasion of non-native plants, insects, reptiles and viruses that continue to undermine the park's biodiversity.[34]
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> Mojave National Preserve, California: Development in and growth around the park threatens the park's desert wilderness.[35]
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> Voyageurs National Park, Minnesota: Pressure for use of motorized vehicles from motorized watercraft to snowmobiles threatens the park's environment.[36]

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34. *NPCA List*, *supra* note 25. *See also* George Wuerthner, *Alien Invasion: Exotic Plant and Animal Species Are One of the Gravest Threats to the Native Flora and Fauna of the National Parks*, NAT'L PARKS, Nov.-Dec. 1996, at 32.

35. *NPCA List*, *supra* note 25. The 1.4 million-acre Mojave National Preserve protects 600 foot-high Kelso Dunes, the world's largest and thickest Joshua tree forests, and three dozen volcanic cinder cones. Clayton E. Jackson, *Sandy Points*, NAT'L PARKS, May-June 1996, at 47. For articles discussing the problems confronting park officials at Mojave National Preserve, see Katurah Mackay, *Desert Parks Need Support*, NAT'L PARKS, Nov.-Dec. 1998, at 21; Katherine M. Heinrich, *Mine Near Mojave May Expand: Mining Company Has a History of Spills in and Near the Park*, NAT'L PARKS, July-Aug. 1997, at 14 (discussing the impact of mining on the desert and certain species such as the endangered desert tortoise).

36. *NPCA List*, *supra* note 25. *See* Hebert, *supra* note 27. Snowmobile use has been cited as a source of environmental degradation in 28 national parks. Snowmobile use is permitted in 28 national park units. *See Snowmobile Ban Sought*, THE HARRISBURG PATRIOT, Jan. 22, 1999, at A9. Snowmobile use is the highest in Yellowstone, Grand Tetons, and Voyageurs National Park. *See id.* In Yellowstone, for example, it has been estimated that during the winter as many as 1,000 snowmobiles enter the park each day, emitting nitrous oxide and hydrocarbons equivalent to the tailpipe emission of 1.7 million cars. *See* Satchell, *supra* note 9. Environmentalists have recently called for a snowmobile ban from all parks. *See Snowmobile Ban Sought*, *supra*, at A9. For more on the snowmobile problem at Voyageurs National Park, see Yvette La Pierre, *Divided Over Voyageurs*, NAT'L PARKS, Jan.-Feb. 1996, at 36; Todd Wilkinson, *Snowed Under: The Roar of Snowmobiles in Many National Parks Has Replaced the Solitude and Quiet That Once Defined the Winter Landscape*, NAT'L PARKS, Jan.-Feb. 1995, at 32.

> Yellowstone National Park, Wyoming, Montana, and Idaho: The "poster child for neglect," [according to the NPCA]. A crumbling sewage system has caused pollution to spill into the park's waterways and the park's famous geyser, Old Faithful.[37]

Like snowmobiles, jet skis are also a source of environmental degradation. Jet skis have already been banned in Yellowstone, the Everglades, and the Grand Canyon. *See* Christopher Reynolds, *Water Scooters May Be Sinking in National Parks*, L.A. TIMES, June 27, 1999, at L2. The NPS is currently planning to enact guidelines that would ban watercraft at all but about two dozen national parks. *See id.* The NPS has decided not to ban the use of jet skis at parks like Lake Mead and Glen Canyon Recreation Areas primarily because both places "are largely man-made attractions that have allowed water sports since their creation." *Id.* It is also interesting to note that most older water scooters have been banned from use on Lake Tahoe by the Tahoe Regional Planning Agency. *See id.* The agency banned all two-stroke engines due in large part to the petroleum waste they leave behind. *See id.* The agency has allowed newer models that have fuel-injected engines because these models dramatically reduce waste. *See id.*

A sport called sandboarding has also begun to threaten some of the national parks' natural environments. *See* Katurah Mackay, *Sand Sport Threatens Plants*, NAT'L PARKS, May-June 1999, at 14. Sandboarders coast down the face of steep sand banks at approximately 30 to 50 miles per hour. *See id.* Many sandboarders "use plastic or cardboard sleds and sand skis, and sometimes enhance speed with furniture polish." *Id.* Currently, this sport is threatening endangered plants at Death Valley National Park and is bringing harmful chemical substances to the Great Sand Dunes National Monument. *See id.*

37. *NPCA List*, *supra* note 25. *See also infra* Parts II-III; Anson, *supra* note 1, at 14-17. Yellowstone National Park suffers from an array of problems including, but not limited to, the following: an overextended staff, funding shortages, aging infrastructure, lack of scientific management, crowded conditions, automobile pollution, and snowmobile pollution. *See generally* Katurah Mackay, *Boaters Seek Park Access: White Water Runners Lured by Churning Rapids in Yellowstone*, NAT'L PARKS, Mar.-Apr. 1999, at 16.

More recently, Yellowstone National Park has had to confront whitewater recreationists. *See* Mackay, *supra*, at 16. Led by American Whitewater, a national non-profit organization, whitewater boaters have proposed that Yellowstone open four or more rivers in Yellowstone for recreational river running. *See id.* Recrea-

II. PROTECTING AND PRESERVING NATIONAL PARKS

The ten most endangered parks, like all national parks, are confronted with problems that threaten the ability of the NPS to protect precious resources for this and future generations. Why have national parks fallen into such disrepair? Why hasn't the NPS fulfilled its statutory obligation by providing the proper protection? The answer is simple. Over the past twenty-five years, the nation's parks have not been adequately funded, have mismanaged many of the funds they have received, and have been overflooded with visitors.[38]

Presently, the NPS has a cumulative monetary shortfall of approximately $9.1 billion.[39] This shortfall is a result of a backlog of resource protection projects, unfunded operations, construction projects, and land acquisitions.[40] This shortfall has inhibited the NPS' ability to care for its priceless natural, cultural, and historical assets; to prevent the steady deterioration of roads, buildings, sewers, and other infrastructure; and to fund many of the national parks' scientific studies programs.[41]

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tional river running has not been allowed in the park since 1950. In 1988, the park reassessed its 1950 decision and determined that river running would be inappropriate on Yellowstone's secluded waterways. *See id.*

38. *See* Ansson, *supra* note 1, at 7-23. For example, the period between 1977 and 1997 saw a $202-million decline in revenue when counted in constant dollars. *See* Carol Estes, *A Culture in Ruins: Across the Nation, Thousands of Historic Sites and Objects are Succumbing to Inadequate Funding and Misplaced Priorities*, NAT'L PARKS, May-June 1997, at 34.

39. *See* Satchell, *supra* note 9, at 27.

40. *See Capital Projects in the National Park System: Hearing Before the Senate Subcomm. on Nat'l Parks, Historic Preservation, and Recreation of the Senate Comm. on Energy and Natural Resources*, 105th Cong. (1997) [hereinafter *Capital Projects Hearing*] (statement of Albert C. Eisenberg, Deputy Director of Conservation Policy for the National Parks and Conservation Association), *available in* 1997 WL 14152141.

41. *See* Ansson, *supra* note 1, at 2-3.

In the past several years, Congress has provided the national parks with increased funding. For example, Congress appropriated $1.5 billion for national parks and monuments in 1998.[42] Congress also enacted legislation that will allow the parks to receive more funds from non-governmental sources.[43] The following sections will discuss and analyze the funding initiatives that Congress enacted during the past year and examine how these funding initiatives will help provide much-needed supplemental funding to imperiled national parks.

A. *Fee Demonstration Program*

In 1996, Congress enacted a Fee Demonstration Program that allows smaller parks, such as Sequoia, to increase their fees from $5 to $10 and larger parks, such as the Grand Canyon, to increase their fees from $10 to $20.[44] This experimental three-year program raised an extra $150 million in 1999, a 10% budget increase.[45] Under this plan, parks keep 80% of the fees they collect.[46] The remaining 20% of the money collected is placed in a national fund for use by parks that do not collect fees.[47] With this extra money, parks have been able to fix water and sewer lines, repair and build trails,

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42. Mark Johnson, *Ads Feature National Parks, Landmarks in Dual Publicity*, THE SEATTLE TIMES, Feb. 14, 1999, at A18.

43. *See infra* Parts II.A-C.

44. *See* Wood, *supra* note 16, at 1. This was the first time the parks increased fees since 1916. *See id.*

45. *See id.* In 1998, Death Valley collected $1 million. *See id.*

46. *See id.* Under this financing scheme, Death Valley received an additional $800,000 in 1998. *See id.* The fees collected comprise a significant portion of the funds the parks receive. For example, Yellowstone collected $6.3 million in fees from tourists entering Yellowstone, accounting for 21% of its budget. *Fees Give Park Fifth of Budget: Yellowstone Discloses Funding for First Time*, DENV. POST, May 7, 1999, at A34.

47. Wood, *supra* note 16, at 1.

clear vistas, repair roads, and erect ranger stations.[48] Park officials have also used this extra money to build access roads, an entrance lane for pre-paid visitors, and a curatorial facility that contains items ranging from Pueblo pottery to 10,000-year-old giant sloth bones.[49] As a result of the success of the Fee Demonstration Program, Congress recently extended the program through the year 2001.[50]

B. *National Parks Omnibus Management Act of 1998*

1. Concession Contract Reform

Historically, in an effort to entice companies to operate in national parks and provide services and accommodations in areas that are remote and sparsely visited, the NPS granted monopolies to those concessionaires that received concession contracts.[51] Some observers have suggested that the policy of granting monopolies originated with Stephen Mather, the NPS' first director.[52] He wanted to encourage private investment while ensuring that the nation's most cherished areas were not subjected to unchecked capitalism.[53] While modern transportation made the parks more accessible and concession profits grew, many of the old policies persisted, in-

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48. *See id.* For example, Grand Canyon park officials have used the $6.8 million they have collected to partially finance a light-rail system that will transport visitors from outside the parking lots to the south rim. *See id.*

49. *See id.*

50. *See id.* Reports also show that 85% of those who visited national parks were satisfied with new fees or thought they were too low. *See id.* However, the National Parks and Conservation Association is concerned that the fees are not entirely fair because in some places, such as the Grand Canyon, higher fees are charged for back country hiking permits and rafting. *See id.*

51. *See* Michael Mantell, *Preservation and Use: Concessions in the National Parks*, 8 ECOLOGY L.Q. 1, 14-15, 28-29 (1979).

