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10  
11 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

13 River Runners for Wilderness, a nonprofit ) Case No.:  
14 corporation; Rock the Earth, a nonprofit )  
15 corporation; Wilderness Watch, a nonprofit )  
16 corporation; and Living Rivers, a nonprofit )  
corporation, )  
Complaint for Declaratory and  
Injunctive Relief

17 Plaintiffs,

18 v.

19 Joseph F. Alston, in his official capacity as )  
superintendent of Grand Canyon National )  
20 Park; Fran Mainella, in her official )  
21 capacity as director of the National Park )  
Service; the National Park Service; Gale )  
22 Norton, in her official capacity as Secretary )  
23 of the United States Department of )  
24 Interior; and United States Department of )  
the Interior;

25 Federal-Defendants.  
26  
27  
28

1 INTRODUCTION

2 1. Plaintiffs bring this civil action against the above named Defendants  
3 (hereinafter the “National Park Service,” “NPS,” or “Park Service”) pursuant to the  
4 Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, for violations of the  
5 National Park Service Organic Act, 16 U.S.C. §1 et seq. and Redwoods Amendment  
6 (hereinafter “Organic Act”) and its implementing regulations; Grand Canyon Protection  
7 Act of 1992, Pub. L. No. 102-575, § 1802; National Park Service Concessions  
8 Management Improvement Act of 1998, 16 U.S.C. §§ 5901 *et seq.*; the Park Service’s  
9 regulations and Management Policies (“MP”); and the National Environmental Policy  
10 Act (“NEPA”), 42 U.S.C. § 4321 et seq. and its implementing regulations.

11 2. Through this civil action, Plaintiffs challenge the Park Service’s 2005  
12 Colorado River Management Plan (“CRMP”) and Final Environmental Impact Statement  
13 (“FEIS”) for the Colorado River corridor in Grand Canyon National Park (hereinafter  
14 “Grand Canyon” or “the Park”) and the February 17, 2006 Record of Decision (“2006  
15 ROD” or “ROD”) adopting the CRMP.

16 3. The Park Service’s 2006 ROD and CRMP authorizes certain types, levels,  
17 and allocations of use that violate the Park Service’s statutory mandates, regulations,  
18 policies, and the 1995 General Management Plan (“GMP”) for the Grand Canyon.

19 4. Specifically, the 2006 ROD and CRMP illegally authorize motorboat use  
20 and helicopter passenger exchanges at levels that have caused, and continue to cause,  
21 adverse impacts and impairment to the wilderness character and natural resources of the  
22 Colorado River corridor. These impacts include, but are not limited to: disruption of  
23 natural quiet and solitude; soil compaction and erosion; water contamination; damage to  
24 riparian habitat, stream banks, trails and campsites; damage to cultural and archeological  
25 resources; displacement of native plant and animal populations; introduction of non-  
26 native species; and impairment of the primitive and natural recreational experience.

27 5. The 2006 ROD and CRMP also inequitably allocate use on the Colorado  
28 River between private commercial concessionaires and non-commercial users. The 2006

1 ROD and CRMP give preferential treatment to commercial concessionaires and users  
2 who can afford to pay for guided trips down the Colorado River by giving them  
3 guaranteed access to the Colorado River during the high demand summer season. In  
4 contrast, members of the public who cannot afford to pay for or do not wish to take a  
5 commercial trip must wait decades to gain access and, under the CRMP's lottery system,  
6 may never obtain a permit to access the Colorado River.

7 6. For these reasons, Plaintiffs – a coalition of organizations committed to  
8 protecting and restoring the Grand Canyon's wilderness character and unique natural  
9 resources and ensuring fair and equitable access to such resources – are compelled to  
10 bring this civil action.

#### 11 JURISDICTION AND VENUE

12 7. This court has jurisdiction pursuant to 28 U.S.C. § 1331 (Federal Question).

13 8. This court has the authority to review the action(s) of the Park Service  
14 complained of herein pursuant to the APA, 5 U.S.C. §§ 701-706.

15 9. Any and all available administrative remedies have been exhausted.

16 10. There is a present and actual controversy between the Parties within the  
17 meaning of 28 U.S.C. §2201(a).

18 11. The relief sought is authorized by 28 U.S.C. § 2201 (Declaratory  
19 Judgment), 28 U.S.C. § 2202 (Injunctive Relief), and the APA, 5 U.S.C. §§ 705, 706.

20 12. Venue is proper in the United States District Court for the District of  
21 Arizona pursuant to 28 U.S.C. § 1391(e) because the Colorado River corridor and the  
22 Grand Canyon are located in the District of Arizona and the Park Service's action being  
23 challenged herein occurred in the District of Arizona.

#### 24 PARTIES

25 13. Plaintiff RIVER RUNNERS FOR WILDERNESS (RRFW) is a nonprofit  
26 conservation organization whose mission is to promote the highest resource protection  
27  
28

1 values through wilderness management and stewardship activities in the Colorado River  
2 corridor and to provide fair and equitable primitive access to the Colorado River corridor  
3 for all recreational river runners. RRFW aims to ensure that the Colorado River in the  
4 Grand Canyon is designated as a non-motorized wilderness area. RRFW implements its  
5 mission by conducting service projects such as education of river runners and  
6 participating in resource protection activities and public planning processes affecting the  
7 river, including the preparation of the FEIS and CRMP at issue in this case. RRFW's all  
8 volunteer staff and members have used, and will continue to use the Colorado River  
9 corridor in the Grand Canyon. RRFW has approximately 1600 members, many of which  
10 live in or near the Grand Canyon and/or routinely use and visit the Colorado River.  
11 These members enjoy rafting, kayaking, wildlife and bird viewing, backpacking, hiking,  
12 and many other non-motorized activities in the Grand Canyon and Colorado River  
13 corridor, in which they can experience the beauty, peace, natural quiet, and the solitude  
14 found in the Park. These members have, and will continue to, regularly and repeatedly  
15 use the Grand Canyon and Colorado River corridor for these purposes. These members  
16 have a specific, concrete interest in using, protecting, and restoring the natural beauty and  
17 quiet of the Grand Canyon and Colorado River corridor. Experiencing the natural  
18 beauty, quiet, and solitude of the Park and river corridor is a key component of their  
19 enjoyment of the area. These members also have a specific, concrete interest in working  
20 to get areas of the Grand Canyon that qualify for non-motorized wilderness management  
21 – including the Colorado River – official recognition and designation as wilderness areas  
22 under the Wilderness Act. The Park Service's ROD and new CRMP/FEIS authorizing  
23 commercial and motorized use of the Colorado River at levels that cause adverse effects  
24 to the areas' natural resources and wilderness character, including natural quiet has  
25 harmed, and continues to harm, RRFW's concrete interests. The Park Service's ROD  
26 and CRMP negatively impacts the members' enjoyment of peace and solitude, which are  
27 increasingly hard to find, and the beauty and ecology of the natural resource. The Park  
28 Service's failure to comply with NEPA and its own regulations and policies also results

1 in uninformed decision making and creates an increased risk of actual, threatened, and  
2 imminent harm to the natural resources of the Colorado River and RRFW's interests in  
3 protecting and restoring such resources. The Park Service's action has also interfered  
4 with and harmed RRFW's interest in free and equitable access to the Colorado River.  
5 RRFW brings this action on behalf of itself and its adversely affected members. None of  
6 the members of RRFW has been compelled to participate in this lawsuit in any way.

