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15 Attorneys for Plaintiffs

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 River Runners for Wilderness, <i>et al.</i> ,)	No. CV-06-0894 PCT-DGC
)	
19 Plaintiffs,)	
)	
20 v.)	PLAINTIFFS' RESPONSE TO
)	FEDERAL DEFENDANTS' AND
21 Joseph F. Alston, <i>et al.</i> ,)	DEFENDANT-INTERVENORS'
)	JOINT STATEMENT OF
22 Federal-Defendants; and)	MATERIAL FACTS IN SUPPORT
)	OF SUMMARY JUDGMENT
23 Grand Canyon River Outfitters)	
Association; Grand Canyon Private)	
24 Boaters Association,)	
)	
25 Defendant-Intervenors.)	
)	

1 Pursuant to LRCiv 56.1 (b), Plaintiffs hereby submit this response to Federal
2 Defendants' and Defendant-Intervenors' joint statement of material facts in support of
3 summary judgment. In accordance with LRCiv 56.1 (b), each of the following headings
4 and numbered paragraphs corresponds to the headings and numbered paragraphs in
5 Federal Defendants' and Defendant- Intervenors' joint statement of facts, followed by
6 Plaintiffs' response **in bold**.

7
8 Establishment and Administration of Grand Canyon National Park

9
10 1. President Theodore Roosevelt established Grand Canyon National Monument
11 through Proclamation No. 794, 35 Stat. 2175 (1908), to protect the Grand Canyon of the
12 Colorado River, "the greatest eroded canyon within the United States." Congress
13 established Grand Canyon National Park ("GRCA" or "Park") through the Act of
February 26, 1919, ch.44, 40 Stat. 1175, and enlarged it through the Grand Canyon
National Park Enlargement Act, Pub. L. No. 93-620, 88 Stat. 2089 (1975), as amended by
the Act of June 10, 1975, Pub. L.

14 **Plaintiffs do not dispute this statement.**

15
16 2. Under 16 U.S.C. § 222, the National Park Service ("NPS"), United States
17 Department of the Interior, administers GRCA as a unit of the National Park System in
18 accordance with what is commonly referred to as the NPS Organic Act, Act of August 25,
1916, ch. 408, 39 Stat. 535, codified as amended at 16 U.S.C. §§ 1 and 2-4 (2006), and
with other laws applicable generally to units of the National Park System, including
NPS's concessions authority.

19
20 **Plaintiffs do not dispute this statement.**

21
22 3. Section 1 of the NPS Organic Act directs the NPS to "promote and regulate the
23 use of the Federal areas known as national parks, monuments, and reservations
24 hereinafter specified . . . by such means and measures as conform to the fundamental
25 purpose of the said parks, monuments, and reservations, which purpose is to conserve the
26 scenery and wild life therein and to provide for the enjoyment of the same in such manner
27 and by such means as will leave them unimpaired for the enjoyment of future
28 generations." 16 U.S.C. § 1. Section 3 of the Organic Act directs the Secretary of the
Interior to "make and publish such rules and regulations as he may deem necessary or
proper for the use and management of the parks, monuments, and reservations under the
jurisdiction of the National Park Service." 16 U.S.C. § 3. A later statute, enacted as part
of the Act of October 7, 1976, Pub. L. No. 94-458, 90 Stat. 1939, authorizes the Secretary
of the Interior to "[p]romulgate and enforce regulations concerning boating and other

1 activities on or relating to waters located within areas of the National Park System,
2 including waters subject to the jurisdiction of the United States." 16
3 U.S.C. § 1a–2(h).

4 **Plaintiffs do not dispute this statement.**

5 4. Acting under its various statutory authorities, the NPS has promulgated
6 regulations specifically governing the use of the Colorado River within GRCA. See 36
7 C.F.R. § 7.4(b). NPS also has entered into concession contracts with 16 private entities to
8 provide motorized and non-motorized boat trips for the public on the Colorado River
9 within GRCA. AR 104606 (FEIS Vol. I at 19).

10 **Plaintiffs do not dispute that the NPS has entered into concessions contracts**
11 **and promulgated regulations concerning the day-to-day use of the Colorado River**
12 **corridor in the Grand Canyon, i.e., regulations concerning use of life preservers,**
13 **permitting, human waste, dogs, fires, picnicking, and swimming etc. . .See 36 C.F.R.**
14 **§ 7.4. Rules concerning compliance with the Organic Act’s non-impairment**
15 **mandate and wilderness management (i.e., rules regarding preserving wilderness**
16 **values, natural soundscape, and motorized uses in wilderness) are located in the**
17 **NPS’s 2001 Management Policies (MPs). SAR 016073. Pursuant to 36 C.F.R. § 1.6**
18 **(a), all permits and contracts issued for the use of the Colorado River corridor “shall**
19 **be consistent with . . .[MPs].”**

20 Grand Canyon National Park and Wilderness

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

27 **Plaintiffs do not dispute this statement.**

28 6. Subsection 4(d)(1) of the Wilderness Act authorizes permitting the continued
use of aircraft and motorboats within designated wilderness, "where these uses have
already become established." 16 U.S.C. § 1133(d)(1). Accordingly, the NPS Management

1 Policies contemplate "the continuation of motorboat and aircraft use under certain
2 circumstances in which those activities were established prior to wilderness designation."
3 Id. § 6.4.3.3.

4 **These are not facts, but legal argument. Plaintiffs do not dispute that § 4**
5 **(d)(1) of the Wilderness Act provides for uses that have "already become**
6 **established" but dispute the application of § 4 (d)(1) to this case for a number of**
7 **reasons outlined in Plaintiffs' briefs. On its face, for instance, § 4 (d)(1) of the**
8 **Wilderness Act does not apply to the Department of the Interior. Plaintiffs do not**
9 **dispute that § 6.4.3.3 of the MPs cites § 4 (d)(1) of the Wilderness Act but note that**
10 **NPS policy does not permit such uses to continue in the Colorado River corridor.**
11 **MP 6.3.1 (SAR 016136); SAR 010275; SAR 016142; SAR 007300.**

12 7. The Grand Canyon National Park Enlargement Act, as amended in June 1975,
13 required the Secretary of the Interior to report to the President, within two years, "his
14 recommendation as to the suitability or nonsuitability of any area within the national park
15 for preservation as wilderness." 16 U.S.C. § 228i-1. In 1977, NPS prepared a "Final
16 Wilderness Recommendation" for GRCA that proposed the Colorado River corridor as
17 wilderness. SAR 002678-810 (particularly SAR 002695). That recommendation was
18 forwarded to the Department's office of legislative counsel but was held in abeyance
19 pending completion of the Park's first comprehensive river management plan. AR 104604
20 (FEIS Vol.I at 17); AR 104820 (FEIS Vol. I at 233). In 1980, upon completion of the
21 plan, the NPS resubmitted the wilderness recommendation to the Department, proposing
22 the Colorado River as "potential wilderness pending the phase-out of non-wilderness use
23 by motorized craft." SAR 005787; see also AR 104604 (FEIS Vol. I at 17); AR 104820
24 (FEIS Vol. I at 233); see generally SAR 005770-893.