52. *See id.*

53. *See id.*

cluding low fees and preferential treatment for contract holders.[54] For example, in 1965, Congress adopted the Concessions Policy Act ("Concessions Policy Act"),[55] which offered existing contract holders exclusivity, long term contracts, preferential right of renewal, and the opportunity to profit from investments in buildings and other structures constructed by concessionaires.[56] The Concessions Policy Act intentionally offered these businesses lucrative contracts to offset the substantial risk of operating in the parks.[57]

The policies of the NPS were necessary because many early entrepreneurs struggled to turn a profit in the parks.[58] Today, this is not the case because the concessionaire industry is booming.[59] In 1996, concessionaires grossed more than $714 million, and pursuant to their lucrative contracts, paid the parks, on average, only 2% of their overall returns.[60] In fact, under the Concessions Policy Act, some of the concessionaires at national parks have been making extremely high profits. For example, the fees paid by Yosemite Park and Curry Com-

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54. *See* Sandi Doughton, *Tahoma: A Celebration of Mount Rainier - Rainier Inc.: GSI Does Well Doing Business in the Park/ Exclusive Concessionaire Took in $6.35 Million in '98*, THE NEWS TRIB. (Tacoma, Wash.), May 30, 1999, at 6.

55. Concessions Policy Act of 1965, 16 U.S.C. § 20 (1965).

56. *See National Park Concession Management: Hearing Before the Subcomm. on Nat'l Parks, Historic Preservation, and Recreation of the Senate Comm. on Energy and Natural Resources*, 105th Cong. 29 (1997) [hereinafter *National Park Concession Management Hearing*] (statement of Philip H. Voorhees, Associate Director for Policy Development, National Parks and Conservation Association).

57. *See* Mantell, *supra* note 51, at 28-29.

58. *See* Doughton, *supra* note 54, at 6.

59. *See id.*

60. *See Government Press Release: Murkowski Supports Parks Concession Reform - Signs On to Overall NPS Reform Bill*, Apr. 30, 1998, *available in* 1998 WL 7323349; Wendy Mitman Clarke, *Insufficient Funds: Appropriations Have Not Kept Pace with Park Visitation and Expansion. Faced with Shifting Priorities and a Growing Maintenance Backlog the Park Service is Struggling to Make Ends Meet*, NAT'L PARKS, July-Aug. 1997, at 26.

pany, a former service provider to Yosemite National Park, amounted to less than 1% of their $100 million in annual gross revenues.[61]

However, not all contracts entered into under the Concessions Policy Act have been as lucrative and favorable to concessionaires as Yosemite Park and Curry Company's contract. For instance, Guest Services, Inc. ("Guest Services"),[62] which services Mount Rainier National Park, grossed $6.35 million in 1998 and paid 6%, or nearly $400,000 of its gross receipts, to the NPS.[63] Nevertheless, Guest Services still benefits under its contract with the NPS. Under the terms of this contract, the NPS can only use money received from Guest Services on NPS-owned buildings that Guest Services uses for its operations - places like Paradise Inn and Sunrise Lodge.[64] As a result of these highly favorable contracts for concessionares, many national park advocates lobbied Congress for comprehensive legislative reform to the Concessions Policy Act.[65]

In the early to mid-1990s, the NPS entered into experimental concession contracts with concessionaires. Under these new contracts, the NPS shortened the length of the concession contract, allowed for competitive bidding upon renewal of the contract, and increased the percentage of proceeds a contractor would have to

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61. *See Vision 2020 National Parks Restoration Act: Hearings Before the Subcomm. on Nat'l Parks, Historic Preservation, and Recreation of the Senate Comm. on Energy and Natural Resources*, 105th Cong. 73, 74 (1998) [hereinafter *Vision 2020 Hearing*] (statement of William J. Bissett, Vice President Government Affairs, Delaware North Companies, Inc.).

62. Guest Services, Inc. is a private concessionaire company and was founded by the grandson of Ulysses S. Grant. *See* Doughton, *supra* note 54, at 6.

63. *See id.* Guest Services' contract at Mount Rainier National Park extends until the year 2012. *See id.*

64. *See id.*

65. *See generally National Park Concession Management Hearing* (statement of Philip H. Voorhees), *supra* note 56.

pay to a park.[66] Delaware North Companies, Inc. ("Delaware North")[67] was one of the first companies to enter into an experimental concessionaire contract. In 1992, after the Yosemite Park and Curry Company (a company that provided concessionaire services to Yosemite Park) was purchased by a foreign firm and was disqualified from operating its concessions business, Delaware North was awarded a concessionaire contract to service Yosemite National Park.[68] Under the terms of the contract, Delaware North agreed to pay 4.5% of its gross sales into a capital improvement fund for the park, $60 million to buy out Yosemite Park and Curry Company, and $12 million to clean up twenty-seven leaking underground fuel tanks.[69] Additionally, the 1992 agreement provided that the contract term would only be for fifteen years, and at the end of that period, Delaware North would have to compete head-to-head with other interested parties.[70] Since winning the contract, Delaware North has paid more than $13 million into the capital improvement fund, which has been used

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66. *See* Ansson, *supra* note 1, at 33-36.

67. Delaware North was founded in 1915 by Marvin, Charles, and Louis Jacobs. *See Delaware North . . . Billion Dollar Niche Player*, 33 FOOD MGMT. 34 (1998). The company initially sold peanuts in theaters in Buffalo, New York. *See id.* Their business grew to service the sports industry. *See id.* Today, their company stands as a major player in our national parks' concessionaire industry, and their company was a key catalyst in igniting reform in our national parks' concessionaire laws. *See id.*

68. *See Oversight Hearing on Concessions Reform: Hearing Before the Subcomm. on Nat'l Parks and Pub. Lands of the House of Representatives Comm. on Resources*, 105th Cong. (1998) (statement of William J. Bissett, Vice President Government Affairs, Delaware North Companies, Inc.), *available in* 1998 WL 8993882.

69. *See* David Robinson, *A New Model for U.S. Parks: Delaware North Wins Kudos for its Operations in National Parks*, BUFFALO NEWS, Apr. 26, 1998, at B16. In all, the company used 17-20% of its revenues for fees, rights, and park improvements. *See id.*

70. *See Vision 2020 Hearing* (statement of William J. Bissett), *supra* note 61.

to restore and renovate the Alwahnee Hotel and Glacier Point overlook.[71]

With the success of the experimental contract between Delaware North and the NPS, national park advocates lobbied Congress to reform the Concessions Policy Act. In the fall of 1998, Congress finally revoked the Concessions Policy Act when it passed the 1998 Act.[72] In passing the 1998 Act, Congress ensured that the NPS may begin to enter into Delaware North-type contracts with all new concessionaires.[73] Specifically, the 1998 Act increases competition for private contracting in the parks by providing for open bidding on nearly all contracts of more than $500,000 and increases the amount of franchise fees concessionaires pay back to the federal government for the right to operate in the parks.[74] Ad-

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71. *See* Robinson, *supra* note 69, at B16. Delaware North received the NPS' highest award for its role in restoring the Alwahanee Hotel and Glacier Point overlook. *See id. See also* Mark Grossi, *Glacier Point Cleanup Applauded: Most of the $3.2 Million Restoration Cost Came from Concession Contract*, THE FRESNO BEE, Sept. 10, 1997, at B1.

72. National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391, § 415(a), 112 Stat. 3497, 3515 (1998).

73. Delaware North, which won the concessions contract at Sequoia National Park, has just completed building a year-round 102-room lodge in the new Wukasachi Village. *See* Shirley Arbruster, *The Wuksachi Lodge is a Natural for Visitors Enjoying the Magnificence of Sequoia National Park*, THE FRESNO BEE, May 28, 1999, at E1. The new establishment, which opened on May 28, 1999, was built in less than a year. *See id.* This establishment replaces the venerable Giant Forest Village. *See id.*

Along with Yosemite and Sequoia-Kings Canyon, Delaware North also runs concessions at the Kennedy Space Center. *See* David Robinson, *Delaware North to Sell in Grand Canyon National Park*, BUFFALO NEWS, Mar. 5, 1999, at C9. Additionally, in March of 1999, Delaware North signed a letter of intent to purchase three grocery and retail stores within Grand Canyon National Park from Babbitt Brothers Trading Company. *See id.* Babbitt Bothers, which was established in 1905, is run by the family of Secretary of Interior Bruce Babbitt. *See id.*

74. 16 U.S.C. §§ 5952, 5956 (1998). *See also* Katurah Mackay, *Concession Reform Victory*, NAT'L PARKS, Jan.-Feb. 1999, at 19.

ditionally, the legislation shortens the length of contract terms from thirty to ten years or less.[75] Further, the bill establishes a new formula for reasonably compensating concessionaires for capital investments in parks, and establishes an advisory board to recommend improvements to the concessions management program.[76] Overall, this legislation is intended to significantly increase competition for contracts and boost park revenues by as much as $50 million.[77] Thus, as a result of this legislation, the national parks have potentially gained a viable source for additional funds.

2. Promotion of Local Fundraising Endeavors

For many years, national parks have received donations from non-profit organizations. For example, the Nature Conservancy,[78] which annually helps the parks in many unique ways, received a $1 million gift from Great Outdoors Colorado.[79] The Nature Conservancy plans to use this money to acquire 29,000 acres of the 100,000-acre Medano/Zapata Ranch in Colorado, which includes part of the Great Sand Dunes National Monument.[80] The Nature Conservancy plans to purchase this acreage, which they estimate will cost about $11.7 million, in order to protect the ranch.[81] Additionally, the Nature Conservancy is planning to acquire the Baca

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75. 16 U.S.C. § 5953 (1998). *See* Mackay, *supra* note 74, at 19.

76. 16 U.S.C. §§ 5954-5955, 5957-5958 (1998). *See* Mackay, *supra* note 74, at 19.

77. *See* Doughton, *supra* note 54, at 6.

78. For more information on the Nature Conservancy, see the Nature Conservancy website at <http://www.tnc.org/welcome/index.html>.

79. *See Nature Group Receives Grant*, OMAHA WORLD-HERALD, June 28, 1999, at 14.

80. *See id.*

81. *See Campbell, Park Status for Dunes Unlikely Soon*, THE COLORADO SPRINGS GAZETTE TELEGRAPH, June 3, 1999, at A8, *available in* 1999 WL 6194225.

Grande Ranch, which borders the monument. The Conservancy has stated that it will probably donate all of the lands they acquire to the Great Sand Dunes National Monument.[82]

In another land acquisition project, the Nature Conservancy recently secured the second and third portions of a five-phase land acquisition plan at Cumberland Island National Seashore in Georgia.[83] These two portions, known as the Greyfield North tract, contain approximately 1,148 acres of pristine oak forests, marsh lands, and undeveloped Atlantic beaches.[84] The Greyfield North tract lies within the park's designated wilderness and contains important cultural resources, such as the slave cabins at Stafford Plantation.[85] Shortly after the Nature Conservancy purchased the lands, the National Parks Conservation Association facilitated an agreement with Congress, whereby Congress agreed to reimburse the Nature Conservancy $6.4 million for the purchase of these two tracks.[86]

In 1998, Congress recognized the importance of nonprofit organizations in the National Park Omnibus Management Act, and therein provided that the National Park Foundation "design and implement a comprehensive program to assist and promote philanthropic programs of support at the individual national park unit level."[87] The Act further provides:

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82. *See id.*

83. *See* Katurah Mackay, *Historic Deal Protects Seashore*, NAT'L PARKS, Mar.-Apr. 1999, at 12.

