

CONCESSIONS CAUSING DETRIMENTAL IMPACTS ON THE ORIGINAL VISION OF NATIONAL PARKS

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*“Scenery is a hollow enjoyment to the tourist who sets out in the morning after an indigestible breakfast and a fitful night’s sleep on an impossible bed.”*²

I. INTRODUCTION

Stephen T. Mather, the first Director of the National Park Service (NPS), created this vision for National Park concessions.³ The present-day Commercial Services Program maintains this vision since Mather’s quote is displayed on the home page of their website today.⁴ The NPS promises its visitors that they will get to travel and experience the land and water that John Wesley Powell and Lewis and Clark once traveled⁵ with the luxuries of a resort and “high-quality visitor services”⁶—a comfortable bed to lay your head on at night, convenient meals, and even transportation to go wherever you want.⁷ This might seem like a great way to experience the wonders of our national parks, but these hospitality benefits come at some cost.

Professor Joseph L. Sax illustrates that the Park Service created a vision geared toward “the windshield tourist”⁸ and comfort for visitors, where concessionaires create illusory wilderness experiences that do not showcase the real rigors and power of nature to people.⁹ After World War II, there was an accelerated use of national parks that continues to increase.¹⁰ At this time, policies started to develop that encouraged tourism and public use of the parks, specifically the establishment of concessions that accommodated visitors through lodging, restaurants, and entertainment services.¹¹ By approving concession demands and fulfilling park visitors’ desires for integral features such as hotels, cabins, and laundromats in

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² U.S. Dep’t of the Interior, *Commercial Services Program*, NAT’L PARK SERV., <https://www.nps.gov/orgs/csp/index.htm> [https://perma.cc/TQY7-DU39] (last updated Oct. 30, 2018).

³ *Id.*

⁴ *Id.*

⁵ JOSEPH L. SAX, MOUNTAINS WITHOUT HANDRAILS: REFLECTIONS ON THE NATIONAL PARKS 98 (1980).

⁶ See U.S. Dep’t of the Interior, *supra* note 2.

⁷ See generally *Ensuring High Quality Visitor Services*, NAT’L PARK SERV., <https://www.nps.gov/subjects/concessions/index.htm> [https://perma.cc/DTQ4-HWG6] (last visited May 25, 2019).

⁸ A “windshield tourist” is an individual who traverses the park without leaving their car.

⁹ See SAX, *supra* note 5, at 99–100.

¹⁰ Michael Mantell, *Preservation and Use: Concessions in the National Parks*, 8 *ECOLOGY L.Q.* 1, 2 (1979).

¹¹ *Id.* at 2–3.

almost every national park, problems of congestion, and the resulting increase in facilities and services, threaten the parks' ability to achieve their original purpose.¹²

Although the Park Service has broad discretion in its concession management,¹³ there is significant debate about whether it is exercising that discretion wisely in light of the agency's mission. With these continuing pressures, debates regarding park use will continue, and questions of where to draw the line for concessionaires should be a priority to our NPS. This Note argues for urgent reevaluation of concessions management by the NPS. Even though today's visitors demand more services and entertainment, new boundaries and policies should be implemented that encourage the priority of preservation in our National Parks.

Section I briefly examines the history of national parks, along with how concessions became increasingly popular and attracted new crowds of people. This section also includes a discussion of the overarching debate in which the national park concessions issue lies: whether the primary purpose of national parks is preservation or use and enjoyment. Section II explores specific problems within national park concessions that confront national park preservation today that our government can get in front of, such as the ongoing fight against water bottle sales in national parks. Finally, Section III of this Note proposes a legislative solution to solve the issue of concessions having such a detrimental impact on the original vision of the parks system.

II. BACKGROUND

A. History of National Parks

Most of the nineteenth century was devoted to allocation and privatization of lands, but the conservation movement soon sparked federal policy to incorporate the idea that some lands should be retained by the public.¹⁴ Starting in 1817, the federal government allocated public lands containing live oak and red cedar for naval construction and then, in 1832, reserved Hot Springs, Arkansas, which was known for its medicinal value.¹⁵ Contributing to this movement, the Supreme Court in *United States v. Gratiot* upheld federal leasing of lead mines.¹⁶

The first significant success for allocation of land for preservation purposes was Abraham Lincoln and Congress' decision in 1864 to place Yosemite Valley and Mariposa Big Tree Grove under the protection of California.¹⁷ Conservationists and naturalists, such as John Muir, Clarence Dutton, and John Wesley Powell, were able

¹² *Id.* at 3.

