

1 DANIEL G. KNAUSS  
United States Attorney  
District of Arizona  
2 SUE A. KLEIN  
Assistant U.S. Attorney (Az. Bar #11253)  
3 Two Renaissance Square  
40 North Central Avenue Suite 1200  
4 Phoenix, Arizona 85004  
(602) 514-7500  
5 E-mail: sue.klein@usdoj.gov

6 RONALD J. TENPAS  
Acting Assistant Attorney General  
ANDREW A. SMITH  
7 Trial Attorney (NM Bar #8341)  
United States Department of Justice  
8 Environment and Natural Resources Division  
c/o U.S. Attorneys Office  
9 P.O. Box 607  
Albuquerque, New Mexico 87103  
(505) 224-1468  
10 E-mail: andrew.smith@usdoj.gov

11 Attorneys for Federal Defendants

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ARIZONA

14 RIVER RUNNERS FOR	)	
WILDERNESS, et al.,	)	Civ. No. 06-0894-PCT-DGC
	)	
15 Plaintiffs,	)	
	)	
16 v.	)	<b>FEDERAL DEFENDANTS' AND</b>
	)	<b>DEFENDANT-INTERVENORS'</b>
17 STEPHEN P. MARTIN, et al., <sup>1</sup>	)	<b>JOINT STATEMENT OF MATERIAL</b>
	)	<b>FACTS IN SUPPORT OF SUMMARY</b>
18 Federal Defendants,	)	<b>JUDGMENT</b>
	)	
19 GRAND CANYON RIVER	)	
OUTFITTERS ASSOCIATION;	)	
20 GRAND CANYON PRIVATE	)	
BOATERS ASSOCIATION,	)	
	)	
21 Defendant-Intervenors.	)	
22 _____	)	

23 Pursuant to LRCiv 56.1(a), Federal Defendants and Defendant-Intervenors, by and  
24 through undersigned counsel of record, hereby submit the following statement of undisputed  
25 material facts in support of their respective motions for summary judgment:

26 \_\_\_\_\_  
27 <sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Stephen P. Martin, the current Superintendent of  
Grand Canyon National Park, is substituted for his predecessor, Joseph F. Alston.

1           **Prefatory Note:** Each of Plaintiffs' claims seeks judicial review of agency actions  
2 pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. The Ninth Circuit  
3 has held that summary judgment motions are an appropriate vehicle for resolving challenges  
4 to agency action under the APA. See Northwest Motorcycle Assn. v. U.S. Dept. of  
5 Agriculture, 18 F.3d 1468, 1471-72 (9th Cir. 1994). Nonetheless, judicial review of federal  
6 agency actions under the APA does not call for this Court to make factual findings on the  
7 merits or to determine the existence of genuine issues of disputed material facts on summary  
8 judgment. Rather, the Court's task is to review the Administrative Record that was before  
9 the federal agencies at the time they made the challenged decisions to determine whether,  
10 as a matter of law, that Record supports the agencies' decisions or whether the agencies'  
11 decisions are arbitrary, capricious or otherwise contrary to law. 5 U.S.C. § 706; Florida  
12 Power & Light Co. v. Lorion, 470 U.S. 729 (1985). Because the Court need not, and may  
13 not, "find" underlying facts, there are no material facts essential to the Court's resolution of  
14 this action. See, e.g., Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986); Lujan v. National  
15 Wildlife Federation, 497 U.S. 871, 883 (1990).

16           Thus, the "facts" necessary for resolution of this case on the pending cross-motions  
17 for summary judgment are set forth in the Administrative Record before the Court, and the  
18 "Statements of Material Facts" submitted by the Parties in support of their respective motions  
19 for summary judgment should be viewed as the Parties' summary and characterization of  
20 materials in the Record that support their legal arguments under the APA standard of review.

### 21           **Establishment and Administration of Grand Canyon National Park**

22           1. President Theodore Roosevelt established Grand Canyon National Monument  
23 through Proclamation No. 794, 35 Stat. 2175 (1908), to protect the Grand Canyon of the  
24 Colorado River, "the greatest eroded canyon within the United States." Congress established  
25 Grand Canyon National Park ("GRCA" or "Park") through the Act of February 26, 1919, ch.  
26 44, 40 Stat. 1175, and enlarged it through the Grand Canyon National Park Enlargement Act,  
27 Pub. L. No. 93-620, 88 Stat. 2089 (1975), as amended by the Act of June 10, 1975, Pub. L.

1 No. 94-31, 89 Stat. 172.<sup>2</sup>

2 2. Under 16 U.S.C. § 222, the National Park Service ("NPS"), United States  
3 Department of the Interior, administers GRCA as a unit of the National Park System in  
4 accordance with what is commonly referred to as the NPS Organic Act, Act of August 25,  
5 1916, ch. 408, 39 Stat. 535, codified as amended at 16 U.S.C. §§ 1 and 2-4 (2006), and with  
6 other laws applicable generally to units of the National Park System, including NPS's  
7 concessions authority.<sup>3</sup>

8 3. Section 1 of the NPS Organic Act directs the NPS to "promote and regulate the use  
9 of the Federal areas known as national parks, monuments, and reservations hereinafter  
10 specified . . . by such means and measures as conform to the fundamental purpose of the said  
11 parks, monuments, and reservations, which purpose is to conserve the scenery and wild life  
12 therein and to provide for the enjoyment of the same in such manner and by such means as  
13 will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. Section  
14 3 of the Organic Act directs the Secretary of the Interior to "make and publish such rules and  
15 regulations as he may deem necessary or proper for the use and management of the parks,  
16 monuments, and reservations under the jurisdiction of the National Park Service." 16 U.S.C.  
17 § 3. A later statute, enacted as part of the Act of October 7, 1976, Pub. L. No. 94-458, 90  
18 Stat. 1939, authorizes the Secretary of the Interior to "[p]romulgate and enforce regulations  
19 concerning boating and other activities on or relating to waters located within areas of the  
20 National Park System, including waters subject to the jurisdiction of the United States." 16  
21 U.S.C. § 1a-2(h)

22 4. Acting under its various statutory authorities, the NPS has promulgated regulations

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23 <sup>2</sup> The various statutes pertaining to GRCA's establishment and enlargement are  
24 codified at 16 U.S.C. §§ 221-228j (2006).

25 <sup>3</sup> NPS's current concessions authority, the National Park Service Concessions  
26 Management Improvement Act of 1998 ("CMIA" or "Concessions Act"), was enacted as title  
27 IV of the National Parks Omnibus Management Act of 1998, Pub. L. No. 105-391, 112 Stat.  
3497, 3503, and is codified at 16 U.S.C. §§ 5951-66 (2006). The CMIA repealed the former  
NPS concessions authorization law, which had been codified at 16 U.S.C. §§ 20-20g (1994).