25 **Plaintiffs dispute this statement. Evidence in the record indicates that the**
26 **Park Service's 1977 wilderness recommendation was forwarded to the President as**
27 **required by the Grand Canyon Protection Act, 16 U.S.C. § 228i-1. See SAR 004459**
28 **(wilderness study report "was sent to President and OMB [on] 3-8-77"). President**
Carter included the wilderness recommendation in his May, 1977 Presidential
address. See SAR 008233.

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

4 **Plaintiffs do not dispute this statement but note that the 1993 Wilderness**
5 **Recommendation specifically states that the Colorado River corridor qualifies as**
6 **potential wilderness (as opposed to wilderness) because of existing non-conforming**
7 **uses. See SAR 008306. The “non-conforming use identified [is] . . .motorized**
8 **riverboat use. . .current levels of motorized boat use probably contradict the intent**
9 **of wilderness designation. This use is inconsistent with the wilderness criteria of**
10 **providing outstanding opportunities for solitude and for a primitive and unconfined**
11 **type of recreation.” SAR 008307.**

12
13 9. Congress has not designated any portion of GRCA as wilderness. AR 104604
14 (FEIS Vol. I at 17); AR 104820-23 (FEIS Vol. I at 233-36); AR 105206 (FEIS Vol. III at
15 369).

16 **Plaintiffs do not dispute this statement.**

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

21 **Plaintiffs do not dispute this statement.**

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

Plaintiffs do not dispute that the GRCA Superintendent obtained legal advice

1 **concerning the continued use of motorboats on the Colorado River. Plaintiffs,**
2 **however, disagree with the legal advice obtained (as outlined in Plaintiffs' briefs)**
3 **and note that the legal advice obtained is contradicted by the previous**
4 **Superintendents' and Director's interpretations. SAR 008133; SAR 008664; SAR**
5 **008756; SAR 009148.**

7 History of NPS's Management of Colorado River within GRCA

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

15 **Plaintiffs do not dispute this statement.**

16 13. At that time, NPS initiated the first in a series of river planning and
17 management efforts, culminating in a River Use Plan issued in December 1972. SAR
18 000712-30. During the ensuing three decades, that plan was followed, in order, by a
19 number of other river planning and management documents:

<u>Title of Document</u>	<u>Date</u>	<u>AR Citation</u>
Draft Environmental Statement Proposed: Establishment of Visitor Use Limits on the Colorado River Through Grand Canyon National Park, Arizona	February 13, 1973	SAR 000913-71
Colorado River Management Plan ("1979-80 CRMP")	Dated 1980 (Approved December 20, 1979)	SAR 005223-85
Colorado River Management Plan and Annual Operating Requirements ("1981 CRMP")	CRMP dated December 1981; Record of Decision signed January 28, 1982	SAR 005921-61 SAR 006063-67
Colorado River Management Plan	Dated September 1989	SAR 007522-612

1 ("1989 CRMP") (Approved September 14, 1989)

2 Final Environmental Impact Statement FEIS dated November 2005 AR 104555-106104
3 and Record of Decision/Colorado River Record of Decision approved

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

10 **Plaintiffs do not dispute this statement to the extent it states facts (as opposed**
11 **to legal arguments). Plaintiffs dispute that the documents adequately analyze all**
12 **impacts of visitor use on the Colorado River corridor's resources as outlined in**
13 **Plaintiffs' briefs. Plaintiffs also dispute that the plans use only user-days to quantify**
14 **visitor use. Group size, number of people, number of launches and other factors all**
15 **play a role in quantifying visitor use.**

16
17 14. The 1973 Draft Environmental Statement allocated 89,000 user-days to
18 commercial users and 7,600 user-days to noncommercial users, or a ratio of 92.1 percent
19 commercial to 7.9 percent noncommercial. SAR 000916.

20 **Plaintiffs do not dispute this statement.**

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

27 **Plaintiffs do not dispute this statement to the extent it accurately quotes**
28

1 **language from the 1979-1980 CRMP, but Plaintiffs do dispute that the Park Service**
2 **made any finding in the 1979-1980 CRMP that there was *not* a means of fairly**
3 **estimating relative demand between user groups.**

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

7 **Plaintiffs do not dispute this statement.**

8 17. The 2006 CRMP continues to cap commercial use at 115,500 user-days
9 annually; all of that use will occur between April 1 and October 31, during what the 2006
10 CRMP calls the "summer season" (May 1-August 31) and most of the "shoulder seasons"
11 (March 1-April 30 and September 1-October 31). The 2006 CRMP does not cap
12 noncommercial user-days. Based on expected number of launches and group size, NPS
13 estimates that noncommercial boaters will use 79,399 user-days during the summer and
14 shoulder seasons and 34,087 userdays during the winter season, or a total of 113,486
15 user-days. Therefore, as measured in user-days, the 2006 CRMP allocates approximately
16 50.3 percent of annual use to commercial boaters and 49.7 percent to noncommercial
17 boaters. During the summer and shoulder seasons the ratio is 59.3 percent commercial to
18 40.7 percent noncommercial. AR 109592-93 (ROD at 2-3).