¹³ See U.S. Dep't of the Interior, *Ensuring High Quality Visitor Services*, NAT'L PARK SERV., <https://www.nps.gov/subjects/concessions/index.htm> [<https://perma.cc/KS3Q-GGP4>] (last updated Oct. 10, 2018) (“[T]he Commercial Services Program administers 500 concession contracts...”).

¹⁴ JAMES RASBAND ET AL., *NATURAL RESOURCES LAW AND POLICY* 146 (3rd ed. 2016).

¹⁵ *Id.*

¹⁶ *United States v. Gratiot*, 39 U.S. 526, 538–39 (1840).

¹⁷ “Yo-Semite Valley,” and “Mariposa Big Tree Grove,” ch. 184, 13 Stat. 325 (1864). California later re-ceded the land to the federal government.

to reach the public by advocating for protection through published writings that became the driving force behind the creation of several national parks.¹⁸ Eight years later, Congress and Ulysses S. Grant made history when they reserved two million acres of public land to create Yellowstone National Park.¹⁹

The proliferation of national parks showcased the “contemporary intellectual, social, and economic changes” of the public appreciation for the natural wilderness, a longing to “escape the increasingly urban places that resulted from industrialization, and the popularization from the automobile.”²⁰ The sparked awareness and need for preservation resulted in the founding of the Appalachian Mountain Club in 1876, described as “one of the first private conservation organizations” with a goal to preserve and protect eastern wilderness areas.²¹ The federal government followed the movement by establishing the United States Geological Survey in 1879, a bureau within the Department of the Interior (DOI) responsible for surveying and mapping lands in national territories.²² President Roosevelt created five new national parks during his administration along with many other sources of public lands, such as national forests and monuments.²³

Even though Yellowstone was named a national park in 1872, the NPS was not founded until 1916.²⁴ During this gap of time, the parks lacked centralized management and duties were shifted between the Departments of War, Agriculture, and Interior.²⁵ According to provisions of an 1894 Act, the Secretary of the Interior was to make regulations providing “for the preservation . . . of all timber, mineral deposits, natural curiosities, or wonderful objects within said park.”²⁶ The Interior struggled to protect the parks from abuses such as private commercial interests that took advantage of the parks and the public.²⁷ These private commercial interests saw “profit potential in the parks and began to exploit their resources,” often without being monitored.²⁸ Consequently, national parks lacked protection and funding, sparking doubts for their future.²⁹

The passage of the Antiquities Act in 1906, which gave the President authority to declare national monuments, resulted in a substantial increase in national parks.³⁰

¹⁸ *Brief History of the National Parks*, LIBRARY OF CONGRESS, <https://www.loc.gov/collections/national-parks-maps/articles-and-essays/brief-history-of-the-national-parks/> [<https://perma.cc/ZTS8-U9JR>] (last visited Oct. 17, 2017).

¹⁹ Yellowstone National Park Protection Act, ch. 24, 17 Stat. 32 (1872).

²⁰ *Brief History of the National Parks*, *supra* note 16.

²¹ *Id.*

²² *Id.*

²³ *Theodore Roosevelt and Conservation*, NAT'L PARK SERV., <https://nps.gov/thro/learn/historyculture/theodore-roosevelt-and-conservation.htm> [<https://perma.cc/932Y-7KVY>] (last updated Nov. 16, 2017).

²⁴ *Brief History of the National Parks*, *supra* note 16.

²⁵ *Id.*; *U.S. National Parks—In the Beginning*, NAT'L GEOGRAPHIC (May 26, 2010), <https://www.nationalgeographic.com/travel/national-parks/early-history> [<https://perma.cc/HVM8-JW7D>].

²⁶ The Lacey Act of 1894, ch. 72, § 4, 28 Stat. 73 (codified at 16 U.S.C. § 26 (1976)).

²⁷ *U.S. National Parks—In the Beginning*, *supra* note 23.

²⁸ *Id.*

²⁹ See RASBAND ET AL., *supra* note 12, at 146.

³⁰ Mark Squillace, *The Monumental Legacy of the Antiquities Act of 1906*, 37 GA. L. REV. 473, 488–89 (2003).