1 specifically governing the use of the Colorado River within GRCA. See 36 C.F.R. § 7.4(b).  
2 NPS also has entered into concession contracts with 16 private entities to provide motorized  
3 and non-motorized boat trips for the public on the Colorado River within GRCA. AR  
4 104606 (FEIS Vol. I at 19).<sup>4</sup>

### 5 Grand Canyon National Park and Wilderness

6 5. In 1964, Congress enacted the Wilderness Act, Pub. L. No. 88-577, 78 Stat. 890,  
7 establishing the National Wilderness Preservation System. See 16 U.S.C. §§ 1131-36.  
8 Under the Wilderness Act, federal agencies may recommend areas under their jurisdiction  
9 for wilderness designation, but only Congress may designate those areas as wilderness. Id.  
10 § 1132. There is no timetable or deadline for Congress to act to designate an area as  
11 wilderness. Id.

12 6. Subsection 4(d)(1) of the Wilderness Act authorizes permitting the continued use  
13 of aircraft and motorboats within designated wilderness, "where these uses have already  
14 become established." 16 U.S.C. § 1133(d)(1). Accordingly, the NPS Management Policies  
15 contemplate "the continuation of motorboat and aircraft use under certain circumstances in  
16 which those activities were established prior to wilderness designation." Id. § 6.4.3.3.

17 7. The Grand Canyon National Park Enlargement Act, as amended in June 1975,  
18 required the Secretary of the Interior to report to the President, within two years, "his  
19 recommendation as to the suitability or nonsuitability of any area within the national park  
20 for preservation as wilderness." 16 U.S.C. § 228i-1. In 1977, NPS prepared a "Final  
21 Wilderness Recommendation" for GRCA that proposed the Colorado River corridor as  
22 wilderness. SAR 002678-810 (particularly SAR 002695). That recommendation was  
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24 <sup>4</sup> Citations to materials in the Administrative Record lodged with the Court on  
25 September 21, 2006, Dkt. No. 42, or the Supplemental Administrative Record lodged on  
26 February 16, 2007, Dkt. No. 50, are provided in the form of "AR ##" and "SAR ##,"  
27 respectively, where "##" is the Bates number of the specific page or pages referenced. For  
the convenience of the Court and the Parties, citations to pages in certain core Administrative  
Record documents, such as the Final Environmental Impact Statement ("FEIS"), are given  
in parallel to the actual page numbers of those documents.

1 forwarded to the Department's office of legislative counsel but was held in abeyance pending  
2 completion of the Park's first comprehensive river management plan. AR 104604 (FEIS Vol.  
3 I at 17); AR 104820 (FEIS Vol. I at 233). In 1980, upon completion of the plan, the NPS  
4 resubmitted the wilderness recommendation to the Department, proposing the Colorado  
5 River as "potential wilderness pending the phase-out of non-wilderness use by motorized  
6 craft." SAR 005787; see also AR 104604 (FEIS Vol. I at 17); AR 104820 (FEIS Vol. I at  
7 233); see generally SAR 005770-893.

8 8. In 1993, NPS prepared a document titled "1993 Update/Final Wilderness  
9 Recommendation." The 1993 Update again proposed the Colorado River corridor as  
10 potential wilderness, "pending resolution of the motorized riverboat issue." AR 104604  
11 (FEIS Vol. I at 17); SAR 008274-008311 (particularly SAR 008292).

12 9. Congress has not designated any portion of GRCA as wilderness. AR 104604  
13 (FEIS Vol. I at 17); AR 104820-23 (FEIS Vol. I at 233-36); AR 105206 (FEIS Vol. III at  
14 369).

15 10. Until Congress acts on any wilderness recommendation for GRCA, the FEIS  
16 indicates that NPS will manage the Colorado River corridor within GRCA as "potential  
17 wilderness" in accordance with internal NPS guidance, including the NPS Management  
18 Polices. AR 104821 (FEIS Vol. I at 234).

19 11. In 2004, the GRCA Superintendent obtained the written concurrence of the  
20 Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks in his  
21 conclusion, based on advice provided by his legal counsel, that "in developing the new  
22 CRMP [Colorado River Management Plan] the NPS may consider alternatives that permit  
23 the continued use of motorboats on the Colorado River in the park without violating the  
24 Wilderness Act or any written NPS policy." Attachment 2 to Federal Defendants'  
25 Supplemental Notice of Lodging Administrative Record, Dkt. No. 42, September 21, 2006.<sup>5</sup>

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27 <sup>5</sup> Defendant-Intervenor Grand Canyon Private Boaters Association joins in paragraphs  
11, 26 and 56 only insofar as those paragraphs provide that the Superintendent's memo dated

1 **History of NPS's Management of Colorado River within GRCA**

2 12. Use of the Colorado River within GRCA increased substantially after completion  
3 of the Glen Canyon Dam in 1963 resulted in a steady flow of water in the River and made  
4 river-running feasible on a year-round basis. In 1967, only 2,100 people ran the River  
5 through the Park; by 1972 that number had risen nearly eightfold to 16,500, exceeding total  
6 use during the 100-year period from 1870 through 1969. That enormous increase resulted  
7 in deleterious impacts on sensitive inner canyon resources: accumulating trash, charcoal, and  
8 human waste; development of multiple informal trails to points of interest; and damage to  
9 cultural resources near the River. It also led to competition and conflicts among diverse  
10 user-groups. AR 104590 (FEIS Vol. I at 3); SAR 005230-35; SAR 007528-30.

11 13. At that time, NPS initiated the first in a series of river planning and management  
12 efforts, culminating in a River Use Plan issued in December 1972. SAR 000712-30.<sup>6</sup> During  
13 the ensuing three decades, that plan was followed, in order, by a number of other river  
14 planning and management documents:

15 <u>Title of Document</u>	<u>Date</u>	<u>AR Citation</u>
16 Draft Environmental Statement 17 Proposed: Establishment of Visitor Use 18 Limits on the Colorado River Through 19 Grand Canyon National Park, Arizona	February 13, 1973	SAR 000913-71
20 Colorado River Management Plan 21 ("1979-80 CRMP")	Dated 1980 (Approved December 20, 1979)	SAR 005223-85
22 Colorado River Management Plan and 23 Annual Operating Requirements 24 ("1981 CRMP")	CRMP dated December 1981; Record of Decision signed January 28, 1982	SAR 005921-61 SAR 006063-67
25 Colorado River Management Plan 26 ("1989 CRMP")	Dated September 1989 (Approved September 14, 1989)	SAR 007522-612
27 Final Environmental Impact Statement and Record of Decision/Colorado River	FEIS dated November 2005; Record of Decision approved	AR 104555-106104

28 \_\_\_\_\_  
29 April 27, 2004 was relied upon by NPS and appears in the Administrative Record with the  
30 Supplemental Notice of Lodging.