7       14. Plaintiff ROCK THE EARTH is a nonprofit conservation organization  
8 whose mission is to protect and defend America's natural resources through partnerships  
9 with the music industry and the world-wide environmental community. Rock the Earth  
10 acts as an advocate to ensure the existence of a sustainable and healthy environment for  
11 all. Rock the Earth is particularly concerned about the natural resources of the Colorado  
12 River corridor and has participated in, and commented on, the Park Service's preparation  
13 of a new CRMP and FEIS. Rock the Earth has approximately 765 members, some of  
14 which live in or near Grand Canyon National Park and/or routinely use and visit the  
15 Colorado River. These members enjoy rafting, kayaking, wildlife and bird viewing,  
16 backpacking, hiking, and many other non-motorized activities in Grand Canyon National  
17 Park and the Colorado River corridor, in which they can experience the beauty, peace,  
18 natural quiet, and the solitude found within the Park. These members have, and will  
19 continue, to regularly and repeatedly use the Grand Canyon and the Colorado River  
20 corridor for these purposes. These members have a specific, concrete interest in using and  
21 protecting and restoring that natural beauty and quiet of the Grand Canyon and the  
22 Colorado River corridor. Experiencing the natural beauty, quiet, and solitude of the Park  
23 and river corridor is a key component of their enjoyment of the area. These members  
24 also have a specific, concrete interest in getting the areas of the Grand Canyon that  
25 qualify for non-motorized wilderness management – including the Colorado River –  
26 official recognition and designation as wilderness areas under the Wilderness Act. The  
27 Park Service's ROD and new CRMP/FEIS authorizing commercial and motorized use of  
28 the Colorado River at levels that cause adverse effects to the areas' natural resources and

1 wilderness character, including natural quiet, have harmed, and continue to harm, Rock  
2 the Earth's concrete interests. The Park Service's ROD and CRMP negatively impact the  
3 members' enjoyment of peace and solitude, which are increasingly hard to find, and the  
4 beauty and ecology of the natural resource. The Park Service's failure to comply with  
5 NEPA and its own regulations and policies also results in uninformed decision making  
6 and creates an increased risk of actual, threatened, and imminent harm to the natural  
7 resources of the Colorado River and Rock the Earth's interests in protecting and restoring  
8 such resources. The Park Service's action has also interfered with and harmed Rock the  
9 Earth's interest in free and equitable access to the Colorado River. Rock the Earth brings  
10 this action on behalf of itself and its adversely affected members. None of the members  
11 of Rock the Earth has been compelled to participate in this lawsuit in any way.

12 15. Plaintiff WILDERNESS WATCH is a nonprofit conservation organization  
13 whose mission is to provide citizen oversight to ensure the long term preservation of  
14 America's wilderness and wild and scenic rivers. Wilderness Watch is the only  
15 organization dedicated solely to monitoring and protecting wilderness and wild and  
16 scenic rivers nationwide. Wilderness Watch is headquartered in Missoula, Montana, and  
17 has chapters in Mammoth Lakes, California; Sonora, California; Sheridan, Wyoming;  
18 Friendswood, Texas; Decatur, Georgia; and Woodinville, Washington. Wilderness  
19 Watch has approximately 945 members. These members enjoy rafting, kayaking,  
20 backpacking, hiking, and many other non-motorized activities in the Grand Canyon and  
21 the Colorado River corridor, in which they can experience the beauty, peace, and the  
22 solitude found within these areas. These members have, and will continue, to regularly  
23 and repeatedly use the Grand Canyon and the Colorado River corridor for these purposes.  
24 These members have a specific, concrete interest in using and protecting and restoring  
25 that natural beauty and quiet of the Grand Canyon and the Colorado River corridor.  
26 Experiencing the natural beauty, quiet, and solitude of the Park and river corridor is a key  
27 component of their enjoyment of the area. These members also have a specific, concrete  
28 interest in getting the areas of the Grand Canyon that qualify for non-motorized

1 wilderness management – including the Colorado River – official recognition and  
2 designation as wilderness areas under the Wilderness Act. The Park Service’s ROD and  
3 new CRMP/FEIS authorizing commercial and motorized use of the Colorado River at  
4 levels that cause adverse effects to the areas’ natural resources and wilderness character,  
5 including natural quiet, have harmed, and continue to harm, Wilderness Watch’s concrete  
6 interests. The Park Service’s ROD and CRMP negatively impacts the members’  
7 enjoyment of peace and solitude, which are increasingly hard to find, and the beauty and  
8 ecology of the natural resource. The Park Service’s failure to comply with NEPA and its  
9 own regulations and policies also results in uninformed decision making and creates an  
10 increased risk of actual, threatened, and imminent harm to the natural resources of the  
11 Colorado River and Wilderness Watch’s interests in protecting and restoring such  
12 resources. The Park Service’s action has also interfered with and harmed Wilderness  
13 Watch’s interest in free and equitable access to the Colorado River. Wilderness Watch  
14 brings this action on behalf of itself and its adversely affected members. None of the  
15 members of Wilderness Watch has been compelled to participate in this lawsuit in any  
16 way.

17         16. Plaintiff LIVING RIVERS is a Utah non-profit corporation with its  
18 principle place of business in Moab, Utah. Living Rivers is dedicated to the restoration  
19 of the natural hydrological and ecological processes within the Colorado River watershed  
20 so as to protect and restore the watershed's native species and their habitats. Since its  
21 inception in 2000, Living Rivers has led efforts to protect and restore endangered fish  
22 habitat below Glen Canyon Dam. Living Rivers seeks to protect the ecology of the  
23 Colorado River that still exists downstream from Glen Canyon Dam and to protect it  
24 from adverse impacts and misuse. The Park Service's failure to comply with NEPA and  
25 its own regulations and policies results in uninformed decision making and creates an  
26 increased risk of actual, threatened, and imminent harm to the natural resources of the  
27 Colorado River and Living Rivers' interests in protecting and restoring such ecological  
28 resources. Many of Living Rivers' members, including its staff, have visited, and intend

1 to continue to visit, Grand Canyon's river corridor, for observation, research, aesthetic  
2 enjoyment, and other recreational, scientific, and educational activities. Living Rivers  
3 brings this action on behalf of itself and its adversely affected members. None of the  
4 members of Living Rivers has been compelled to participate in this lawsuit in any way.

5 17. The aesthetic, recreational, scientific, non-motorized wilderness  
6 management and protection, and spiritual interests of the members of Plaintiffs have been  
7 and will continue to be adversely affected and irreparably injured if the Park Service  
8 continues to act as alleged herein. These are actual, concrete injuries caused by the Park  
9 Service's violation of its duties under the Organic Act, NEPA, Park Service regulations  
10 and policies, and other federal laws. The injuries will be redressed by the relief sought.

11 18. Defendant JOSEPH F. ALSTON is sued in his official capacity as the  
12 Superintendent of the Grand Canyon, a unit of the National Park System administered by  
13 the Park Service and the Department of Interior. Mr. Alston is the federal official  
14 responsible for administering the Grand Canyon and approving the CRMP. Mr. Alston is  
15 also the federal official with responsibility for the Park Service's actions and inactions  
16 challenged in this complaint.

17 19. Defendant FRAN MAINELLA is sued in her official capacity as the  
18 Director of the National Park Service, Department of the Interior. Ms. Mainella is the  
19 federal official responsible for the proper administration of the National Park System,  
20 including the Grand Canyon. Ms. Mainella is the federal official with responsibility for  
21 the Park Service's actions and inactions challenged in this complaint.

22 20. Defendant NATIONAL PARK SERVICE is an agency of the U.S.  
23 Department of the Interior with the responsibility for managing all units of the National  
24 Park System, including the Grand Canyon and Colorado River corridor at issue in this  
25 case. The Park Service and its officers are responsible for compliance with all applicable  
26 laws, regulations, and policies at issue in this case.

27 21. Defendant GALE NORTON is sued in her official capacity as the Secretary  
28 of the U.S. Department of Interior. As Secretary Ms. Norton is the federal official



1 ultimately responsible for the management and oversight of the National Park System and  
2 for all Park Service official actions or inactions challenged in this complaint.

3 22. Defendant U.S. DEPARTMENT OF INTERIOR is a department of the  
4 United States government with supervisory and managerial responsibility over the Park  
5 Service and is responsible for applying and implementing the federal laws, regulations,  
6 and policies challenged in this complaint.