By 1916, the Interior Department was responsible for fourteen national parks and twenty-one national monuments, although Congress still lacked an organization or policy guidance that would manage them.³¹ Preservationists did not push for park service reformation until the defeat of the Hetch Hetchy Valley in Yosemite National Park.³² In order to provide water and power to San Francisco, Congress passed legislation allowing Hetch Hetchy Valley to be dammed, causing preservationists to become alarmed and support the creation of a “comprehensive management scheme.”³³

Finally, there was a breakthrough in 1916 when Congress passed and President Woodrow Wilson signed the NPS Organic Act, which created the NPS within the DOI.³⁴ Congress gave the NPS a mission to manage the parks in a manner that would “conserve the scenery and natural and historic objects and the wildlife 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.”³⁵ This mission statement created an ongoing pressure for NPS, because it left a responsibility to the Park Service to provide for use and enjoyment of the parks and, importantly, to do so in a way that would leave them unimpaired for the enjoyment of future generations.

B. Concessions

The continued existence of the parks depended on the number of people who utilized them, pushing preservationists along with railroad officials to be interested in how to increase park tourism and outdoor recreation.³⁶ However, to counter the influence of the emerging utilitarian philosophy, greater use of the parks was needed to continue their existence.³⁷ Therefore, the scenic preservation was compromised by building additional roads, hotels, and other visitor facilities.³⁸ Self-defeating management coupled with the need for increased use led to the creation of the Organic Act.³⁹ This gave the Secretary of the Interior authority to make rules and regulations as necessary for use and administration of national park areas and also gave the Secretary power to develop various visitor facilities in the parks through concessionaire leases.⁴⁰

³¹ RASBAND ET AL., *supra* note 12, at 146–47.

³² Richard J. Ansson Jr. & Dalton L. Hooks Jr., *Protecting and Preserving our National Parks in the Twenty First Century: Are Additional Reforms Needed Above and Beyond the Requirement of the 1998 National Parks Omnibus Management Act?*, 62 MONT. L. REV. 213, 218 (2001).

³³ *Id.*

³⁴ National Park Service Organic Act of 1916, ch. 408, 39 Stat. 535 (1916) (codified as amended at 54 U.S.C.S. § 100101 *et seq.*).

³⁵ *Id.*

³⁶ Mantell, *supra* note 8, at 10.

³⁷ *Id.*

³⁸ *Id.* at 12.

³⁹ *Id.* at 13.

⁴⁰ National Park Service Organic Act of 1916, ch. 408, § 2, 3, 39 Stat. 535 (1916) (codified as amended at 54 U.S.C.S. § 100101 *et seq.*).

By the end of World War II, park visitation had exceeded all expectations to the point that the Park Service was unable to accommodate all visitors.⁴¹ Throughout the 1950s and 1960s, Congress allocated over one billion dollars to the Park Service to provide accommodations for the increased number of visitors.⁴² However, by 1965 Congress's ideals started to shift and so stated that the Park Service should only allow concessions within parks if they were "consistent...with preservation...[of] park values."⁴³ The National Park Concessions Policy Act of 1965 (hereinafter "The Act") was an effort to deal with park amenities with a preservation-based policy: "[i]t is the policy of Congress that the development [of public accommodations] shall be limited to those that are necessary and appropriate for public use and enjoyment . . . and are consistent to the highest practicable degree with the preservation and conservation of the areas."⁴⁴

Even though the Act seems focused on preservation, it has brought many challenges in balancing the Park Service's need to provide adequate services and facilities for park supporters while protecting the parks for future generations.⁴⁵ Practices allowed by the Act resulted in less money being spent on protection and preservation.⁴⁶ The Act also provided businesses with "long-term contracts, exclusivity, bidding advantages and the opportunity to profit from any expenditures made on park facilities if they entered into concessions with the Park Service."⁴⁷

After the Park Service encountered an array of problems, Congress enacted the National Parks Omnibus Management Act of 1998 (hereinafter "The Omnibus Act").⁴⁸ The Omnibus Act included "provisions designed to reform the concessions industry, promote local fund raising activities, demand fiscal accountability by park managers, encourage cooperative agreements with universities and the scientific community, and establish new criteria for the admission of new parks to the system."⁴⁹ The Omnibus Act supposedly ended all of the preferential rights concessionaires had enjoyed under the Concessions Policy Act.⁵⁰ For instance, the Concessions Policy Act authorized the parks to retain concession fees themselves⁵¹ rather than sending the fees straight to the general treasury fund as required under the Omnibus Act.⁵² Even though the Omnibus Act was a step in the right direction, there are still problems that arise out of concessions, such as overcrowding of

⁴¹ Mantell, *supra* note 8, at 17.

⁴² *Id.* at 22.