19 **Plaintiffs do not dispute this statement, but it only tells part of the story.**

20 **First, "[t]he FEIS does not use user-days to allocate noncommercial use. It only uses**
21 **launches," (AR104904 (FEIS Vol. III at 67) (A52)), because user-days are a**
22 **meaningless measure of noncommercial use. AR 104890 (FEIS Vol. III at 53)**
23 **(Response to A4). "Daily launches are probably the most important use measure for**
24 **measuring impacts to visitor use and experience." AR 104892 (FEIS Vol. III at 55)**
25 **(A10 Response). The number of passengers is also important. Ibid. In the summer,**
26 **commercial operators may launch 476 trips with up to 32 people on each trip. AR**
27 **104646-47 (FEIS Vol. I at 59-60). In the summer, noncommercial groups may**
28 **launch only 123 trips with 16 people and 62 trips with 8 people. Ibid. In the**
shoulder season commercial operators may launch 122 trips with up to 24 people.
Ibid. Noncommercial groups may launch 184 trips with up to 16 people and 15 trips

1 with up to 8 people. Ibid. In the winter, there are no commercial trips, but there
2 120 total launches available for up to 16 people each. Ibid.

3 As for user-days, the Park Service estimates that noncommercial users will
4 use 32,407 user-days in the summer, 46,992 user-days in the shoulder seasons and
5 34,087 user-days in the winter. See AR 104647 (FEIS Vol. I at 60). Conversely,
6 concessioners have 91,909 user-days in the summer and 23,591 user-days in the
7 shoulder season. Ibid. Thus, the concessioners have 280% more user-days in the
8 summer than noncommercial users. Ibid. During the summer season, the
9 noncommercial-commercial ratio is 35.3% to 64.7%. Ibid. While none of the
10 commercial use is in the winter, nearly one-third of noncommercial user-days would
11 be in the winter, under the Park Service's scenario. Ibid.

12
13
14 18. In the 1979-80 CRMP, NPS announced a plan to phase out the use of
15 motorized watercraft on the Colorado River within GRCA over a five-year period. SAR
16 005244. In the appropriations act for the Department of the Interior and related agencies
17 for federal fiscal year 1981, Congress responded to the NPS's plan by enacting a
18 provision, sponsored by Senator Orrin Hatch and commonly referred to as the "Hatch
19 Amendment," that prohibited the use of funds appropriated by the act "for the
20 implementation of any management plan for the Colorado River within Grand Canyon
21 National Park which reduces the number of user days or passenger-launches for
22 commercial motorized watercraft excursions, for the preferred use period, from all current
23 launch points below that which was available for the same period in the calendar year
24 1978." Title I, § 112 of the Act of December 12, 1980, Pub. L. No. 96-514, 94 Stat. 2957,
25 2972; SAR 005896-5900; SAR 005901-02. In response to that legislative restriction, NPS
26 revised the 1979-80 CRMP to produce the 1981 CRMP, which, among other things,
27 removed the five-year phase-out of motorized watercraft. SAR 005903-10; SAR 005921-
28 61 (particularly SAR 005928). Subsequent river management plans have not called for the
phase-out of motorized watercraft, and NPS has continued to issue concession contracts
requiring the use of motors.

24 **Plaintiffs do not dispute this statement but note that the 1979-80 CRMP's call**
25 **to phase out motors was the *second* time the NPS required that motors be phased**
26 **out of the Colorado River corridor to protect the Park's resources (the first request**
27 **was made in the 1973 DEIS (SAR 000929)) and that the decision was made only**

1 **after the Park Service conducted and/or reviewed approximately 29 ecological and**
2 **social studies on the carrying capacity of the Colorado River corridor and the use of**
3 **motorized boats. SAR 001787; SAR 003715.**

4
5 1995 General Management Plan

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

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

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

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

16 **Plaintiffs do not dispute this statement but note that the other management**
17 **objectives in the GMP include to: (1) “Protect the natural quiet and solitude of the**
18 **park, and mitigate or eliminate the effects of activities causing excessive or**
19 **unnecessary noise, in, over, or adjacent to the park; (2) “Manage areas meeting the**
20 **criteria for wilderness designation as wilderness;” and (3) “Manage the Colorado**
21 **River corridor through the Grand Canyon to protect and preserve the resource in a**
22 **wild and primitive condition.” SAR 010138.**

23
24
25 20. With respect to the CRMP, the 1995 GMP states:

26 The park’s 1989 *Colorado River Management Plan* will be revised as needed
27 to conform with the direction given in the management objectives of this
28 *General Management Plan*. The use of motorboats will be addressed in the
revised plan, along with other river management issues identified through the

1 scoping process. The revised plan will also conform to NPS direction and
2 responsibilities as set forth in the *Operation of Glen Canyon Dam Final*
3 *Environmental Impact Statement* (Bureau of Reclamation).

4 AR 010182 (1995 GMP at 57).

5 **Plaintiffs do not dispute this statement except for the page citation. The**
6 **quoted language can be found at SAR 010188. This page of the GMP also states that**
7 **the GMP “treats all proposed wilderness areas as wilderness [and that] . . .All**
8 **actions proposed in [the GMP], and all future implementation plans based on it such**
9 **as the . . . Colorado River Management Plan . . .will be consistent with NPS**
10 **wilderness policy requirements.” SAR 010188.**

11
12 2006 Colorado River Management Plan

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

15 **Plaintiffs do not dispute this statement.**

16 22. In 1997, NPS initiated that review, hosting public scoping workshops in
17 Portland, Oregon; Salt Lake City, Utah; and Phoenix, Arizona, and inviting written public
18 comments on river issues. SAR 10432-10433. That review process continued on and off
19 until February 2000, when it was suspended by GRCA Superintendent Robert L.
20 Arnberger. SAR 014305-014429. His decision to suspend the planning process
21 precipitated the filing of two lawsuits, one styled Randall v. Babbitt, No. CIV 00-349
22 MV/WWD (D.N.M.), and the other Grand Canyon Private Boaters Ass'n v. Arnberger
23 (hereinafter "GCPBA"), No. CIV 00-1277 PCTPGR-TSZ (D. Az.). NPS settled GCPBA
24 by agreeing to restart the planning process within 120 days after dismissal of the action
25 and to complete a new CRMP by December 31, 2004. AR 104593-94 (FEIS Vol. I at 6-
26 7); see www.nps.gov/archive/grca/crmp/documents/index
27 (copy of settlement agreement).