7 FACTS

8 The Grand Canyon

9 23. In 1919, Congress established Grand Canyon National Park, to be managed  
10 in accordance with the National Park Service Organic Act of 1916. Over the years the  
11 Park has been enlarged and its boundaries revised to recognize and protect the Park's  
12 natural features of national and international significance.

13 24. Located on the southern end of the Colorado Plateau, the Park is known as  
14 a globally significant natural resource, with scenic vistas known throughout the world.  
15 The great variety of scenery includes forests, deserts, canyons, plains, plateaus, volcanic  
16 features, and streams and waterfalls. Consequently, it was designated as a world heritage  
17 site on October 26, 1979.

18 25. The Grand Canyon is considered to be the greatest eroded canyon in the  
19 United States and is known for its biological diversity. The Park serves as an ecological  
20 refuge, with relatively undisturbed remnants of dwindling ecosystems and numerous rare,  
21 endemic, and specially protected plant and animal species.

22 26. The Grand Canyon contains a large number of historic and prehistoric  
23 properties and districts that are nationally and internationally significant.

24 27. The Grand Canyon is recognized as a place with unusual and noticeable  
25 natural quiet and direct access to opportunities for solitude.

26 28. According to the Park Service, the Grand Canyon's "natural, cultural, and  
27 scenic qualities . . . coupled with the canyon's vast size, give rise to inspirational/spiritual  
28

1 values and a sense of timelessness . . . [the] vast majority of the park provides  
2 opportunities for wilderness experience.”

### 3 The Colorado River Corridor

4 29. The 277-mile stretch of the Colorado River that runs through the Park is the  
5 longest stretch of navigable, free flowing whitewater in the United States. It provides  
6 world-class primitive and unconfined river recreation, the wilderness qualities of solitude  
7 and natural quiet, unique geological features and wildlife habitat for rare, endemic and  
8 specially protected plant and animal species.

9 30. The exposed geologic strata, from Vishnu schist to Kaibab limestone, rise  
10 over a mile above the river, and represent one of the most complete records of geological  
11 history seen anywhere in the world. The great biological diversity and relatively  
12 undisturbed remnants of desert riparian communities in the Colorado River corridor are  
13 unique and rare and make it an important natural gene pool. Because of its immense  
14 natural resources, the Colorado River corridor is a nationally significant research area in a  
15 number of different fields.

16 31. Grand Canyon National Park, and the Colorado River corridor specifically,  
17 contain a 4,500 year archeological record of human occupation. At least six American  
18 Indian groups have close and sacred ties to the Grand Canyon.

19 32. The stretch of the Colorado River running through the Park passes through  
20 some of the most scenic wilderness in the Grand Canyon. According to the Park  
21 Service’s 1980 and 1993 Wilderness Recommendations, 12,190 acres of the Colorado  
22 River corridor are recommended for designation as potential wilderness. The Colorado  
23 River is considered potential wilderness rather than proposed wilderness under the  
24 Wilderness Act because non-conforming motorized uses in the corridor are presently  
25 occurring.

26 33. The Colorado River and most of its tributaries in Grand Canyon National  
27 Park also meet the criteria for wild river designation under the Wild and Scenic Rivers  
28 Act.

1           34.     According to the Park Service, a trip down the Colorado River should allow  
2 visitors to experience the river corridor with as little influence from the modern world as  
3 possible. Visitors should be able to intimately relate to the majesty of the canyon and  
4 experience solitude on their journey.

5           35.     A trip down the Colorado River corridor is one of the most sought-after  
6 backcountry wilderness experiences in the country. Currently, nearly 22,000 visitors run  
7 all or part of the river annually.

8           36.     Since completion of the Glen Canyon Dam in 1964, recreational and  
9 commercial use of the river, particularly the use of large, motorized rafts for commercial  
10 tours, has dramatically increased.

11          37.     The use of commercial, motorized watercraft operations in the Colorado  
12 River corridor and associated helicopter exchanges have become a substantial and  
13 growing threat to the ecology and wilderness character of the Colorado River corridor  
14 and surrounding backcountry.

15  
16                   Phasing Out Motorboat Use: The Park Service's Decision To Manage the  
17                   Colorado River Corridor for its Wilderness Character

18          38.     Beginning with the Park Service's first formal river management plan in  
19 1972, the Park Service decided to phase out motorboat use of the Colorado River. The  
20 Park Service has found that continued motorized use of the River is inconsistent with the  
21 area's wild character and has an adverse impact on the River's natural resources and the  
22 public's enjoyment of those resources.

23          39.     In response to political pressure from the commercial concessionaires in  
24 1972, the Secretary of the Interior directed the Park Service to defer implementation of  
25 the first river management plan's decision to eliminate motorized uses and conduct  
26 research on the social and ecological carrying capacity of the Colorado River and the  
27 impacts of motorboats.

1           40. By 1976, the Park Service had conducted twenty-eight (28) ecological and  
2 social studies on the ecological carrying capacity of the River and the impacts of  
3 continued motorized use of the Colorado River corridor. Upon completion of these  
4 studies, the Park Service reiterated its decision to eliminate motorized use.

5           41. The Park Service's studies determined that irreversible degradation to the  
6 Park's resources was occurring and that its original 1972 decision to eliminate motorized  
7 use of the River was supported by the best available scientific evidence.

8           42. Also in 1976, the Park Service called for eliminating mechanized access  
9 below the rim in its Master Plan for the Grand Canyon in order to ensure a wilderness  
10 river running experience.

11           43. In 1977, the Park Service's Final Wilderness Recommendation identified  
12 the Colorado River corridor as qualifying for wilderness designation, pending the  
13 elimination of motorboat use.

14           44. In 1977, the Park Service also issued a new draft environmental impact  
15 statement (DEIS) for a revised CRMP. Consistent with the Final Wilderness  
16 Recommendation, the 1977 DEIS proposed that the Colorado River corridor through the  
17 Grand Canyon be managed as "potential wilderness" pending the elimination of the non-  
18 conforming, motorized watercraft use in the River corridor.

19           45. Following completion of the 1976 studies, DEIS, and review of the 1977  
20 Wilderness Recommendation, and a determination that motorized use of the Colorado  
21 River corridor was having a detrimental, adverse impact on the Colorado River corridor's  
22 wilderness character and natural resources, the Park Service completed a final  
23 environmental impact statement (FEIS) and new Colorado River Management Plan  
24 (CRMP) in December, 1979 (hereinafter "1980 CRMP/FEIS").

25           46. The Park Service's 1980 CRMP/FEIS concluded that future management of  
26 the river corridor must be guided not only by visitor demands (which are not static),  
27 environmental considerations, and public input, but also by the legislative purpose,  
28 policies and goals applicable to the Grand Canyon.

1           47.     The Park Service’s 1980 CRMP/FEIS determined that motorized use of the  
2 Colorado River corridor is inconsistent with the Park Service’s guidelines, policies and  
3 purposes, especially wilderness management mandates, and that such motorized activities  
4 cause unacceptable adverse environmental impacts to park resources (i.e., crowds, noise,  
5 air and water pollution, beach erosion, loss of and damage to wildlife and fish habitat).

6           48.     The Park Service’s 1980 CRMP/FEIS states that in order to comply with  
7 Congressional mandates, Park Service management policies, Master Plan objectives and  
8 public input, the Park Service will phase out the use of motorized watercraft between  
9 Lees Ferry and Separation Canyon over five years.

10          49.     The Park Service determined that motorized uses in the Colorado River  
11 must be phased out in order to protect the wilderness river running experience and ensure  
12 that the natural sounds and silence of the canyon and the river are experienced.

13          50.     The Park Service’s decision to phase out motorized use of the Colorado  
14 River corridor in the 1980 CRMP/FEIS was made after completing approximately  
15 twenty-eight (28) studies on the ecological impacts of the decision that specifically  
16 considered impacts of continued motorized use of the Colorado River corridor.