⁴³ *Id.* at 28.

⁴⁴ National Park Concessions Policy Act of 1965, ch. 6, 79 Stat. 969 (codified as amended at 54 U.S.C.A. § 101912 (b) (2018)).

⁴⁵ ALFRED RUNTE, NATIONAL PARKS: THE AMERICAN EXPERIENCE, 173 (2d ed. 1987).

⁴⁶ *Id.*

⁴⁷ Ansson & Hooks, *supra* note 32, at 220.

⁴⁸ National Parks Omnibus Management Act of 1998, Pub. L. No. 105–391, 112 Stat. 3497 (codified as amended at 54 U.S.C.S. § 100701 *et seq.* (2018)).

⁴⁹ Ansson & Hooks, *supra* note 32, at 222–23.

⁵⁰ 16 U.S.C.A. § 5952(7) (1998); Concessions Policies Act of 1965, Pub. L. No. 89-219, § 4, 79 Stat. 969.

⁵¹ Concessions Policies Act of 1965 § 4.

⁵² 16 U.S.C.A. § 407(c) (1998).

visitors.⁵³ This causes an increasing amount of wear and tear on the parks including traffic jams, pollution from off-road vehicles, and pollution from scenic overflights.⁵⁴

C. Preservation v. Use and Enjoyment

The Organic Act deliberately entails a conflicting “dual mandate” that creates tension between preserving an area and managing it for public use and enjoyment.⁵⁵ The dual mandate provides two priorities for park management that NPS must balance depending on the current needs of the park.⁵⁶ Historically, the NPS “championed preservation over economic use,” but the demanding pressures of “recreational and cultural responsibilities” led to a shift.⁵⁷ This Note showcases how the dual mandate requires balance, but preservation should be the dominant goal of national parks and dictate the policies surrounding concessions.

From prior cases, it is obvious that judicial review and other such tools of ensuring compliance with the Organic Act are not powerful enough to “moderate the anthropogenic pressures that risk the long-term impairment of our national parks.”⁵⁸ The NPS lacks a statutory amendment that explicitly clarifies that the NPS favors the conservation mission, prioritizing preservation over potentially damaging use and enjoyment.⁵⁹ Unlike the Wilderness Act or the Wild and Scenic Rivers Act, which are well-known to give clear priorities to preservation and natural resource values, national parks are left continually fighting the battle of those in favor of preservation versus those who seek to only enjoy or use the land, no matter how much damage the activity creates.

Development of concession facilities falls under the use prong of the dual mandate.⁶⁰ Concessions in parks contribute to the overabundance of crowds, promoting increased use of parks or new types of accommodations or recreation.⁶¹ Rather than just providing the necessary amenities for the public to enjoy the “scenery, natural objects, and wildlife” while visiting the parks, concessionaires tend to overreach their goals, harming any environment in their path.⁶² Certain types of concession facilities or means of use are unnecessary to the public. Even though Congress adopted the “necessary and appropriate” language in the Concessions Policy Act of 1965, Congress did not define these terms, giving no teeth to this provision.⁶³

⁵³ See Michael Satchell, *National Parks in Peril*, U.S. NEWS & WORLD REP. (July 21, 1997), <https://www.usnews.com/news/articles/2016-08-19/national-parks-in-peril>.

⁵⁴ *Id.*

⁵⁵ Denise E. Antolini, *National Park Law in the U.S.: Conservation, Conflict, and Centennial Values*, 33 WM. & MARY ENVTL. L. & POL’Y. REV. 851, 861–62 (2009).

⁵⁶ *See id.*

⁵⁷ *Id.* at 863–64.

⁵⁸ *Id.* at 885.

⁵⁹ *Id.* at 885, 912.

⁶⁰ *Id.* at 36.

⁶¹ *Id.* at 36.

⁶² *Id.*

⁶³ Concessions Policies Act of 1965, Pub. L. No. 89-219, § 4, 79 Stat. 969.

III. PROBLEMS THAT EXIST IN NATIONAL PARKS DUE TO LESS RESTRICTIVE POLICIES ON CONCESSIONS

Congress needs to address the continual management and regulation challenges faced by the NPS. In particular, underfunding continues to plague the national parks, as problems such as overcrowding, encroaching development, and pollution tend to add to the deteriorating budget.⁶⁴ The increasing pressure on the NPS by visitors and recreational users has industrialized many of the parks, in turn creating long-term environmental harm as well as management and budget deficiencies.⁶⁵ Below are examples of concessions that continue to cause harmful effects to the national parks that should be limited or even eliminated in order to preserve the original vision for national parks.