31 <sup>6</sup> No statute, regulation, guideline, or policy requires NPS to develop or revise a river  
32 management plan.

1 Management Plan ("2006 CRMP") February 17, 2006  
2 The documents listed above analyze the impacts of visitor use on the Colorado River  
3 corridor's resources and attempt to establish the corridor's "carrying capacity." See, e.g., AR  
4 109607-08 (Record of Decision ("ROD") for 2006 CRMP at 17-18); AR 104617-19 (FEIS  
5 Vol. I at 30-32). All quantify visitor use in terms of user-days. E.g., AR 109593 (ROD for  
6 2006 CRMP at 3). One person using the river for any portion of one day equals one user-  
7 day. AR 104621 (FEIS Vol. I at 34). In all of the planning documents listed above, NPS  
8 allocated the number of user-days between professionally outfitted and guided (i.e.,  
9 commercial) boaters and self-outfitted and self-guided (i.e., private or noncommercial)  
10 boaters.

11 14. The 1973 Draft Environmental Statement allocated 89,000 user-days to  
12 commercial users and 7,600 user-days to noncommercial users, or a ratio of 92.1 percent  
13 commercial to 7.9 percent noncommercial. SAR 000916.

14 15. The 1979-80 CRMP allocated 115,500 user-days to commercial users and 54,450  
15 user-days to noncommercial users, or a ratio of 67.9 percent commercial to 32.1 percent  
16 noncommercial, divided between "summer" (April 16-October 15) and "winter" seasons  
17 (October 16-April 15). SAR 005244-51. That allocation was "based on the best available  
18 information on the demand for commercial and noncommercial trips." Several factors  
19 complicated the NPS's allocation decision, including the absence of a means to count the  
20 number of potential commercial passengers turned away because certain dates are full,  
21 duplicate applications for noncommercial trips, and false applications for noncommercial  
22 trips. Because of those factors, the "allocation ratio is . . . a best estimate based on  
23 experience and on interpretation of the available data." SAR 005249-50.

24 16. The 1981 CRMP and 1989 CRMP incorporated the annual allocation announced  
25 in the 1979-80 CRMP, with only minor changes to the seasonal definitions and allocations.  
26 SAR 005930; SAR 007530.

27 17. The 2006 CRMP continues to cap commercial use at 115,500 user-days annually;

1 all of that use will occur between April 1 and October 31, during what the 2006 CRMP calls  
2 the "summer season" (May 1-August 31) and most of the "shoulder seasons" (March 1-April  
3 30 and September 1-October 31).<sup>7</sup> The 2006 CRMP does not cap noncommercial user-days.  
4 Based on expected number of launches and group size, NPS estimates that noncommercial  
5 boaters will use 79,399 user-days during the summer and shoulder seasons and 34,087 user-  
6 days during the winter season, or a total of 113,486 user-days. Therefore, as measured in  
7 user-days, the 2006 CRMP allocates approximately 50.3 percent of annual use to commercial  
8 boaters and 49.7 percent to noncommercial boaters. During the summer and shoulder  
9 seasons the ratio is 59.3 percent commercial to 40.7 percent noncommercial. AR 109592-93  
10 (ROD at 2-3).

11 18. In the 1979-80 CRMP, NPS announced a plan to phase out the use of motorized  
12 watercraft on the Colorado River within GRCA over a five-year period. SAR 005244. In  
13 the appropriations act for the Department of the Interior and related agencies for federal  
14 fiscal year 1981, Congress responded to the NPS's plan by enacting a provision, sponsored  
15 by Senator Orrin Hatch and commonly referred to as the "Hatch Amendment," that  
16 prohibited the use of funds appropriated by the act "for the implementation of any  
17 management plan for the Colorado River within Grand Canyon National Park which reduces  
18 the number of user days or passenger-launches for commercial motorized watercraft  
19 excursions, for the preferred use period, from all current launch points below that which was  
20 available for the same period in the calendar year 1978." Title I, § 112 of the Act of  
21 December 12, 1980, Pub. L. No. 96-514, 94 Stat. 2957, 2972; SAR 005896-5900; SAR  
22 005901-02. In response to that legislative restriction, NPS revised the 1979-80 CRMP to  
23 produce the 1981 CRMP, which, among other things, removed the five-year phase-out of  
24 motorized watercraft. SAR 005903-10; SAR 005921-61 (particularly SAR 005928).  
25 Subsequent river management plans have not called for the phase-out of motorized

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27 <sup>7</sup> The 2006 CRMP permits only noncommercial use between November 1 and March 31. AR 109593 (ROD at 3).



1 watercraft, and NPS has continued to issue concession contracts requiring the use of motors.

2 **1995 General Management Plan**

3 19. In August 1995, NPS approved a general management plan ("1995 GMP") for  
4 GRCA. AR 010126-99. The 1995 GMP guides the management of resources, visitor use,  
5 and general development at the Park over a 10- to 15-year period. AR 010132 (1995 GMP  
6 at 1). The plan focuses on the Park's developed areas: South Rim, North Rim, Tuweep, and  
7 the corridor or cross-canyon trails. AR 010132 (1995 GMP at 1). Among its many  
8 management objectives, the 1995 GMP includes the following:

9 Manage the Colorado River corridor through Grand Canyon National Park to  
10 protect and preserve the resource in a wild and primitive condition. Actively  
11 pursue the designation of eligible segments as part of the national wild and  
12 scenic rivers system.

12 Provide a wilderness river experience on the Colorado River (this objective  
will not affect decisions regarding the use of motorboats on the river).

13 AR 010138-42 (1995 GMP at 7-11).

14 20. With respect to the CRMP, the 1995 GMP states:

15 The park's 1989 *Colorado River Management Plan* will be revised as needed  
16 to conform with the direction given in the management objectives of this  
17 *General Management Plan*. The use of motorboats will be addressed in the  
18 revised plan, along with other river management issues identified through the  
scoping process. The revised plan will also conform to NPS direction and  
responsibilities as set forth in the *Operation of Glen Canyon Dam Final  
Environmental Impact Statement* (Bureau of Reclamation).