17          51.     The Park Service’s decision to phase out motorized use of the Colorado  
18 River corridor was also based on the extensive Colorado River Research project for the  
19 Grand Canyon and public input obtained from a series of public meetings on river  
20 management.

21          52.     The 1980 CRMP/FEIS established total use capacities for the Colorado  
22 River and mandated the “reasonable” and “equitable” allocation of such use between the  
23 competing commercial concessionaires and non-commercial users. The Park Service  
24 increased the interim use ceilings established in 1972 for both user groups.

25          53.     The 1980 CRMP/FEIS granted to commercial concessionaires an increase  
26 from 89,000 to 121,500 user days annually. A user day is “any person in any part of the  
27 canyon for any part of the day.” The 1980 CRMP/FEIS also increased the applicable  
28 river use ceilings in order to accommodate growing demand for self-guided access, which

1 had increased from 7,600 to 54,450 potential user days. The 1980/FEIS CRMP allocated  
2 approximately 73% of the total number of user days available to the commercial  
3 concessionaires and approximately 27% of the total number of user days available to  
4 public non-commercial river-runners annually. This percentage includes the roughly  
5 25,000 user days that were awarded to concessionaires for their crew members above and  
6 beyond the commercial passenger and non-commercial user days. During the summer  
7 months, commercial user days (less crew user days) amounted to 106,156 and public self  
8 guided user days amounted to 43,920.

9 54. The 1980 CRMP/FEIS also established a waiting list for persons applying  
10 for permits required to access the Colorado River for non-commercial watercraft  
11 recreation and monitoring programs to continually assess changes in resource conditions  
12 and indicators such as visitor congestion, public demand, and visitor expectations.

13 55. The Park Service determined that the 1980 CRMP/FEIS was consistent with  
14 the 1977 Final Wilderness Recommendation insofar as it called for managing the  
15 Colorado River as a potential wilderness area and for the elimination of non-conforming  
16 motorized use of the River.

17 56. In 1980, the Park Service also updated its 1977 Wilderness  
18 Recommendation. The 1980 Wilderness Recommendation determined that the Colorado  
19 River corridor qualified as potential wilderness and could become designated wilderness  
20 upon the elimination of motorized use according to the 1980 CRMP/FEIS.

21 57. The Park Service's 1980 Wilderness Recommendation proposed that the  
22 Colorado River corridor be designated as potential wilderness until January 1, 1985 at  
23 which time the non-conforming motor use would be phased out pursuant to the 1980  
24 CRMP/FEIS.

25 58. The Park Service's decision was based upon the findings that motorized  
26 watercraft use is inconsistent with the criteria for wilderness specified by the Wilderness  
27 Act and with other requirements imposed by applicable federal regulations and Park  
28 Service policies.

1  
2                   The Park Service Abandons its Earlier Decision to Phase Out Motorized Use of  
3   the Colorado River Corridor

4           59.     In response to the Park Service’s 1980 CRMP/FEIS and decision to  
5 eliminate motorboats in the Colorado River corridor, Congress included language in an  
6 appropriations bill to “prohibit the use of appropriated funds to implement any river  
7 management plan that reduces the number of user days or passenger launches for  
8 commercial motorized watercraft excursions, for the preferred use period, from all  
9 current launch points below that which was authorized for the same period in calendar  
10 year 1978.” Title I, § 112 of the Appropriations Act for the Department of the Interior  
11 and Related Agencies for Fiscal Year 1981, Public Law 96-514, 94 Stat. 2957, 2972).

12           60.     The Park Service responded to the one-year Congressional appropriations  
13 bill by modifying the 1980 CRMP/FEIS and reversing the decision to eliminate  
14 motorized use of the Colorado River. FEIS (2005) Vol. I at 15.

15           61.     The Park Service prepared a new, modified CRMP in 1981 that retained  
16 motorized use and the increase in user days that had been intended as compensation for  
17 the phase out of motors.

18           62.     The 1981 CRMP departed from its prior wilderness management  
19 determinations set forth in the 1980 CRMP/FEIS, the 1977 and 1980 Wilderness  
20 Recommendations, and the Master Plan.

21           63.     The 1981 CRMP authorized continued motorized watercraft use of the  
22 Colorado River for an indefinite period of time.

23           64.     The 1981 CRMP also increased the maximum allowable group and crew  
24 size on commercial concessionaire trips in the Grand Canyon, thereby contradicting the  
25 scientific research, data, and public input documented by the 1980 CRMP/FEIS.

26           65.     Virtually all references to wilderness management in the 1980 CRMP/FEIS  
27 were deleted in the 1981 CRMP without any input from the public or scientific  
28 community or NEPA compliance. The 1981 CRMP required only ongoing studies to

1 assess public interest in and demand for commercial and non-commercial watercraft trips  
2 and that allocation between the two user groups be modified as needed.

3 66. The 1981 CRMP's authorization of motorized use of the Colorado River  
4 corridor is inconsistent with the Park Service's statutory mandates, regulations, policies,  
5 and plans to manage the area for its wilderness character and protect the Park's natural  
6 resources.

7 67. In 1988, the Park Service issued a Backcountry Management Plan (BMP)  
8 for the Grand Canyon in order to define policies for managing visitor use and resource  
9 protection in the undeveloped areas of the park, excluding the river corridor. The BMP  
10 required that lands suitable for wilderness designation be managed so that wilderness  
11 values are not adversely affected until Congress has made a decision regarding  
12 designation of the recommended lands as wilderness.

13 68. In 1989, the Park Service prepared a new CRMP to address increasing  
14 resource impacts caused by the 1981 CRMP.

15 69. The 1989 CRMP was intended to address and resolve major issues  
16 surrounding management of recreational uses and supplement existing management  
17 guidelines, including the Master Plan, BMP, 1977 Wilderness Recommendation and  
18 1980 Wilderness Recommendation and applicable Park Service management policies.

19 70. The Park Service's 1989 CRMP notes that review of the 1981 CRMP  
20 indicated a need to provide equal means for the public, non-commercial sector to access  
21 its permit allocation in light of a 77% increase in the non-commercial waiting list since  
22 1981.

23 71. The 1989 CRMP retained the commercial and non-commercial user day  
24 allocations established in 1979 but added non-commercial launches in the summer so that  
25 non-commercial river runner use approached its allocation capacity. The 1989 CRMP  
26 also retained motorized use of the Colorado River corridor but adopted a resource  
27 monitoring program and resource condition standards. The monitoring program has yet  
28 to be effectively implemented.



1           72.     Despite references to the Park Service’s 1977 Wilderness  
2 Recommendation, and other regulations, policies, guidelines and directives addressing  
3 wilderness management, the 1989 CRMP sanctioned the level of motorized watercraft  
4 use and permit allocation between commercial and non-commercial watercraft users  
5 specified by the 1981 CRMP, while “reserving the right to re-allocate user-days based on  
6 review of all relevant factors.”

7           73.     The 1989 CRMP required the Park Service to prepare a new CRMP within  
8 five to ten years and to “fully examine evolving public concerns and be responsive on an  
9 annual basis to public input” regarding demand/allocation changes and other management  
10 issues.

11           74.     In the 1989 CRMP, the Park Service announced that the 1980 FEIS was  
12 sufficient to document the environmental consequences of adopting the 1989 CRMP,  
13 even though the 1980 FEIS was issued in connection with the 1980 CRMP that would  
14 have resulted in the elimination of motorized use of the Colorado River corridor through  
15 the Grand Canyon and the management of the river corridor pursuant to applicable  
16 statutes, Park Service management policies and the Master Plan, which require such  
17 management to protect the wilderness characteristics of the lands and waters within the  
18 Grand Canyon that qualify for wilderness designation.

19  
20                   The Park Service’s Renewed Recognition that the Colorado River Corridor Must  
21                   be Managed for its Wilderness Character

22           75.     In 1993, the 1980 Wilderness Recommendation was updated to reflect  
23 boundary adjustments and address the dispute over the motorized use of the Colorado  
24 River corridor.