28 **Plaintiffs do not dispute this statement.**

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

32 **Plaintiffs do not dispute this statement.**

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

3 August 1, 2002 Denver, Colorado

4 August 6, 2002 Sandy, Utah (suburb of Salt Lake City)

5 August 8, 2002 Flagstaff, Arizona

6 August 13, 2002 Las Vegas, Nevada

7 August 15, 2002 Mesa, Arizona

8 September 30, 2002 Towson, Maryland (suburb of Baltimore)

9 October 2, 2002 Oakland, California

10 More than a thousand people attended those meetings. AR 105847-105848 (FEIS Vol. II
11 at 810-11). During the public scoping process, NPS received approximately 13,770
12 written submissions containing approximately 55,165 comments. AR 105848 (FEIS Vol.
13 II at 811). The public identified the following major issues: access and visitor services;
14 motors and aircraft use; allocation and the noncommercial permit system; level of
15 use/crowding, trip length, and group size; and resource protection, tribal issues, and NPS
16 regulations. AR105848-49 (FEIS Vol. II at 811-12). In January and June 2003, an NPS
17 contractor conducted four intensive "stakeholder workshops" and one public workshop on
18 various issues, including allocation of recreational use and motor use on the river. AR
19 105849 (FEIS Vol. II at 812).

20 **Plaintiffs do not dispute this statement.**

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

Plaintiffs do not dispute this statement.

 26. In a memorandum dated April 27, 2004, the GRCA Superintendent sought
concurrence of the Department of the Interior's Assistant Secretary for Fish and Wildlife
and Parks in his conclusion, based on advice provided by legal counsel, that in preparing

1 the revised CRMP he legitimately could consider alternatives permitting the continued
2 use of motors on the Colorado River without violating the Wilderness Act or any written
3 NPS policy. On November 10, 2004, the Assistant Secretary signed the concurrence line
4 on the Superintendent's memorandum, which previously had been endorsed by the NPS's
5 Regional Director and NPS's Director in Washington, D.C. Attachment 2 to Federal
6 Defendants' Supplemental Notice of Lodging Administrative Record, Dkt. No. 42,
7 September 21, 2006. In his memorandum, the Superintendent first observes that under
8 section 4(d)(1) of the Wilderness Act the administering federal official generally has
9 discretion to permit continued motorboat use where it has already become established. "It
10 is undisputable," he continues, "that motorboat use has already become established on the
11 Colorado River within GRCA." After quoting the relevant section of the NPS
12 Management Policies, he then observes that "continued motorboat use on the Colorado
13 River does not permanently impact wilderness resources or permanently denigrate
14 wilderness values (but rather causes only a temporary or transient disturbance) and
15 therefore does not compromise possible future wilderness designation." In support of that
16 proposition, he cites a January 20, 1999, document prepared by the Washington, D.C.,
17 Solicitor's Office stating that "the use of motors is not an irretrievable commitment of
18 resources that would foreclose meaningful congressional consideration of a wilderness
19 proposal. (The use of motors is not equivalent to cutting trees.)" "Therefore," the
20 Superintendent concludes, "the NPS Management Policies and Director's Order [# 41] do
21 not require the NPS to seek to remove motorboat use from the river."

22 **Plaintiffs do not dispute that the Superintendent requested and obtained legal
23 advice regarding the continued use of motors in the Colorado River corridor.**

24 **Plaintiffs dispute, however, the validity of the legal advice obtained. See Plaintiffs'
25 briefs.**

26 27. In the fall of 2004, NPS released for public review the draft environmental
27 impact statement ("DEIS") for the revised CRMP. AR 102375-618 (DEIS Vol. I); AR
28 102619-3228 (DEIS Vol. II); AR 105849-50 (FEIS Vol. II at 812-13). The DEIS
presented eight alternatives (identified as Alternatives A-H) for managing the River from
Lees Ferry (River Mile 0) to Diamond Creek (River Mile 226) and five alternatives
(identified as Alternatives 1-5) for managing the River from Diamond Creek (River Mile
226) to Lake Mead (River Mile 277). AR 102381-87 (DEIS Vol. I at v-xi). The various
alternatives (and combinations of alternatives) incorporated a wide range of options to
accommodate both commercial and noncommercial users. Because of the complexity of
the DEIS and the level of public interest, NPS extended the standard 90-day public
comment period on the DEIS from its original ending date of January 7, 2005, to
February 1, 2005. AR 105849 (FEIS Vol. II at 812). In 2004, NPS hosted a series of
public meetings to receive public comments on the DEIS at the following locations:

November 8, 2004 Denver, Colorado

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

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

17 **Plaintiffs do not dispute this statement.**

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
20 Colorado River within GRCA--the Grand Canyon River Outfitters Association, the Grand
21 Canyon Private Boaters Association, American Whitewater, and the Grand Canyon River
22 Runners Association--regarding how best to revise the CRMP in a manner that would
23 resolve longstanding river management controversies. AR 050534-41. Their joint
24 comments supported equal allocation of use between commercial and noncommercial use
25 on an annual basis, the continued authorization of an appropriate level of motorized use,
26 seasonal adjustments that would result in fewer river trips occurring at one time, and
27 improvements to the noncommercial permit system. AR 060444-51; AR 050468.12

28 **Plaintiffs do not dispute this statement to the extent it accurately reflects
actual comments received. Plaintiffs note that GCPBA has altered its legal position
on the issues before the Court. In a letter to counsel for the Park Service at the
beginning of the CRMP planning process, counsel for GCPBA, Lori Potter, wrote
that "[GCPBA] believe[s] that the CRMP and WMP [Wilderness Management Plan]
processes should be comprehensive and integrated, as a matter of sound resource
planning and management, and that the Park Service must, in accordance with NPS
Policy, manage all 1.1 million acres of proposed wilderness within GCNP as**

1 wilderness.” AR 024535. Ms. Potter also wrote that a minimum requirements
2 analysis was necessary and that no-motor and no-helicopter exchanges alternatives
3 were required under NEPA. Ibid. Last, she wrote that the Park Service could and
4 should take these management actions (eliminate motors and helicopter exchanges)
5 and that GCPBA would continue to work toward that goal. Ibid.

6
7 29. In November 2005, NPS released the three-volume Final Environmental
8 Impact Statement ("FEIS") for the revised CRMP. AR 104555-833 (Vol. I); AR 105919-
9 6104(Appendixes); AR 105262-918 (Vol. II); AR 104834-5261 (Vol. III).

10 **Plaintiffs do not dispute this statement.**

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

16 **Plaintiffs do not dispute this statement.**

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

27 **Plaintiffs dispute this statement which is a legal conclusion. As outlined in**
28 **Plaintiffs’ briefs, the FEIS does not analyze all cumulative impacts associated with**
the ROD in accordance with the Council on Environmental Quality’s NEPA
regulations.