19 AR 010182 (1995 GMP at 57).

20 **2006 Colorado River Management Plan**

21 21. In the 1989 CRMP, NPS stated that it would conduct a "comprehensive plan  
22 review" within a five- to 10-year period. SAR 007535.

23 22. In 1997, NPS initiated that review, hosting public scoping workshops in Portland,  
24 Oregon; Salt Lake City, Utah; and Phoenix, Arizona, and inviting written public comments  
25 on river issues. SAR 10432-10433. That review process continued on and off until February  
26 2000, when it was suspended by GRCA Superintendent Robert L. Arnberger. SAR 014305-  
27 014429. His decision to suspend the planning process precipitated the filing of two lawsuits,

1 one styled Randall v. Babbitt, No. CIV 00-349 MV/WWD (D.N.M.), and the other Grand  
2 Canyon Private Boaters Ass'n v. Arnberger (hereinafter "GCPBA"), No. CIV 00-1277 PCT-  
3 PGR-TSZ (D. Az.). NPS settled GCPBA by agreeing to restart the planning process within  
4 120 days after dismissal of the action and to complete a new CRMP by December 31, 2004.  
5 AR 104593-94 (FEIS Vol. I at 6-7); see [www.nps.gov/archive/grca/crmp/documents/index](http://www.nps.gov/archive/grca/crmp/documents/index)  
6 (copy of settlement agreement).<sup>8</sup>

7 23. On June 13, 2002, NPS published in the Federal Register a notice of intent to  
8 prepare an environmental impact statement ("EIS") for a revised CRMP. AR 105847 (FEIS  
9 Vol. II at 810).

10 24. In 2002, NPS hosted a series of public scoping meetings at the following  
11 locations:

- 12 August 1, 2002 Denver, Colorado
- 13 August 6, 2002 Sandy, Utah (suburb of Salt Lake City)
- 14 August 8, 2002 Flagstaff, Arizona
- 15 August 13, 2002 Las Vegas, Nevada
- 16 August 15, 2002 Mesa, Arizona
- 17 September 30, 2002 Towson, Maryland (suburb of Baltimore)
- 18 October 2, 2002 Oakland, California

19 More than a thousand people attended those meetings. AR 105847-105848 (FEIS Vol. II at  
20 810-11). During the public scoping process, NPS received approximately 13,770 written  
21 submissions containing approximately 55,165 comments. AR 105848 (FEIS Vol. II at 811).  
22 The public identified the following major issues: access and visitor services; motors and  
23 aircraft use; allocation and the noncommercial permit system; level of use/crowding, trip  
24 length, and group size; and resource protection, tribal issues, and NPS regulations. AR

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25  
26 <sup>8</sup> On April 19, 2004, the District Court in New Mexico denied the Randall plaintiffs' request  
27 for an adjustment of the allocation between commercial and noncommercial boaters, but  
ordered NPS "to complete a comprehensive plan review, as had been contemplated by the  
1989 CRMP, within a reasonable time." 2003 U.S. Dist. LEXIS 27224.

1 105848-49 (FEIS Vol. II at 811-12). In January and June 2003, an NPS contractor conducted  
2 four intensive "stakeholder workshops" and one public workshop on various issues, including  
3 allocation of recreational use and motor use on the river. AR 105849 (FEIS Vol. II at 812).

4 25. In 1998, NPS had contracted with two researchers, Dr. Troy Hall and Dr. Bo  
5 Shelby, to conduct a sociological study on river runners and river running in the Grand  
6 Canyon. They provided NPS a June 15, 2000, report titled "1998 Colorado River Boater  
7 Study, Grand Canyon National Park." SAR 015411-624. The objective of the 1998 study  
8 was "to obtain information about boaters' experiences, and especially how social conditions  
9 affect experiences. One goal was to evaluate conditions (encounters) in relation to NPS  
10 management standards. Another was to replicate a 1975 study to assess how conditions and  
11 visitor attitudes had changed." SAR 015426. In early 2004, NPS received from Dr. Shelby  
12 and another researcher, Dr. Doug Whittaker, a "technical memorandum" titled "River  
13 Running in the Grand Canyon: Current Situation and Social Impacts of Alternatives." AR  
14 107899-8079. That technical memorandum summarized the older and more recent research  
15 and provided detailed information about social and visitor experience issues related to  
16 recreational river running. AR 107908. NPS used the 2004 technical memorandum to  
17 develop the descriptions and analyses of visitor use and experience in both the draft and final  
18 environmental impact statements. AR 107908; AR 106047 (FEIS Appendix G).

19 26. In a memorandum dated April 27, 2004, the GRCA Superintendent sought  
20 concurrence of the Department of the Interior's Assistant Secretary for Fish and Wildlife and  
21 Parks in his conclusion, based on advice provided by legal counsel, that in preparing the  
22 revised CRMP he legitimately could consider alternatives permitting the continued use of  
23 motors on the Colorado River without violating the Wilderness Act or any written NPS  
24 policy. On November 10, 2004, the Assistant Secretary signed the concurrence line on the  
25 Superintendent's memorandum, which previously had been endorsed by the NPS's Regional  
26 Director and NPS's Director in Washington, D.C. Attachment 2 to Federal Defendants'  
27 Supplemental Notice of Lodging Administrative Record, Dkt. No. 42, September 21, 2006.

1 In his memorandum, the Superintendent first observes that under section 4(d)(1) of the  
2 Wilderness Act the administering federal official generally has discretion to permit continued  
3 motorboat use where it has already become established. "It is undisputable," he continues,  
4 "that motorboat use has already become established on the Colorado River within GRCA."  
5 After quoting the relevant section of the NPS Management Policies, he then observes that  
6 "continued motorboat use on the Colorado River does not permanently impact wilderness  
7 resources or permanently denigrate wilderness values (but rather causes only a temporary or  
8 transient disturbance) and therefore does not compromise possible future wilderness  
9 designation." In support of that proposition, he cites a January 20, 1999, document prepared  
10 by the Washington, D.C., Solicitor's Office stating that "the use of motors is not an  
11 irretrievable commitment of resources that would foreclose meaningful congressional  
12 consideration of a wilderness proposal. (The use of motors is not equivalent to cutting  
13 trees.)" "Therefore," the Superintendent concludes, "the NPS Management Policies and  
14 Director's Order [# 41] do not require the NPS to seek to remove motorboat use from the  
15 river."