25           76.     The 1993 Wilderness Recommendation reiterated the potential wilderness  
26 status of the Colorado River “pending resolution of motorized river issues” and explained  
27 that existing motorized watercraft use of the Colorado River is “inconsistent with  
28 established wilderness criteria.”

1           77. In 1995, the Park Service issued a General Management Plan (“GMP”) for  
2 the Grand Canyon, accompanied by an EIS.

3           78. The GMP requires the Park Service to protect opportunities for natural  
4 quiet and solitude within the Grand Canyon and maintain the wilderness character of the  
5 Colorado River corridor.

6           79. The GMP directs that the 1989 CRMP “be updated to be consistent with  
7 wilderness management directives,” including the directive to preserve the “wilderness  
8 river-running experience” and the directive to address the “non-conforming uses of  
9 motorboats and generators.”

10           80. In 1998, the Park Service announced its intent to revise the 1989 CRMP.  
11 The Park Service justified its decision to revise the 1989 CRMP on the grounds of  
12 dramatic changes in the amount of public demand for river recreation in the Grand  
13 Canyon. The public, non-commercial boater, permit waiting list had grown to over 5,500  
14 applicants by 1998.

15           81. The stated objective of the planned revision of the 1989 CRMP was to  
16 “develop a comprehensive plan that will insure resource protection while maximizing the  
17 benefits the river can provide to society.” Specific goals of the revised CRMP included:  
18 (a) mitigation or elimination of noise; (b) management of areas meeting the criteria for  
19 wilderness designation in a manner consistent with proper management of designated  
20 wilderness; (c) active pursuit of wilderness designation for lands and waters within the  
21 Grand Canyon recommended for such designation; and (d) management of the Colorado  
22 River corridor in such a manner as to protect and preserve the resource in a wild and  
23 primitive condition, provide primitive recreational activities consistent with Wilderness  
24 Act requirements and Park Service policies on accessibility, and provide a wilderness  
25 river experience on the Colorado River.

26           82. After a scoping process, the Park Service identified additional objectives  
27 including improvement of river access, evaluation of the impacts of current use of the  
28 Colorado River corridor, and evaluation of alternative access systems that would enable

1 public use of the river regardless of whether the use consists of a commercially outfitted  
2 tour or self-guided trip.

3 83. In 1999, the Park Service Director issued Director's Order #41: Wilderness  
4 Preservation and Management (Director's Wilderness Order) in order "to provide  
5 consistency and accountability" among Park Service wilderness management programs,  
6 "clarify policies and establish specific instructions and requirements" regarding  
7 wilderness management, and "guide Park Service efforts in meeting the letter and spirit  
8 of the Wilderness Act."

9 84. The Director's Wilderness Order provided that Park Service Reference  
10 Manual #41: Wilderness Preservation and Management (Wilderness Reference Manual)  
11 was to be considered a supplement to its terms, conditions, and requirements of the  
12 Director's Wilderness Order.

13  
14 The Park Service's Decision to Abandon its Efforts To Revise the 1989 CRMP  
15 and Manage for Wilderness Character

16 85. On February 23, 2000, Grand Canyon Superintendent Arnberger announced  
17 that the Park Service would immediately cease all work on a revised CRMP.

18 86. Superintendent Arnberger ordered a deferral of "major river decisions that  
19 lie outside the park's discretion," including "major changes in the river-use allocation  
20 system," until the Grand Canyon and/or the Park Service "have the capacity to properly  
21 engage necessary planning requirements."

22 87. Superintendent Arnberger justified his decision on the basis of "limitations  
23 of funding and personnel, federal requirements for strategic planning, and consideration  
24 of the park's other priorities." Superintendent Arnberger also indicated that the decision  
25 to cease planning activities was the result of "unresolved differences among user groups,"  
26 the "difficulties of wilderness management without a decision from Congress on the  
27 park's wilderness designation," "fragmentation of the issues," and a lack of improvement  
28

1 in the “possibilities for collaboration where serious division exists among the various  
2 interests.”

3 88. Despite the dramatic increase in demand for non-commercial, self-guided  
4 river use and an increase in negative impacts to the Colorado River corridor’s wilderness  
5 character caused by continued motorized use, the Park Service had not revised or  
6 adjusted the types and allocations of use between commercial and non-commercial use  
7 since 1981.

8 89. Since 1981, the relative demand for commercial and public, non-  
9 commercial boating access to the river corridor has continued to significantly change as  
10 the public has become more knowledgeable and adept at “self-guided” river recreation as  
11 a sport and has become increasingly aware of the opportunity for access to lands and  
12 waters that exhibit outstanding primitive recreational opportunities.

13 90. The demand for access to the Colorado River by public, non-commercial  
14 rafters the majority of which are interested in using oar-driven watercraft to navigate the  
15 river, has significantly increased. The most obvious indication of this increase in demand  
16 is the fact that by the year 2000, there were over 6,000 applicants listed on the non-  
17 commercial river access waiting list, resulting in an average wait of between 10 to 20 or  
18 more years for a permit for non-commercial boat access to the river. By 2003, there were  
19 more than 8,000 trip leaders on the waiting list and approximately 1000 people joined the  
20 waitlist each year.

21 91. Commercial concessionaires are not subject to the waiting list and can  
22 make trips available within several days of a request. Oftentimes commercial user-days  
23 go unused and are put on sale to attract more customers.

24 92. Motorized uses, both commercially and administratively, continued to  
25 dominate river activities, despite mandates, policies and directives requiring  
26 implementation of wilderness management and standards.

27 93. On April 7, 2000 the Grand Canyon Private Boaters Association  
28 (“GCPBA”) wrote to Superintendent Arnberger to ask that the Park Service prepare a

1 new CRMP to address use inequity and significant resource impacts under the existing  
2 management plan. After the Park Service refused to prepare a new CRMP, GCPBA and  
3 other plaintiffs filed a lawsuit in 2000 to compel preparation of the new CRMP. In 2002,  
4 the Park Service settled the case by agreeing to reinstate the CRMP planning process.

5  
6 The Park Service's 2005 CRMP/FEIS and Record of Decision

7 94. In 2005, after a public scoping process, the Park Service released the  
8 CRMP/DEIS for public comment. The DEIS considered a no action alternative along  
9 with seven action alternatives. The no action alternative and five other alternatives retain  
10 motorized use and either increase or retain current levels of commercial use of the  
11 Colorado River, to varying degrees. Two alternatives seek to increase non-motorized use  
12 of the Colorado River, one that provides high levels of use and one alternative which  
13 proposed reducing commercial use by 15%. Alternative H, the Preferred Alternative,  
14 would increase both commercial and non-commercial use. Additional use for non-  
15 commercial river users would be allocated primarily in the less-preferred winter season  
16 and in the shoulder seasons of spring and fall.

17 95. Plaintiffs submitted timely substantive comments on the draft CRMP/DEIS.

18 96. The Park Service issued the CRMP/FEIS in November, 2005 with some  
19 modifications from the DEIS. In the CRMP/FEIS, the Park Service's Preferred  
20 Alternative allows motorized use of the Colorado River during the popular summer  
21 season (over 5 ½ months), helicopter passenger exchanges, and an increase in the  
22 maximum number of annual users of the Colorado River.

23 97. Under the Preferred Alternative, commercial motorized use of the Colorado  
24 River corridor will increase.

25 98. Under the Preferred Alternative, commercial users will be able to take their  
26 river trips in the summer and shoulder seasons, but over one-third of the non-commercial  
27 users will be forced to take a winter trip in order to float the Colorado River in the Grand  
28 Canyon.