84. *See id.*

85. *See id.*

86. *See id.* Senator Max Cleveland (D-Ga.), Rep. Jack Kingston (R-Ga), and Rep. Ralph Regula (R-Ohio) helped secure the agreement. *See id.*

87. 16 U.S.C. § 19(o) (1998). This portion of the National Parks Omnibus Management Act amends the National Park Foundation Act found at 16 U.S.C. § 19(o) (1967). For more on the National Park Foundation, see *infra* Parts III.D.2.d – IV; Mark Johnson, *Corporate America Finds a New Place to Hang Its Hat*, YORK DAILY REC., Feb. 14, 1999, at 1.

> (b) Implementation
> The program . . . shall be implemented to--
> (1) assist in the creation of local nonprofit support organizations; and
> (2) provide support, national consistency, and management-improving suggestions for local nonprofit support organizations.
> (c) Program
> The program . . . shall include the greatest number of national park units as [is] practicable.
> (d) Requirements
> The program . . . shall include, at a minimum--
> (1) a standard adaptable organizational design format to establish and sustain responsible management of a local nonprofit support organization for support of a national park unit;
> (3) standard and legally tenable bylaws and recommending money-handling procedures that can easily be adapted as applied to individual national park units; and
> (3) a standard training curriculum to orient and expand the operating expertise of personnel employed by local nonprofit support organizations.[88]

By establishing this program, Congress has stated that new non-profit organizations will provide needed supplemental funding to the parks in a more efficient and calculated manner. Additionally, Congress has provided that the 1998 Act does not require an existing non-profit organization to modify current practices or affiliate with the Foundation, nor does it require that any of the organizations established as a result of this section of the 1998 Act be permanently affiliated with

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Section 19(o) is very important because private funding for our national parks is being relied upon more and more. For example, the $100 million World War II Veterans Monument is being built without any federal funding. *See* Ken Sean O'Donoghue, *Memorial to WWII on Track*, HOUSTON CHRON., July 1, 1999, at 23A.

88. 16 U.S.C. § 19(o) (1998).

the Foundation.[89] Thus, Congress has attempted through the language of the 1998 Act to facilitate non-profit organization participation in an all inclusive manner, thereby maximizing the level of potential supplemental funding available to national parks.

3. Park Budgets and Accountability

Over the years, the NPS has misused many of the funds appropriated to it.[90] For example, the NPS has recently spent $333,000 on a two-toilet outhouse at the Delaware Gap National Recreation Area, $1 million on an outhouse at Glacier National Park, $8 million on a small visitor center in Seward, Alaska, and $584,000 for each new employee housing unit built in Yosemite.[91] Additionally, the NPS annually spends 90% of its funds on construction projects and less than 10% on resource management.[92]

As a result of the mishandling and misuse of appropriations by the NPS, Congress included a monetary accountability provision in the 1998 Act.[93] Under the 1998 Act, each unit of the park system must release both a five-year strategic plan and an annual performance plan.[94] Additionally, each unit must make their budget public.[95] The Act requires that in preparing its budget the parks must include:

> at a minimum, funding allocations for resource preservation (including resource management), visitor services (including maintenance, interpretation, law enforcement, and search and rescue) and administration. The budget shall also include allocations into each of the above categories of all funds retained

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89. *Id.*
90. *See* Ansson, *supra* note 1, at 21-23.
91. *See id.*
92. *See id.*
93. 16 U.S.C. § 5914 (1998).
94. *Id.*
95. *See id.*

> from fees collected for that year, including (but not limited to) special use permits, concession franchise fees, and recreation use and entrance fees.[96]

Yellowstone National Park was one of the first parks to disclose its budget for park operations after the enactment of the accountability provisions of the 1998 Act.[97] Yellowstone's disclosure report indicated that the park's overall budget was $30 million and that $6.3 million, approximately 21%, of its budget, was collected from entrance fees.[98] The park expended its funds as follows: $12.3 million was used to fund "facility maintenance and operations, including plowing park roads, road and trail maintenance, campground care and utility operations;" $9.5 million was used to fund "[v]isitor services, including law enforcement, firefighting and visitor centers;" and $5 million was used to fund "resource protection programs, including wildlife and fisheries research and management and archaeological research and protection."[99]

Ideally, these provisions will help individual park units develop a higher level of accountability. Under the 1998 Act, each individual park unit will be forced to disclose five-year strategic plans, annual performance plans, and detailed budget information. If the park units follow the mandates of the 1998 Act, they will ultimately appropriate the money they do receive more effectively and efficiently. Thus, as a result of the 1998 Act, the parks will be prodded into effectively managing the money they receive.

4. Cooperative Agreements and Scientific Management

As a result of the lack of funding, many of the parks have been forced to eliminate their scientific studies

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96. *Id.*
97. *See Fees Give Park Fifth of Budget*, *supra* note 46, at A34.
98. *See id.*
99. *Id.*

programs.[100] For example, Yellowstone National Park was forced to discontinue several research programs, including a program that studied how to prevent the infiltration of damaging species, a program that monitored geothermal activity, and a program that tracked the condition of wildlife.[101] In the 1998 Act, Congress enacted a unique provision designed to facilitate scientific studies programs within the parks.[102] Under the 1998 Act, the Secretary of Interior is authorized:

> to enter into . . . agreements with colleges and universities, including but not limited to . . . grant schools, in partnership with other Federal or State agencies, to establish cooperative study units to conduct multi-disciplinary research and develop integrated information products on the resources of the National Park System, or the larger region of which parks are a part.[103]

This provision encourages parks to gain valuable scientific research through collaboration with colleges and universities. In turn, this provision provides a real-life laboratory for a number of research departments.

Prior to the passage of the 1998 Act, at least one college and park had successfully entered into a partnership similar to that envisioned by the 1998 Act. Shasta-Thama-Trinity Joint Community College had developed a partnership with Whiskeytown National Recreation Area, whereby the community college helped the park restore the 300-acre Paige-Bar Watershed in Northern California.[104] In addition, the two institutions have worked together to improve the habitat for diminishing salmon populations and to restore degraded

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100. *See* Ansson, *supra* note 1, at 3, 10-11.

101. *See id.*

102. 16 U.S.C. § 5933 (1998).

103. *Id.*

104. *See Canon Sponsors First National Park Partnership Award To Recognize Leaders In Environmental Conservation*, PR Newswire, Apr. 21, 1999, *available in* WESTLAW, PRWIRE File.

landscapes.[105] The program has also provided opportunities for the sharing of expertise and technology and has given students training in restoration ecology.[106] Most recently, the college and park gave presentations at the Coordinated Resource Management Planning Group for the Lower Clear Creek Watershed.[107] The partnership has been so successful that it was presented with the National Park Partnership Award in the Environmental Conservation Category.[108]

Since the passage of the 1998 Act, the University of California ("UC") has announced that its new UC campus at Merced will join forces with Yosemite and Sequoia-Kings Canyon National Parks to provide research and other ecological resources.[109] UC Merced and national park officials hail this partnership as a win-win situation because UC students and faculty will gain a place in which to perform research, and the NPS receives much-needed resources.[110] UC is already conducting two important demonstration research projects.[111] One of the studies focuses on transportation in Yosemite, and the other will decode a three-year Sierra ecosystem study for local and regional planners.[112] Ideally these successes will lead to many more partnerships between universities and national parks.

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105. *See id.*

106. *See id.*

107. *See id.*

108. *See id.* The Environmental Conservation Award is presented to projects that "improve the habitat of rare, threatened and endangered species; that restore disturbed lands; or that enhance and beautify parks and adjacent areas." *Id.*

109. *See* John G. Taylor, *UC Forges Ties to National Parks Partnership Would Benefit the Proposed UC Merced Campus*, THE FRESNO BEE, Mar. 29, 1999, at B1.

110. *See id.*

111. *See id.*

112. *See id.*

5. New Guidelines For Admitting New Parks

The establishment of a national park represents a daunting commitment because it requires funding for the protection of cultural, historic, and natural resources, funding for the purchase of park lands (which sometimes may require acquiring millions of acres), and enough money to provide facilities for visitors to have access to and enjoy the area.[113] Over the last thirty years, the number of parks under the management of the NPS has risen from 259 to 374.[114] Although it is important for preservation purposes to continue creating new parks, the vast majority of these parks have been created at the insistence of congressional representatives who may feel duty-bound to procure parks for their districts, rather than by the NPS.[115] Ironically, the NPS

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113. *See Conservation and Reinvestment: Hearings Before the Nat'l Parks and Conservation Association on S.819 Before the Senate Comm. on Energy and Natural Resources, the "National Park Preservation Act,"* 106th Cong. 253 (1999) [hereinafter *National Park Preservation Act Hearing*] (statement of Thomas C. Kiernan, President of the National Parks and Conservation Association).

114. *See* Estes, *supra* note 38 at 35.

115. *See National Park Concession Management Hearing* (statement of Thomas C. Kiernan), *supra* note 113. Indeed, with national parks currently pumping $10 billion annually into local economies, many congressional representatives view national parks as a potential monetary bonanza for their respective districts. *See id.* Additionally, many congressional representatives who have parks within their districts that have not been denoted as national parks push for those parks to receive national park status. Many national monuments push for national park status because such status usually means that the park will receive more notoriety, more visitors, more funds, and more protection. For example, many public officials around the Great Sand Dunes National Monument in Colorado, which was established in 1932 to protect 39 miles of spectacular 300 to 700-foot-vertical-drop sand dunes, have been lobbying Sen. Ben Nighthorse Campbell (R-Co.) to push for national park status for "their" park. *See Campbell: Park Status for Dunes Unlikely Soon*, THE GAZETTE (Colorado), June 3, 1999, at 8. In response, Sen. Campbell has stated that he is not against the monument becoming a national park; however, he has warned public officials that it will probably not happen any time

has deemed many of these parks either unnecessary or too expensive.[116] For example, one congressional representative requested that $66 million be appropriated to create the Steamtown National Historic Site in Scranton, Pennsylvania, hoping that it would revitalize the rust belt.[117]

In an effort to depoliticize the park creation process, the National Parks Omnibus Management Act reforms the process by which areas are considered for addition to the National Park System.[118] The 1998 Act provides

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soon. *See id.* Indeed, Sen. Campbell has been fighting for over ten years to secure national park status for the Black Canyon of the Gunnison National Monument. *See* Mary Boyle, *Canyon Wins Support for National Park Status*, KNIGHT-RIDDER TRIBUNE BUSINESS NEWS, May 7, 1999, *available in* 1999 WL 17337131. For years, federal agencies have been opposed to the idea because they have claimed the park was too small to gain national park status. *See id.* However, the federal agencies now say they support national park status as long as Congress follows through on the proposed expansion of the park. *See id.*

116. *See supra* note 115 and accompanying text.

