U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

CONCESSIONER IMPROVEMENT ACCOUNTS, NATIONAL PARK SERVICE

REPORT NO. 98-I-389
MARCH 1998

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

MAR 31 1998

Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks

From: Robert J. Williams Robert J. Williams
Acting Inspector General

Subject: Audit Report on Concessioner Improvement Accounts, National Park Service (No. 98-I-389)

This report presents the results of our audit of concessioner improvement accounts maintained by National Park Service concessioners. The objective of the audit was to determine whether the amounts deposited into concessioner improvement accounts and the expenditures from those accounts were appropriate. At the request of the Park Service, we also reviewed the adequacy of its procedures for concessioner improvement accounts.

We concluded that projects financed with concessioner improvement account funds enhanced visitor facilities in the park units. However, the Park Service had not provided sufficient and timely guidance to ensure that concessioner improvement account funds were used appropriately and allowed concessioners to use these funds before procedures were issued. Although the Park Service did issue procedures in August 1995 relating to the use of these funds, the procedures did not provide sufficient guidance for determining the types of projects that could be funded or for establishing cost-sharing agreements for projects that benefited both the Park Service and the concessioner. We also found that the Park Service (1) did not amend existing concession contracts so that they would be in compliance with the new procedures, (2) approved projects which were not in conformance with the procedures, and (3) did not enforce concessioner compliance with contract provisions. As a result, concessioner improvement account funds were used for (1) projects initiated before the procedures were issued, that did not directly support concession operations, or that benefited both the concessioner and the Park Service and would have been appropriate for cost sharing ($17.5 million); (2) expenditures related to concession operations that would not be considered proper uses of the funds under the new procedures ($1.2 million); and (3) capital improvement projects for which the concessioner was improperly granted a possessory interest ($823,000). Furthermore, in the absence of sufficient guidance on the use of improvement account funds, there is no assurance that the funds will be used properly or consistently throughout the Park Service. In addition, we identified one concessioner that did not meet its capital improvement program expenditure requirement by about $100,000.

Regarding deposits to concessioner improvement accounts, we found that two concessioners made improper deductions from recorded gross receipts in determining the amounts required to be deposited into concessioner improvement accounts. As a result, these concessioners should have deposited additional funds of about $124,800, excluding interest, into these accounts.

In the January 21, 1998, response (Appendix 3) from the Director, National Park Service, the Park Service partially concurred with Recommendation A.1, did not address all parts of Recommendation A.2, and concurred with Recommendation B.1. Based on the response, we consider Recommendation B.1 resolved and implemented and request that the Park Service reconsider its responses to Recommendations A.1 and A.2, which are unresolved (see Appendix 4). The Park Service also provided comments on the text of the report, which we have considered in preparing the final report. One of these comments related to the Other Matters section of the draft report, which discussed a special set-aside arrangement at Yellowstone National Park. Based on the Park Service's comments, we agree that this arrangement was not a concessioner improvement account, and accordingly, we excluded the Others Matters section from the final report.

In accordance with the Departmental Manual (360 DM 5.3), we are requesting a written response to this report by May 22, 1998. The response should provide the information requested in Appendix 4.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, the monetary impact of audit findings (Appendix 1), actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the assistance of National Park Service personnel in the conduct of our audit.

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INTRODUCTION

BACKGROUND

Since 1981, the National Park Service has included provisions in some of its concession contracts that require concessioners to deposit a percentage of gross receipts into interest-bearing bank accounts. (For the purpose of this report, these accounts will be referred to as concessioner improvement accounts[1]). Funds from these accounts are to be spent by the concessioners on projects approved by the Park Service for improving park or concessioner property related to concession operations. Generally, deposits are made to these accounts in lieu of the concessioners' paying franchise fees to the Park Service that must be deposited into the general fund of the U.S. Treasury and are not available to the Park Service. Before concessioner improvement accounts were established, improvements to Park Service-owned facilities assigned to concessioners were funded by the concessioners through a building improvement program and by the Park Service with appropriated funds. The funds deposited into and expended from concessioner improvement accounts are outside the appropriations process and supplement the appropriations made to the Park Service for improving visitor facilities. In fiscal year 1995, there were approximately 40 concessioner improvement accounts at 19 locations, which had annual deposits of about $19 million and expenditures of about $11 million. The Park Service has informed the Congress through the budget process of its use of concessioner improvement accounts.

In a February 7, 1995, opinion, the Office of the Solicitor concluded that the inclusion of improvement account provisions in concession contracts was authorized by law and stated that the concessioner improvement accounts ensured that concessioners have the financial ability to provide required visitor facilities. The Solicitor also concluded that the accounts should be used for activities that "directly support concession operations" and recommended that the Park Service issue procedures for these accounts. The Solicitor subsequently determined, in a March 1996 memorandum, that a construction set-aside account at Glen Canyon National Recreation Area funded by a visitor surcharge (4 1/2 percent of gross receipts) and concessioners' contributions (1/2 percent of gross receipts) was also a form of a concessioner improvement account.

The Park Service issued procedures for administering concessioner improvement accounts on August 11, 1995. These procedures identify two types of accounts: capital accounts and government improvement accounts. Capital accounts are to be used for significant capital improvements of a nonrecurring nature to government-owned or concessioner property or for the construction of new facilities that "directly support concession operations." Government improvement accounts are to be used for major repairs and improvements to government-owned structures assigned to concessioners for concession purposes. Park

[1]The various concession contracts use different terms for individual concessioner improvement accounts, including capital, capital improvement, construction and improvement, construction set-aside, and government improvement accounts.