1           99.    The Preferred Alternative allows motorized use of the Colorado River from  
2 April 1 until September 15 and creates a non-motorized window from September 16 until  
3 March 31. The Preferred Alternative allows for an increase in the estimated yearly  
4 passengers on the Colorado River to totals of 24,657. The number of total launches per  
5 day in the summer season would be decreased from nine to the current average of six.  
6 Commercial motor trip and oar trip group sizes would be decreased from the maximum  
7 of 42 to the current average of 32 people in the summer and 24 people during other times.  
8 Non-commercial trip group sizes would remain at 16 people for a standard trip and a new  
9 small group size of 8 was also added to reduce campsite competition along the river.  
10 Even though the maximum number of river trips at one time would be reduced from 70 to  
11 60 trips and the maximum number of people at one time would be reduced from 1,095 to  
12 985, commercial motorized use is expected to increase to an estimated 76,913 user days.

13           100. The Park Service claims that non-commercial use will increase under the  
14 revised CRMP, but that claim is based primarily on the Park Service's assumption that  
15 non-commercial river users will want to float the Colorado River in the winter season in  
16 greater numbers than they do today. The Park Service's Preferred Alternative allocates  
17 roughly 60% of the user days for summer and shoulder river trip seasons to commercial  
18 concessionaires. This means that during the preferred summer and shoulder river trip  
19 seasons, roughly 77% of recreational river users will be paying, commercial users and  
20 roughly 23% of recreational river users will be non-commercial. During the winter, no  
21 commercial users will be on the river, but according to the Park Service, 1,855 non-  
22 commercial river runners may take a winter trip each year, even though in the past only  
23 approximately 318 people have done so. Each year, the predicted 1,855 winter users  
24 represent 35% of people authorized by the Park Service to take a non-commercial trip  
25 down the Colorado River in a given year. If any user wants to float the Grand Canyon  
26 and experience the true wilderness character of the Colorado River, without the noise and  
27 distraction of motorboats, they will be forced to do so in the winter season.

1           101. The Preferred Alternative failed to base its allocation between commercial  
2 and non-commercial users on the best available information regarding river use and  
3 demand. The CRMP and ROD's apportionment of use is inequitable in terms of overall  
4 use, group size and timing of use.

5           102. The Preferred Alternative allows helicopter exchanges at Whitmore to  
6 accommodate commercial river trips. An estimated 3,635 commercial passengers will be  
7 transported by helicopter to Whitmore to begin their river trips. An estimated 5,715  
8 commercial passengers will be transported by helicopter at the end of their river trips at  
9 Whitmore.

10           103. On February 17, 2006, the Park Service signed its Record of Decision  
11 (ROD) for the CRMP and thereby revised and updated the Colorado River Management  
12 Plan developed in 1980 and revised in 1981 and 1989. On March 23, 2006, the Park  
13 Service released the ROD to the public.

14           104. The Park Service's 2006 ROD adopts the preferred alternatives (Modified  
15 Alternative H and Modified Alternative 4) from the FEIS.

16           105. The ROD does not address the Park Service's legal duty to manage the  
17 Colorado River corridor through Grand Canyon National Park as wilderness. However,  
18 the ROD states that the CRMP will result in adverse impacts of moderate intensity for  
19 visitors seeking outstanding opportunities for solitude or a primitive and unconfined type  
20 of experience on the river.

21           106. The Park Service's 2006 ROD and CRMP will adversely impact and impair  
22 the Colorado River corridor's wilderness character and cultural resources.

23           107. The Park Service's 2006 ROD and CRMP will adversely impact and impair  
24 the Colorado River corridor's natural resources, including the region's natural  
25 soundscape, riparian vegetation, beaches, and wildlife.

26           108. These impacts include, but are not limited to: crowding; disruption of  
27 natural quiet and solitude; soil compaction and erosion; water contamination; damage to  
28 riparian habitat, stream banks, trails and campsites; damage to cultural and archeological

1 resources; displacement of native plant and animal populations and introduction of non-  
2 native species and impairment of the primitive and natural recreational experience.

3 109. Based on the decisions made in the CRMP, the Park Service will issue new  
4 contracts to commercial operators in 2006. These contracts will be issued without an  
5 opportunity for public comment. These contracts will be issued without further NEPA  
6 analysis.

## 7 CLAIMS FOR RELIEF

### 8 COUNT I

#### 9 Violation of the Park Service's Duty to Manage the Colorado River as Wilderness

10 110. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

11 111. The Park Service's ROD and CRMP violates the Organic Act, Park Service  
12 regulations and policies and the Park Service's 1995 GMP.

13 112. Pursuant to the Organic Act, the Park Service is required "to conserve the  
14 scenery and the natural and historic objects and the wildlife [within the Grand Canyon]  
15 and to provide for the enjoyment of the same in such manner and by such means as will  
16 leave them unimpaired for the enjoyment of future generations." 16 U.S.C. § 1. The  
17 Grand Canyon must be administered to conserve the Park's natural, historic, and wildlife  
18 resources. 16 U.S.C. § 1a-1.

19 113. The "fundamental purpose" of the national park system . . . begins with the  
20 mandate to conserve park resources and values." Management Policies ("MP") at 1.4.3.  
21 In the Grand Canyon, wilderness character is a park resource and value that must be  
22 conserved. The Park's "natural resources are [a] critical defining element of the  
23 wilderness resource." MP at 6.3.7. "Without natural resources . . . a wilderness  
24 experience would not be possible." MP at 6.3.7. As such, "[w]ilderness preservation [is]  
25 . . . considered among the purest applications of the [Park] Service's responsibilities for  
26 protecting 'wildlife,' its habitat, and the conservation of associated resources." Reference  
27 Manual 41 at 10.



1           114. In accordance with this mandate, the Park Service must develop regulations  
2 respecting the administration and use of areas within the Grand Canyon “which may be  
3 designated as wilderness areas . . . with a view to protecting such areas and preserving  
4 their wilderness character for the use and enjoyment of the American people in such a  
5 manner as will leave them unimpaired for future use and enjoyment as wilderness.” 43  
6 C.F.R. § 19.6.

7           115. The Management Policies require the Park Service to manage potential  
8 wilderness areas for the “preservation of the physical wilderness resources” and ensure  
9 through its planning documents that the “wilderness character is likewise preserved.”  
10 MP at 6.3.1.

11           116. Managing for “wilderness character” means keeping the area  
12 “untrammelled,” “natural,” and “undeveloped,” and managing for “outstanding  
13 opportunities for solitude or a primitive and unconfined type of recreation.”

14           117. The Park Service’s policies require the Park Service to “seek to remove  
15 from potential wilderness the temporary, non-conforming conditions that preclude  
16 wilderness designation.” MP at 6.3.1.

17           118. The Park Service’s policies require that “[r]ecreational uses that do not  
18 meet the purposes and definitions of wilderness should be prohibited.” MP at 6.4.3.1.  
19 The Park Service’s policies expressly prohibit public use of motorized equipment or any  
20 form of mechanical transport in potential wilderness except as provided for in specific  
21 legislation. MP at 6.4.3.3.

22           119. The Park Service’s 1995 GMP for the Grand Canyon is consistent with the  
23 Organic Act and Park Service’s policies with respect to managing potential wilderness  
24 areas for their “wilderness character.”

25           120. The Park Service’s 1995 GMP sets objectives and standards for the  
26 management of park resources, visitor use and general development.  
27  
28

1           21. The Park Service’s 1995 GMP implements the statutory mandate of the  
2 Organic Act to protect park resources from degradation while providing for meaningful  
3 visitor experiences consistent with preserving park resources.

4           22. The Park Service’s 1995 GMP mandates that “[o]ver 90% of the park will  
5 be managed as wilderness, in accordance with the park’s 1993 wilderness  
6 [recommendation].” GMP at 21.

7           23. The Colorado River corridor, consisting of approximately 7,890 acres on  
8 the western side of the park and 4,300 acres on the eastern side of the park, is included as  
9 recommended potential wilderness in the 1993 Wilderness Recommendation. The Park  
10 Service must manage the Colorado River corridor as wilderness and protect its wilderness  
11 character.