16 27. In the fall of 2004, NPS released for public review the draft environmental impact  
17 statement ("DEIS") for the revised CRMP. AR 102375-618 (DEIS Vol. I); AR 102619-3228  
18 (DEIS Vol. II); AR 105849-50 (FEIS Vol. II at 812-13). The DEIS presented eight  
19 alternatives (identified as Alternatives A-H) for managing the River from Lees Ferry (River  
20 Mile 0) to Diamond Creek (River Mile 226) and five alternatives (identified as Alternatives  
21 1-5) for managing the River from Diamond Creek (River Mile 226) to Lake Mead (River  
22 Mile 277). AR 102381-87 (DEIS Vol. I at v-xi). The various alternatives (and combinations  
23 of alternatives) incorporated a wide range of options to accommodate both commercial and  
24 noncommercial users. Because of the complexity of the DEIS and the level of public  
25 interest, NPS extended the standard 90-day public comment period on the DEIS from its  
26 original ending date of January 7, 2005, to February 1, 2005. AR 105849 (FEIS Vol. II at  
27 812). In 2004, NPS hosted a series of public meetings to receive public comments on the

1 DEIS at the following locations:

2	November 8, 2004	Denver, Colorado
3	November 10, 2004	Salt Lake City, Utah
4	November 16, 2004	Washington, D.C.
5	November 18, 2004	Las Vegas, Nevada
6	November 22, 2004	Flagstaff, Arizona
7	November 30, 2004	Phoenix, Arizona
8	December 2, 2004	San Francisco, California

9 Approximately a thousand people attended those meetings. AR 105849-50 (FEIS Vol. II at  
10 812-13). During the public review period, NPS received almost 10,000 written submissions  
11 containing approximately 6,000 substantive and 30,000 nonsubstantive comments. AR  
12 105850 (FEIS Vol. II at 813); AR 104840 (FEIS Vol. III at 1). NPS reviewed, coded, and  
13 organized the substantive comments into subject-matter categories, including allocation,  
14 concessions, natural soundscape, visitor use and experience, and wilderness. AR 104838-39  
15 (FEIS Vol. III at i-ii). NPS then analyzed and responded to those comments, where  
16 appropriate modifying the DEIS as a result. E.g., AR 105207 (FEIS Vol. III at 370) (in  
17 response to public comments, NPS added "wilderness character" as impact topic).

18 28. Among the comments received by NPS were a set of joint comments from a  
19 coalition of groups representing both commercial and noncommercial users of the Colorado  
20 River within GRCA--the Grand Canyon River Outfitters Association, the Grand Canyon  
21 Private Boaters Association, American Whitewater, and the Grand Canyon River Runners  
22 Association--regarding how best to revise the CRMP in a manner that would resolve  
23 longstanding river management controversies. AR 050534-41. Their joint comments  
24 supported equal allocation of use between commercial and noncommercial use on an annual  
25 basis, the continued authorization of an appropriate level of motorized use, seasonal  
26 adjustments that would result in fewer river trips occurring at one time, and improvements  
27 to the noncommercial permit system. AR 060444-51; AR 050468.

1           29. In November 2005, NPS released the three-volume Final Environmental Impact  
2 Statement ("FEIS") for the revised CRMP. AR 104555-833 (Vol. I); AR 105919-6104  
3 (Appendixes); AR 105262-918 (Vol. II); AR 104834-5261 (Vol. III).

4           30. On February 17, 2006, the NPS Regional Director approved the Record of  
5 Decision ("ROD") for the revised CRMP. AR 109590-626. In the ROD, NPS announced  
6 that it had selected for implementation the preferred alternatives--Modified Alternative H  
7 (Lees Ferry to Diamond Creek) and Modified Alternative 4 (Diamond Creek to Lake Mead)--  
8 described in the FEIS. AR 109592 (ROD at 2).

9           31. In accordance with regulations (40 C.F.R. chapter V (parts 1500-17))  
10 promulgated by the Council on Environmental Quality pursuant to Section 102(2) of the  
11 National Environmental Policy Act of 1969, the FEIS analyzes the cumulative effects of each  
12 alternative when added to other past, present, and reasonably foreseeable future actions,  
13 including operation of Glen Canyon Dam, backcountry management at GRCA, Hualapai  
14 Tribal actions solely on their land, air tour management efforts at GRCA, and comprehensive  
15 noise management at GRCA. NPS analyzed the cumulative effects on various aspects of the  
16 affected environment, each of which is identified in the FEIS as a "resource topic" or "impact  
17 topic." AR 105277-78 (FEIS Vol. II at 240-41); AR 1052856 (FEIS Vol. II at 249).

18           32. In the FEIS, NPS adopted management zones based on the recreational  
19 opportunity spectrum, a planning framework that recognizes that people participate in  
20 various recreational activities in different biophysical/social/managerial settings to realize  
21 various experiences. AR 104626 (FEIS Vol. I at 39). The FEIS divides the Colorado River  
22 corridor into four zones, ranging from "primitive" (Lees Ferry to Diamond Creek) to "urban"  
23 (park boundary to Lake Mead). AR 104626-29 (FEIS Vol. I at 39-42).

24           33. Through the process of developing the DEIS and the FEIS, NPS considered and  
25 determined the Colorado River corridor's "visitor carrying capacity," which NPS defined as  
26 "the type and level of visitor use that can be accommodated while sustaining acceptable  
27 resource and social conditions that complement the park." The concept of carrying capacity

1 is intended to safeguard the quality of Park resources and the visitor experience. Park  
2 resources encompass all of the biophysical, aesthetic, and cultural elements and features  
3 contained in a park. AR 102428-30 (DEIS Vol. I at 26-28); AR 104617-19 (FEIS Vol. I at  
4 30-32).

5 34. NPS also considered the equitable allocation of use between commercial and  
6 noncommercial boaters without exceeding the Colorado River corridor's carrying capacity.  
7 AR 102426-28 (DEIS Vol. I at 24-26); AR 104615-17 (FEIS Vol. I at 28-30). Although  
8 relative demand for commercial and noncommercial trips is difficult, if not impossible, to  
9 measure, multiple sources indicate that demand exceeds supply for both commercial and  
10 noncommercial trips. AR 104785-86 (FEIS Vol. I at 198-99).

11 35. As discussed above, the 2006 CRMP adjusts the allocation of use between  
12 commercial and noncommercial users that was in effect under the 1989 CRMP. The 1989  
13 CRMP allocated 115,500 user-days to commercial users and 54,450 user-days to  
14 noncommercial users annually, or a ratio of 67.9 percent commercial to 32.1 percent  
15 noncommercial. SAR 007530. The 2006 CRMP continues to cap commercial use at  
16 115,500 user-days annually; however, the 2006 CRMP does not cap noncommercial user-  
17 days. Based on expected number of launches and group size, NPS estimates that  
18 noncommercial boaters will use 113,486 user-days annually. Therefore, as measured in user-  
19 days, the 2006 CRMP allocates approximately 50.3 percent of annual use to commercial  
20 boaters and 49.7 percent to noncommercial boaters. During the summer and shoulder  
21 seasons the ratio is 59.3 percent commercial to 40.7 percent noncommercial. AR 109592-93  
22 (ROD at 2-3); AR 104630 (FEIS Vol. I at 43).