32. In the FEIS, NPS adopted management zones based on the recreational
opportunity spectrum, a planning framework that recognizes that people participate in

1 various recreational activities in different biophysical/social/managerial settings to realize
2 various experiences. AR 104626 (FEIS Vol. I at 39). The FEIS divides the Colorado
3 River corridor into four zones, ranging from "primitive" (Lees Ferry to Diamond Creek)
4 to "urban" (park boundary to Lake Mead). AR 104626-29 (FEIS Vol. I at 39-42).

4 **Plaintiffs do not dispute this statement.**

5 33. Through the process of developing the DEIS and the FEIS, NPS considered
6 and determined the Colorado River corridor's "visitor carrying capacity," which NPS
7 defined as "the type and level of visitor use that can be accommodated while sustaining
8 acceptable resource and social conditions that complement the park." The concept of
9 carrying capacity is intended to safeguard the quality of Park resources and the visitor
10 experience. Park resources encompass all of the biophysical, aesthetic, and cultural
11 elements and features contained in a park. AR 102428-30 (DEIS Vol. I at 26-28); AR
12 104617-19 (FEIS Vol. I at 30-32).

11 **Plaintiffs do not dispute that NPS said that it did these things in the DEIS and**
12 **FEIS. However, Plaintiffs dispute that what NPS has done related to visitor**
13 **carrying capacity and types and levels of visitor use is lawful, as explained in**
14 **Plaintiffs' briefs.**

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

20 **Plaintiffs dispute this statement. The Park Service did not equitably allocate**
21 **use, or even consider equitable allocation because it never addressed relative**
22 **demand for access, as discussed in Plaintiffs' briefs. See Federal Defendants**
23 **Summary Judgment Brief, p. 34. The only objectives discussed in the FEIS pages**
24 **cited by Defendants include: 1) minimizing complexity for people; 2) addressing the**
25 **"user perception of allocation inequity"; 3) maintaining or improving the quality of**
26 **commercial services; 4) minimizing the costs to river users while adequately funding**
27 **operations. AR 104617. The "user perception of allocation inequity" is not the**
28

1 equivalent of actually addressing the inequities and allocating use fairly. Further
2 the pages cited by the Park Service do not address amounts or types of use at all.
3 They merely address the allocation system.

4 The Park Service did not measure demand or base its decisions on demand.
5 Federal Defendants Summary Judgment Brief, p.34. Early in the planning process,
6 Superintendent Alston sought data from the concessioners, through GCROA,
7 related to commercial demand. AR 000277. However, the record does not contain
8 this data and there is no legitimate basis for the Park Service's statement that
9 noncommercial demand exceeds supply. GCROA admitted in an internal
10 memorandum that "[w]e will have no scientific or otherwise credible evidence to
11 support our contention that commercial demand constitutes 68% of the total and
12 that private demand is only 32%. We will only have our intuition to offer, the
13 intuition of a group with a clear profit motive at stake. This will continue to
14 convince no one."). AR 014138 (emphasis original). In addition, the record is
15 replete with evidence that at least a portion of commercial use is by the public who
16 seeks noncommercial access and does not want to wait for 10-20 years. See
17 Defendants Joint Response to Plaintiffs' Statement of Facts ¶ 172.

20 35. As discussed above, the 2006 CRMP adjusts the allocation of use between
21 commercial and noncommercial users that was in effect under the 1989 CRMP. The 1989
22 CRMP allocated 115,500 user-days to commercial users and 54,450 user-days to
23 noncommercial users annually, or a ratio of 67.9 percent commercial to 32.1 percent
24 noncommercial. SAR 007530. The 2006 CRMP continues to cap commercial use at
25 115,500 user-days annually; however, the 2006 CRMP does not cap noncommercial
26 userdays. Based on expected number of launches and group size, NPS estimates that
27 noncommercial boaters will use 113,486 user-days annually. Therefore, as measured in
28 userdays, the 2006 CRMP allocates approximately 50.3 percent of annual use to
commercial boaters and 49.7 percent to noncommercial boaters. During the summer and
shoulder seasons the ratio is 59.3 percent commercial to 40.7 percent noncommercial. AR
109592-93 (ROD at 2-3); AR 104630 (FEIS Vol. I at 43).

1 **Plaintiffs do not dispute that the Park Service made these estimates.**
2 **However, this is not a complete and accurate summary of the allocations of use. See**
3 **Plaintiffs' Response to paragraph 17, above.**
4

5 36. Under the 1989 CRMP--specifically during the five-year period from 1998
6 through 2002--an average of 640 commercial launches and 18,891 commercial passengers
7 embarked on the River annually. AR 104632 (FEIS Vol. I at 45). Under the 2006 CRMP,
8 those numbers will decrease to 598 launches and an estimated 17,600 passengers. AR
9 062742 (ROD at 3); AR 104647 (FEIS Vol. I at 60). Under the 1989 CRMP, an average
10 of 253 noncommercial launches and 3,570 noncommercial passengers embarked on the
11 River annually. AR 104632 (FEIS Vol. I at 45). Under the 2006 CRMP those numbers
12 will nearly double to a total of 503 launches and an estimated 7,051 passengers. AR
13 109593 (ROD at 3); AR 104647 (FEIS Vol. I at 60).

14 **Plaintiffs do not dispute that the FEIS makes these claims as to numbers.**
15 **However, of the 503 launches available to noncommercial trips, 120 of them are in**
16 **the winter season which accounts for an estimated 1,855 people. AR 104647. For**
17 **the summer season, standard size noncommercial trips for the summer season have**
18 **actually been reduced by six trips from 129 (no action) to 123. AR 104647, 104632.**
19 **The FEIS then adds 62 noncommercial launches for small trips of 8 or fewer people.**
20 **Ibid. Whereas, under the old CRMP, 1,883 people took noncommercial trips in the**
21 **summer, now an estimated 2,270 people will take a noncommercial summer trip.**
22 **Ibid. That is an increase of just over 20%. Further, these numbers are not the**
23 **equivalent of demand for access.**

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

 The analysis of public scoping comments clearly indicated that there is no one
definition of the ideal Grand Canyon river trip. For example, while some

1 people may prefer a trip without motors of any kind, some may prefer a
2 motorized trip that ends with a helicopter ride. Still others may prefer
3 motorized trips, but find the prospect of encountering a helicopter shuttle
4 unacceptable. Some visitors want a social experience while others prefer to
5 vacation with a small group that is unlikely to encounter other groups. Some
6 want short trips, others want long trips. Preferences also vary on desired
7 season and whether trips are commercial or self-guided. All of the variables,
8 and the degree to which each is offered, are considered in this analysis.