Service procedures also state that capital and government improvement accounts are not to be used for routine maintenance and repairs and require that all projects undertaken with concessioner improvement account funds be approved in advance by the applicable Park Service regional director.

OBJECTIVE AND SCOPE

The objective of the audit was to determine whether the amounts deposited into concessioner improvement accounts and the expenditures from those accounts were appropriate. At the request of the Park Service, we also reviewed the adequacy of the Park Service's August 11, 1995, procedures for concessioner improvement accounts. In total, we reviewed eight accounts at five locations, which had fiscal year 1994 and 1995 deposits totaling about $25.6 million and expenditures totaling about $16.9 million (see Appendix 2). Although we focused our audit on improvement account projects that were active during 1994 and 1995, our scope included transactions that had taken place since project initiation. For example, at Glen Canyon we reviewed transactions that occurred since project initiation in 1987.

Our review was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances.

As part of our review, we evaluated the system of internal controls related to concessioner improvement accounts to the extent that we considered necessary. The internal control weaknesses identified are discussed in the Findings and Recommendations section of this report. The recommendations, if implemented, should improve internal controls over improvement account deposits and expenditures. We also reviewed the Department of the Interior's Annual Statement and Report, which is required by the Federal Managers' Financial Integrity Act of 1982, for fiscal year 1995 and found that no material weaknesses were reported which related to the objective and scope of our audit.

PRIOR AUDIT COVERAGE

During the past 6 years, the Office of Inspector General has issued three audit reports and the General Accounting Office has issued two reports on selected aspects of concessioner improvement accounts as follows:

- The Office of Inspector General report "Concessions Management, National Park Service" (No. 94-I-1211), issued in September 1994, recommended that the Park Service obtain a legal opinion on the establishment and use of concessioner improvement accounts and implement internal controls over the deposit and expenditure of account funds. Based on a February 1995 Solicitor's opinion, the Park Service issued concessioner improvement account procedures in August 1995.

- The Office of Inspector General report "Operations of National Park Concessions, Inc., Under Contract No. CC-0680-2-0001 With the National Park Service" (No. 96-E-541), issued in March 1996, contained recommendations that the Park Service, in regard to concessioner improvement accounts, should (1) require the concessioner to reimburse ineligible expenditures, (2) establish new project initiation priorities, (3) amend the contract as it related to concessioner bank accounts and interest earned, and (4) ensure that administrative costs charged were supported. Because of the recency of this report, we did not follow up on the recommendations. However, the conditions noted were considered during our review at other parks.

- The Office of Inspector General report "National Park Service Financial Statements for Fiscal Years 1995 and 1996" (No. 97-I-936), issued in June 1997, concluded that the Park Service had not established a process for collecting reliable and timely information on the number of special concession accounts (including concessioner improvement accounts) and their deposits and disbursements to ensure that the information it reports in its notes to the financial statements is complete and accurate. However, the Park Service disagreed with the recommendation to establish such a process, stating that it did not plan to report this information in the notes to the financial statements in future years. Accordingly, we referred the recommendation to the Assistant Secretary for Policy, Management and Budget for resolution.

- The General Accounting Office report "Policies and Practices for Determining Concessioners' Building Use Fees, National Park Service" (No. GAO/T-RCED-92-66), issued in May 1992, covered testimony before the Environment, Energy, and Natural Resources Subcommittee, Committee on Government Operations, House of Representatives. In its report, the General Accounting Office recommended that the Park Service develop specific policies, methodologies, and guidelines on establishing, administering, and tracking set-aside (concessioner improvement) accounts and other contractual agreements for repairs, maintenance, and improvements to Federally owned facilities used by concessioners. Our current review found that the Park Service had complied with this recommendation with the issuance of its procedures in August 1995.

- The General Accounting Office report "Information on Special Account Funds at Selected Park Units, National Park Service" (No. GAO/RCED-96-90), issued in May 1996, contained background and financial information for each of eight different types of funds, including those from concessioner improvement accounts, received by park units that were not subject to the annual appropriations process. The report did not contain any recommendations.

FINDINGS AND RECOMMENDATIONS

A. IMPROVEMENT ACCOUNT PROJECTS

Overall, we concluded that the projects funded by concessioner improvement accounts enhanced visitor facilities in the parks. Without concessioner improvement account funds, many of the new park facilities may not have been built and many of the historical structures in the parks may have deteriorated further. However, we found that the Park Service had not provided clear, sufficient, and timely guidance to ensure that account funds were used appropriately and had allowed concessioners to use these funds before the procedures were issued. Although the major concession contracts at four of the five parks we reviewed and the Park Service concession improvement account procedures issued in August 1995 state that account funds were to be used for improvements that "directly support concession operations," neither the contracts nor the procedures adequately define the term "directly support concession operations" or provide sufficient guidance on the appropriate uses of account funds.[2] We also found that the procedures did not provide sufficient guidance on cost-sharing arrangements for projects which benefited both the concessioner and the Park Service. Further, the Park Service did not amend existing concession contracts that contained provisions which were in conflict with the new procedures and did not enforce concessioner compliance with contract provisions. As a result, concessioner improvement account funds were used or planned for (1) projects that did not directly support concession operations or that benefited both the Park Service and concessioners and would have been appropriate for cost sharing ($17.5 million), (2) expenditures that related to concession operations but that would not be considered proper uses of the funds under the new procedures ($1.2 million), and (3) capital improvement projects for which the concessioner was improperly granted a possessory interest ($823,000).[3] Furthermore, in the absence of sufficient guidance, there is little assurance that improvement account funds will be used appropriately and consistently throughout the Park Service. In addition, we identified one concessioner that did not meet its capital improvement program expenditure requirement by about $100,000.