A. *What's in Our National Parks' Trash Cans?*

Since National Parks attract millions of visitors from around the world, one consequence of national park concessions is the 100 million pounds of garbage a year those visitors generate, which mostly ends up in landfills.⁶⁶ The National Parks Conservation Association recently put together a report on what is in the trash cans in national parks.⁶⁷ Most of what the Association found is what you would find in your household trash and recycling bins; “[p]lastic bottles, paper cups, plastic bags, food [sic] and food wrappers” are some common examples.⁶⁸ Unfortunately, the NPS currently has little control over what people bring in or even buy from concessionaires in the national parks. Statistics show that 82% of visitors at national parks consume food or drinks while in the parks and only about half (53%) purchase these items within the park.⁶⁹

National Parks could save significant expenses if they did not have to spend their resources removing substantial amounts of trash. The NPS has to use taxpayer dollars to manage the burden of disposing and recycling all plastic, including plastic water bottles.⁷⁰ Dealing with the removal of trash takes away from funding other services. The Yellowstone National Park environmental protection specialist concedes that the

⁶⁴ Antolini, *supra* note 3, at 876–87.

⁶⁵ *Id.* at 877–80.

⁶⁶ Greta Weber, *Iconic National Parks Move to Eliminate Landfill Trash*, NAT'L GEOGRAPHIC (June 29, 2015), <http://news.nationalgeographic.com/2015/06/150629-zero-landfill-national-parks-yosemite-grand-teton-denali/> [<https://perma.cc/59RB-EBUG>].

⁶⁷ Jamie Varner, *What's in National Parks' Trash Cans—and What You Can Do*, NAT'L PARKS CONSERVATION ASS'N (Aug. 16, 2016), <https://www.npca.org/articles/1289-what-s-in-national-parks-trash-cans-and-what-you-can-do> [<https://perma.cc/UAA3-V3R4>].

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Darryl Fears, *National Parks Put a Ban on Bottled Water to Ease Pollution. Trump Just Sided with the Lobby that Fought It.*, THE WASHINGTON POST (Aug. 17, 2017), https://www.washingtonpost.com/news/energy-environment/wp/2017/08/17/national-parks-banned-bottled-water-to-ease-pollution-trump-just-sided-with-the-lobby-that-fought-it/?utm_term=.e9b5fc5104d9 [<https://perma.cc/KR3D-JACPhhttps>].

park “spends half a million dollars annually to remove 3,000 tons of trash that enter the park each year.”⁷¹ Similarly, Denali National Park “spends about \$75,000 a year to get rid of the 140 tons of garbage that visitors bring into the park.”⁷² Unfortunately, large quantities of trash and costs associated with the removal process render constant maintenance challenging.⁷³

Even though energy use and fuel consumption are the main causes of climate change, landfills are also to blame.⁷⁴ Landfills produce 20% of the potent greenhouse gas called methane, which has been proven to cause “[twenty-five] times more global warming than carbon dioxide.”⁷⁵ Since most waste from national parks ends up in landfills, this is a starting point where our government can make a difference in our environment.⁷⁶ National parks such as Alaska’s Denali are as far away as fifty miles from the closest recycling plant, which is sometimes not even able to handle Denali’s large amounts of recycling loads.⁷⁷ Therefore, eighty percent of Denali’s trash ends up in landfills.⁷⁸ However, recycling usually only delays plastic’s inevitable destination: a trash can.

As we all have seen at some point, much of pollution and trash end up harming and even killing some of our Earth and parks’ most precious species. Much of our pollution, which the parks contribute to, has been “discovered in the mouths of whales and bellies of dead seabirds that mistook it for food.”⁷⁹ Some of these species are even on the Endangered Species List, which the NPS is supposed to prioritize and do everything in its power to obey and promote their protection.⁸⁰ Also, pollution often affects the visitor experience, blinding travelers to the aesthetic beauty of the park. As we saw in the study above, concessions add to this pollution by serving their food and drinks in disposable materials such as plastic water bottles. It is contradictory to allow concessions to aid the pollution problem by serving waste products to NPS visitors.

i. The Water Bottle Controversy

By reversing a ban on bottled water sales at national parks, was the Trump administration attempting to reduce plastic pollution, or was there another goal?⁸¹

⁷¹ Chris Valencia, *As Park Attendance Grows, so Does Trash*, UNIV. MIAMI SCH. OF COMM’N (May 6, 2008), http://www.ournationalparks.us/park_issues/as_park_attendance_grows_so_does_trash_problem/ [https://perma.cc/R4KF-9R74].

