

Henry B. Lacey, Arizona Bar No. 013921

LAW OFFICE OF HENRY B. LACEY  
120 North San Francisco Street  
Flagstaff, Arizona 86001  
(520) 774-8830

Robert P. Lippman, Arizona Bar No. 006156

LAW OFFICE OF ROBERT P. LIPPMAN  
103 East Birch Street  
Flagstaff, Arizona 86001  
(520) 774-0130

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

GRAND CANYON PRIVATE BOATERS )  
ASSOCIATION, an Arizona Non-Profit )  
Corporation; AMERICAN WHITEWATER, a )  
Missouri Non-Profit Corporation; NATIONAL )  
PARKS CONSERVATION ASSOCIATION, )  
a District of Columbia Non-Profit Corporation; )  
AMERICAN CANOE ASSOCIATION, a New )  
York Non-Profit Corporation; ELIZABETH )  
BOUSSARD; KIM CRUMBO; JOHN )  
BACHRACH; MARTY WILSON, )

Plaintiffs, )

v. )

ROBERT L. ARNBERGER, in his official )  
capacity as Superintendent, Grand Canyon )  
National Park; ROBERT STANTON, in his )  
official capacity as Director, National Park )  
Service; BRUCE BABBITT, in his official )  
capacity as Secretary of the Interior; NATIONAL )  
PARK SERVICE, an agency of the United States )  
Government, )

Defendants. )

No. CIV 001277-PCT-PGR

FIRST AMENDED COMPLAINT  
FOR DECLARATORY,  
INJUNCTIVE AND MANDAMUS  
RELIEF

For its complaint, Plaintiff alleges as follows:

### **Introduction**

1. This is an action for declaratory, injunctive, and mandamus relief. Plaintiffs seek a declaration that Defendants have violated Federal law by failing to perform non-discretionary duties to properly manage and regulate Grand Canyon National Park (GCNP).
2. Specifically, Plaintiffs allege that Defendants have abused their discretion by: (a) halting certain required, ongoing planning activities at GCNP; (b) authorizing and/or engaging in certain activities, including renewal of commercial motorized recreation concessionaire contracts, authorization of the use of motorized watercraft and helicopters to transport park visitors, engaging in administrative use of motorboats and helicopters, and construction and installation of facilities to facilitate such administrative use of motorized watercraft and helicopters without preparation of environmental compliance documents required by the National Environmental Policy Act or adherence to procedures mandated by National Park Service (NPS) Management Policies, GCNP management plans, and other directives and orders issued by the NPS Director; and (c) permitting commercial concessionaires to utilize motorized watercraft on the Colorado River, and helicopters within GCNP and adjacent to the Colorado River, at levels and frequencies that harm wilderness and other ecological, environmental, and scenic values at GCNP.
3. Defendants have also abused their discretion and acted arbitrarily and capriciously and in violation of applicable law by failing to re-allocate the number of permits, required for watercraft access to the Colorado River through GCNP, granted each year to commercial outfitters and private boaters. The effect of Defendants' refusal to re-allocate the numbers of river access permits granted to commercial and non-commercial rafters of the Colorado River through GCNP, despite ample data justifying the appropriateness of such a re-allocation, has been to irrationally limit non-commercial, self-guided watercraft recreation on the Colorado River by the rapidly growing portion of the population interested in such self-guided, private river recreation. Defendants' practice of favoring commercial, motorized watercraft use of the Colorado River has resulted in the creation and maintenance of a "waiting list" requiring private, non-commercial rafters to wait an average of more than twenty (20) years for access to the Colorado

River. Defendants' practice violates several federal laws, including the National Park Service Organic Act and the Redwoods Amendment thereto and Administrative Procedure Act, and NPS Management Policies, applicable GCNP management plans, and certain NPS Director's Orders.

4. Defendants' failure to appropriately manage and limit commercial use, especially that involving motorized watercraft, of the Colorado River through GCNP has caused and continues to cause significant and enduring damage to wildlife, aquatic and riparian ecosystems, aesthetic, scenic, and natural recreational qualities, and experiential wilderness attributes of the river corridor and surrounding terrain. These adverse impacts include but are not limited to motor noise, water and air pollution, damage to riparian habitat, crowding and congestion, and impairment of the solitary and primitive recreational experience required to be provided to non-commercial users of the lands and waters within GCNP, much of which have been proposed for designation as Wilderness.