23 36. Under the 1989 CRMP--specifically during the five-year period from 1998  
24 through 2002--an average of 640 commercial launches and 18,891 commercial passengers  
25 embarked on the River annually. AR 104632 (FEIS Vol. I at 45). Under the 2006 CRMP,  
26 those numbers will decrease to 598 launches and an estimated 17,600 passengers. AR  
27 062742 (ROD at 3); AR 104647 (FEIS Vol. I at 60). Under the 1989 CRMP, an average of

1 253 noncommercial launches and 3,570 noncommercial passengers embarked on the River  
2 annually. AR 104632 (FEIS Vol. I at 45). Under the 2006 CRMP those numbers will nearly  
3 double to a total of 503 launches and an estimated 7,051 passengers. AR 109593 (ROD at  
4 3); AR 104647 (FEIS Vol. I at 60).

5 37. Throughout the process of developing the DEIS and the FEIS, NPS considered  
6 visitor use and experience as part of the affected environment and analyzed the impacts of  
7 the various proposed alternatives on visitor use and experience. AR 102566-95 (DEIS Vol. I  
8 at 164-93); AR 102990-3077 (DEIS Vol. II at 578-665); AR 104767-96 (FEIS Vol. I at 180-  
9 209); AR 105642-733 (FEIS Vol. II at 605-96). The FEIS summarizes the public comments  
10 received during public scoping as follows:

11 The analysis of public scoping comments clearly indicated that there is no one  
12 definition of the ideal Grand Canyon river trip. For example, while some  
13 people may prefer a trip without motors of any kind, some may prefer a  
14 motorized trip that ends with a helicopter ride. Still others may prefer  
15 motorized trips, but find the prospect of encountering a helicopter shuttle  
16 unacceptable. Some visitors want a social experience while others prefer to  
vacation with a small group that is unlikely to encounter other groups. Some  
want short trips, others want long trips. Preferences also vary on desired  
season and whether trips are commercial or self-guided. All of the variables,  
and the degree to which each is offered, are considered in this analysis.

17 AR 105645 (FEIS Vol. II at 608).

18 38. The NPS also specifically considered whether guided, commercial trips down the  
19 Colorado River, including motorized trips, are a necessary and appropriate service to  
20 authorize within GRCA. AR 104605-07 (FEIS Vol. I at 18-20). Commercial outfitters have  
21 been providing guided trips on the Colorado River through GRCA for nearly 60 years. AR  
22 104606 (FEIS Vol. I at 19). In general, motorized trips are shorter than nonmotorized trips,  
23 and motorized, commercial trips are less expensive than nonmotorized commercial trips. AR  
24 104804 (FEIS Vol. I at 217).

25 39. After releasing the DEIS, NPS received hundreds of public comments on the  
26 motors/no-motors issue. Although opinions varied widely, many commenters urged the NPS  
27 to continue to authorize motorized trips. The most common reasons given in support of  
continuing to authorize motorized trips were to increase access for those physically unable



1 to experience the canyon without motorized assistance, to offer shorter trips for people with  
2 limited vacation time, and to offer less expensive trips (i.e., faster and thus shorter than  
3 commercial oar trips) for people with limited financial means. Four major Grand Canyon  
4 river user groups--representing a diverse assembly of the Park's river users, including  
5 outfitters, private boaters, and commercial passengers--in joint comments, explained the  
6 importance of motorized use, stating, in part:

7       The collaborating groups support the continuation of an appropriate type and  
8       level of both motor and non-motor recreational use on the Colorado River  
9       within the Grand Canyon throughout the life of the newly revised CRMP.  
10       \* \* \* Motorized use as part of the system allows for far greater and broader  
11       overall public access opportunities to Grand Canyon river trips, both  
12       commercial and noncommercial, than would otherwise be possible. \* \* \* It is  
13       absolutely critical, therefore, that a reasonable level of the appropriate type of  
14       both motorized and non-motorized recreational use continue on the Colorado  
15       River under the updated and revised CRMP.

16 AR 050540. Many individuals submitted comments similar to the following:

17       We applaud the National Park Service for supporting the continuation of  
18       motorboats in Preferred Alternative 'H'. Retaining motorized rafting supports  
19       the management objective of providing a diverse range of quality recreational  
20       opportunities for park visitors by allowing the widest spectrum of ages,  
21       abilities and trip lengths for canyon visitors. We are pleased that the NPS  
22       recognizes the fact that motorboats do not 'permanently impact wilderness  
23       resources or permanently denigrate wilderness values.'

24 AR 047187. One commenter stated: "It [prohibiting motorboats and helicopters] would  
25 certainly eliminate many, or most, individuals from making the trip for time, financial, or  
26 physical factors." AR 057654. Another commenter stated:

27       When I was young enough to hike the canyon, I had neither the money nor the  
28       vacation time to allow me to raft the canyon. I dreamed of someday rafting the  
29       canyon for nearly 25 years before I was able to do it. Do not restrict rafting  
30       to only those tax-paying citizens fit enough to hike in/out of the canyon. Do  
31       not make rafting the canyon available only to those citizens with enough  
32       vacation time and rafting experience to take an 18-day non-motorized rafting  
33       trip.

34 AR 057567.

35       40. With respect to the impact on visitor use and experience of Modified Alternative  
36       H, the selected alternative for the upper section of the River (Lees Ferry to Diamond Creek),  
37       NPS concluded:

1 Because of the variability of visitors' perceptions, values, and their level of  
2 sensitivity to certain impacts, the intensity of impacts would be negligible to  
3 moderate, and adverse or beneficial depending on their perspective and desired  
4 experience. The even launch patterns, smaller group sizes, higher level of  
5 mixed motorized and nonmotorized opportunities at similar to current levels  
of Whitmore exchanges during the motorized season, and increased  
discretionary time throughout the year, but especially during the summer  
season, would most likely be desirable to most people seeking both motorized  
and nonmotorized trips.