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Weber, *supra* note 65.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Fears, *supra* note 70.

⁸⁰ *Endangered Species in our National Parks*, NAT’L PARK RESERVATIONS (Aug. 9, 2016), <https://www.nationalparkreservations.com/endangered-species-in-our-national-parks/> [https://perma.cc/4RHH-VC57]; 16 U.S.C. § 1536 (2012).

⁸¹ Fears, *supra* note 69.

Does this move reflect the NPS commitment to providing a safe and world-class visitor experience? Does it demonstrate that corporate agenda and lobbying always win, or that plastic pollution is not a global problem, or that our government is not concerned about climate change? By reversing this ban, our government sent visitors a contradictory message that the Green Parks Plan, a strategic NPS plan centered around sustainability and recycling, is not taken seriously.⁸²

The ban's reversal was approved three weeks after David Bernhardt was approved as Deputy Secretary of the Interior.⁸³ Bernhardt is a prior lobbyist with Brownstein Hyatt Farber Schreck, a law firm that represents Nestle Water (Nestle distributes Deer Park brand as well), one of the most dominant water bottle distributors in the United States.⁸⁴ This conflict made many senators question Bernhardt's bias during his confirmation hearing, because his past corporate affairs contradict the DOI's goal and "regulations to promote clean air and water."⁸⁵ Publicists exposed that the Trump administration (specifically the DOI), including Bernhardt, coincidentally worked with the same industry to sell their brand of water in the parks.⁸⁶

The water bottle industry's arguments against the ban focused on the health and safety of the three hundred million annual visitors to the NPS's 411 sites.⁸⁷ When the plastic water bottle ban was in place, the NPS spent millions of dollars constructing a sufficient amount of water stations at which people could fill their own water bottles for no cost.⁸⁸ Parks such as Zion National Park also sell reusable bottles that visitors are able to take home, and those sales increased by seventy-eight percent when the ban took place.⁸⁹ Therefore, these parks have proved the water bottle industry wrong, as the parks are able to supply purified water to its visitors and even continue to make a profit despite worry amongst some critics.⁹⁰

The decision to ban water bottles was ultimately based on the statistic that at least fifty billion plastic water bottles are thrown away by Americans annually.⁹¹ About twenty billion oil barrels were used to produce this high quantity of water bottles, the production of which emitted greenhouse-gas pollutants.⁹² The Interior Department spoiled a successful and popular "opportunity to improve the environment on the millions of acres that parks occupy,"⁹³ sending out a damaging and contradictory message to America that portrays where their priorities lie. The

⁸² Kurt Repanshek, *Traveler's View: Lost in the Water Bottle Ban Debate Is National Park Service Leadership*, NAT'L PARKS TRAVELER (Aug. 21, 2017), <https://www.nationalparkstraveler.org/2017/08/travelers-view-lost-water-bottle-ban-debate-national-park-service-leadership> [<https://perma.cc/PV6T-575S>].

⁸³ Fears, *supra* note 69.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

ban could decrease plastics going to the landfills, help reduce the amount of greenhouse gases generated by the manufacture of plastic bottles, reduce litter, protect wildlife against plastic ingestion, and save visitors money via free refilling stations.⁹⁴

B. Turn Off Your Engines

Air pollution in national parks continues to increase as vehicles, snowmobiles, jet skis, terrain vehicles, and airplane/helicopter oversights emit nitrous oxide and hydrocarbons.⁹⁵ These are all examples of transportation that concessionaires rent out to visitors for additional amenities and activities in the parks. Such air pollution has damaged the scenic beauty of the parks and disturbed plant and animal life. In the face of significant overcrowding, some parks such as Grand Canyon National Park and Zion National Park have prohibited automobiles to try to lessen the congestion and pollution.⁹⁶ In the recent past, the NPS, in an effort to alleviate the harmful effects of gas emissions, banned snowmobiles in Yellowstone and Grand Teton National Park.⁹⁷

Just like snowmobiles, Congress found that scenic over flights that concessionaires sell contribute to noise pollution and negatively impact the air quality and wildlife.⁹⁸ From April to September 2015, about 650 tourists took advantage of the helicopter oversight concession.⁹⁹ The helicopters burden 99.75 percent of Glacier National Park's visitors, yet only to allow tourists to see a miniscule piece of the park.¹⁰⁰ The NPS's Natural Sounds and Night Skies Division have proven through many studies that aircraft noise negatively burdens surrounding wildlife as well.¹⁰¹

Sounds plays a significant role in ecosystems, as many activities such as "finding desirable habitat and mates, avoiding predators, protecting young, and establishing territories are all dependent on the acoustical environment."¹⁰² Furthermore, studies show noisy environments cause animals stress; they have found that species such as the Sonoran pronghorn try to stay away from areas disturbed by military jets, and the gleaning bat is not able to hunt because of the noise from roads.¹⁰³ These effects should be carefully considered when humans generate noise

⁹⁴ Repanshek, *supra* note 82.