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

10 **Plaintiffs do not dispute that this statement exists in the FEIS or that the**
11 **statement is the Park Service’s “summary” of public comments received. Plaintiffs**
12 **point out that the Park Service’s FEIS did not identify the relative demand for**
13 **different kinds of trips. Record evidence shows that after experiencing both kinds of**
14 **trips, over 90% of users would prefer a non-motorized trip. AR 106062.**

15 38. The NPS also specifically considered whether guided, commercial trips down
16 the Colorado River, including motorized trips, are a necessary and appropriate service to
17 authorize within GRCA. AR 104605-07 (FEIS Vol. I at 18-20). Commercial outfitters
18 have been providing guided trips on the Colorado River through GRCA for nearly 60
19 years. AR 104606 (FEIS Vol. I at 19). In general, motorized trips are shorter than
20 nonmotorized trips, and motorized, commercial trips are less expensive than
21 nonmotorized commercial trips. AR104804 (FEIS Vol. I at 217).

22 **Plaintiffs dispute the first statement. The Park Service never considered**
23 **whether motorized commercial services of any kind are necessary and appropriate**
24 **within the Colorado River corridor. The FEIS pages cited by the Park Service here**
25 **(Vol. I at 18-20) do not even mention the words motor or motorized. AR 104605-07.**
26 **The FEIS ignored and failed to address evidence in the record demonstrating that**
27 **motorized services are not necessary and appropriate. AR 00813, 092571; SAR**
28 **011163, 011164, 002647, 005100, 005804.**

39. After releasing the DEIS, NPS received hundreds of public comments on the
motors/no-motors issue. Although opinions varied widely, many commenters urged the

1 NPS to continue to authorize motorized trips. The most common reasons given in support
2 of continuing to authorize motorized trips were to increase access for those physically
3 unable to experience the canyon without motorized assistance, to offer shorter trips for
4 people with limited vacation time, and to offer less expensive trips (i.e., faster and thus
5 shorter than commercial oar trips) for people with limited financial means. Four major
6 Grand Canyon river user groups--representing a diverse assembly of the Park's river
7 users, including outfitters, private boaters, and commercial passengers--in joint
8 comments, explained the importance of motorized use, stating, in part:

9 The collaborating groups support the continuation of an appropriate type and
10 level of both motor and non-motor recreational use on the Colorado River
11 within the Grand Canyon throughout the life of the newly revised CRMP.

12 * * * Motorized use as part of the system allows for far greater and broader
13 overall public access opportunities to Grand Canyon river trips, both
14 commercial and noncommercial, than would otherwise be possible. * * * It is
15 absolutely critical, therefore, that a reasonable level of the appropriate type of
16 both motorized and non-motorized recreational use continue on the Colorado
17 River under the updated and revised CRMP.

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

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

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

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

AR 057567.

**Plaintiffs do not dispute that certain commenters submitted the comments
quoted above, but do dispute their contents. Plaintiffs dispute the statements of the**

1 Park Service, too, because they are misleading and unsupported by credible
2 evidence. The Park Service has never conducted a demand study and cannot say
3 what proportion of the public these comments represent. In addition, the Park
4 Service does not cite to evidence of the actual cost of commercial services and the
5 profits obtained by the concessioners. Nor does the Park Service cite to evidence on
6 the cost of a noncommercial trip. Further, the Park Service has not verified that the
7 latter comments are from independent people not affiliated or associated with the
8 concessioners or GCROA. In addition, these statements are inconsistent with the
9 law as discussed in Plaintiffs' briefs.
10

11 The first block comment is from the Defendant-Intervenors in this case, who
12 have been less than forthcoming about the facts as they know them. See AR 014138
13 (memo from GCROA). Plaintiffs also note that GCPBA has altered its legal position
14 on the issues before the Court. In a letter to counsel for the Park Service at the
15 beginning of the CRMP planning process, counsel for GCPBA, Lori Potter, wrote
16 that “[GCPBA] believe[s] that the CRMP and WMP [Wilderness Management Plan]
17 processes should be comprehensive and integrated, as a matter of sound resource
18 planning and management, and that the Park Service must, in accordance with NPS
19 Policy, manage all 1.1 million acres of proposed wilderness within GCNP as
20 wilderness.” AR 024535. Ms. Potter also wrote that a minimum requirements
21 analysis was necessary and that no-motor and no-helicopter exchanges alternatives
22 were required under NEPA. Ibid. Last, she wrote that the Park Service *could and*
23 *should take these management actions (eliminate motors and helicopter exchanges)*
24 *and that GCPBA would continue to work toward that goal. Ibid.* (emphasis added).
25
26
27
28

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

3 Because of the variability of visitors' perceptions, values, and their level of
4 sensitivity to certain impacts, the intensity of impacts would be negligible to
5 moderate, and adverse or beneficial depending on their perspective and desired
6 experience. The even launch patterns, smaller group sizes, higher level of
7 mixed motorized and nonmotorized opportunities at similar to current levels
8 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.

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

10 **Plaintiffs do not dispute that this is what the NPS concluded, but Plaintiffs**
11 **dispute that it is accurate. The quote itself makes clear that NPS is making a guess**
12 **(“most likely”). The conclusion provides no references in support.**

13
14
15 41. Based on extensive public comments it received on the DEIS and its various
16 impact analyses, NPS made the following determination with respect to the necessity and
appropriateness of continuing to authorize commercial river guides and trips:

17 A river trip through the Grand Canyon can be a life-shaping experience.
18 Thousands of visitors each year seek to experience the Grand Canyon in this
19 intimate and adventurous way. Since many visitors who wish to raft the
20 Colorado River through Grand Canyon possess neither the equipment nor the
21 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
22 enjoyment of the park to provide for experienced and professional river guides
who can provide such skills and equipment.