6 AR 105691 (FEIS Vol. II at 653).

7 41. Based on extensive public comments it received on the DEIS and its various  
8 impact analyses, NPS made the following determination with respect to the necessity and  
9 appropriateness of continuing to authorize commercial river guides and trips:

10 A river trip through the Grand Canyon can be a life-shaping experience.  
11 Thousands of visitors each year seek to experience the Grand Canyon in this  
12 intimate and adventurous way. Since many visitors who wish to raft the  
13 Colorado River through Grand Canyon possess neither the equipment nor the  
14 skill to successfully navigate the rapids and other hazards of the river, the NPS  
has determined that it is necessary and appropriate for the public use and  
enjoyment of the park to provide for experienced and professional river guides  
who can provide such skills and equipment.

15 AR 104606 (FEIS Vol. I at 19).

16 42. Although NPS will continue to authorize commercial trips, including motorized  
17 trips, the 2006 CRMP imposes additional restrictions on commercial trips. For example, the  
18 1989 CRMP permitted a maximum of 43 passengers per motorized commercial trip (39 per  
19 nonmotorized commercial trip), including guides. The 2006 CRMP reduces group size,  
20 permitting a maximum of 32 passengers per commercial trip, including guides, from May 1  
21 through August 31, and 24 passengers, including guides, during the "shoulder seasons." AR  
22 109592 (ROD at 2); AR 104630 (FEIS Vol. I at 43); AR 104646 (FEIS Vol. I at 59).

23 43. In the FEIS, NPS considered natural soundscape as part of the affected  
24 environment and analyzed the impact of the various proposed alternatives on natural  
25 soundscape along the Colorado River within GRCA. AR 104728-30 (FEIS Vol. I at 141-43);  
26 AR 105385-441 (FEIS Vol. II at 348-404). NPS also considered appropriate mitigation  
27 measures to reduce the impacts of various alternatives on the natural soundscape. AR  
105393-94 (FEIS Vol. II at 356-57).

1           44. For purposes of the natural soundscape analysis, NPS evaluated impacts "for the  
2 noise produced at various locations along the river corridor (percent time audible), and  
3 contrasted to the amount of unaffected natural sounds (noise-free interval) to be expected or  
4 desired in the particular zone." AR 105391 (FEIS Vol. II at 354). NPS utilized "natural  
5 ambient sound levels" or "natural soundscape" as the baseline for its analysis. AR 104728-  
6 30 (FEIS Vol. I at 141-43) and AR 105388-98 (FEIS Vol. II at 351-61).

7           45. Typical water-influenced natural ambient sound levels along the river vary  
8 between 24 dBA and 66 dBA, depending on proximity to rapids and flow levels. AR  
9 104728-30 (FEIS Vol. I at 141-43); AR 105389 (FEIS Vol. II at 352).

10           46. The 2006 CRMP continues to require the use of four-stroke outboard motors,  
11 which are cleaner burning and quieter than two-stroke outboard motors, and prohibits the use  
12 of generators, except in emergency situations and for inflating rafts. AR 109597 (ROD at  
13 7); AR 105323, 105330 (FEIS Vol. II at 286, 293). A researcher measured the noise  
14 produced by a 30-horsepower, four-stroke outboard motor, operating at full speed while  
15 headed downstream, at a maximum of 60 dBA at a distance of about 56 yards. AR 105389  
16 (FEIS Vol. II at 352). By comparison a normal conversation also measures about 60 dBA.  
17 AR 104730 (FEIS Vol. I at 143). In locations such as river rapids, where the sound from  
18 moving water and other natural sounds (wind, storm activity, insect activity, etc.) raises the  
19 natural ambient sound levels, the sounds of motors and other human sources will usually  
20 have less impact on the natural soundscape. AR 105395 (FEIS Vol. II at 360).

21           47. Under the 2006 CRMP, during the peak summer season (May-August), motorboat  
22 noise may be audible at any single point on the river for a total of about 54 minutes during  
23 a 12-hour day, which is considered a minor adverse impact. Because motorized watercraft  
24 do not run their motors all the time, for any single point on the river the noise intrusions are  
25 expected to be random in nature and infrequent. AR 105421 (FEIS Vol. II at 384).

26           48. The 1989 CRMP authorized motorized trips during nine months of the year; the  
27 2006 CRMP authorizes motorized trips during only five and a half months of the year. AR

1 104648 (FEIS Vol. I at 61).

2 49. Some passengers either leave or join an existing river trip at places other than the  
3 standard launch points, such as Phantom Ranch (River Mile 88) or Whitmore Wash (River  
4 Mile 187). The action of substituting one passenger for another is known as a "passenger  
5 exchange." AR 104774 (FEIS Vol. I at 187). Most passenger exchanges at Whitmore Wash  
6 occur via helicopters landing on, and taking off from, nearby Hualapai Indian Reservation  
7 lands. AR 104774 (FEIS Vol. I at 187); AR 104781 (FEIS Vol. I at 194). NPS has no  
8 authority over transportation outside Park boundaries, including helicopter flights on  
9 Hualapai lands. AR 104646 (FEIS Vol. I at 59). Helicopters landing at Whitmore Wash on  
10 the Hualapai Indian Reservation typically transport passengers to and from the Bar-10  
11 Ranch, a private ranch located outside of the park on the north rim. AR 104774 (FEIS Vol. I  
12 at 187); AR 104802 (FEIS Vol. I at 215).

13 50. Section 3(b) of the Act of August 18, 1987, Pub. L. No. 100-91, 101 Stat. 674,  
14 required the Secretary of the Interior to submit to the Administrator of the Federal Aviation  
15 Administration a recommendation providing for "the substantial restoration of the natural  
16 quiet and experience of the park [GRCA] and protection of public health and safety from  
17 adverse effects associated with aircraft overflight." In accordance with this Act, the  
18 Administrator prepared a final plan for air traffic in the air space above the Grand Canyon  
19 and promulgated regulations to implement it. 14 C.F.R. Part 93, Subpart U. However,  
20 Section 3(c) of the Act contained the following limitation:

21 (c) HELICOPTER FLIGHTS OF RIVER RUNNERS--Subsection (b) shall not  
22 prohibit the flight of helicopters--

23 (1) which fly a direct route between a point on the north rim outside of the  
24 Grand Canyon National Park and locations on the Hualapai Indian Reservation  
(as designated by the Tribe); and

25 (2) whose sole purpose is transporting individuals to or from boat trips on the  
26 Colorado River and any guide of such a trip.