Concessioner Improvement Account Procedures

The Park Service allowed the parks to establish concessioner improvement accounts and to initiate projects before it established procedures for the use of these accounts. At least 35 of the 40 concessioner improvement accounts were established before the August 1995 procedures were issued. Although the major concession contracts at four of the five parks we reviewed state that capital account funds can be used only for projects that "directly

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[2]The concession contracts we reviewed at Yellowstone National Park, which was the first Park Service unit to establish an improvement account, did not contain this statement.

[3]These amounts included expenditures from project initiation through fiscal year 1995, or just after issuance of the Park Service's procedures.

support concession operations," we concluded that the contracts did not clearly define "directly support" or provide sufficient guidance on the appropriate uses of account funds to address the various circumstances surrounding account expenditures or contain provisions for cost-sharing arrangements. As a result, concessioner improvement account funds of $17.4 million[4] and $120,000 were used for some projects at Glen Canyon National Recreation Area and Mount Rushmore National Memorial, respectively, that, in our opinion, did not "directly support concession operations," benefited both concessioner and park operations and may have been appropriate for cost sharing, and/or may not have been considered proper uses of account funds under the new procedures. For example, at Glen Canyon, improvement account funds were used for projects such as comfort stations; a visitor center; shelters; landscaping; aerial mapping; water quality studies; road chip sealing; directional signs; the elimination of drainage problems; a school building for children of concessioner and Park Service employees; and several projects which benefited both concessioner and Park Service operations such as sewer system upgrades, water storage and distribution systems, electrical system improvements, boat ramps and related infrastructure, pedestrian trails, breakwaters, and road and parking lot expansion and paving.[5] We also noted that Glen Canyon had planned to conduct similar projects after fiscal year 1995. At Mount Rushmore, improvement account funds were used for projects such as removing asbestos from an old concessioner building that was converted to park administrative offices, parking lot stairways, and a nature trail.

In response to a February 1995 opinion and recommendation from the Office of the Solicitor, the Park Service issued procedures in August 1995 for administering concession improvement accounts. The procedures describe the types of projects and expenditures that are considered proper or improper uses of concessioner improvement accounts. Specifically, proper uses of capital accounts include projects that involve the "rehabilitation or construction of new facilities used directly to house or otherwise provide services to park visitors (such as hotels, restaurants, gift shops, and service stations) as well as concessioner support facilities necessary for the functioning of the primary visitor facilities." The procedures also authorize the use of these accounts on a shared-cost basis to provide infrastructure facilities that serve both Park Service and concessioner visitor facilities. Improper uses of capital accounts, according to the procedures, include projects that do not "directly support concession operations" and that are for general park purposes such as resource protection and ancillary Park Service management. These projects would include

[4]This amount includes $2.8 million for the construction of a school. Prior to construction, a regional solicitor stated, "The construction of a school directly supports concession activities by providing necessary educational opportunities for dependents of employees of the Concessioner and the NPS [National Park Service]." However, the new procedures, which were based on the Solicitor's February 1995 opinion, state that improvement account funds cannot be used to construct school facilities.

[5]Park Service employees at Glen Canyon provided information showing that appropriated funds were spent on construction and cyclic maintenance of similar projects that benefited the Park Service, as well as the concessioner, and stated that these expenditures constituted cost sharing. However, in the absence of cost-sharing guidelines, there is no basis for determining whether these expenditures met the Park Service's intent for cost-sharing arrangements.

constructing or repairing Government visitor facilities, such as visitor centers, interpretative facilities, entrance stations, restrooms, roads, and parking lots, as well as Government support facilities, such as employee housing, maintenance buildings, administrative buildings, and school buildings.

We concluded, however, that the August 1995 procedures did not provide clear and sufficient guidance on the use of improvement account funds. For example, although the procedures state that the construction or repair of facilities such as parking lots, roads, or school buildings is not a proper use of improvement account funds, there may be instances where such facilities "directly support concession operations" or support both the concessioner and the Park Service and may be appropriate for cost sharing. Further, although the procedures cite instances where cost-sharing arrangements may be appropriate, the procedures did not provide sufficient guidance on establishing such arrangements, including methodologies for allocating costs.

At the time of our review, the respective park managers indicated that they believed that concessioner improvement accounts could be used for construction or rehabilitation projects which directly affected park visitors, whether or not the projects enhanced the concession facilities. They also indicated that several of the projects funded prior to the procedures represented an appropriate use of the accounts under the new procedures. As such, we believe that the Park Service needs to provide additional guidance in its procedures regarding the proper uses of improvement account funds.

Concession Contract Provisions

Prior to the issuance of the August 1995 procedures, concessioner improvement account funds of about $1.2 million were used or planned for purposes that would not be considered proper uses of the funds under the new procedures. In addition, the Park Service did not attempt to amend the contracts to conform to the procedures in those instances in which the concession contracts included provisions that conflicted with the new procedures. Examples of conflicting contract provisions and improper uses of funds are as follows:

- The Park Service's procedures state that concessioner improvement accounts "are not to be used to pay or otherwise reimburse" Government appropriations accounts. Because the Park Service did not issue guidelines in a timely manner, we found that concessioner improvement account funds were used before issuance of the 1995 procedures to reimburse Government appropriations for services costing about $127,000 that were provided by the Park Service to concessioners as follows:

-- Both the Wahweap and the Uplake concession contracts at Glen Canyon permitted the improvement account to be used to reimburse the Park Service for "unprogrammed expenses of the permitted activity incurred as a result of the account, not to exceed 5 percent of total account expenditures." For 1995, more than $19,000 was reimbursed from the improvement account to the Park Service for unprogrammed expenses related to improvement account projects at Glen Canyon. Glen Canyon officials stated that the unprogrammed expenses represented additional personnel services, travel, equipment, and other costs that would not have been incurred by the Park Service had there not been an improvement account.