⁹⁵ Ansson & Hooks, *supra* note 32, at 224.

⁹⁶ *Id.* at 224.

⁹⁷ *Id.*

⁹⁸ *Id.* at 225.

⁹⁹ Ryan Wichelns, *For National Parks, Helicopter Tours are a Noisy Problem*, BACKPACKER (Feb. 28, 2017), <https://www.backpacker.com/news-and-events/national-park-helicopter-tours> [https://perma.cc/MUQ2-M99S].

¹⁰⁰ *Id.*

¹⁰¹ U.S. Dep't of the Interior, *Effects of Noise on Wildlife*, NAT'L PARK SERV., https://www.nps.gov/subjects/sound/effects_wildlife.htm [https://perma.cc/5MBY-LDQX] (last visited Jan. 15, 2018).

¹⁰² *Id.*

¹⁰³ *Id.*

in national parks, as these sounds can have negative implications on the well-being and vitality of wildlife populations within a park or even an entire ecosystem.

In 2000, Congress passed the National Parks Air Tour Management Act, which required the FAA and NPS to create a detailed plan for each park that hosts more than 50 overflights annually.¹⁰⁴ The agencies were then responsible to “incentivize quieter technology, limit flights, even ban them altogether.”¹⁰⁵ However, the problem is that the FAA has sole authority over civilian air travel in the United States and is the leading agency under the Act; since the Act does not give a deadline for the agencies to follow, there has not been a single plan implemented since its passage, leaving no change in the conduct of the overflight concessionaires.¹⁰⁶ In a 2006 Government Accountability Office report, the DOI blamed the Act’s lack of progress on the agencies’ differing mission and policies.¹⁰⁷ The agencies have not followed Congressional intent to carry out the Act’s purpose and just put the responsibility of figuring out the significance of noise pollution on the back burner. Sadly, air pollution in some of the western parks has reached the same drastic levels as those in Los Angeles.¹⁰⁸ A domino chain of effects for both animals and humans is created when human-caused noise sources stress the interconnecting system of resources that the wildlife depends on for survival. Visitors also seek natural sounds, as they travel to escape their loud and urban lives.

IV. PRESERVE NATIONAL PARKS’ ORDINARY GOALS

The idea that a variety of concession services and amenities are necessary in order to attract tourists, to ensure that national parks’ existence is not threatened, has faded. From the overcrowding tourists that fill each park, it is evident that parks are no longer at the mercy of providing extensive concession services. In order to get a gratifying experience, visitors, Congress, and even the Park Service believe that the parks should be full of the modern amenities they enjoy on a daily basis, such as “fast food, laundromats, shopping facilities, and electronic entertainment.”¹⁰⁹ In light of these increasing pressures from the public, the national parks need “reinforcement of a national re-commitment to conservation.”¹¹⁰

¹⁰⁴ Wichelns, *supra* note 98.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ U.S. GOV’T ACCOUNTABILITY OFF., GAO-06-263, NATIONAL PARKS AIR TOUR MANAGEMENT ACT: MORE FLEXIBILITY AND BETTER ENFORCEMENT NEEDED 12 (2006).

¹⁰⁸ Tony Barboza, *An ‘F’ in Air Quality: California National Parks Top the List for Worst Pollution*, LOS ANGELES TIMES (July 28, 2015), <https://www.latimes.com/local/lanow/la-me-ln-parks-air-quality-20150727-story.html> [<https://perma.cc/2RSD-ZXRD>].

¹⁰⁹ Mantell, *supra* note 10, at 49.

¹¹⁰ Antolini, *supra* note 53, at 912.