5. Plaintiffs seek as relief an order compelling Defendants to promptly re-start the required Colorado River Management Plan (CRMP) revision process; to comply with applicable federal law, including the National Park Service Organic Act, Wilderness Act, National Park System Concessions Policy Act, and Administrative Procedures Act; and to implement all applicable NPS Management Policies, existing applicable GCNP management plans, and NPS Director's Orders relating to the management of recommended, potential or proposed wilderness in the National Park System. Plaintiffs' request for relief includes a plea for an order specifically requiring Defendants to reduce or eliminate uses of the Colorado River corridor through GCNP that do not conform with applicable requirements imposed upon lands and waters proposed for Wilderness designation, including the use of motorized watercraft by commercial concessionaires, private boaters and GCNP management and staff and the use of helicopters to transport rafters, crew, materials, and waste to and from the river corridor. Finally, Plaintiffs seek an order compelling Defendants to equitably re-allocate, on the basis of existing data regarding public demand and preferences, the number of permits available for recreational boating access to the Colorado River through GCNP between the commercial and non-commercial sectors and to re-evaluate and, if appropriate, alter the mechanism employed for deciding how many permits the commercial and non-commercial boating public may receive.

6. Should Plaintiffs prevail on the merits, Plaintiffs will seek an award of attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 USC § 2412.

### **Jurisdiction and Venue**

7. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 and 28 U.S.C. § 1346 because this action involves the United States as a defendant and arises under the laws of the United States, including the Administrative Procedures Act (APA), 5 U.S.C. §§ 701 et seq.; the National Park Service Organic Act and Redwoods Amendment thereto, 16 U.S.C. §§ 1 et seq.; the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq.; the Wilderness Act, 16 U.S.C. §§ 1131 et seq.; the Grand Canyon Enlargement Act (GCEA), 16 U.S.C. §§ 228 et seq.; the National Park System Concessions Policy Act (CPA), 16 U.S.C. §§ 20 et seq. (repealed by Pub. L. No. 105-391, § 415(a), 112 Stat. 3503 (1998)); and certain Federal regulations, NPS Management Policies, NPS Director's Orders, and applicable GCNP management plans as specified herein. Jurisdiction is also proper pursuant to 28 U.S.C. § 1361 and 28 U.S.C. § 2201 because Plaintiffs seek mandamus relief and a declaratory judgment in this action. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. § 2202 and 5 U.S.C. §§ 705 & 706.

8. Plaintiffs have previously requested that Defendants correct their violations of federal law. Defendants have taken no actions to correct their violations of law and continue to illegally manage and regulate uses in GCNP.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e). Plaintiff Grand Canyon Private Boaters Association is headquartered in Flagstaff, Arizona, which is in this district. Many members of all Plaintiff groups, and three of the individual Plaintiffs, reside in this district.

10. Any available administrative remedies have been exhausted. 7 U.S.C. § 6914(e). Reviewable final agency action, which is subject to this Court's review under 5 U.S.C. §§ 702 & 704, exists.

## Parties

11. Plaintiff Grand Canyon Private Boaters Association (GCPBA) is an Arizona non-profit corporation with more than 600 members in 32 states. GCPBA acts as an advocate for, and information resource to, the non-commercial (private) boating public on the Colorado River in GCNP. GCPBA represents non-commercial boating and other private recreational interests in the process leading to the development of Colorado River Management Plans, Wilderness Management Plans, and General Management Plans; monitors and responds to proposals for legislation affecting private recreational use of GCNP; participates in Colorado River-oriented conferences; produces and distributes newsletters, bulletins, and action alerts; and maintains a website that provides information useful for GCNP visitors. Members of GCPBA regularly visit GCNP and/or float the Colorado River.

12. Plaintiff American Whitewater (AW) is a Missouri non-profit corporation with approximately 8,300 members nationwide. AW's mission is to conserve and restore America's whitewater resources and to enhance opportunities to enjoy them safely. AW has affiliations with approximately 160 canoe and paddling clubs nationwide. Members of AW regularly visit GCNP and/or float the Colorado River.

13. Plaintiff National Parks Conservation Association (NPCA) is a District of Columbia non-profit organization dedicated solely to preserving, protecting, and enhancing the National Park System. NPCA has more than 400,000 members nationwide. NPCA's mission is to protect and enhance the natural and cultural resources of the National Park System through research, public education, and advocacy. NPCA, along with its members, is active in a wide range of activities and issues related to Grand Canyon National Park, including efforts to preserve wild lands in and around GCNP, to improve the visitor experience along the Colorado River through GCNP from the adverse impacts of heavy recreational use, and to improve operations of the park's concessionaires in the public interest. Members of NPCA reside, work in, and/or regularly visit GCNP and/or float the Colorado River.