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

24 **Plaintiffs do not dispute that is what the Park Service determined. Notably**
25 **missing from the Park Service’s determination is that *motorized* commercial services**
26 **(as opposed to non-motorized commercial services) are “necessary and appropriate”**
27 **for the public use and enjoyment of the park. Further, the Park Service never**
28

1 **determined the amounts of commercial services that are necessary and appropriate.**

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

8 **Plaintiffs do not dispute this statement. However, even with restrictions,**
9 **“commercial motorized use is expected to increase somewhat, to an estimated 76,913**
10 **user-days.” AR 104645. The Park Service also imposed further restrictions on**
11 **noncommercial groups by adding trip launches that are limited to 8 people**
12 **(compared to 16 people on standard trips) and by shortening trip length from 18**
13 **days to 16 days in the summer, from 21 to 18 days Sept. 1-15 and 25 days in winter**
14 **from 30 days. Ibid.**

15
16 43. In the FEIS, NPS considered natural soundscape as part of the affected
17 environment and analyzed the impact of the various proposed alternatives on natural
18 soundscape along the Colorado River within GRCA. AR 104728-30 (FEIS Vol. I at 141-
19 43); AR 105385-441 (FEIS Vol. II at 348-404). NPS also considered appropriate
20 mitigation measures to reduce the impacts of various alternatives on the natural
soundscape. AR 105393-94 (FEIS Vol. II at 356-57).

21 **Plaintiffs do not dispute that there is a “natural soundscape” section in the**
22 **affected environment section of the FEIS. Plaintiffs dispute that the Park Service**
23 **adequately analyzed all impacts (including cumulative impacts) and appropriate**
24 **mitigation measures on the Grand Canyon’s natural soundscape. See Plaintiffs’**
25 **briefs.**

26
27 44. For purposes of the natural soundscape analysis, NPS evaluated impacts "for
28 the noise produced at various locations along the river corridor (percent time audible),

1 and contrasted to the amount of unaffected natural sounds (noise-free interval) to be
2 expected or desired in the particular zone." AR 105391 (FEIS Vol. II at 354). NPS
3 utilized "natural ambient sound levels" or "natural soundscape" as the baseline for its
4 analysis. AR 104728-30 (FEIS Vol. I at 141-43) and AR 105388-98 (FEIS Vol. II at 351-
5 61).

6 **Plaintiffs dispute this statement. While the Park Service did conduct a study**
7 **of the “natural ambient sound levels” at various points along the Colorado River**
8 **corridor in the Grand Canyon this study only measured natural sound levels “in the**
9 **presence of audible human-caused noise including aircraft overflights.” AR 104729**
10 **(FEIS Vol. I at 142). As such, audible human-caused noise from aircraft overflights**
11 **was included in the environmental baseline. AR 104729**

12 45. Typical water-influenced natural ambient sound levels along the river vary
13 between 24 dBA and 66 dBA, depending on proximity to rapids and flow levels. AR
14 104728-30 (FEIS Vol. I at 141-43); AR 105389 (FEIS Vol. II at 352).

15 **Plaintiffs do not dispute that this statement is included in the FEIS.**

16 46. The 2006 CRMP continues to require the use of four-stroke outboard motors,
17 which are cleaner burning and quieter than two-stroke outboard motors, and prohibits the
18 use of generators, except in emergency situations and for inflating rafts. AR 109597
19 (ROD at 7); AR 105323, 105330 (FEIS Vol. II at 286, 293). A researcher measured the
20 noise produced by a 30-horsepower, four-stroke outboard motor, operating at full speed
21 while headed downstream, at a maximum of 60 dBA at a distance of about 56 yards. AR
22 105389 (FEIS Vol. II at 352). By comparison a normal conversation also measures about
23 60 dBA. AR 104730 (FEIS Vol. I at 143). In locations such as river rapids, where the
24 sound from moving water and other natural sounds (wind, storm activity, insect activity,
25 etc.) raises the natural ambient sound levels, the sounds of motors and other human
26 sources will usually have less impact on the natural soundscape. AR 105395 (FEIS Vol. II
27 at 360).

28 **Plaintiffs do not dispute that these statements are included in the FEIS. With**
29 **respect to generators, the complete restriction on use states: “Generators use will be**
30 **limited to emergency situations and inflating rafts. The use of generators for other**
31 **purposes will be evaluated through the minimum requirement process.” AR 109597.**

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

5 **Plaintiffs dispute this statement because it is misleading. Noise intrusions in**
6 **the Colorado River corridor are more than a “minor adverse impact.” In the ROD,**
7 **the Park Service notes that impact “to natural conditions (except soundscape) . .**
8 **.will be of minor intensity. For visitors seeking outstanding opportunities for**
9 **solitude or a primitive and unconfined type of experience, the impacts will be**
10 **adverse and of moderate intensity during the peak-use motorized periods.” AR**
11 **109612-13. The Park Service states that the “Grand Canyon’s natural soundscape is**
12 **considered a disappearing resource that requires restoration, protection, and**
13 **preservation.” AR 104728-29. There are “significant adverse effects” occurring on**
14 **the Grand Canyon’s natural soundscape. AR 105424.**

15
16
17 48. The 1989 CRMP authorized motorized trips during nine months of the year;
18 the 2006 CRMP authorizes motorized trips during only five and a half months of the year.
AR 104648 (FEIS Vol. I at 61).

19 **Plaintiffs do not dispute this statement except to note that use of motorized**
20 **generators is authorized year round.**

21
22 49. Some passengers either leave or join an existing river trip at places other than
23 the standard launch points, such as Phantom Ranch (River Mile 88) or Whitmore Wash
24 (River Mile 187). The action of substituting one passenger for another is known as a
"passenger exchange." AR 104774 (FEIS Vol. I at 187). Most passenger exchanges at
25 Whitmore Wash occur via helicopters landing on, and taking off from, nearby Hualapai
Indian Reservation lands. AR 104774 (FEIS Vol. I at 187); AR 104781 (FEIS Vol. I at
26 194). NPS has no authority over transportation outside Park boundaries, including
27 helicopter flights on Hualapai lands. AR 104646 (FEIS Vol. I at 59). Helicopters landing
and from the Bar-10 Ranch, a private ranch located outside of the park on the north rim.