-- Concessioner improvement account funds were used at Mount Rushmore and Yellowstone to reimburse the Park Service for expenses incurred, although the concession contracts did not provide for reimbursement of these expenses. At Mount Rushmore, about $67,000 was reimbursed from the improvement account in 1994 to the Park Service for the salary of an on-site construction inspector (a Park Service employee) hired under a term appointment to inspect the construction of the new concessioner restaurant and gift shop buildings. At Yellowstone, improvement account funds were used to reimburse the Park Service approximately $41,000 in 1994 and 1995 for costs related to concessions management support activities, such as engineering and project coordination.

- The Park Service's procedures state that trust accounts are not permissible for the deposit and expenditure of improvement account funds and that improvement account funds cannot be used by concessioners to pay income taxes on interest earned from deposits made to the accounts. Exhibit G to the Yosemite concession contract provided for the creation of a trust arrangement for the deposit and expenditure of capital improvement account funds and government improvement account funds. The trust agreements, which were established to assist the concessioner in administering the improvement accounts, were executed on November 15, 1993. Amendment 1 to the trust agreements, effective on October 1, 1994, authorized the trustee to use funds from the capital improvement and government improvement accounts to pay tax liabilities on the earnings of the accounts. The concessioner used the trust agreements for the deposit and expenditure of capital improvement funds and government improvement account funds and paid almost $31,000 in trust account administration fees for 1994 and 1995, including about $12,400 that was paid after the issuance of the Park Service's August 1995 procedures. The concessioner also used about $27,500 during 1994 and 1995 from the capital improvement account to pay taxes on the interest earnings of the accounts, including about $240 that was paid after the issuance of the new procedures.

- The Park Service's procedures state that concessioner improvement account funds may not be used to acquire personal property. We found that concessioner improvement account funds were used at Yellowstone before the August 1995 procedures were issued to purchase a tour boat during 1994, at a cost of $283,000, as permitted by Exhibit D of the concession contract. However, we also noted that similar purchases with concessioner improvement account funds, such as a new boat for the Bridge Bay Marina ($125,000), other specialized vehicles ($40,000), and computer hardware and software development ($35,000), were included in Yellowstone's list of approved projects that was revised after the procedures were issued.

- The Park Service's procedures state that concessioner improvement account funds are not to be used for redecorating and periodic recarpeting of facilities or for furniture. We found that prior to the issuance of the August 1995 procedures, concessioner improvement account funds of about $485,000 were used or planned for these purposes as follows:

-- At Yellowstone, about $302,000 was expended from the improvement account, primarily during 1994, for the purchase of mattresses ($196,000), furniture ($99,000), and furniture refinishing ($7,000). Similar projects, such as additional mattress purchases, recarpeting, and floor refinishing, had been approved for 1996, after the Park Service's procedures were issued, at an estimated cost of $135,000.

-- At Glacier National Park, several recarpeting projects that were approved before the procedures had been issued were under way or had been completed at various concession facilities throughout Glacier at an estimated total cost of $48,000. However, during our audit, staff at Glacier stated that they would no longer approve the funding of recarpeting projects from the improvement account.

In addition, we noted that the major concession contract at Yosemite, which became effective on October 1, 1993, contains a provision (Section 10(b)(1)) which states that "ten (10%) percent of the funds deposited in the [capital improvement] fund shall be expended by the Concessioner as directed by the Secretary for construction of facilities necessary for visitor enjoyment of the area [park] even though such facilities do not directly support concession operations required or authorized under this contract." We found that no improvement account funds had been expended as of June 1996 at Yosemite for such projects, although about $407,000 (10 percent of 1995 deposits) was available for that purpose based on the provisions of the concession contract.

To ensure that concessioner improvement account funds are used for appropriate purposes, we believe that the Park Service should review each concession contract to identify any provisions that are inconsistent with the August 1995 procedures and initiate action to modify those contracts accordingly when the opportunity occurs. In the interim, the Park Service should not approve concessioner requests to use concessioner improvement account funds for purposes that are prohibited by the procedures or concession contracts.

Possessory Interest

The Park Service's procedures state that concessioners will not accrue any possessory interest in improvements made with concessioner improvement account funds.[6] The concession contract for Mount Rushmore required the concessioner to complete a construction and improvement program at a cost not to exceed $10 million, including the construction of a concession facility, a dormitory for concessioner employees, and support facilities. A December 1993 amendment to the contract specified that in lieu of paying franchise fees, the concessioner would deposit 5 percent of gross receipts into a concessioner

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[6]The Park Service's procedures regarding possessory interest are supported by a December 26, 1996, opinion from the Office of the Solicitor, which states, "Completed improvements made with funds from the special accounts, we consider, properly may be considered as NPS [National Park Service] assets."

improvement account for use on other capital improvement projects. This amendment also specified that the concessioner was to have no ownership or possessory interest in improvements made with improvement account funds. In anticipation of an estimated $2 million cost overrun on the construction and improvement program, the Park Service orally instructed the concessioner in September 1994 to stop making deposits to the concessioner improvement account and to use the balance in the account to help fund the cost overrun. However, an amendment to the concession contract to document the oral instructions was not executed until December 1995, after the Park Service's procedures were issued. The amendment was retroactive to the period prior to August 31, 1995, and, contrary to the concession contract and Park Service procedures, granted the concessioner a possessory interest in the improvements constructed with monies accumulated in the improvement account up to that time. We determined that the value of this possessory interest was at least $823,000. This amount consisted of the $500,000 improvement account balance at September 16, 1994, and an additional $323,000 that would have been deposited into the improvement account had the concessioner continued to make deposits through August 31, 1995, as required by the concession contract.