14. Plaintiff American Canoe Association (ACA) is a New York non-profit corporation with its principal place of business in Springfield, Virginia. Founded in 1880, ACA is a membership organization with approximately 40,000 members nationwide. ACA is dedicated to the

preservation and protection of America's natural areas, focusing primarily on rivers, streams, lakes, coastal waterways and their surrounding environments. Members of ACA regularly visit GCNP and/or float the Colorado River.

15. Plaintiff Elizabeth Boussard is a resident of Flagstaff, Arizona. She has hiked in Grand Canyon National Park on many occasions and plans to continue that activity in the future, both alone and with her son. Ms. Boussard has also rafted the Colorado River through Grand Canyon National Park on several occasions and plans to do so again in the future. She enjoys taking photographs in Grand Canyon National Park, has engaged in such hobby photography on numerous prior occasions, and plans to do so again in the future. Ms. Boussard is a graduate student, pursuing a degree in Rural Geography, and is currently studying the management of recreational use at Grand Canyon National Park. Ms. Boussard lacks the financial resources to hire a commercial concessionaire to provide her and her son the opportunity to raft the Colorado River through Grand Canyon National Park.

16. Plaintiff Kim Crumbo resides at Grand Canyon Village, Arizona. He is a former river guide, river ranger, resource management specialist, and Wilderness Coordinator at Grand Canyon National Park. He has rowed approximately 150 river trips through GCNP and has hiked thousands of miles of wilderness trails within the park. Mr. Crumbo continues to act as a private river guide and plans to continue rafting the Colorado River through GCNP and to hike the trails of the park.

17. Plaintiff John Bachrach resides in Flagstaff, Arizona. He is a private boater and a member and director of the Grand Canyon Private Boaters Association. Mr. Bachrach is on the GCNP waiting list for private river access permits. He has previously rafted the Colorado River through GCNP and plans to do so again.

18. Plaintiff Marty Wilson resides in Oregon City, Oregon. He is a private boater and member and director of Grand Canyon Private Boaters Association and a member of the Northwest Rafters Association. Mr. Wilson has previously rafted the Colorado River through GCNP and plans to do so again in the future. He is on the GCNP waiting list for private river access permits.

19. The aesthetic, recreational, scientific, religious, and (in some cases) financial interests of the members of the Plaintiff organizations and the individual Plaintiffs have been and will continue to be adversely affected and irreparably injured if Defendants continue to act and fail to act as alleged herein and to affirmatively implement the actions that Plaintiffs challenge herein. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties or discretionary duties imposed by the National Park Service Organic Act and Redwoods Amendment thereto, National Environmental Policy Act, Wilderness Act, Grand Canyon Enlargement Act, National Park System Concessions Policy Act, Administrative Procedures Act, and various Federal regulations, NPS Management Policies, Director's Orders, and GCNP-specific management plans. The relief sought would redress the injuries alleged herein.

20. Defendant Robert L. Arnberger is the Superintendent of Grand Canyon National Park, a unit of the National Park System administered by the National Park Service and the Department of Interior. Mr. Arnberger and his predecessors have acted and failed to act in ways alleged herein, including but not limited to ceasing required ongoing planning activities at GCNP and instituting and approving management actions in violation of the National Park Service Organic Act and Redwoods Amendment thereto, National Environmental Policy Act, Wilderness Act, Grand Canyon Enlargement Act, National Park System Concessions Policy Act, Administrative Procedures Act, and various Federal regulations, NPS Management Policies, Director's Orders, and GCNP-specific management plans. Mr. Arnberger is sued in his official capacity.

21. Defendant Robert Stanton is the Director of the National Park Service, an agency of the Department of Interior. As Director of the National Park Service, Mr. Stanton is ultimately responsible for the decisions affecting GCNP. Mr. Stanton is sued in his official capacity.

22. Defendant Bruce Babbitt is the Secretary of the Interior, responsible for the management and oversight of that department's agencies, including the National Park Service. Mr. Babbitt is sued in his official capacity.

23. Defendant National Park Service is an agency of the U.S. Department of the Interior. It and its officers are responsible for the management of the National Park System, including GCNP.