A. Small Change with a Huge Impact

The needed change in national parks “depends directly on the inconsistent generosity of Congress, the strength of advocacy organizations, the disposition of the current President, and political winds.”¹¹¹ An amendment should be put in place that clearly and explicitly prioritizes conservation of the parks’ resources, landscape, and wildlife first, and promotion of human enjoyment second. It is obtainable for both goals to be compatible, but the law should require that conservation take priority in every decision made. Rather than to promote commercialism and tourism, the Organic Act can be construed to support this interpretation since the enjoyment clause entails a condition on any use that the parks remain “unimpaired” for the future.¹¹² Also, the fact that the “conservation” clause is before the “use” clause, indicates legislators emphasized preservation and conservation as the primary goal.¹¹³

A simple amendment to change the language of the Organic Act would clarify priorities of the dual mandate and take away the tension between preservation and use and enjoyment. The amendment would add that conservation and preservation are given the highest priority at all times and that use and enjoyment should be compatible with the goal of preservation. This will give the NPS and courts a clear road map to resolve and control the present and continual conflicts that center around the dual mandate. The change would result in less litigation over concession policies because the mandate would be clear in the future and the NPS would be able to limit harmful human impacts and have conservation as its paramount focus. Our focus needs to be on conservation for future generations since we only get one chance at succeeding at that task.

An objection may be from those who disagree with this Note’s view that preservation is paramount in the Organic Act and believe the dual mandate does not place conservation as a higher priority than enjoyment. Critics who take this stance view that the dual mandate was intentionally to create flexibility for the NPS, legislators, and courts. Thus, both goals of the Act are “interdependent and simultaneous” and prioritizing one above the other would contradict with the “valid political compromise that must be respected.”¹¹⁴ Critics of preservationists also argue that putting conservation ahead of enjoyment is “elitist and undemocratic.”¹¹⁵ Preservationist Joseph Sax has been criticized for this in his own works such as when he stated that “access to the national parks should be limited to those who have the sensitivity and willingness to encounter nature of its own terms.”¹¹⁶ These are all valid objections that have been made previously by many critics, and as such, it is unlikely that such a reform of the Organic Act will be easily accomplished and passed even if there is a progressive Congress in place. However, this idea and debate

¹¹¹ *Id.* at 882.

¹¹² National Park Service Organic Act of 1916, ch. 408, 39 Stat. 535 (codified as amended at 54 U.S.C.S. § 100101 *et seq.*).

¹¹³ *See id.*

¹¹⁴ Antolini, *supra* note 55, at 916.

¹¹⁵ *Id.* at 917.

¹¹⁶ *Id.*

needs to be expressed by the public and organizations, as it might be our only hope to achieve a final resolution of the ongoing issue.

B. A Step in the Right Direction

Another simple proposal to alleviate the tension of the dual mandate consists of the administration, at a minimum, adopting policies that err on the side of preservation. Instead of sending out a message, as our government has previously done by revoking the ban of water bottles in certain national parks, the public, national parks, and government need to be building a foundation. In order to start making this movement, it is essential that the NPS engage the public by informing them of the importance of preserving our national parks for the future. It is also important that national advocacy organizations that support conservation of national parks, such as the Sierra Club, keep the public informed and involved in the movement. This could consist of different community programs that promote protection of the parks, such as clean up groups, educational programs, and replanting different species of plants. This will help our legislators see the need and desires of the public – that the public wants a change in priorities of the Organic Act.

If such a clarifying amendment were enacted, it would allow the NPS and national parks individually to enact policies to aid the problems discussed previously. For example, parks could mandate that there should be no disposable waste served by concessionaires (plastic, paper, etc.) or even reissue the plastic water bottle ban they already started. They would also be able to limit off road vehicles and oversight tours to a minimum or even eliminate them if such policy is necessary to preserve the wildlife and noise pollution within the parks.

V. CONCLUSION

Many problems such as waste and noise pollution, gas emissions, the daily wear and tear from overcrowding of tourists, and unnecessary concessions are putting the preservation of national parks in jeopardy. The two goals of conservation and enjoyment of the parks have caused many conflicts throughout the national parks' history, as the Organic Act mandate requires the NPS to accommodate both objectives. This Note takes the position that a simple amendment to the Organic Act that clarifies that preservation is of the utmost priority will take away the duality tension. In furtherance, an amendment such as this will allow the parks and the NPS to achieve successful policies such as the banning the sale of water bottles in the parks. This would send out a message to the public that the purpose of the parks is to be preserved for future generations. As such, it is up to the public, advocacy organizations, the NPS, and Congress to continue to fund and reform our national parks so that the concession industry acts in a more accountable and effective manner with the purpose of preservation at the forefront at all times.