117. *See* Satchell, *supra* note 9, at 27.

118. National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391, § 303(4), 112 Stat. 3497, 3502 (1998). This provision amends the National Park System General Authorities Act. 16 U.S.C. § 1a-5 (1998). In part, section 303(4) of the 1998 Act provides:

> (c)(1) The Secretary shall complete the study for each area for potential inclusion in the National Park System within 3 complete fiscal years following the date on which funds are first made available for such purposes. Each study under this section shall be prepared with appropriate opportunity for public involvement, including at least one public meeting in the vicinity of the area under study, and after reasonable efforts to notify potentially affected landowners and State and local governments.
> (2) In conducting the study, the Secretary shall consider whether the area under study --
> (A) possesses nationally significant natural or cultural resources and represents one of the most important examples of a particular resource type in the country; and
> (B) is a suitable and feasible addition to the system.
> (3) Each study --
> (A) shall consider the following factors with regard to the area being studied –
> (i) the rarity and integrity of the resources;
> (ii) the threats to those resources;

for rigorous guidelines to ensure that lands receiving park status actually warrant said status.[119] For example, Interior Secretary Bruce Babbitt's proposed 550,000-acre monument on the Shivwits Plateau in northern Arizona has, in his estimation, surpassed the guidelines of the 1998 Act.[120] The Shivwits Plateau, comprised of mostly federal and state land located between the Grand Canyon and the Utah state line, is a scenic strip of land containing numerous petroglyphs and featuring stunning views of side canyons to the

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

(B) shall consider whether direct National Park Service management or alternative protection by other public agencies or the private sector is appropriate for the area.

119. Representative Curt Weldon (R-Pa.) recently successfully lobbied for the passage of a bill which appropriated $1.3 million to purchase the Paoli Battlefield, a 40-acre tract where more than 50 Americans died in 1777 to protect Philadelphia from British capture. *See* Michael Doyle, *Parks and Public Lands Bill Are Going Nowhere Fast*, THE SACRAMENTO BEE, May 30, 1999, at A7.

120. *See* Michelle Rushlo, *Babbitt: Protect Arizona Plateau*, THE COLUMBIAN, June 22, 1999, at A6. The Shivwits Plateau was named for a band of Paiute Indians. *See id.* In the 1970s, the federal government had proposed adding this strip of land to Grand Canyon National Park. *See id.* However, the Senate decided against the plan because, had national park status been conferred upon the plateau, numerous cattle ranchers, many of whom come from generations-old Arizona strip ranching families, would have been unable to continue their ranching operations. *See id.* Secretary Babbitt has stated that the grazing rights of ranchers would be protected at the proposed national monument. *See id.* This new proposal is not without controversy since monument status would prevent any new mining claims, causing some to worry that valuable mineral resources might become inaccessible. *See id.*

Grand Canyon.[121] Additionally, the plateau is also home to a number of endangered and threatened species.[122] This proposed monument is controversial since miners and cattle ranchers fear that national monument status will prevent them from conducting their respective business ventures.[123] In spite of the controversy, Secretary of Interior Babbitt believes that the Shivwits Plateau should be deemed a national monument.[124]

C. *Transportation Equity Act of the 21st Century*

In earlier years, national park officials encouraged car use by visitors because the car allowed for affordable travel and freedom of choice for visitors.[125] However, as the number of visitors to parks has increased, so has the number of cars. Park officials have finally realized that the "traffic is aging the natural jewels beyond their years."[126] Throughout the park system, the lack of funding has thwarted the ability of the NPS to prevent the steady deterioration of roads and has impeded the

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121. *See id.*

122. *See id.*

123. For more on the controversy, see Rushlo, *supra* note 120.

124. The Shivwits Plateau fulfills the requirements of the act in part because the land possesses nationally significant natural and cultural resources; the resources in the area are threatened, and the cost of preserving these lands is slight since the federal and/or state governments own most of the land. *See supra* notes 118, 121-123 and accompanying text.

125. *See* Joe Kolman, *A National (Car) Park: Vehicles Mar the Beauty Their Drivers Came to See*, DENV. POST, June 20, 1999, at B2. In 1907, Mount Rainier was the first national park to allow vehicles in the park. *See* Joel Connelly, *Rainier's Park Endures Peak Load*, SEATTLE POST-INTELLIGENCER, June 17, 1999, A1. A total of 60 cars traversed the muddy roads and toured the park that year. *See id.* In 1911, President William Howard Taft visited and toured the park in a car. (However, mules had to pull his car part of the way.) *See id.*

126. Kolman, *supra* note 125, at B2.

ability of the NPS to provide alternative modes of transportation into the parks.[127]

In September 1998, Congress passed the Transportation Equity Act of the 21st Century (TEA 21)[128] which "provides unprecedented funds and authority to the National Park Service for park transportation repair, maintenance, and rehabilitation projects."[129] Under TEA 21, the level of funding for transportation improvements to park roads and parkways will increase from $84 million to $115 million in fiscal year 1998 and to $165 million in each year thereafter.[130] Additionally, under TEA 21, the parks will be able to use some of the $165 million on transportation projects outside of park boundaries.[131] These additional funds are intended to assist states and localities in implementing alternative transportation methods.[132]

In an effort to thwart overcrowding and traffic jams, park officials at Grand Canyon, Yosemite, and Zion have begun to implement alternative transportation systems. For example, park officials at Grand Canyon National Park, where the visitation rate has almost doubled in the past fifteen years from 2.4 million to 4.6 million, have decided to build a light rail system.[133] The light rail

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127. *See generally* Satchell, *supra* note 9.

128. Transportation Equity Act of the 21st Century (TEA 21), Pub. L. No. 105-178, 112 Stat. 107 (1998).

129. Katurah Mackay, *Transportation Act Improves Park Access*, NAT'L PARKS, Sept.-Oct. 1998, at 18. The Transportation Equity Act of the 21st Century was formerly known as the Intermodal Surface Transportation Efficiency Act (ISTEA). *See id.*

130. *See id.*

131. *See id.*

132. *See id.*

133. *See* Jayne Clark, *Canyon Congestion Could Clear*, USA TODAY, June 25, 1999, at D2; Jayne Clark, *The Grand Canyon Without Reservations*, USA TODAY, June 25, 1999, at D1. In 1998, only 4.2 million people visited the Grand Canyon, down 12% from the previous year. *See* Christopher Reynolds, *Fewer Visit U.S. National Parks in Western Region Tourism*, L.A. TIMES, Mar. 14, 1999, at L2. It is believed that the decline is due in large part to fewer Asians taking American vacations. *See id.*

system, which is expected to be completed by the year 2002, will be able to carry up to 4,200 visitors into the park per hour.[134] Visitors will be able to park their cars in a 3,500-space parking lot in Tusayan, a community six miles south of the Grand Canyon.[135] Additionally, park officials are building a forty-five mile greenway for biking and walking.[136] Park officials estimate that construction costs will be about $200 million with $20 million per year in operating expenses.[137] Grand Canyon officials have used park entrance fees[138] and private partnerships to fund this $200-million project.[139] In the future, park officials may also be able to use funds from TEA 21 to help fund and maintain their light rail system.

Much like the Grand Canyon, Yosemite is too popular for its own good. In the past two decades, the number of visitors has grown from 2.5 million to more than 4 million a year.[140] With this increase in visitors, Yosemite

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134. *See* Whitman, *supra* note 5, at 18.

135. *See id.*

136. *See id.*

137. *See Natural Resources Grand Canyon: Mass Transit Construction Begins*, American Political Network Greenwire, June 21, 1999, available in WESTLAW, 6/21/99 APN-GR 16. The project also includes a $330 million gateway at Tusayan, which will include 1,220 hotel rooms and 250,000 square feet of commercial space. *See id.* Additionally, the plan includes a visitors center for the park, and an interpretive and education center to be run by the Museum of Northern Arizona. *See* Whitman, *supra* note 5, at 18.

138. *See Natural Resources Grand Canyon: Mass Transit Construction Begins*, *supra* note 137. For more on fees and the Grand Canyon transportation system, see Wood, *supra* note 16.

139. *See Natural Resources Grand Canyon: Mass Transit Construction Begins*, *supra* note 137. For more on private partnerships, see *infra* notes 260-261 and accompanying text.

140. *See* James Rainey, *Yosemite Plan to Limit Traffic Hits Roadblock - Tuolumne, Madera Counties Opt to Exit Regional Bus Plan*, THE SACRAMENTO BEE, May 3, 1999, at A4. Yosemite's problems are further aggravated by the floods that swept through the valley in the winter of 1997. *See* Eric Noland, *Yosemite Under Siege; Rock Slides, Crime, Flood Damage, Internal Bickering . . . But the Tourists Still Come in Droves*, L.A. DAILY NEWS, June 20, 1999,

has experienced some of the most severe automobile traffic problems of any national park.[141] Park officials estimate that as many as 7,000 cars travel in the park each day during the summer months.[142] Yosemite officials estimate that a total of 1.5 million cars travel through the seven-square-mile valley each year.[143]

The Yosemite General Management Plan describes automobile traffic as the single greatest threat to the enjoyment of Yosemite's natural and scenic qualities.[144] The NPS is working in the Yosemite Area Regional Transportation Strategy (YARTS), a federal-state-local partnership whose mission is to propose a transportation system for the Yosemite region that will involve bringing day-use visitors into Yosemite Valley from the gateway communities.[145] By directing automobile traffic away from the parks themselves and shifting traffic to gateway communities, YARTS will enhance service and commercial opportunities for local economies, while reducing impacts to the park and providing a better in-park experience for visitors.[146] Though the transportation strategy is still evolving, YARTS hopes to begin with a modest pilot program that will allow no more than twenty buses a day into Yosemite by the summer of

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at T2. Campground sites were reduced by 52% and lodging was reduced by 15%. *See id.* Yosemite officials have used this to their advantage and are returning the valley to its natural state. *See* Reynolds, *supra* note 133, at L2. In particular, the NPS would like to rebuild campgrounds, lodging, employee housing, and visitor facilities outside the flood plain of the Merced River. *See* Noland, *supra*, at T2.

141. *See* Rainey, *supra* note 140, at A4.

142. *See Yosemite Bus Plan Funding to Be Held Over Next Year*, L.A. TIMES, June 10, 1999, at A31.

143. *See id.*

144. *See* Rainey, *supra* note 140, at A4.