## **Factual Background**

24. In 1919, Congress established Grand Canyon National Park (GCNP), to be managed in accordance with the National Park Service Organic Act of 1916. The National Park Service Organic Act, 16 U.S.C. §§ 1 et seq., requires Defendant NPS to, among other things, “conserve the scenery and the natural and historic objects and the wildlife” within all designated units of the National Park System and “to provide for the enjoyment of the same in such a manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

25. GCNP contains within its boundaries the longest stretch of navigable, “free flowing” whitewater in the United States, providing world-class river recreation and challenge, potential for the wilderness qualities of solitude and natural quiet, unique geological features and wildlife habitat for threatened and endangered species of fish, birds and other wildlife.

26. A relative handful of explorers, scientists and adventurers navigated the Colorado River within the present boundaries of GCNP between 1869 and 1964, the year that Glen Canyon Dam was completed just upstream of the Park. Since 1964 recreational and commercial use of the river, particularly the use of large, motorized rafts for commercial tours, have dramatically increased. Such commercial, motorized watercraft operations on the Colorado River through GCNP have become a substantial and growing threat to the ecology and wilderness attributes of the river corridor and surrounding backcountry.

27. In 1964 Congress enacted the Wilderness Act, 16 U.S.C. §§ 1131 et seq. The purpose of the Wilderness Act is to “secure for the American people of present and future generations the benefits of an enduring resource of wilderness.” The Wilderness Act established the National Wilderness Preservation System, to include “federally owned areas” designated as Wilderness Areas by Congress. Pursuant to 16 U.S.C. § 1132[c], Defendants are required to preserve the wilderness characteristics of lands at GCNP that have been proposed for designation as part of the National Wilderness Preservation System until such time as Congress acts on that recommendation.

28. In 1970, NPS commenced a process leading to the inventory of land and waters eligible for designation as Wilderness. During late 1971 NPS conducted hearings on that inventory process.

29. By 1972 more than 16,000 visitors rafted the Colorado River through GCNP. That year the NPS instituted interim limits on watercraft use of the Colorado River through GCNP pending completion of ecological and recreational studies. The interim use levels were established on the basis of the levels of commercial and non-commercial watercraft use of the Colorado River through GCNP existing at that time. Over 95% of persons traversing the Colorado River by watercraft in 1972 utilized the services of commercial concessionaires, and NPS froze the number of commercial “user days” at the 1972 level of actual use, being 89,000 user-days. Non-commercial, or “private” use of the river was frozen at the 1972 level of 7,600 user-days. These figures translate to 11,000 commercial passengers and 475 self-guided boaters. Additional use levels were set for commercial boat crews and NPS administrative or research use.

30. In 1975, Congress enacted the Grand Canyon Enlargement Act, Pub. L. No. 93-620, 88 Stat. 2089 (codified at 16 U.S.C. §§ 228a et seq.) (GCEA). GCEA significantly expanded the Park and required a wilderness review and recommendation for lands and waters within the boundaries of the Park pursuant to the Wilderness Act of 1964. GCEA also required the Secretary of the Interior to report his recommendations as to the suitability or nonsuitability of areas within GCNP for preservation as wilderness to the President within two years, in accordance with the Wilderness Act, 16 U.S.C. § 1132(c). This duty is also imposed by 43 CFR § 19.3.

31. In order to facilitate management of the newly enlarged national park as a natural area, retain its primitive qualities, protect the park’s environment, maintain the quality of the human experience, and include and properly manage eligible lands in and for the National Wilderness Preservation System pursuant to the Wilderness Act, GCNP promulgated the Grand Canyon Master Plan in 1976. The Master Plan called for elimination of mechanized access below the rims, to “perpetuate the wilderness river running experience,” and more intensive recreational use management, pursuant to an updated and formalized CRMP.

32. In 1976, NPS conducted several “river management workshops,” which included participation from 365 individuals and more than 100 special interest organizations. The input received by NPS at the river management workshops facilitated the agency’s issuance of a draft Environmental Impact Statement (EIS) for a revised CRMP. The 1977 draft EIS proposed that NPS recommend designation of the Colorado River through GCNP as a “Potential Wilderness,” with designation of certain portions of the Colorado River corridor through the park as part of a Wilderness Area to await management decisions relating to the elimination of non-conforming, motorized watercraft use.