Other Contract Provisions

The concession contract at Glacier requires the concessioner to undertake capital improvements by expending annually "not less than one (1%) percent of gross receipts . . . from the previous year on alterations, additions, improvements, and new facilities of the character normally considered to be capital improvements under generally accepted accounting principles." These projects were to be in addition to those funded under Glacier's concessioner improvement account.

We determined that the concessioner did not meet its capital improvement program expenditure requirement by about $100,000 for 1994 and 1995. After our fieldwork was completed, the Superintendent sent a July 17, 1996, letter informing the concessioner of this spending shortfall and requested that the concessioner make up the $100,000 deficiency in 1996 and 1997. The concessioner did not agree that a spending shortfall existed and said that the issue would be researched and appropriate action would be taken. Park Service officials said that in subsequent negotiations, the concessioner agreed, effective in fiscal year 1997, to submit a list of capital improvement projects for Park Service approval before funds are expended to ensure that all projects are legitimate capital improvements. Park Service officials also said that the concessioner did not agree to spend an additional $100,000 on capital improvements as compensation for the 1994 and 1995 spending shortfall because the Park Service had not acted in a timely manner to notify the concessioner of the capital expenditure deficiency. We disagree with the concessioner's position and believe that the Park Service should require that the concessioner spend an additional $100,000 on approved capital improvements, thereby fulfilling its contractual requirement for 1994 and 1995 capital improvement expenditures.

Recommendations

We recommend that the Director, National Park Service:

1. Revise the concessioner improvement account procedures to include clear and sufficient guidance on the use of funds in these accounts, including a clear definition of the term "directly support concession operations," and on cost-sharing arrangements for projects that benefit both the concessioner and the Park Service. These guidelines should include more specific examples of the types of projects that are appropriate uses of these funds and the types of projects that are appropriate for cost sharing.

2. Review each existing concession contract to identify any provisions which are inconsistent with concession improvement account procedures and initiate action to amend those contracts accordingly. In the interim, the Park Service should not approve concessioner requests to use improvement account funds for purposes that are prohibited by the procedures. Regarding the concession contracts we reviewed, the Park Service should:

- Amend the Mount Rushmore contract to specify that the concessioner will not have possessory interest in facilities constructed with improvement account funds.

- Amend the Glen Canyon contract to prohibit the use of improvement account funds for reimbursements to Government appropriations accounts.

- Amend the Yellowstone contract to eliminate equipment purchases as a proper use of improvement account funds and ensure that improvement account funds are no longer used to reimburse Government appropriations.

- Amend the Yosemite contract to eliminate the provision that 10 percent of capital improvement account fund deposits can be used for projects which do not directly support concession operations, require the concessioner to terminate the trust agreements for the deposit and expenditure of improvement account funds, and ensure that improvement account funds are no longer used to pay the concessioner's income taxes.

- Ensure that the concessioner at Glacier complies with the contract requirements and require the concessioner to spend an additional $100,000 on approved capital improvements.

National Park Service Response and Office of Inspector General Reply

In the January 21, 1998, response (Appendix 3) to the draft report from the Director, National Park Service, the Park Service partially concurred with Recommendation 1 and did not fully address Recommendation 2. Based on the response, we request that the Park Service reconsider its responses to both recommendations, which are unresolved (see Appendix 4).

Recommendation 1. Nonconcurrence.

National Park Service Response. The Park Service disagreed with our finding concerning the use of improvement account funds, stating that each contract which was examined during the audit was executed prior to the current procedures and that therefore "any comparison would be ineffectual." The Park Service also stated that in each instance, expenditures made with improvement account funds were consistent with the contract and therefore appropriate. Specifically, the Park Service stated that the landscaping, aerial mapping, road chip sealing, and elimination of drainage at Glen Canyon National Park "were all done in conjunction with concession operations" and that the construction of the stairway and nature trail at Mount Rushmore "was in direct support of the concession operation" and was necessary "to provide access to the existing concessioner facility during the construction of the new concession facility initiated in August 1994."

Despite its disagreement with the finding, the Park Service agreed to revise its procedures "to more clearly define the term 'directly support concession operations,'" stating, "Though our requirement that improvement accounts can only be used on facilities that directly support concession operations has not caused a problem thus far, we can see where this could be open to a variety of interpretations."

The Park Service, however, did not agree to revise its procedures to include clear and sufficient guidance for cost-sharing arrangements. The Park Service stated that in drafting its guidelines, it "did not plan to share construction costs with concession improvement account projects because of the unpredictability of Federal funds and the difficulty of melding a private project with a procurement project." The Park Service further stated that "if the time comes that cost sharing becomes a necessity, we will develop guidelines to address this issue."