145. *See id.*

146. For more on gateways, see *infra* notes 233-240 and accompanying text.

2000.[147] As an incentive to ride the bus, the NPS will charge families only $6 to enter the park as opposed to the normal $20 entrance fee.[148]

Initially, five counties - Madera, Tuolumne, Merced, Mono, and Mariposa - were involved in the creation of YARTS.[149] However, Madera and Tuolumne counties pulled out of the plan because their county officials believed that the bus system would favor routes that primarily passed through other counties.[150] In particular, these counties believed that the bus system was already tilted in favor of California Route 140, which runs through Merced and Mariposa counties.[151] Despite the defections, the NPS and the remaining three counties - Merced, Mono, and Mariposa - are continuing to move ahead with the YARTS project and hope to bring subsidized bus traffic to Yosemite by the summer of 2000.[152] Additionally, the state of California granted the three counties $2.37 million in funds for YARTS.[153] In June of 1999, the California Transportation Commission voted seven to zero to move the $2.37 million in funds for the YARTS to the next fiscal year.[154] This action gave the group's board time to find a private bus operator, lay

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147. *See* Rainey, *supra* note 140, at A4. Many environmentalists have also encouraged YARTS to use natural-gas-powered buses as opposed to diesel fueled buses to reduce the amount of pollution in the greater Yosemite area. *See* Mark Grossi, *Diesel Fuels YARTS Opposition Some Experts Push Natural-Gas Buses as a Cleaner Option*, THE FRESNO BEE, March 7, 1999, at B1. Although funding is limited, it costs around $360,000 for a 50-passenger diesel transit bus while it costs a little under $500,000 for a similar natural-gas powered bus. *See id.* However, the draw back to using natural-gas-powered buses is the fact that they are usually underpowered and may have difficulty climbing the Sierra passes which have elevations that exceed almost 10,000 feet on Tioga Road. *See id.*

148. *See* Rainey, *supra* note 140, at A4.

149. *See id.*

150. *See id.*

151. *See id.*

152. *See id.*

153. *See Yosemite Bus Plan Funding*, *supra* note 142, at A31.

154. *See id.*

out plans for future funding, and conduct all necessary environmental studies.[155] Hopefully, Yosemite park officials will also be able to use funds from TEA 21 to help fund and maintain their private bus system.

Other parks have begun to look for alternative transportation methods. In each case, TEA 21 funding will be paramount. For example, Yellowstone officials are beginning to plan for alternative modes of transportation.[156] Currently, it is difficult to find parking in Yellowstone during the summer. Traffic flow in some places can be reduced to near-gridlock, and by the year 2015, Yellowstone officials are expecting the number of visitors to reach four million.[157] Mount Rainier - the first park to allow cars within its boundaries in 1907 - is beginning to discuss alternatives.[158] Park officials note that on weekends visitors have a difficult time finding parking spots - even though spaces are fairly plentiful during the week.[159] However, Mount Rainier park officials hope to avoid banning cars completely because a shuttle bus system is still not economically feasible.[160]

III. SUPPLEMENTAL FUNDING FOR NATIONAL PARKS

National parks can best be protected through increased appropriations. In the past year, Congress has sought to appropriate additional funding for staffing, maintenance, visitor services, interpretation, and park protection. In the area of land acquisitions, the Senate Appropriations Committee recently approved $1.5 mil-

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155. Such a vote was necessary because under California law, an agency will lose the funds appropriated to it if such money is not used. *See id.*

156. *See* Kolman, *supra* note 125, at B2.

157. *See id.*

158. *See* Connelly, *supra* note 125, at A1.

159. *See id.* Approximately 2.2 million people visit the 235,612-acre park each year. *See id.*

160. *See id.*

lion for land acquisitions[161] at two of Hawaii's National Parks.[162] The funding will add 1,950 acres to Hawaii Volcanoes National Park[163] and 2,911 acres to Haleakala National Park.[164] Additionally, Sen. Pete Domenici (R-N.M.) has requested $8.8 million to buy privately-held land within Petroglyph National Monument, Pecos National Historic Park, Jemez National Recreation Area, and the Cieneguilla Petroglyph site.[165] Further, Rep. Jim Kolbe (R-AZ) has sought to secure $6 million to pur-

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161. Private individuals hold more than four million acres of land within our national parks. *See* Chandler, *supra* note 8, at 40. Many park advocates believe that acquisition of land is necessary to protect parks from incompatible development. *See id.*

162. *See U.S. Senate Committee Looking to Increase Size of Hawaii Parks*, Associated Press Newswires, June 28, 1999, *available in* WESTLAW, APWIRESPLUS File.

163. *See id.* The proposed addition to Hawaii Volcanoes National Park will complete the ecosystem at the park. *See id.* The ecosystem, or ahupuaa, stretches from the ocean to the elevation of 7,700 feet. *See id.* Congress is also considering amending the enabling legislation of this park. The enabling legislation states that the Secretary of Interior may only purchase lands contiguous to the park for the purpose of "rounding out the park." *National Parks and Trails: Hearings Before the Senate Subcomm. on Nat'l Parks, Historic Preservation, and Recreation, Comm. on Energy and Natural Resources On S. 938, a Bill to Eliminate Restrictions on the Acquisition of Certain Land Contiguous to Hawaii Volcanoes National Park, and for Other Purposes*, 106th Cong. (1999) (testimony of Katherine Stevenson, Associate Director Cultural Resource Stewardship and Partnerships, National Park Service, Director of the Interior), *available in* 1999 WL 16948411. Additionally, the enabling legislation only allows the Secretary of Interior to purchase lands with donated funds. *See id.* Senate bill 938 would give the Secretary of Interior the authority to purchase lands contiguous to the park with appropriated funds. *See id.* Proponents of the bill argue that this legislation is necessary to enable the secretary to purchase private lands that are for sale and are at risk of being developed. *See id.*

164. *See U.S. Senate Committee Looking to Increase Size of Hawaii Parks*, *supra* note 162.

165. *See Domenici Requests $8.8 Million for Park Land*, ALBUQUERQUE J., June 3, 1999, at 1; Sue B. Mann, *Petroglyph Trails Trace Lives of Ancient People*, ALBUQUERQUE J., Apr. 8, at 1999, at C1.

chase private property within Saguaro National Park.[166] However, even with increased funding, numerous other potential land acquisitions have not received any federal money.

Congress has also failed to appropriate sufficient funds to properly protect parks in other areas. For example, Kenai Fjords and Katmain National Parks in Alaska lacked the funds and staff to appropriately document the damage to each park caused by the 1989 *Exxon Valdez* oil spill of eleven million gallons of crude oil into Alaska's Prince William Sound.[167] In a 1991 settlement, the Exxon Corporation paid Alaska and the United States $900 million for restoration purposes.[168] After receiving this money, the United States and the State of Alaska created the *Exxon Valdez* Oil Trustee Council to oversee the expenditure of the settlement funds.[169] The Oil Trustee Council has since formed several multi-million dollar programs to monitor species recovery.[170] However, the Oil Trustee Council has not appropriated any money to the Kenai Fjords or Katmain

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166. *See* Maureen O'Connell, *Saguaro National Park to Gain 614 Acres*, THE ARIZ. DAILY STAR, Jan. 26, 1999, at 1B. In 1994, Congress expanded the park's western boundaries by adding 3,460 acres to the 24,498-acre park. *See id.* However, it failed to appropriate funds for land purchases. *See id.* Within this time, eight homes have been built on privately held land within the boundaries of the park. *See id.* The government has appropriated approximately $9 million for the purchase of lands within the western section of the park. *See id.* It should also be noted that the government expanded the park's eastern boundaries in 1992. *See id.* The NPS has appropriated approximately $23 million to buy private land in the eastern sections of the park. *See id.* The current appropriations, which have been allocated from the Land and Water Conservation Fund, will be used to purchase 102 acres in the eastern portion of the park and 512 acres in the western portion of the park. *See id.*

167. *See* Katurah Mackay, *Research Needed in Alaska Parks*, NAT'L PARKS, Mar.-Apr. 1999, at 20.

168. *See id.*

169. *See id.*

170. *See id.*

National Parks for recovery studies and species monitoring.[171] As a result, park officials do not know how the park habitat - sea otters, killer whales, harbor seals, cormorants, loons, numerous varieties of fish and bivalve populations as well as archaeological resources - have been affected by the 1989 oil spill.[172]

Even the most popular national parks suffer from inadequate funding. For example, Yellowstone National Park, which has an annual budget of $30 million, requires major infrastructure repairs.[173] Currently, the park needs $300 million in road repairs, $30 million to repair the sewage system, and millions more for other needs.[174] Without adequate funding, officials at Yellowstone have been unable to repair the park's roads, fix the park's sewage system, or maintain the park's natural resources.[175] This lack of funding has been detrimental to the park's welfare. In 1998, raw sewage leaked into Yellowstone Lake and into a creek near Old Faithful in separate incidents.[176] This year, in an effort to thwart a catastrophic failure of the outdated sewage system, park officials dumped 6.5 million gallons of treated sewage into a meadow.[177] Without more funding from Congress or from other supplemental sources, Yellowstone officials will be unable to maintain and preserve the park.

Congress provided the parks with $1.5 billion this past year.[178] However, it is estimated that the NPS needs $4 billion to $8 billion to adequately protect the

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171. *See id.*

172. *See id.*

173. *See Fees Give Park Fifth of Budget*, *supra* note 46, at A34.

174. *See* Moen, *supra* note 24, at B1.

175. *See id.*

176. *See id.*

177. *See id.* It is estimated that the three million people who visit Yellowstone will create 270 million gallons of waste. *See id.*

178. *See* Johnson, *supra* note 42, at A18. This figure does not include the $180 million parks received last year from entrance fees, concessions, and private donations. *See id.*

parks.[179] Nevertheless, Congress has made it clear that it will not increase current funding levels any time soon.[180] Why doesn't the government provide more funding to national parks? The answer to this question is fairly easy. At the present time, the United States government is reducing the size of the federal government and the amount of expenditures that it appropriates to federal programs.

Interestingly enough, other developed countries have also had similar experiences regarding the level of expenditures they have appropriated to their parks. These countries have also experienced an increase in the number of parks, park usage, and infrastructure costs, while at the same time receiving approximately the same level of government funding. For example, England's national parks have experienced erosion as its parks receive an estimated 100 million visitors each year.[181] Meanwhile, the eleven national parks in England and Wales have seen a reduction in their public funding in the past several years.[182] Fortunately, England's park service is receiving an 8% increase in funding in 1999, and an 2.5% additional increase in each of the following years.[183]

English park service officials allege that this increase in funding, though welcomed, is not enough for park service officials to meet their overriding responsibility of protecting some of England's most treasured national resources.[184] Accordingly, the England's national park service is seeking a 20% increase of funds for the years 2000-01.[185] However, England's national park service,

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179. *See id.*

180. *See id.*

181. *See* Steve Brown, *Downward Path: On the 50th Anniversary Of National Parks*, THE GUARDIAN, June 23, 1999, at 41.