1 AR 104774 (FEIS Vol. I at 187); AR 104802 (FEIS Vol. I at 215).

2 **Plaintiffs do not dispute that passenger exchanges occur and that helicopters**
3 **taking off and landing at Whitmore Wash do so on Hualapai land. Plaintiffs dispute**
4 **the Park Service’s statement that it has “no authority” over transportation outside**
5 **the Park boundaries because it is misleading. Not having “authority” over the use of**
6 **helicopters does not mean the Park Service’s cannot “control” the use of helicopters.**
7 **Pursuant to the National Park Service Concessions Management Improvement Act,**
8 **16 U.S.C. § 5951, the Park Service enjoys broad authority to limit, restrict, or if**
9 **necessary prohibit commercial services to protect the Grand Canyon’s natural**
10 **resources and values, including the Colorado River corridor’s natural soundscape.**
11 **The Park Service is exercising this authority with its “Modified Preferred**
12 **Alternative H [which] restricts [helicopter] passenger exchanges at Whitmore to**
13 **before 10AM (April through September), [to protect] the natural soundscape.” AR**
14 **105066; see also AR 109593 (ROD) (discussing helicopter passenger exchanges at**
15 **Whitmore). If the Park Service has the authority to prohibit passenger exchanges**
16 **from October to March to protect the Grand Canyon’s natural soundscape and**
17 **restrict exchanges to before 10AM the remainder of the year, it has the ability –**
18 **either indirectly (by including permit conditions, limits, or restrictions on the use of**
19 **passenger exchanges at Whitmore) or directly (by prohibiting passenger exchanges**
20 **at Whitmore) – to control the use of helicopters.**

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

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

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

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

7 **Plaintiffs do not dispute this statement to the extent it accurately reflects the**
8 **language included in section 3(b) of the Act of August 18, 1987, Pub. L. No. 100-91.**

9
10 51. The 1989 CRMP permitted passenger exchanges at Whitmore Wash all year.
11 AR 104630 (FEIS Vol. I at 43). The 2006 CRMP permits passenger exchanges at
12 Whitmore Wash only for trips launching from April through September. AR 109593-94
13 (ROD at 3-4); AR 104630 (FEIS Vol. I at 43). The 2006 CRMP reduces the total number
14 of passenger exchanges permitted at Whitmore Wash. AR 104648 (FEIS Vol. I at 61).
15 The 2006 CRMP also requires that exchanges be completed before 10:00 a.m. local time
16 each day. AR 109593-94 (ROD at 3-4). Therefore, during the part of the year when
17 exchanges are permitted at Whitmore Wash (April through September), helicopter sounds
18 will be concentrated during the early morning hours (7:00 a.m. to 10:00 a.m.), but will not
19 be audible at all during the rest of the day. AR 105422 (FEIS Vol. II at 385).

20 **Plaintiffs do not dispute this statement.**

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

Plaintiffs do not dispute that these statements are included in the FEIS.

**Plaintiffs dispute the NPS's unsupported conclusion that impacts to the Grand
Canyon's natural soundscape can be reduced to minor levels with monitoring and
mitigation.**

1
2 53. In response to public comments on the DEIS, the FEIS considered wilderness
3 character as part of the affected environment and analyzes the impact of the various
4 proposed alternatives on wilderness character along the Colorado River within GRCA.
5 AR 104820-23 (FEIS Vol. I at 233-36) and AR 105815-37 (FEIS Vol. II at 778-800).
6 Specifically, NPS analyzed the impacts of the various proposed alternatives on the
7 following three qualities of wilderness derived from the language of the Wilderness Act:

8 a. Wilderness is undeveloped land retaining its primeval character and influence,
9 without permanent improvements or human habitation.

10 b. Wilderness generally appears to have been affected primarily by the forces of
11 nature, with the imprint of man's work substantially unnoticeable.

12 c. Wilderness has outstanding opportunities for solitude or a primitive and
13 unconfined type of recreation.

14 16 U.S.C. § 1131(c); see AR 104822-23 (FEIS Vol. I at 235-36); AR 105816-17 (FEIS
15 Vol. II at 779-80).

16 **Plaintiffs do not dispute that there is a “wilderness character” section in the**
17 **affected environment section of the FEIS. Plaintiffs dispute that the Park Service**
18 **considered and analyzed all impacts, including cumulative impacts, to wilderness**
19 **character. See Plaintiffs’ briefs.**

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

29 **Plaintiffs do not dispute that this is what the Park Service stated and**
30 **concluded in the FEIS.**

31 55. With respect to the impact on wilderness character of Modified Alternative H,
32 NPS concluded that the impacts would be both beneficial and adverse, and would range

1 in intensity from negligible to moderate. AR 105829 (FEIS Vol. II at 792).

2 **Plaintiffs do not dispute that this is what the Park Service concluded in the**
3 **FEIS.**

4
5 56. Based on advice provided by legal counsel and with the concurrence of the
6 Department of the Interior's Assistant Secretary for Fish and Wildlife and Parks, the
7 GRCA Superintendent concluded that it legitimately could permit the continued use of
8 motorboats on the Colorado River without violating the Wilderness Act or any written
9 NPS policy because (a) Congress has not designated any portion of GRCA as wilderness
10 and (b) the continued use of motors is only a temporary or transient disturbance of
11 wilderness values on the River and does not permanently impact wilderness resources or
12 permanently denigrate wilderness values. Furthermore, "the continued use of motorboats
13 does not pose a legal impediment to possible wilderness designation." AR 104604 (FEIS
14 Vol. I at 17); AR104821-22 (FEIS Vol. I at 234-35); Attachment 2 to Federal Defendants'
15 Supplemental Notice of Lodging Administrative Record, Dkt. No. 42, September 21,
16 2006.

17 **Plaintiffs do not dispute that the GRCA Superintendent obtained legal advice**
18 **concerning the continued use of motorboats on the Colorado River or that this is**
19 **what the Superintendent concluded. Plaintiffs, however, disagree with the legal**
20 **advice obtained (as outlined in Plaintiffs' briefs) and note that the legal advice**
21 **obtained is directly contradicted by the previous Superintendents' and Director's**
22 **interpretations. SAR 008133; SAR 008664; SAR 008756; SAR 009148.**

23 Respectfully submitted this 4th day of September, 2007.

24 /s/ Matthew K. Bishop

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, I electronically transmitted a complete copy of Plaintiffs' response to Federal Defendants' and Defendant-Intervenors' joint statement of material facts in support of summary judgment to the following CM/ECF registrants:

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