Office of Inspector General Reply. Although the Park Service agreed to revise its procedures to more clearly define the term "directly support concession operations," its comments on the audit finding raise concerns regarding what it considers to be appropriate uses of concessioner improvement account funds. As discussed in the report, the concession contracts at four of the five parks we reviewed required that concessioner improvement account funds be used for projects which "directly support concession operations," which is also required under the new procedures. We disagree with the statement that all of the projects we reviewed were consistent with that requirement. For example, several of the projects we reviewed clearly did not directly benefit concession operations, such as the construction of a building at Glen Canyon to house fire and ambulance equipment, detention halls, associated offices (which support Park Service functions and not those of the concessioner), and the removal of asbestos from an old building at Mt. Rushmore that was converted to park administrative offices. Other projects appeared to benefit primarily Park Service operations, with some benefits to the concession operations, such as the temporary stairway at Mt. Rushmore, which was necessary to reach the monument viewing area from the parking area and the concessions facility in the area.

Regarding the statement that "any comparison [to the new procedures] would be ineffectual" because the projects we reviewed were executed before the current procedures were issued, the primary purposes of our review were (1) to determine whether concessioner improvement accounts were used in accordance with the provisions of the concession contracts (both the contracts and the new procedures required that funds be used for projects that "directly support concession operations"); (2) to determine the effect of the Park Service's delay in issuing those procedures; and (3) to determine whether the new procedures were adequate to address the various circumstances surrounding the expenditures of concession improvement account funds, as requested by the Park Service. For example, based on our review of these projects, we believe that the Park Service needs to clarify its guidance concerning the use of improvement account funds for projects that support primarily Government operations rather than concessioner operations. Specifically, the procedures need to address the issue of whether it is appropriate to use these funds for projects such as utility systems, parking lots, or boat ramps when only a small percentage of the use relates to the concession operations. In addition, some park managers indicated that concessioner improvement accounts could be used for construction or rehabilitation projects which directly affected park visitors, whether or not the projects enhanced concessioner facilities. This issue needs to be clearly addressed in the procedures.

Regarding cost sharing, the basis for the Park Service's comment that in drafting its guidelines "it did not plan to share construction costs with concession improvement account projects" appears to indicate that projects that also benefit the Park Service will be fully funded by the improvement accounts. The Park Service's procedures clearly recognize the potential for cost sharing "of a joint NPS [National Park Service]/concessioner infrastructure facility, such as where the concessioner joins NPS in the construction of a sewer plant which serves both NPS installations and concessioner visitor facilities." Furthermore, the Park Service did not include a detailed explanation in its response to support its decision not to consider cost sharing "because of the unpredictability of Federal funds and the difficulty of melding a private project with a procurement project." Because a large number of projects we reviewed benefited both concessioner and Park Service operations, we believe that this issue needs to be fully addressed in the guidelines. Accordingly, we consider the recommendation unresolved.

Recommendation 2. Nonconcurrence.

National Park Service Response. The Park Service stated that it "cannot unilaterally amend concession contracts" to conform to its current procedures but that it would attempt to amend the contracts during the contract reconsideration process. The Park Service further stated that three of the contracts will have expired by September 2001 and that as these contracts expire, it will "issue new contracts which will conform to our improvement account procedures."

In regard to amending the Mt. Rushmore contract, the Park Service stated that additional requirements for capital improvements were placed on the concessioner which were not anticipated when the concessioner's original obligations were established. The Park Service further stated that because of these additional obligations, it allowed the concessioner to have a possessory interest in a portion of this contribution to provide the concessioner, in accordance with the Concessions Policy Act of 1965, "a reasonable opportunity for a profit commensurate with the capital invested and the obligations assumed."

In regard to requiring the concessioner at Yellowstone to deposit $65,000 into its concessioner improvement account fund because funds were used for maintenance activities, the Park Service stated that the expenditures were for resource management and environmental projects but not maintenance and that it added these responsibilities to the concessioner's maintenance plan "only to make it clear that these would not be NPS [National Park Service] responsibilities."

In regard to ensuring that the concessioner at Glacier spends an additional $100,000 on approved capital improvements, the Park Service stated that while the concessioner "had clearly expended in excess of this amount [1 percent of gross receipts] every year on capitalized items, the dispute centered on whether or not these items could be considered improvements." The Park Service further stated that it had reached a settlement with the concessioner that expenditures should be approved by the Park Service in advance and that the concessioner had met the minimum expenditure requirement for fiscal year 1997.

Office of Inspector General Reply. Although the Park Service agreed to attempt to amend the contracts when the opportunity occurs and to ensure that the new contracts conform to its improvement account procedures, it did not address the recommendation as it related to disapproving concessioner requests to use improvement account funds for purposes that are prohibited by the procedures.

In regard to the possessory interest issue at Mt. Rushmore, the Park Service did not include sufficient information in its response to support its position that it was necessary not only to allow the concessioner to use these funds to meet its financial obligations under the contract but also to grant the concessioner possessory interest in these facilities in order for the concessioner to make a reasonable profit. In addition, the Park Service did not specifically address amending the concession contract to specify that the concessioner will not have possessory interest in future facilities constructed with improvement account funds.

In regard to requiring the concessioner at Yellowstone to deposit $65,000 into the concessioner improvement account fund, the projects in question were included in the concessioner's maintenance plan and therefore were the concessioner's responsibility. However, since the Park Service authorized the concessioner to use improvement account funds for these projects, it would not be appropriate to require the concessioner to reimburse the improvement account at this time. As such, we have not included the finding and recommendation in the final report.

In regard to requiring the concessioner at Glacier to spend an additional $100,000 on approved capital improvements, the actions identified in the response are adequate to ensure that future expenditures of capital improvement account funds are proper. However, the Park

Service did not specifically identify the basis for its decision not to require the concessioner to spend an additional $100,000 on approved capital improvement projects to meet its contractual requirement. We do not believe that the Park Service's lack of timeliness in notifying the concessioner of the deficit is an appropriate basis for waiving the requirement.