182. *See id.* Funding for English parks fell from 17.7 million pounds in 1995-96 to 17.4 million in 1998-99. *See id.*

183. *See id.*

184. *See id.*

185. *See id.*

which is celebrating its fiftieth anniversary, realizes that complete reliance on the state for funding is no longer feasible.[186] As a result, England's national parks, like the national parks in the United States, are now seeking new sources of funding.[187] Many in England fear, however, that without some consistent level of government funding, England's national parks will not be worth visiting in another fifty years.[188]

Australia, like the United States and England, has nominally increased funding for their national parks in an effort to protect and repair their parks' natural resources and infrastructure.[189] In 1999, Australia increased national park funding by 13%.[190] The government is providing more funding to improve air and water quality, protect threatened species, purchase land, and expand forests.[191] Additionally, the government is providing more funds to maintain park facilities, repair sewage systems, and create new parks.[192] However, like

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186. *See id.*

187. *See* Brown, *supra* note 181, at 41.

188. *See id.* at 42.

189. *See* Julia Baird, *Spending on National Parks To Rise By 13%*, SYDNEY MORNING HERALD, June 23, 1999, at 2.

190. *See id.*

191. *See id.*

192. *See id.* Providing funds for parks, whether in the United States or elsewhere, is usually a popular political move. For example, British Columbia officials recently enacted legislation to preserve 3.45 million acres. *See Pressured by Environmentalists, B.C. Government Establishes 35 Parks*, Associated Press Newswires, June 23, 1999, *available in* WESTLAW, APWIRESPLUS File. Numerous parks will be created throughout the province including: five parks in the Vancouver area, one of which will protect a huge population of bald eagles; a 1.6 million-acre park in the Northern Rockies, near Fort Nelson; a 230,000-acre preserve, which will protect moose, caribou, stone's sheep, mountains goats, wolves, and grizzly bears; a low-elevation valley near Fraser River Canyon; a 52-mile stretch of the Babine River, which will protect sockeye salmon and stellhead; a 410,000-acre expansion to the Kakwa Provincial Park; a 8,500-acre old-growth forest north of Vancouver; and a 150,000-acre parcel of land in the Entiako River Valley, which will protect the caribou's winter range. *See id.*

the funding increases in the United States and England, the funding increases in Australia are only nominal.

The United States government and governments worldwide are currently providing their national parks with relatively minimal funding increases and the United States government has made it clear that the appropriations parks receive will not grow much for several years to come.[193] In the past year, Congress has, to its credit, enacted legislation that will provide some supplemental funding. Yet, national parks are still in dire need of additional funds. National parks still cannot adequately protect their natural, historical, and cultural resources. The protection of these resources is, by law, the priority mission of the NPS. It is therefore imperative that Congress continue to enact legislation which provides parks with innovative funding.[194]

A. *Funding From Bonds*

Many of the national parks' funding requirements could be met through the issuance of bonds.[195] Currently, the NPS has between $4 billion and $8 billion in unfunded projects.[196] Such unfunded projects include: the implementation of park resource protection projects; construction of transportation systems; construction of appropriate interpretative inventories; scientific research and monitoring systems; and development of education/ interpretive programs.[197] Issuing bonds does not provide parks with more overall funds; rather, it allows parks to move money across time.[198] For example, Yellowstone National Park requires at least $330 million - $30 million for sewage repairs and $300 million for

193. *See* Johnson, *supra* note 42, at A18.

194. *See supra* notes 18-21 and accompanying text.

195. *See* Ansson, *supra* note 1, at 36-39.

196. *See* Johnson, *supra* note 42, at A18.

197. *See* Ansson, *supra* note 1, at 36; *Capital Projects Hearing* (statement of Albert C. Eisenberg), *supra* note 40.

198. *See* Ansson, *supra* note 1, at 36-37.

highway repairs - in capital improvements[199] and has received only $12.3 million for its operation and maintenance.[200] If the park were to use $2 of each park entrance fee that it obtains, it could secure a twenty-year bond that would immediately raise over $100 million for the park.[201] This use would enable Yellowstone officials to fund critically-needed projects, such as repairing the leaking sewage system.

Another approach would be to give the NPS authority to join local governments in issuing bonds. For example, gateway communities that surround the national parks may levy bonds in partnership with parks to help fund the construction of alternative transportation systems. Under this approach, the various communities around the Grand Canyon or Yosemite could join with the NPS in issuing bonds, and the bond could be serviced by charging each visitor a $2 transportation fee. Joint bonding authority, like park bonding, affords park officials great potential to meet the needs of their respective parks and is an economically feasible approach that would provide national parks with much-needed supplemental funds for expensive capital improvement projects.

B. *Funding from Federal Sources*

In 1968, Congress provided that funds generated from oil and gas leasing on the outer continental shelf should be deposited in the Land and Water Conservation

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199. *See* Moen, *supra* note 24, at B1.

200. *See Fees Give Park Fifth of Budget*, *supra* note 46, at A34.

201. *See* Ansson, *supra* note 1, at 37. *See Capital Projects in the National Park System: Hearing Before the Subcomm. on Nat'l Parks, Historic Preservation, and Recreation of the Senate Comm. on Energy and Natural Resources*, 105th Cong. 3 (1997) (statement of Senator John McCain). Senator McCain (R-AZ) has been a fierce advocate of parks receiving funds from bonding. Senator McCain has endorsed using bonding to help provide needed funds for Grand Canyon National Park. *See id.* Currently, the Grand Canyon needs over $350 million in capital improvements. *See id.*

Fund[202] and used for acquiring federal lands and providing state grants for outdoor recreation.[203] In recent years, funds to the NPS from the Land and Water Conservation Fund have been woefully inadequate.[204] As a result, the ability of the NPS to purchase many private parcels of land has been severely challenged.[205] Many of these private landholdings are ripe for potential development, which is almost always incompatible with the scenic and biological values that national parks aim to protect.[206] Therefore, to ensure that parks are protected, Congress should appropriate more funds from the Land and Water Conservation Fund to the NPS so that they may be better-equipped to counteract potentially harmful development. In his recent Land Legacy Initiative,[207] President Clinton advocated appropriating $1 billion from the Land and Water Conservation Fund for the purchase of threatened lands.[208] The president's plan increases the available funding for federal land ac-

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202. Land and Water Conservation Fund Act, 16 U.S.C.A. 4061; the Act of July 15, 1968, 82 Stat. 355 (1968).

203. *See* Katurah Mackay, *President Issues Green Agenda*, NAT'L PARKS, Mar.-Apr. 1999, at 13.

204. *See Funding For Parks Pushed*, THE LAS VEGAS REVIEW-JOURNAL, Apr. 20, 1999, at 4B.

205. *See supra* notes 162-167 and accompanying text.

206. *See supra* notes 162-167 and accompanying text. The administration would like to see the money used to protect acreage in the Mojave Desert; preserve forests and refuges in New England; restore the Everglades; and protect lands around Joshua Tree National Park, Gettysburg National Historic Battlefield and Antietam National Historic Battlefield. *See supra* notes 162-167 and accompanying text.

207. *See Remarks on the 150th Anniversary of the Department of the Interior*, 35 WEEKLY COMP. PRES. DOC. 9 (Mar. 8, 1999).

208. *See* Mackay, *supra* note 203, at 13. It is estimated that Outer Continental Shelf drilling generates an estimated $2 billion a year in federal royalties. *See* Karen Testa, *Bill Would Help Endangered National Parks, Especially Everglades*, Associated Press Newswires, Apr. 20, 1999, *available in* WESTLAW, APWIRESPLUS File.

quisitions by an additional $442 million and provides for a fixed level of funding by fiscal year 2001.[209]

Congressional representatives have also proposed legislation providing for funding to national parks. In April 1999, Sen. Harry Reid (D-NV), Sen. Bob Graham (D-Fla.), and Sen. Connie Mack (R-Fla) proposed dedicating $500 million in annual royalties from offshore oil drilling to a special fund to protect and preserve national parks.[210] This legislation, known as the National Park Preservation Act of 1999,[211] would use the $500 million to finance projects "such as land acquisitions, construction, and grants to state or local governments for use in combating threats to ecosystems, wildlife habitat and cultural resources within the national park system."[212]

C. *Unique Funding Initiatives*

1. National Park Checkoff Provision

Representative John Duncan (R-TN) has introduced a bill that would place a checkoff provision on all IRS tax forms in order to facilitate taxpayer contributions to national parks.[213] This idea is similar to the Presidential Checkoff Provision already on tax forms.[214] The Presi-

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209. *See* Mackay, *supra* note 203, at 13.

210. *See Funding for Parks Pushed*, *supra* note 204, at 4B; Testa, *supra* note 206.

211. National Park Preservation Act, S. 819, 106th Cong. (1999).

212. Testa, *supra* note 208. The Act would earmark $150 million annually from 2000 to 2010 for Everglades National Park. The remaining $350 million would be used for National Park acquisitions elsewhere. *See id.*

213. *See* Michael Doyle, *Parks and Public Lands Bill Are Going Nowhere Fast*, THE SACRAMENTO BEE, May 30, 1999, at A7. This provision had been introduced in 1998 and had been included in an earlier version of Senator Thomas' Vision 2020 proposal. *See Spotlight Story National Parks*, *supra* note 12.

214. *See* Doyle, *supra* note 213, at A7.

dential Checkoff Provision has generated in excess of $200 million in three years.[215] It has been estimated that a National Park Checkoff Provision could generate in excess of $75 million per year.[216]

2. Film Fee Bill

Recently, several congressional representatives drafted a bill that would charge a higher fee to producers who film movies and commercials on national park lands.[217] National parks have served as the background for many popular movies, including such well-known movies as *Star Wars*, *Star Trek*, *Thelma and Louise*, and *Forrest Gump*.[218] Producers of these films have returned few, if any, of their profits to the national parks.[219] As the law now stands, anyone who uses national parks to make films or commercials has to pay the NPS only for the expenditures they incur by monitoring the filming, a negligible application fee, and the cost of any damage remediation.[220] By comparison, if a film company had been shooting their film on private lands, they would have had to pay up to $8,500 per day.[221]

In May 1999, the Senate Energy Committee unanimously approved a bill[222] sponsored by Sen. Craig Thomas that would allow parks to charge a fee when commercial filming takes place on public lands.[223] Parks would charge the film company a fee based on the number of days that they film, the size of the film crew, the

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215. *See* Ansson, *supra* note 1, at 41.

216. *See id.*

217. *See generally* H. Res. 154, 106th Cong. (1999) (enacted).

218. *See also H.R. 154 Hearings*, *supra* note 13 (statement of Philip H. Voorhees).