27 51. The 1989 CRMP permitted passenger exchanges at Whitmore Wash all year. AR  
104630 (FEIS Vol. I at 43). The 2006 CRMP permits passenger exchanges at Whitmore

1 Wash only for trips launching from April through September. AR 109593-94 (ROD at 3-4);  
2 AR 104630 (FEIS Vol. I at 43). The 2006 CRMP reduces the total number of passenger  
3 exchanges permitted at Whitmore Wash. AR 104648 (FEIS Vol. I at 61). The 2006 CRMP  
4 also requires that exchanges be completed before 10:00 a.m. local time each day. AR  
5 109593-94 (ROD at 3-4). Therefore, during the part of the year when exchanges are  
6 permitted at Whitmore Wash (April through September), helicopter sounds will be  
7 concentrated during the early morning hours (7:00 a.m. to 10:00 a.m.), but will not be  
8 audible at all during the rest of the day. AR 105422 (FEIS Vol. II at 385).

9 52. With respect to the impact on natural soundscape of Modified Alternative H, the  
10 selected alternative for the upper section of the River (from Lees Ferry to Diamond Creek),  
11 NPS concluded that overall noise intrusions would be of "minor to moderate intensity (at  
12 high-use areas and gathering points). It is likely that impacts can be reduced to minor levels  
13 or less with adequate funding and staffing for a monitoring and mitigation program." NPS  
14 also noted that even if all noise from all river recreation were eliminated from the Park  
15 (including river-related helicopter flights at Whitmore), "[t]here would still be 'significant  
16 adverse effects' on the natural soundscape due to frequent, periodic and noticeable noise  
17 from [non-river-related] overflights." AR 105424 (FEIS Vol. II at 387).

18 53. In response to public comments on the DEIS, the FEIS considered wilderness  
19 character as part of the affected environment and analyzes the impact of the various proposed  
20 alternatives on wilderness character along the Colorado River within GRCA. AR 104820-23  
21 (FEIS Vol. I at 233-36) and AR 105815-37 (FEIS Vol. II at 778-800). Specifically, NPS  
22 analyzed the impacts of the various proposed alternatives on the following three qualities of  
23 wilderness derived from the language of the Wilderness Act:

- 24 a. Wilderness is undeveloped land retaining its primeval character and influence,  
25 without permanent improvements or human habitation.
- 26 b. Wilderness generally appears to have been affected primarily by the forces of  
27 nature, with the imprint of man's work substantially unnoticeable.
- c. Wilderness has outstanding opportunities for solitude or a primitive and  
unconfined type of recreation.

1 16 U.S.C. § 1131(c); see AR 104822-23 (FEIS Vol. I at 235-36); AR 105816-17 (FEIS  
2 Vol. II at 779-80).

3 54. With respect to the impact on wilderness recreational opportunities of Modified  
4 Alternative H, NPS stated: "Visitors will experience smaller group sizes, especially during  
5 the shoulder and winter months, and the absence of motorized rafts and helicopter noise at  
6 the Whitmore area for at least six months each year (beginning in late September through  
7 March)." AR 105828 (FEIS Vol. II at 791). NPS also concluded: "For visitors seeking  
8 outstanding opportunities for solitude or a primitive and unconfined type of experience, the  
9 impacts would be adverse and of moderate intensity during the peak motorized periods, with  
10 beneficial and negligible impacts during the longer non-motorized use period with smaller  
11 group size." AR 105829 (FEIS Vol. II at 792).

12 55. With respect to the impact on wilderness character of Modified Alternative H,  
13 NPS concluded that the impacts would be both beneficial and adverse, and would range in  
14 intensity from negligible to moderate. AR 105829 (FEIS Vol. II at 792).

15 56. Based on advice provided by legal counsel and with the concurrence of the  
16 Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks, the GRCA  
17 Superintendent concluded that it legitimately could permit the continued use of motorboats  
18 on the Colorado River without violating the Wilderness Act or any written NPS policy  
19 because (a) Congress has not designated any portion of GRCA as wilderness and (b) the  
20 continued use of motors is only a temporary or transient disturbance of wilderness values on  
21 the River and does not permanently impact wilderness resources or permanently denigrate  
22 wilderness values. Furthermore, "the continued use of motorboats does not pose a legal  
23 impediment to possible wilderness designation." AR 104604 (FEIS Vol. I at 17); AR  
24 104821-22 (FEIS Vol. I at 234-35); Attachment 2 to Federal Defendants' Supplemental  
25 Notice of Lodging Administrative Record, Dkt. No. 42, September 21, 2006.

26  
27 Dated: August 6, 2007.

Respectfully Submitted,

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DANIEL G. KNAUSS  
United States Attorney  
District of Arizona  
SUE A. KLEIN  
Assistant U.S. Attorney

RONALD J. TENPAS  
Acting Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division

s/ Andrew A. Smith  
ANDREW A. SMITH  
Trial Attorney  
Natural Resources Section

Of Counsel:

ROBERT C. EATON  
Office of the Solicitor  
U.S. Department of the Interior

**Attorneys for Federal Defendants**

s/ Jonathan D. Simon  
JONATHAN D SIMON  
SAM KALEN  
Van Ness Feldman PC  
1050 Thomas Jefferson St NW, Suite 700  
Washington, DC 20007  
202-298-1932

**Attorneys for Defendant-Intervenor  
Grand Canyon River Outfitters Association**

s/ Lori Potter  
LORI POTTER  
Kaplan Kirsch & Rockwell LLP  
1675 Broadway, Suite 2300  
Denver, Colorado 80202  
303-825-7000

**Attorneys for Defendant-Intervenors  
Grand Canyon Private Boaters Association**

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 6, 2007, I electronically transmitted the attached  
3 document to the Clerk's Office using the CM/ECF System for filing and transmittal of a  
4 Notice of Electronic Fling to the following CM/ECF registrants:

4 Matthew Bishop  
5 Western Environmental Law Center  
6 108B Civic Plaza Drive  
7 P.O. Box 1507  
8 Taos, New Mexico 87571  
9 505-751-0351  
10 bishop@westernlaw.org

8 Julia A. Olsen  
9 Wild Earth Advocates  
10 2985 Adams Street  
11 Eugene, Oregon 97405  
12 541-344-7066  
13 jaoearth@aol.com

11 Jonathan D Simon  
12 Sam Kalen  
13 Van Ness Feldman PC  
14 1050 Thomas Jefferson St NW, Suite 700  
15 Washington, DC 20007  
16 202-298-1932  
17 jxs@vnf.com

15 Lori Potter  
16 Kaplan Kirsch & Rockwell LLP  
17 1675 Broadway, Suite 2300  
18 Denver, Colorado 80202  
19 303-825-7000  
20 lpotter@kaplankirsch.com

20 s/ Andrew A. Smith  
21 Andrew A. Smith