Based on the Park Service's response, we consider the recommendation unresolved.

B. DEPOSITS TO CONCESSIONER IMPROVEMENT ACCOUNTS

Two of the five concessioners we reviewed made improper deductions from their recorded gross receipts in determining the amounts to be deposited into their concessioner improvement accounts. Section 9 of the concession contracts defines gross receipts as the total amount received or realized by the concessioner from all sales of services, accommodations, materials, and other merchandise less specified exclusions. Typical contract exclusions from gross receipts include receipts from the sale of genuine United States Indian and native handicrafts; intracompany earnings on charges to other departments; charges for employees' meals, lodging, and transportation; cash discounts on sales and purchases; and sales, excise, and gasoline taxes. However, Park Service personnel did not adequately analyze the exclusions made by the concessioners. As a result, we estimated that for 1994 and 1995, two concessioners should have deposited additional funds totaling about $124,800, excluding interest, into their concessioner improvement accounts (see Appendix 1).

We found that the concessioner at Glen Canyon deducted credit card fees and freight charges from gross receipts in determining the amounts to be deposited into the construction set-aside account. Also, a concessioner at Glacier National Park excluded sales to employees from gross receipts in determining the amounts to be deposited into the capital improvement account. Section 9 of the concession contracts (franchise fees) does not permit these exclusions and deductions from gross receipts; however, Park Service personnel did not adequately analyze revenue exclusions to ensure that concessioners deposited funds in accordance with the terms of the concession contracts, as required by Park Service Directive 90-7, as amended. As a result, for 1994 and 1995, concessioners did not deposit about $124,800, excluding interest, into a set-aside account at Glen Canyon ($119,500) and into an improvement account at Glacier ($5,300).

Park officials took prompt action to address these issues after we brought them to their attention. Specifically, the Superintendent at Glen Canyon, in a July 17, 1996, letter, informed the concessioner of the improper exclusions and instructed the concessioner to (1) stop the exclusions that were not identified as allowable in the concessioner contracts, beginning with the next monthly deposit; (2) submit records showing the itemized exclusions taken in calculating deposits from the inception of the program in 1987 through the current year; and (3) submit a proposal on how to resolve the issue for all previous years in which deposits were incorrect. Also, the Concessions Manager at Glacier, in a July 15, 1996, letter, informed the concessioner that the exclusion of sales to employees from the gross receipts was not appropriate and requested the concessioner to deposit about $5,300 plus interest into the capital improvement account. On August 5, 1996, the concessioner deposited $5,401 into the account to correct the error.

Recommendation

We recommend that the Director, National Park Service, ensure that park personnel sufficiently analyze all exclusions from gross receipts and confirm that deposits to concessioner improvement accounts are made in accordance with the provisions of the concession contracts.

National Park Service Response and Office of Inspector General Reply

In the January 21, 1998, response (Appendix 3) to the draft report from the Director, National Park Service, the Park Service agreed with the recommendation. Based on the response and additional information provided by the Park Service, we consider the recommendation resolved and implemented (see Appendix 4).

CLASSIFICATION OF MONETARY AMOUNTS

Finding Area	Potential Additional Revenues
Other Contract Provisions	$100,000
Deposits to Concession Improvement Accounts	124,800
Total	$224,800[1]

[1]This amount represents additional funds that the concessioners should deposit into their concessioner improvement accounts.

SITES VISITED, TYPES OF ACCOUNTS REVIEWED, AND CONCESSIONER DEPOSITS AND EXPENDITURES

Site	Concession Contract Number	Type of Account	1994 Deposits	1994 Expenditures	1995 Deposits	1995 Expenditures
Mount Rushmore National Memorial	CC-MORU-001-93	Capital	$289,290	$194,470	*	0
Glacier National Park	CC-GLAC-002-81	Capital Improvement	1,067,452	348,892	$466,572	$117,592
Glen Canyon National Recreation Area	CC-GLCA-003-69	Construction Set Aside	2,679,281	1,841,513	2,877,034	4,825,362
	CC-GLCA-002-88	Capital Improvement	202,103	0	1,255,713	20,760
	CC-GLCA-002-88	Campground Improvement	38,310	1,500	41,367	1,500
Yellowstone National Park	CC-YELL-077-91	Construction and Improvement	3,973,933	3,635,879	4,148,186	4,318,362
Yosemite National Park	CC-YOSE-004-93	Capital Improvement	4,029,832	0	4,071,390	1,491,364
	CC-YOSE-004-93	Government Improvement	222,756	35,945	222,756	82,772
			$12,502,957	$6,058,199	$13,083,018	$10,857,712

*The account was terminated effective August 31, 1995. No funds were deposited into the account by the concessioner in 1995, and the funds remaining in the account were to be used by the concessioner to pay for a portion of the construction cost overrun discussed in the "Possessory Interest" section of this report.

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

JAN 21 1998

Memorandum

To: Robert J. Williams
Assistant Inspector General for Audits

From: Robert Stanton, Director, National Park Service

Subject: Draft Audit Report on Concessioner Improvement Accounts, National Park Service (Assignment No. C-SP-NPS-033-96)

We have reviewed the draft report and our comments are as follows.

A. Improvement Account Projects

Each contract that was examined was executed *prior* to the establishment of our current procedures and therefore any comparison would be ineffectual. In each instance, expenditures made from improvement accounts were consistent with the contract and therefore appropriate Additionally each contract that was examined by the Inspector General underwent legal review by the Office of the Solicitor as well as a 60-day congressional review.