219. *See id.*

220. *See id.*

221. *See id.*

222. S. 568, 106th Cong. (1999).

223. *See Senate Committee Approves Thomas' Filming Fee Bill*, Associated Press Newswires, May 19, 1999, *available in* WESTLAW, APWIRESPLUS File.

amount of equipment used, and the type of equipment used.[224] Under the bill, the money collected would be used to benefit visitor and resource management programs at the site where the fee was collected.[225] If enacted, this bill would provide national parks with additional revenues.

3. Transit in Parks Bill

Senator Paul Sarbanes (D-MD) has recently introduced the Transit in Parks bill that would authorize $250 million for new mass transit programs in the national parks.[226] The bill would allocate $50 million annually over the next five years to the NPS, the U.S. Fish and Wildlife Service, and the Bureau of Land Management.[227] Under the terms of the bill, national parks could use the money to fund clean fuel bus service, rail service, pedestrian and bike paths, and park watercraft access.[228] If this bill were enacted, many of parks - such as Yellowstone, Grand Canyon, and Yosemite - could benefit from the additional funds each year.[229]

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224. *See id.*

225. *See id.*

226. Transit in Parks (TRIP) Act, S. 690, 106th Cong. (1999).

227. *Id.* § 2(b); *See Park Advocacy Group Supports Sarbanes Plan to Fund Mass Transit in National Parks*, U.S. Newswire, Mar. 23, 1999, *available in* 1999 WL 4635950.

228. *See id.* The bill also provides that the NPS should undertake a comprehensive study of alternative transportation for our parks. *See id.*

229. It is interesting to note that a 1998 survey conducted by Colorado State University found that 92% of the respondents said they would use shuttle buses to help reduce traffic and protect our park resources. *See id.*

D. *Funds from Public and Corporate Groups*

1. Local Public Funding

a. Local Communities and Funding

Local communities may also be able to provide national parks with additional funds. For example, Petrolglyph National Monument, located in Albuquerque, New Mexico, was established in 1990 after the city, state, and the NPS reached a funding agreement on land acquisitions.[230] To date, the three governments have spent approximately $44 million to purchase land in an effort to protect more than 15,000 petrolglyphs within its boundaries and one hundred 12,000-year-old archaeological sites.[231] The governmental entities only have 160 acres left to buy - the NPS has 55 acres, the city has thirty-five acres, and the state has 70 acres.[232]

b. Gateway Communities, National Parks and Funding

Gateway communities have even more of an incentive to help provide supplemental funding to nearby national parks because these communities rely on such parks to attract tourists.[233] Many park officials have begun to recognize the potential benefits of working with their respective gateway communities. For years, park proponents have decried the commercialization of gateway communities.[234] Many park officials have recognized

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230. *See* Mann, *supra* note 165, at C1.

231. *See id.*

232. *See id. See also Domenici Requests $8.8 Million for Park Land*, ALBUQUERQUE JOURNAL, June 3, 1999, *available in* 1999 WL 19903797.

233. For more on the growth of gateway communities, see John W. Ragsdale, Jr., *National Forest Land Exchanges and the Growth of Vail and Other Gateway Communities*, 31 URB. LAW. 1, 2-3 (1999).

234. *See* Ansson, *supra* note 1, at 11-16.

that building visitor facilities within parks can be detrimental to park resources, and, as a result, have decided to build park facilities outside of the parks in nearby gateway communities.[235]

In turn, national parks and their gateway communities have begun developing common approaches to address park problems. For example, those parks that suffer from overcrowding have devised public transportation systems that transport visitors from gateway communities to various points of interest within the parks.[236] In many instances, the gateway communities have pledged substantial money to help finance the public transportation systems for they realize that helping park officials provide access to the park will benefit their respective communities.[237]

Although gateway communities may provide national parks with substantial benefits, there is a potential problem. National parks must not allow gateway communities to coerce park officials into allowing activities within the park that might be detrimental to the park. For example, when Yellowstone officials proposed banning snowmobiles in the winter of 1998, many visitors canceled their trips to the gateway communities sur-

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235. *See supra* notes 16, 147-155 and accompanying text.

236. *See supra* notes 147-155 and accompanying text.

237. *See supra* notes 147-155 and accompanying text. Many gateway communities are eager to pledge funds as their respective town's well-being rests upon the popularity and success of the park. When new parks are created, new gateway towns are created, and these communities usually can not wait to reap the economic benefits. For example, the NPS is currently building several visitor centers at the newly created Grand Staircase-Escalante National Monument in Utah. *See* Brent Israelsen, *Gateway Towns May Profit from New Monument; Big Water, Glendale, Cannonville, in Line for Visitor-Center Construction Funding; Monument May Bring Funds to Gateway Towns*, THE SALT LAKE TRIB., Mar. 7, 1999, at E1. The visitor centers will be located in the economically challenged towns of Big Water, Glendale, Cannonville, Kanab, and Escalante. *See id.* The 1.9-million-acre National Monument has already secured $3.2 million to build visitor facilities in Big Water, Glendale, and Cannonville. *See id.*

rounding Yellowstone.[238] In an effort to protect their businesses, the local tourism industry lobbied politicians and parks officials to lift the ban on snowmobiles.[239] After several weeks, park officials lifted the ban and instead pledged to conduct a thorough study before implementing a new snowmobile plan.[240]

Additionally, national parks must thwart any efforts by Congress to allow local community officials to have either nominal or overt control over park policies. In 1996, Congress proposed creating an eleven-member intergovernmental council to make recommendations for the future management of Voyageurs National Park.[241] The council, which would have been comprised largely of local and state officials, would have had only one person representing the NPS.[242] Opponents of the plan voiced concerns that a delegation controlled by local officials would likely allow increased recreational use of the park, which would, in their estimation, compromise the environmental integrity of the park.[243] Fortunately, Congress did not enact this legislation at Voyageurs National Park.

The NPS recently enacted a similar, and in this case well-intentioned, plan at the Niobrara National Scenic River.[244] The Niobrara National Scenic River Park, located in north-central Nebraska, was created in 1991 amid much local opposition.[245] The Niobrara river, which runs largely through private land, is known for its historical, paleontological, archaeological, and ecological

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238. *See* Ansson, *supra* note 1, at 15-16.

239. *See id.*

240. *See id.*

241. *See* Kim A. O'Connell, *Congress Debates Voyageur Bill*, NAT'L PARKS, Sept.-Oct. 1996, at 15.

242. *See id.*

243. *See id.* For example, many feared that the new committee may have allowed visitors with snowmobiles to have increased access to remote areas of the park. *See id.*

244. *See* National Park and Conservation Ass'n v. Stanton, 54 F. Supp. 2d 7 (D.C. Cir. 1999).

245. *See id.* at 10.

treasures.[246] In an effort to create the park, Congress limited the amount of land the federal government could acquire and encouraged local involvement.[247] In the summer of 1997, a fifteen-member council was created to manage the park, with all decisions to be determined by a simple majority vote.[248] The council consisted of four county commissioners, two local natural resource district representatives, one timber industry representative, one Nebraska Game and Park Commission representative, one Fish and Wildlife representative, and one NPS representative.[249]

In March 1998, the National Park and Conservation Association and the American Canoe Association filed suit[250] against the NPS, arguing that the Niobrara council had failed to properly manage and protect the river.[251] The two associations alleged that the river was overcrowded, campsites were poorly managed, and pit toilets were polluting the river.[252] These associations also argued that the NPS vested too much control in local hands.[253] The federal district court, agreeing with the associations, held:

> Although NPS is given the authority to enter into cooperative agreements with local governments, there is nothing in any of the statutes or legislative history cited by either party to suggest that Congress wished to change the traditional role of NPS in managing lands and rivers under its stewardship. . . .
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> . . . .

246. *See id.* at 9.

247. *See id.* at 10.

248. *See id.* at 10-11.

249. *See id.*

250. National Park and Conservation Ass'n v. Stanton, 54 F. Supp. 2d 7 (D.C. Cir. 1999).

251. *See* Joe Ruff, *Judge Throws Out Management Plan for Niobrara River*, Associated Press Wires, June 17, 1999, *available in* WESTLAW, APWIRESPLUS File.

252 *See id.*

253 *See id.*

> The Court concludes that delegation [by the NPS] of its statutory management duties to the Council violates the unlawful delegation doctrine because NPS retains no oversight over the Council, and no final reviewing authority over the Council's actions or inaction, and the Council's dominant private local interests are likely to conflict with the national environmental interests that NPS is statutorily mandated to represent. NPS lacks the authority to: appoint or remove members of the Council, aside from its own representative; determine which interests will be represented; select Council officers; establish Council sub-committees; determine the term limit for Council members; veto Council decisions which are contrary to the [General Management Plan]; independently review Council decisions prior to implementation; and control Council funding. The delegation is also unlawful because the Council, made up almost wholly of local commercial and landowning interests, does not share NPS' national vision and perspective.[254]

The federal district court's decision indicates that the NPS would not be able to give unlimited management discretion to local officials. The court, however, does hint at a permissible management scheme that would allow local officials to participate in management decisions. Under such a scheme: (1) the NPS would have to retain broad oversight authority over any council; (2) the council would have to have more NPS representatives; and (3) the representatives of local commercial and landowners would be limited. In the future, the NPS may want to consider creating a council dominated by NPS representatives in which the NPS has broad oversight controls. The council could then establish several subcommittees chaired mainly by local officials, thereby allowing active participation by these officials in man-

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254. *National Park and Conservation Association*, 54 F. Supp. 2d, at 20. The court also determined that the NPS' management plan failed to provide an adequate Environmental Impact Statement. *See id.* at 25. As a result, the court held that the NPS violated the mandates and principles underlying the National Environmental Policy Act. *See id.*

agement of the park. Regardless of the solution, gateway communities and parks will share a common link in the future. Their ability to work together will help ensure that parks are properly protected and may provide parks with a viable source of supplemental funding.

2. Corporations and Funding

a. Corporate Donations

Corporations, like private individuals and conservation societies, may donate funds to national parks. For example, Canon Inc. ("Canon") recently donated cameras and over $1 million a year to fund a bobcat count and other conservation projects in the Santa Monica Mountains National Recreation Area.[255] With the help of Canon, NPS biologists are tracking, counting, and identifying bobcats that pass through or live in the recreation area.[256]

Clairol, the hair care corporation, also recently donated money for the national parks. Specifically, Clairol donated $25,000 to the National Parks and Conservation Association,[257] which the association in turn used to fund projects that protect endangered Hawaiian plants

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255. *See Canon Sponsors First National Partnership Award*, *supra* note 104.