12           24. The Wilderness Act defines wilderness and sets forth standards for  
13 protecting wilderness. The Wilderness Act prohibits temporary roads, motor vehicle use,  
14 motorized equipment or motorboats, landing of aircraft, mechanical transport, structures  
15 and installations. 16 U.S.C. § 1133(c). The Wilderness Act allows for commercial  
16 services within wilderness only to the extent necessary for activities that are proper for  
17 realizing the recreational or other wilderness purposes of the areas. 16 U.S.C. §  
18 1133(d)(5). The Park Service’s Management Policies and the GMP provide for  
19 management of potential wilderness consistent with the Wilderness Act.

20           25. The 1993 Wilderness Recommendation reaffirms the 1980 Wilderness  
21 Recommendation’s conclusion that motorized riverboat use is a non-conforming use that  
22 prevents wilderness designation. According to the 1993 Wilderness Recommendation,  
23 motorized boat use on the Colorado River is “inconsistent with the wilderness criteria of  
24 providing outstanding opportunities for solitude and for a primitive and unconfined type  
25 of recreation.” 1993 Wilderness Proposal at 17.

26           26. The Park Service’s 2006 ROD and CRMP authorize the use of motorboats  
27 in the Colorado River corridor, a potential wilderness area.

28

1           127. The Park Service’s 2006 ROD and CRMP also authorize helicopter  
2 passenger exchanges to accommodate motorized boat launches in and/or adjacent to the  
3 Colorado River corridor which is a potential wilderness area.

4           128. The authorization of motorboats and helicopter passenger exchanges is  
5 inconsistent with managing the Colorado River corridor as wilderness.

6           129. The Park Service’s authorization of motorized boats on the Colorado River  
7 and helicopter passenger exchanges – uses that degrades the river’s aesthetic, natural, and  
8 scenic values, interferes with opportunities for solitude and natural quiet, and impacts the  
9 wilderness character of the river corridor – therefore violates the Park Service’s duty to  
10 manage the Colorado River for its wilderness character.

11           130. The Park Service has illegally allowed certain commercial uses of the  
12 Colorado River without a determination that such uses are consistent with managing the  
13 area as wilderness. Further, the Park Service has illegally allowed certain commercial  
14 uses of the area that are inconsistent with managing the area as wilderness. The current  
15 levels of commercial services authorized by the 2006 ROD and CRMP go well beyond  
16 what is necessary and appropriate to enable the public to realize the recreational and other  
17 wilderness purposes of the park.

18           131. The Park Service illegally allowed motorized uses of the Colorado River  
19 without determining that such uses are necessary and appropriate to realize the  
20 recreational or other wilderness purposes of the park. Commercial motorized uses of the  
21 Colorado River are not necessary to realize the recreational or other wilderness purposes  
22 of the park.

23           132. The 2006 ROD and CRMP allow types and amounts of use of the Colorado  
24 River corridor that will degrade its wilderness character.

25           133. The Park Service’s 2006 ROD and CRMP are therefore arbitrary and  
26 capricious, an abuse of discretion, and not in accordance with the Organic Act, Park  
27 Service’s regulations and policies, and the Park Service’s GMP for the Grand Canyon. 5  
28 U.S.C. § 706 (2).

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COUNT II

The Park Service's Authorization of Commercial Services That Are Not "Necessary and Appropriate" is Arbitrary and Capricious

134. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

135. The CRMP and ROD violate the Organic Act, Management Policies and the National Park Service Concessions Management Improvement Act of 1998, 16 U.S.C. §§ 5901 *et seq.*

136. The Park Service can only authorize commercial services in National Parks where such services are "necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located; and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit." 16 U.S.C. § 5951(b)

137. The Park Service's 2006 ROD and CRMP states that "since visitors who wish to raft on the Colorado River through the Grand Canyon possess neither the equipment nor the skill to successfully navigate the rapids and other hazards of the river, the [Park Service] 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." FEIS Vol. 1 at 19.

138. The Park Service states that it has "determined that the service provided by commercial concessionaires, which enable thousands of people to experience the river in a relatively primitive and unconfined manner and setting (when many of them otherwise would be unable to do so), are necessary to realize the recreational and other wilderness purposes of the park." FEIS Vol. I at 19.

139. The Park Service never determined whether continued commercial *motorized* use of the Colorado River corridor was necessary and appropriate for the public to realize the recreational and other wilderness purposes of the Park. Commercial

1 motorized use of the Colorado River corridor is not necessary and appropriate for the  
2 public to realize the recreational and other wilderness purposes of the Park. The public  
3 can realize the recreational and other wilderness purposes of the Park by taking a non-  
4 motorized commercial trip or a non-motorized non-commercial trip down the Colorado  
5 River corridor.

6 140. The 2006 ROD and CRMP fail to identify any specific *amount* of  
7 commercial services that are “necessary and appropriate” to enable the public to realize  
8 the recreational and other wilderness purposes of the Park. The current levels of  
9 commercial services authorized by the Park Service’s ROD and CRMP go well beyond  
10 what is “necessary and appropriate” to enable the public to realize the recreational and  
11 other wilderness purposes of the Park.

12 141. The Park Service’s authorization of continued commercial use fails to  
13 preserve the wilderness character and other values of the Colorado River corridor to the  
14 highest practicable degree as required by law.

15 142. The Park Service’s determination that the current levels of use of the  
16 Colorado River corridor are necessary and appropriate to realize the recreational and  
17 other wilderness purposes of the Park is therefore “arbitrary and capricious, an abuse of  
18 discretion, and not in accordance with law.” 5 U.S.C. § 706 (2).

### 19 20 COUNT III

#### 21 Violation of the Park Service’s Duty to Avoid Impairment of the Park’s Resources and 22 Values

23 143. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

24 144. The Park Service’s 2006 ROD and CRMP violate the Organic Act and Park  
25 Service regulations and policies.

26 145. Pursuant to the Organic Act, the Park Service is required to “to conserve  
27 the scenery and the natural and historic objects and the wildlife [within Grand Canyon  
28 National Park] and to provide for the enjoyment of the same in such manner and by such

1 means as will leave them unimpaired for the enjoyment of future generations.” 16 U.S.C.  
2 § 1.

3 146. The Park Service’s Management Policies describe when an impact to the  
4 Grand Canyon’s natural resources becomes an “impairment” of the Park’s resources in  
5 violation of the Organic Act. MP at 1.4.

6 147. The Park Service’s policies state that their discretion to manage the Park “is  
7 limited by the statutory requirement (enforceable by federal courts) that the Park Service  
8 must leave park resources and values unimpaired, unless a specific law directly and  
9 specifically provides otherwise.” MP at 1.4.4. The “impairment of park resources and  
10 values may not be allowed by the Service unless directly or specifically provided for by  
11 legislation.” MP at 1.4.4.

12 148. The Management Policies state that the “impairment that is prohibited by  
13 the Organic Act . . . is an impact that . . . would harm the integrity of park resources or  
14 values, including the opportunities that otherwise would be present for the enjoyment of  
15 those resources and values. Whether an impact meets this definition depends on the  
16 particular resources and values that would be affected; the severity, duration, and timing  
17 of the impact; the direct and indirect effects of the impact; and the cumulative effects of  
18 the impact in question and other impacts.” MP at 1.4.5.

19 149. The Management Policies state that an “impact to any park resource or  
20 value may constitute an impairment. An impact would be more likely to constitute an  
21 impairment to the extent that it affects a resource or value whose conservation is:  
22 [n]ecessary to fulfill the specific purposes . . . of the park; [k]ey to the natural and cultural  
23 integrity of the park or to opportunities to enjoy the park; or [i]dentified as a goal in the  
24 park’s general management plan or other relevant NPS planning documents.” MP at  
25 1.4.5.

26 150. The Management Policies state that “[i]mpairment may occur from visitor  
27 activities.” MP at 1.4.6.

28

1           151. The Grand Canyon’s scenery, natural resources, natural soundscape, and  
2 the opportunity to experience natural quiet and solitude are some of the Park’s resources  
3 and values that must be conserved and cannot be impaired. MP at 1.4.6; FEIS, Vol. II at  
4 348.

