



Public Lands & Natural Resources

FEDERAL LANDS CONCESSIONS

Counseling Concessioners, Guides, and Outfitters

Van Ness Feldman represents concessioners (or concessionaires) that provide lodging, food services, boat and cruise services, transportation, outfitter and guide services, and a variety of other visitor services in National Parks, National Forests, and other Federal lands in dealing with the highly specialized legal, regulatory, and strategic business issues that they face in their operations. The firm provides these important businesses with a broad range of services, including:

- preparation of, and strategic advice relating to, responses to prospectuses and similar proposals for new or renewed contracts;
- contract negotiation;
- possessory interest determinations and appraisals;
- assignments (*i.e.*, sales and other transfers) of contracts/permits or ownership interests;
- litigation; and
- legislative and administrative advocacy.

Van Ness Feldman's clients include concessioners and outfitters and guides, and their trade associations, which provide recreational opportunities on Federal lands throughout the United States and its territories. Our clients operate in areas including, among others: Grand Canyon National Park; Grand Teton National Park; Glen Canyon National Recreation Area; Big Bend National Park; Lake Mead National Recreation Area; Glacier Bay National Park; Virgin Islands National Park; Buck Island Reef National Monument; Dry Tortugas National Park; Olympic National Park; Gateway National Recreation Area; and Lake Berryessa, California.

Building and Fostering Cooperative Relationships Between Our Clients and the Federal Public Lands Management Agencies

We are proud of our ability to build and foster strong partnerships between private sector entities and the National Park Service (NPS), U.S. Forest Service (USFS), U.S. Bureau of Reclamation, and other Federal land management agencies. Howard Feldman, a founding member and current Chairman of the firm, has worked on behalf of concessions clients for more than thirty-five years. During his career, he has served as general counsel to the Wolf Trap Foundation for the Performing Arts (the first National Park dedicated to the performing arts), provided legal guidance to the Kennedy Center, and represented dozens of individual concessions operations. As general counsel to (and five-term board member of) the Wolf Trap Foundation, Mr. Feldman worked on the development of

precedent-setting cooperative arrangements between a private non-profit foundation and the NPS. More recently, he helped facilitate the conversion of a longstanding concessioner into a foundation, which funds improvements in the National Parks it once served. Today, our attorneys continue this work by developing and pursuing both traditional as well as innovative approaches to concessions-related matters.

Thirty Years of Specialized Experience as Advisors to the Concessions Industry

Having represented concessioners since the firm's inception over 30 years ago, our attorneys possess substantial expertise in matters relating to the Concessions Management Improvement Act (CMIA), the now-repealed Concessions Policy Act, the National Environmental Policy Act, the Wilderness Act, the National Park Service Organic Act, and the many other federal laws, regulations and formal and informal policies that affect the Federal land management agencies and their unique governmental relationship with concessioners.

Van Ness Feldman has particular experience and expertise with:

Concession Contracts. Assisting clients throughout the agency contracting process, whether in providing strategic advice on responding to a new prospectus, drafting a response to a prospectus, amending an existing contract, seeking a contract interpretation, or securing a contract extension.

Resolution of Possessory Interest Valuation. Resolving the valuation of possessory interest, in expectation of the expiration of existing NPS contracts issued under the 1965 Concessions Policy Act and issuance of new contracts under the CMIA. Van Ness Feldman attorneys (some of whom are also certified public accountants) help clients obtain fair value for their possessory interest property in accordance with established legal and accounting standards, and have significant experience and success in negotiating with the NPS regarding such interests.

Transfers/Assignments. Obtaining required agency approval of assignments of interests in concession contracts or in concessioners themselves. Van Ness Feldman attorneys provide strategic advice on such transfers and can prepare and submit the necessary documentation to obtain agency approval. Where appropriate, the firm can assist clients in structuring innovative transactions to advance both the client's interest and conservation and other resource goals, such as through the concept of a foundation, which the firm employed with the sale of a non-profit concessioner operating in five National Parks.

Litigation. Representing clients in a variety of disputes involving the federal land management agencies over matters such as ratings, franchise fee adjustments, rates, provision of new services, management planning, and routine contract administration issues.

Advocacy. Advocating the interests of concessioners, outfitters, and guides before Congress, the Departments of the Interior and Agriculture, the NPS, USFS, Bureau of Reclamation, and other governmental entities. Having worked for decades in both the public and private sectors to create, influence, shape, implement, and comply with the laws governing the provision of visitor services on Federal lands, our professionals have an in depth understanding of the nuances of policymaking in both Congress and the Executive Branch and are well-equipped to effectively advocate concessioners' interests.

Selected Representative Matters

- **Grand Canyon National Park-River Management Planning Litigation.** The firm represented the trade association of Grand Canyon whitewater river outfitters and guides in federal court litigation, assisting in the settlement of a lawsuit that led to the resumption of the river management planning process for Grand Canyon National Park, and in a subsequent favorable decision by the U.S. Court of Appeals for the Ninth Circuit upholding the National Park Service's 2006 Colorado River Management Plan.
- **Glacier Bay National Park—Approval of Assignment.** The firm provided strategic and legal counsel to a major cruise ship line with respect to the impact of its worldwide reorganization on the company's boat and cruise service concession in Alaska under the jurisdiction of the NPS.
- **Yellowstone National Park—Government Buyout of Concessioner.** Firm attorneys successfully negotiated a government buyout of one of the then-largest concessioners in Yellowstone National Park, including acquisition of the concessioner's possessory interest in buildings and other assets, and worked successfully to obtain funding for the purchase through the appropriations process.
- **Glen Canyon National Recreation Area—Prospectus Response.** Firm attorneys assisted the concessioner in preparing its successful bid to obtain the competitive award of a concession contract in Glen Canyon National Recreation Area.
- **Big Bend, Olympic, Mammoth Cave, Isle Royale, and Blue Ridge Parkway National Parks—Approval of Assignments.** The firm provided legal counsel and overall coordination with regard to the transfer of five separate concessions operated under a single, unique contract.
- **Advocacy Relating to the Concessions Management Improvement Act and Implementing Regulations.** The firm advocated the interests of several of our concessions clients during Congress's consideration of the CMIA and in the NPS rulemaking process that led to the development of the regulations implementing the Act and the current standard concession contract.