33. In 1977 NPS issued a Wilderness Recommendation for GCNP. NPS decided to postpone presentation of the recommendation to the President until after an updated CRMP was completed. The 1977 Wilderness Recommendation for GCNP has never been presented to the President.

34. In 1978 Congress enacted the Redwoods Amendment to the National Park Service Organic Act. 16 U.S.C. §1a-1. The Redwoods Amendment declared that park management and administration must not be exercised in derogation of the values and purposes for which the park is established, thereby expanding and clarifying the purposes of each unit of the National Park System, and reiterating a rigorous standard of protection in terms designed to impose regulatory prohibitions.

35. NPS adopted the proposed Wilderness classification for GCNP in the 1980 final Wilderness Recommendation. The 1980 Wilderness Recommendation, which was transmitted to the Department of the Interior, proposed that the Colorado River through GCNP be designated as “Potential Wilderness” until January 1, 1985, at which time the non-conforming motor use would be phased out pursuant to the 1980 Colorado River Management Plan (CRMP). This action was based upon findings that motorized watercraft use is not necessary for use and enjoyment of the Colorado River and is inconsistent with the criteria for Wilderness specified by the Wilderness Act and with other requirements imposed by applicable Federal regulations and NPS policies.

36. In late 1979, after nearly eight years of research and public involvement, NPS issued a CRMP (1980 CRMP) accompanied by a final EIS (1979 EIS), concluding that future

management of the river corridor must be guided not only by visitor demands (which are not static), environmental considerations, and public input, but also by the legislative purpose, policies and goals applicable to GCNP. Finding that motorized watercraft tours are inconsistent with such guidelines, policies and purposes, especially wilderness management mandates, and further finding that such activities cause unacceptable adverse environmental impacts to park resources (i.e., crowds, noise, air and water pollution, beach erosion, loss of and damage to wildlife and fish habitat), the 1980 CRMP required that all recreational motorized watercraft use on the Colorado River through GCNP be phased out within five years. The 1980 CRMP further established total use capacities for the Colorado River, mandating the “reasonable” and “equitable” allocation of such use between the competing commercial and non-commercial users on the basis of available data and existing demand. Both sectors were given an increase over the interim use ceilings established in 1972 in order to reflect the transition to longer, oar-powered trips by commercial concessionaires. The 1980 CRMP granted to commercial concessionaires an increase from 89,000 to 115,000 user days annually. The 1980 CRMP also increased the applicable river use ceilings in order to accommodate growing demand for self-guided access, which had increased from 7,600 to 54,500 potential user days. Thus the 1980 CRMP allocated approximately 11,500 of the available annual user days, or approximately 78% of the total number of user days available, to the commercial concessionaires and 3200 of the available annual user days, or approximately 22% of the total number of user days available, to private river-runners. The 1980 CRMP also established a “waiting list” for persons seeking permits required to access the Colorado River for non-commercial watercraft recreation and monitoring programs to continually assess changes in resource conditions and visitor congestion, public demand, visitor expectations, and other parameters.

37. The areas of GCNP that are the subject of NPS’ 1980 Wilderness Recommendation and the 1993 Update to the Wilderness Recommendation are subject to certain mandates contained within the Wilderness Act, 16 U.S.C. §§ 1131 et seq. In particular, Defendants are required by 16 U.S.C. § 1132(c) and 43 C.F.R. § 19.6 to maintain the wilderness characteristics of all areas within GCNP proposed for designation as Wilderness until such time as Congress has determined whether to designate such areas of the park as Wilderness.

38. In 1981, without preparing an Environmental Assessment/Finding of No Significant Environmental Impact or EIS, NPS modified the CRMP. The 1981 CRMP was a radical

departure from the prior findings, policies, directives and mandates for wilderness planning and river management included in the 1980 CRMP. The management objectives specified by the 1980 CRMP were drastically curtailed as NPS committed GCNP management only to provide opportunities for a “diversity of river running experiences.” The 1981 CRMP also authorized continued motorized watercraft use of the Colorado River for an indefinite period of time, while retaining the substantial user-day increases granted to commercial concessionaires in 1980. The 1981 CRMP also increased the maximum allowable group and crew size on commercial watercraft trips at GCNP, thereby contradicting the scientific research, data, and public input documented by the 1979 EIS and 1980 CRMP. Virtually all of the references to wilderness management contained in the 1980 CRMP were deleted in the 1981 CRMP. The 1981 CRMP required only that ongoing studies intended to assess public interest in and demand for commercial and non-commercial watercraft trips on the Colorado River continue. The 1981 CRMP provided for the revision and update of the Plan and its individual components and mandates, including adjustments to the allocation of river access permits, “as necessary.”