5           152. Natural quiet and the opportunity to experience solitude, along with the  
6 Park’s natural resources, are key to the natural integrity of the Park and to the public’s  
7 opportunity for enjoyment of the Park.

8           153. Preservation of natural quiet and the opportunity to experience solitude,  
9 along with the protection of the Park’s natural resources, are identified as goals in the  
10 Park Service’s GMP for the Grand Canyon.

11           154. The GMP states that “[t]he Grand Canyon National Park is recognized as a  
12 place with unusual and noticeable natural quiet, and direct access to numerous  
13 opportunities for solitude.” GMP at 8.

14           155. The GMP states that protecting “the natural quiet and solitude of the park,  
15 and mitigat[ing] or eliminat[ing] the effects of activities causing excessive or unnecessary  
16 noise in, over, or adjacent to the park” is a “management objective for Grand Canyon  
17 National Park.” GMP at 12.

18           156. The Park Service’s 2006 ROD and CRMP impair the Grand Canyon’s  
19 natural resources and values and the visitor’s opportunity to enjoy and experience those  
20 resources and values.

21           157. The Park Service’s 2006 ROD and CRMP provide for high levels of use  
22 and authorize motorboats on the Colorado River and helicopter passenger exchanges.  
23 These uses degrade the River’s natural soundscape and aesthetic, natural, and scenic  
24 values, interfere with visitors’ opportunities to experience solitude and natural quiet in  
25 the river corridor, and violate the Park Service’s duty to avoid the impairment of the  
26 Grand Canyon’s resources and values.  
27  
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1           158.    The Park Service's ROD and CRMP are therefore arbitrary and capricious,  
2 an abuse of discretion, and not in accordance with the Organic Act and Park Service  
3 regulations and policies. 5 U.S.C. § 706 (2).  
4

5  
6   COUNT IV

7                                   Violation of the Park Service's Duty to Provide Fair and Equitable Access to the Park's  
8   Resources

9           159.    Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

10          160.    The Park Service's ROD and CRMP violates the Organic Act and Park  
11 Service regulations and policies.

12          161.    The Organic Act mandates that "[n]o natural, curiosities, wonders, or  
13 objects of interest shall be leased, rented, or granted to anyone on such terms as to  
14 interfere with free access to them by the public." 16 U.S.C. § 3.

15          162.    Because the overall use of the river must be limited to protect its natural  
16 resources and the wilderness character of the Colorado River corridor, user access must  
17 necessarily be limited. The Park Service has chosen to allocate use in a split allocation  
18 system between commercial and noncommercial user groups.

19          163.    The 2006 ROD and CRMP allow the Colorado River to be leased for use  
20 by commercial concessionaires at levels that interfere with free access to the Colorado  
21 River by the public. Pursuant to the 2006 ROD and CRMP, the public gains access to  
22 travel down the Colorado River by either: (1) applying for a non-commercial permit  
23 through the lottery system and coordinating a public river trip; or (2) paying a  
24 commercial concessionaire, which already has guaranteed allocated use of the river, to  
25 take people on a private trip down the river. Members of the public who have the  
26 financial means and inclination to gain river access by paying for a private commercial  
27 trip are assured a trip down the Colorado River. Members of the public who cannot  
28



1 afford to pay a commercial outfitter and/or do not wish to take a commercial trip, have no  
2 guarantee they will be able to take a trip down the Colorado River.

3 164. Under the existing permit system a member of the public must wait  
4 between 10 and 20 years to obtain a permit to take a non-commercial trip through the  
5 Grand Canyon. There are currently approximately 7,000 people on this list who are  
6 waiting to obtain a permit.

7 165. Pursuant to the 2006 ROD and CRMP, the waiting list for non-commercial  
8 uses will be eliminated and replaced by a weighted lottery system.

9 166. The 2006 ROD and CRMP's allocation system – a system that inequitably  
10 favors access by private commercial users who can afford to pay for guided trips and  
11 authorizes unnecessary amounts of commercial concessionaires at the expense of  
12 noncommercial users -- is therefore arbitrary and capricious, an abuse of discretion, and  
13 not in accordance with the Organic Act. 5 U.S.C. § 706 (2).  
14

15  
16 COUNT V

17 Violation of the Park Service's Duty to Take a Hard Look at Environmental  
18 Consequences

19 167. Plaintiffs repeat and incorporate by reference the foregoing paragraphs.

20 168. The Park Service's ROD, CRMP, and FEIS violate NEPA and its  
21 implementing regulations and the Management Policies.

22 169. Pursuant to NEPA and its implementing regulations, the Park Service is  
23 required to take a hard look at the environmental consequences of its proposed action.  
24 The Park Service must assess the direct, indirect, and cumulative impact of its actions  
25 before they occur and before the agency commits resources to the action(s). 40 C.F.R. §§  
26 1500 to 1508.  
27

28 170. Pursuant to NEPA and its implementing regulations, the Park Service must  
also ensure the scientific accuracy of information it relies upon in making conclusions

1 (and make explicit reference by footnote to those sources), ensure use of high-quality  
2 information and an accurate scientific analysis, disclose and analyze conflicting scientific  
3 data and responsible opposing views, and ensure that the EIS includes enough  
4 information in order to afford the public an opportunity to submit meaningful public  
5 comment. 40 C.F.R. §§ 1500 and 1502.

6 171. The Park Service’s Management Policies mandate that before making a  
7 determination of whether there would be impairment to the Grand Canyon’s resources  
8 and values, the Park Service “must consider any environmental assessments or  
9 environmental impact statements . . . relevant scientific studies, and other sources of  
10 information; and public comments.” MP at 1.4.7.

11 172. The Park Service’s 2006 ROD, CRMP, and FEIS fail to take a hard look at  
12 the direct, indirect, and cumulative impacts of allowing different levels and types of  
13 commercial and motorized use of the Colorado River. The FEIS fails to establish the  
14 proper baseline and fails to consider all available, high quality and scientifically accurate  
15 studies and data and public comments on the direct, indirect, and cumulative impacts of  
16 allowing motorboats and helicopter exchanges on the Colorado River’s natural resources  
17 (natural soundscape, wilderness character, riparian areas and vegetation, and wildlife)  
18 and visitor experiences.

19 173. The Park Service also fails to base its 2006 ROD on complete scientific  
20 data concerning the present condition of Colorado River resources and the ongoing  
21 degradation of these resources, especially as caused by the operations of Glen Canyon  
22 Dam, to the visitor experience pursuant to the Organic Act and Grand Canyon Protection  
23 Act.

24 174. The Park Service’s decision to issue its 2006 ROD and adopt the CRMP in  
25 the absence of this information and analyses is arbitrary and capricious, an abuse of  
26 discretion, and not in accordance with NEPA and its implementing regulations. 5 U.S.C.  
27 § 706 (2)(A).  
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## REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request the Court order the following relief:

A. Issue a declaratory judgment that the Park Service has violated and continues to violate the National Park Service Organic Act and Redwoods Amendment, the National Park Service Concessions Management Improvement Act of 1998, Park Service regulations and policies, and NEPA for the reasons and in the manner alleged above;

B. Issue a declaratory judgment that the Park Service's violation of the above listed laws, regulations, and policies constitutes "agency action unlawfully withheld or unreasonably delayed" and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under the APA;

C. Issue an injunction ordering the Park Service to prepare a new CRMP and FEIS that remedies the violations of law articulated in this complaint;

D. Issue an injunction prohibiting the Park Service from acting and/or requiring the Park Service to act, in such a manner as Plaintiffs may request in briefing on this action;

E. Award Plaintiffs their costs of litigation, including reasonable attorneys' fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412 (d); and

F. Grant such other relief as this Court deems necessary, proper, and equitable.

Respectfully submitted this 28<sup>TH</sup> day of March, 2006.

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