256. *See id.* The NPS has stations Canon Sureshot Owl cameras within several feet of a scented lure which is wired to a nearby camera. The lure entices the bobcats to step on a hidden six-inch by six-inch touchpad. When they do, a picture of the bobcat is taken, flash and all. *See id.*

257. The National Parks and Conservation Association also has an ongoing partnership with Georgia-Pacific Corp. This year Georgia-Pacific has stated that it will donate $185,000 in cash grants and technical support to four "park friends" groups for infrastructure improvement projects. *See NPCA/Georgia Pacific 'Partnership for Parks' to Donate More Than $185,000 to Benefit National Parks*, PR Newswire, June 17, 1999, *available in* WESTLAW, PRWIRE File. *See also* Ansson, *supra* note 1, at 49-51.

at Haleakala National Park.[258] This grant will also fund an endowment for scientists to study the alula, which is included in the National Collection of Endangered Plants.[259] Fewer than 200 alula plants survive in the wild and the plants are unable to pollinate themselves.[260] The funds that Clairol donated will pay botanists to rappel cliffs and hand pollinate the alula.[261]

b. Non-Profit Foundations & Gettysburg National Military Park

In an effort to remedy deteriorating conditions at parks, the NPS recently decided to enter into partnerships with private developers, whereby the private developers would provide the funds needed for capital improvements at parks.[262] For example, the NPS has entered into a partnership with Robert Kinsley of Kinsley Equities and National Geographic Television to construct $39.3-million visitor's center and museum complex.[263] The new complex will include a theater, exhibit

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258. *See* Elizabeth G. Daerr, *Clairol Supports Endangered Plant Rescue*, NAT'L PARKS, July-Aug. 1999, at 44.

259. *See id.*

260. *See id.*

261. *See id.*

262. The Grand Canyon has also turned to private partnerships to help build the $330 million gateway at Tusayan, which will include 1,220 hotel rooms and 250,000 square feet of commercial space. *See Natural Resources Grand Canyon: Mass Transit Construction Begins*, *supra* note 137. Grand Canyon officials have also used park entrance fees and private partnerships to fund the $200 million light rail system. *See also Natural Resource National Parks: Park Service to Announce Gettysburg Deal*, American Political Network Greenwire, June 18, 1999, *available in* WESTLAW, 6/18/99 APN-GR 14.

263. *See Natural Resource National Parks: Park Service To Announce Gettysburg Deal*, *supra* note 260. The private developers have decided to form a non-profit corporation. *See* Ellen Lyon, *Private-Public Gettysburg Proposal Selected/Planned Park Complex to Have Stores, Museum, Cinema*, THE HARRISBURG PATRIOT, Nov. 8, 1997, at A1. Under this management scheme, the private develop-

areas, a 250-seat cafeteria, and facilities for housing Civil War artifacts.[264] As of late, Gettysburg National Military Park has been in dire straits as monuments, memorials, and cannons throughout the park have been rusting and corroding.[265] Civil War artifacts, which have been housed in a visitors' center without humidity controls, have succumbed to mold and red rot.[266] This largest collection of Civil War memorabilia has been damaged by rain leaking through the roof of the archives building.[267] Over the years, park officials have not had enough funds to maintain the park's monuments, much less to build a new visitors' center to protect many of the artifacts it contains. However, as a result of the partnership between the park and private developers, the park will be able to protect the Civil War memorabilia in the new visitors' center. If this endeavor is successful, the NPS will probably enter into similar agreements in the future.

c. Scientific Research Companies & Bioprospecting Royalties

In the summer of 1997, the federal government began an experimental program officially known as the Cooperative Research and Development Agreement ("CRADA"), at Yellowstone National Park.[268] Under this program, the federal government licenses "bioprospecting" rights to private companies seeking to conduct research on Yellowstone microbes for commercial

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ers will operate the facilities until the debt is retired, whereupon they will then donate the facilities to the NPS. *See id.*

264. *See Natural Resource National Parks: Park Service to Announce Gettysburg Deal*, *supra* note 262.

265. *See* Ellen Lyon, *Gettysburg*, THE HARRISBURG PATRIOT, Sept. 20, 1998, at F1.

266. *See id.*

267. *See* Satchell, *supra* note 9.

268. *See* Todd Wilkinson, *Panning Yellowstone's Pools for Science and Profit*, NAT'L PARKS, Sept.-Oct. 1998, at 23.

applications.[269] Prior to this agreement, any company could withdraw microbes from the park, develop them for commercial purposes, receive a patent on them, and receive all of the royalties generated from their sale.[270] For example, the pharmaceutical giant Hoffman-La Roche extracted the microbe *Thermus Aquaticus* from Yellowstone and developed it for use in DNA fingerprinting. As a result of CRADA, Yellowstone National Park now earns more than $100 million annually from the patent.[271]

Under CRADA, private companies seeking to conduct research in Yellowstone will have to obtain a license from the park and pay royalties to the park.[272] For example, the first CRADA, which was reached with San Diego-based Diversa Corporation, provides that Yellowstone "will receive information about endemic organisms it could not afford to inventory, collect about $20,000 annually over the next five years from Diversa to support research activities, and earn potentially millions of dollars in product royalties in the future."[273] The research information and funds provided by Diversa will help Yellowstone better fund its scientific programs and may provide a significant source of funding for the park. Additional agreements with other private companies should also provide necessary funding and research. In the future, other parks that are rich in genetic resources valuable to science should consider entering into CRADA-type contracts with private companies as a way to obtain additional funds.[274]

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269. *See id.*

270. *See id.* at 25.

271. *See id.*

272. *See generally* Wilkinson, *supra* note 36.

273. Wilkinson, *supra* note 268, at 23.

274. For example, microbial research at Lechuguilla Cave in Carlsbad Caverns has discovered primitive microbes that have shown promise in fighting cancer. *See id.* at 24. Even NASA officials have been interested in these microbes because it has been

d. Corporate Sponsorship

The issue of whether corporations should be able to sponsor national parks has been hotly debated. To illustrate the concerns about this issue, assume General Electric donated $100 million to Yellowstone National Park for the sole sponsorship of the park for the next five years. In commercials, General Electric could then say it was the official sponsor of Yellowstone and print its corporate symbol on merchandise and on signs within Yellowstone. In turn, the money General Electric donated to the park would help Yellowstone fund scientific research and repair infrastructure. In spite of the benefits corporate donations provide, however, should we allow such corporate sponsorship?

Although corporate funding is attractive, the answer must be no. The sale of corporate sponsorship is an inherently commercial activity that is inconsistent with the fundamental idea behind America's National Park System. Americans visit national parks in order to escape this sort of commercialism. Additionally, there is also an unavoidable conflict of interest in having the Secretary of Interior rely on corporate sponsors for funding the National Park System, while simultaneously exercising broad regulatory authority over the ways in which corporations commercially exploit the parks. The broad discretionary authority that would be vested in the Secretary of Interior would not provide adequate protection against commercialization of the national parks. This would be especially true with respect to the Secretary's authority over determining that advertisements and promotional activities are appropriate to the image of the National Park System, and to the Secretary's authority to grant limited recognition of corporate sponsors within national parks. This authority could be

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theorized that they could be related to life forms able to live in extreme conditions on Mars. *See id.*

misused by even a well-intentioned Secretary of Interior seeking to maximize corporate contributions.

Allowing corporate sponsorship may also essentially be an invitation for environmentally destructive corporations to donate money in an attempt to "greenwash" their image. Under such a program, there may not be a prohibition against oil, timber, or mining companies that profit from destruction of public lands from participating in the program. The goodwill associated with America's national parks should not be for sale - for this purpose or any other. While we need to find new sources of funds to meet the many pressing needs of the National Park System, we must avoid making the problems worse in our efforts. In seeking new funding, we must not commercialize the national parks.

If corporations want to donate money to parks, they should forward the funds to the National Park Foundation. The National Park Foundation is a non-profit organization, non-governmental organization that acts as an agent between the NPS and corporations.[275] Recently, the National Park Foundation has begun to allow these corporations to use national parks and monuments in ads.[276] For example, in January 1999 a full-page advertisement in *USA Today* featured the Washington Monument and bull's-eye mark of Target stores.[277] In addition, recent American Airlines promotional materials included color photos of Utah's crimson stone arches and a vista from the Great Smoky Mountains National Park."[278] The National Park Foundation, however, has not allowed corporate sponsors to use national park images or logos to advertise a corporation's products.[279] Rather, the corporation's advertising spots

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275. *See National Park Foundation: Charter and Mission* (visited Dec. 5, 1999) <http://www.nationalparks.org/about-mission.htm>.

276. *See* Johnson, *supra* note 87, at 1.

277. *See id.*

278. *Id.*

279. *See id.*

trumpet the need for Americans to preserve national icons.[280]

In return for permission to use images of national parks, corporations have donated money to the National Park Foundation. For example, Target has donated $6.5 million to help restore the Washington Monument.[281] Aurora Foods, the makers of Log Cabin syrup, has pledged to donate $1 million over four years to help restore historic log cabins in national parks.[282] In all, the National Park Foundation received $20 million in contributions last year.[283] The amount of funding this foundation generated last year is amazing, considering that three years ago it received only $1 million in contributions.[284] In attempting to ensure that corporations donating money are well-intentioned, the National Park Foundation has provided that any "advertisement by a park foundation donor must pass through a series of screeners at both the foundation and the NPS. Approval is largely a judgment call, but some rules are clear: no tobacco or liquor ads, no ads from companies in litigation with the Department of the Interior and minimal use of the company image."[285]

CONCLUSION

Within the national parks, we find all the rich diversity and extraordinary beauty of America's natural heritage. From the majestic Grand Tetons to the mysterious Everglades, national parks preserve the treasures of our magnificent country: the astonishing variety of plant and animal life, the tranquillity of forests and meadows, and the breathtaking grandeur of our great rivers, deserts, and mountains. National parks also provide us

280. *See id.*
281. *See id.*
282. *See* Johnson, *supra* note 87, at 1.
283. *See id.*
284. *See id.*
285. *See id.*

with vital links to our heritage as a people and as a nation. They tell us the stories of individuals, places, and events that have shaped the American character.

However, national parks are in serious peril as they are suffering from years of inadequate funding and misplaced priorities. Without proper funding, park officials have been unable to protect parks from the effects of increased visitation. Additionally, park officials have been unable to repair misfunctioning sewage and water systems, to fix historic buildings whose roofs are leaking and walls crumbling, or to properly document, catalogue, or monitor archaeological sites, historic artifacts, and wildlife. Finally, some parks have been forced to curtail programs for visitors, reduce the number of rangers and other staff, and shorten hours.

Fortunately, the outlook for resolving some of the national parks' problems has recently improved. Indeed, with the passage of several bills, Congress has provided the parks with necessary supplemental funding. These new funding sources will help many of the parks fund much-needed capital improvements and scientific studies programs. However, the new supplemental funding measures are inadequate to address all the needs of the national parks. Therefore, it is necessary that Congress continue to enact legislation that provides our parks with additional ways of raising supplemental funding for national parks.