While we do concur with the finding listed under "Concessioner Compliance" this issue is not related to "Improvement Account Projects" and therefore should be listed in the "Other Matters" section of the report.

"Directly Support Concession Operations"

Every use of improvement account funds at Glen Canyon was consistent with the provisions of the contract. Furthermore, the landscaping, aerial mapping, road chip sealing, and elimination of drainage problems were all done in conjunction with concession operations.

With regards to Mount Rushmore, construction of the stairway and nature trail using improvement account funds was in direct support of the concession operation. These projects were necessary to provide access to the existing concession facility during the construction of the new concession facility initiated in August of 1994. It was anticipated that access through a construction zone would eliminate access to the existing concession area during the winters of 1994-1995 and 1995-1996, unless a safe alternative route was established. Therefore access directly from the parking area by means of a stairway to the orientation center and then to the concession facility by way of the nature trail were constructed during the summer of 1994. The stairway was a temporary structure and removed with the construction of the new parking facility and the nature trail remains as a permanent trail providing alternative access to all visitor facilities including the concession facility.

Cost-Sharing Projects

All funds spent from Glen Canyon's set-aside account were done so in accordance with the provisions of the concession contract. The NPS, in drafting its guidelines, did not plan to share construction costs with concessioner improvement account projects because of the unpredictability of Federal funds and the difficulty of melding a private project with a procurement project. However, if the time comes that cost sharing becomes a necessity, we will develop guidelines to address this issue.

Concession Contract Provisions

The NPS cannot unilaterally amend concession contracts. As each contract expires, new contracts will be executed which will conform with the new improvement account procedures.

Possessory Interest

In June of 1995 the NPS recognized that insufficient funds existed to construct the utilities, roads, landscaping and trails surrounding the new concession sales facility in Mt. Rushmore. The contract amendment signed in December of 1993 would not provide adequate funds to complete the planned improvements. Therefore a contract negotiation commenced in the summer of 1995 and concluded in August of 1995. This negotiation required the concessioner to contribute an additional $2 million to the capital improvement requirement of their contract. This contribution included the funds remaining in the improvement account plus approximately $1.2 million in additional concessioner funds. A specific part of that negotiation was the treatment of the approximate $800,000 in the improvement account.

The Concessions Policy Act of 1965 states that the NPS will provide concessioners with a reasonable opportunity for a profit commensurate with the capital invested and the obligations assumed. Since this additional requirement on the concessioner was unanticipated when their original obligation was set, we allowed the concessioner to have a possessory interest in a portion of their contribution.

Maintenance

These projects were resource management and environmental projects but not maintenance. The NPS added similar responsibilities to their maintenance plan only to make it clear that these would not be NPS responsibilities.

Concessioner Compliance

We agree with the majority of this finding regarding Glacier Park, Inc.'s failure to meet its contractual obligation to expend not less than one percent of their gross receipts on capital improvements for 1994 and 1995. While the concessioner had clearly expended in excess of this amount every year on capitalized items, the dispute centered on whether or not these items could be considered improvements.

The Superintendent reached a settlement with the concessioner that from 1996 onward, expenditures would be submitted for approval in advance for credit toward this contract requirement. This agreement has been in place and in 1997 the concessioner exceeded their minimum requirement. As we mentioned previously, this issue has no relation to improvement accounts and therefore we ask that it be addressed under the "Other Matters" section of your report.

Recommendations

1. Though our requirement that improvement accounts can only be used on facilities that directly support concession operations has not caused a problem thus far, we can see where this could be open to a variety of interpretations. Therefore, we agree to revise our improvement account procedures to more clearly define the term "directly support concession operations." The target date for the revision of these procedures will be June 30, 1998, and the responsible official will be the Concessions Program Manager.

2. As indicated previously, the National Park Service cannot unilaterally amend concession contracts. Where we have the opportunity during reconsiderations we will attempt to amend the contracts to conform to our current procedures. Additionally, three of these contracts will have expired by September 2001 and as these contracts expire we will issue new contracts which will conform to our improvement account procedures.

B. Deposits to Concessioner Improvement Accounts

The Park Service concurs with this finding and the recommendation. We will issue a memorandum reminding our parks to review the contract provision relating to improvement account deposits to make sure that their concessioners are in compliance with this requirement. The target date for the issuance of this memorandum will be February 15, 1998, and the responsible official will be the Concessions Program Manager.

Other Matters

The amendment requires the concessioner to spend a minimum amount of their receipts on maintenance and is therefore not considered to be an improvement account

We have no further comments on the report. Please contact Robert Yearout, Concessions Program Manager, at 202-565-1212 if you have any questions.

Robert Stanton

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
A.1	Unresolved.	Reconsider the recommendation. If concurrence is indicated, provide an action plan that includes target dates and titles of the officials responsible for implementation. If nonconcurrence is indicated, provide the reasons for nonconcurrence, including the basis for the Park Service's position that cost-sharing arrangements are not appropriate and/or feasible.
A.2	Unresolved.	Reconsider the recommendation with respect to the following: not approving concessioner requests to use account funds for purposes that are prohibited by the procedures, requiring the concessioner at Glacier to spend an additional $100,000 on approved projects, and amending the Glacier contract to specify that the concessioner will not have possessory interest in future projects funded by the improvement account. If concurrence is indicated, provide an action plan that includes target dates and titles of the officials responsible for implementation. If nonconcurrence is indicated, provide reasons for the nonconcurrence.
B.1	Implemented.	No further action is required.

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