

# MEMORANDUM OF UNDERSTANDING

between

the

**THE UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE**

the

**The UNITED STATES DEPARTMENT OF DEFENSE  
Army Corps of Engineers**

and the

**THE UNITED STATES DEPARTMENT OF THE INTERIOR  
Bureau of Land Management  
Bureau of Reclamation  
Fish and Wildlife Service  
National Park Service**

On

## CONCESSIONS<sup>1</sup> MANAGEMENT

This Memorandum of Understanding (MOU) is entered into by and among the United States Department of Agriculture, Forest Service; the United States Department of Defense, Army Corps of Engineers; and the United States Department of the Interior, Bureau of Land Management, Bureau of Reclamation, Fish and Wildlife Service, and National Park Service. Collectively, the parties to this MOU shall be referred to as Cooperators.

### I. PURPOSE

The purpose of this MOU is to promote interagency consistency and cooperation in concessions management. The Cooperators shall work together to achieve common goals. These goals include:

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<sup>1</sup>For the purposes of this Memorandum Of Understanding, a concession is the privilege of operating a business for the provision of recreation services, facilities, or activities on Federal lands or waters.

1. Introducing more competition into concessions programs first to improve the quality of services provided to the public and second to ensure a fair return to the Federal government;
2. Improving business relations and fostering interagency cooperation by making concessions policies more uniform; and
3. Making concessions programs more amenable to audit.

In achieving these goals, the Cooperators shall work together to address the recommendations for concessions management reform previously identified by the Congress, the Offices of the Inspector General, the Government Accounting Office, and the Department of the Interior's 1992, "Report of the Concessions Management Task Force Regarding Commercial Recreational Activities on Federal Lands." These recommendations include the following:

1. Form an Interagency Concessions Management Coordinating Group consisting of agency concessions management specialists and appropriate policy officials to review concessions management operations.
2. Each agency should establish and maintain a concessioner database, using a common set of data elements. The data elements for each data base should include, at a minimum, information on the (1) type of agreement; (2) length of agreement; (3) expiration date; (4) services provided; (5) annual gross receipts; (6) fees paid; (7) value of in-kind payments made in lieu of fees; (8) dates of audits; and (9) dates of reviews and evaluations.
3. Each agency should establish and maintain staff skilled in concessions management.
4. To the extent permitted by law and to the extent practicable, develop consistent provisions for concession instruments for the same types of uses.
5. Develop cooperative procedures to facilitate authorization of cross-boundary concessioner uses.
6. To the extent permitted by law, develop consistent policies for setting fees for similar types of concessions.
7. Develop and apply an accurate valuation system and reasonable controls for in-kind payments made in lieu of fees.
8. Develop eligibility and performance standards for all concessions programs.

## **II. GUIDING PRINCIPLES:**

The Cooperators shall use the following principles as a guide in implementing the recommended reforms:

1. Where permitted by law, fees for all concession instruments should be based on fair market value.
2. Using a market-based approach, establish a baseline fee for advertisements, requests for proposals, and negotiations.
3. Where permitted by law, recoup administrative costs for all concession instruments.
4. Where permitted by law, charge a fee based on fair market value for concession instruments with State and local governments that have a subordinate instrument with third parties.
5. Where permitted by law, each agency should limit the length of new concession agreements to the shortest practical period, unless a longer term is determined to be in the public interest.
6. Require agency review and approval for transfers of ownership or control of the concession operation. All concession instruments should provide that when such transfers occur, the terms of the authorization are subject to renegotiation.
7. Agencies having competitive concession opportunities, including reofferings, should advertise widely in appropriate media.
8. Unless required by law, agencies should not grant preferential rights of renewal in concession instruments.
9. Unless required by law, agencies should not grant a possessory interest in improvements covered by concession instruments.
10. Where permitted by law, compensation for a possessory interest in improvements covered by a concession instrument should be based upon book value.

The guiding principles are not to be considered binding agency policy until such time as adopted by the agencies, pursuant to any necessary procedures under the Administrative Procedure Act.

### III. STATEMENT OF MUTUAL BENEFITS AND INTEREST

The Cooperators have a common interest in providing quality visitor services and safe recreational experiences. Customer service and resource stewardship, along with ensuring a fair return to the Federal government, shall guide the Cooperators' efforts. Differences in concessions managed by the Cooperators, such as size and applicable legal requirements, are recognized, and shall be taken into consideration. A brief summary of each party's concessions program follows:

Bureau of Land Management - As a result of the Reclamation Project Act, BLM inherited recreational concession leases and their associated sites from the Bureau of Reclamation. BLM initiated a concession policy of its own in 1989.

Bureau of Reclamation - Of the approximately 250 commercial concessions on Bureau of Reclamation lands, the bureau manages 16 directly. The remainder are managed by other Federal, State, and local agencies.

Corps of Engineers - The primary objective of the Corps' concessions program is to provide services and facilities to meet public recreational demands at reasonable prices.

Forest Service - A large number and variety of commercial recreation concessions operate in the National Forests. Some of these commercial operations include ski areas, outfitting and guiding, and campgrounds.

Fish and Wildlife Service - Twenty concession enterprises are authorized to utilize lands, waters and facilities managed by the Fish and Wildlife Service.

National Park Service - The Concessions Policy Act of 1965 codifies virtually all aspects of concessions management in the National Park Service. Commercial Use Licenses, not under the purview of the Act, are used for services with minor impact on park resources.

### IV. IN CONSIDERATION OF THE ABOVE, IT IS MUTUALLY AGREED BY THE PARTIES THAT:

The Cooperators shall endeavor to meet at a frequency necessary to achieve the goals and recommendations outlined in this MOU. In doing so, they shall share information and cooperate in promoting greater consistency in their respective concessions management programs. The following considerations are recognized in implementing this MOU:

1. The public interest shall be the primary consideration of the agencies implementing this MOU.
2. In implementing this MOU, each agency shall be operating under its own laws and

regulations.

3. Nothing in this MOU is intended to alter, limit, or expand the statutory and regulatory authority of the Cooperators.
4. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU shall be handled in accordance with applicable laws, regulations, and procedures, including those for Government procurement and printing. Such endeavors shall be outlined in separate written agreements between parties and shall be independently authorized by statute. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
4. This MOU in no way restricts the parties from participating in similar activities with other public or private agencies, organizations, and individuals.
5. No member of or delegate to Congress shall benefit from this MOU either directly or indirectly.
6. Any party, in writing, may terminate this MOU in whole or in part at any time before its expiration when the other party has failed to comply with the conditions of this MOU.
7. Modifications to this MOU shall be made in writing and with the consent of the Cooperators and shall be signed and dated by the Cooperators.
8. This MOU shall expire no later than September 30, 1999, at which time it shall be subject to review and renewal or expiration.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the last date written below.

  
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Chief  
U.S. Forest Service

4 May 1995  
Date

Assistant Secretary for Civil Works  
U.S. Army Corps of Engineers

Date

Mike Dornbeck

Director  
Bureau of Land Management

5/2/95  
Date

Samuel Beaul

Commissioner  
Bureau of Reclamation

5/2/95  
Date

Jim Reynolds  
Director  
National Park Service

4/28/95  
Date

Jim G. Hogan  
Director  
U.S. Fish and Wildlife Service

5/2/95  
Date