39. In 1988 NPS issued a Backcountry Management Plan (BMP) for GCNP, in order to define policies for managing visitor use and resource protection in the undeveloped areas of the park, excluding the river corridor. The BMP again recognized and imposed the mandate that lands suitable for Wilderness designation be managed so that wilderness values are not adversely affected until Congress has made a decision regarding designation of the recommended lands as Wilderness.

40. Citing a dramatic increase in recreational use of the Colorado River and the physical and aesthetic impacts on park resources resulting from it, NPS again revised the CRMP in 1989. The purpose of the 1989 CRMP was to “address and resolve major issues surrounding management of recreational use activities” and to “supplement existing management guidelines,” including the Master Plan, BMP, 1976 Wilderness Proposal and 1980 Wilderness Recommendation, and applicable NPS management policies. NPS specifically noted that “review of the 1981 CRMP indicated a need to provide equal means for the non-commercial sector to access their defined allocation,” in light of a 77% increase in the non-commercial river access permit “waiting list” since 1981. Despite references to GCNP’s 1976 Wilderness proposal, and other regulations, policies, guidelines and directives addressing wilderness management, the 1989 CRMP sanctioned the level of motorized watercraft use and permit

allocation between commercial and non-commercial watercraft users specified by the 1981 CRMP, while “reserving the right to re-allocate user-days based on review of all relevant factors.” The 1989 CRMP required NPS to prepare a new CRMP within five to ten years and to “fully examine evolving public concerns and be responsive on an annual basis to public input” regarding demand/allocation changes and other management issues.

41. Although the 1989 CRMP largely incorporated the terms of the 1981 CRMP, NPS did not issue a new EA/FONSI or EIS in connection with the issuance of the 1989 CRMP. Instead, NPS announced that the 1979 EIS was sufficient to document the environmental consequences of adopting the 1989 CRMP, even though the 1979 EIS was issued in connection with a CRMP that would have resulted in the elimination of motorized watercraft recreation on the Colorado River through GCNP and the management of the river corridor pursuant to applicable statutes, NPS management policies and the Master Plan, which require such management to preserve the wilderness characteristics of the lands and waters at GCNP proposed for Wilderness designation.

42. Despite the status quo management of the Colorado River through GCNP since 1981, the relative demand for commercial and private boating access to the river corridor has continued to significantly change as the public has become more knowledgeable and adept at “self-guided” river recreation as a sport and has become increasingly aware of the opportunity for access to lands and waters that exhibit outstanding recreational opportunities. The demand for access to the Colorado River by private, non-commercial rafters, often interested in using oar-driven watercraft to navigate the river, has significantly increased. The most obvious indication of this change in the pattern of demand for access to the Colorado River is the fact that there are over 6,000 applicants presently on the non-commercial river access “waiting list,” resulting in an average wait of more than twenty (20) years for a permit for private boat access to the river, while expensive, commercially-guided access is often available within several days, and without the need to participate in any “waiting list,” through the concessionaires contracted by NPS to provide watercraft recreation at GCNP.

43. The 1980 Wilderness Recommendation was updated in 1993 to reflect boundary adjustments and the ongoing lack of resolution of the motorized use issue. The proposal (1993 Wilderness Update) reiterated the “potential wilderness” status of the Colorado River, “pending resolution of motorized river issues,” and explained that existing use of the Colorado River by

private rafters and commercial concessionaires employing motorized watercraft “probably contradicts the intent of wilderness designation” and is “inconsistent with established wilderness criteria.” The document referenced the 1988 NPS Management Policies, which establish guidelines and directives for interim wilderness management of National Park System lands and resources. The NPS Management Policies provide that “no action may be taken that would diminish wilderness suitability until the legislative process is completed.”

44. In 1995 NPS issued a General Management Plan (GMP) for GCNP, accompanied by an EIS, to address park management issues in the context of the NPS Organic Act and other applicable statutes, the Master Plan, 1980 Wilderness Recommendation and 1993 Wilderness Update, NPS Management Policies, BMP, and 1989 CRMP. The GMP requires Defendants to protect the opportunities for natural quiet and solitude available at GCNP and to maintain the wilderness characteristics of the Colorado River through GCNP and commits Defendants to a goal of mitigating or eliminating all activities that cause unnecessary noise. The GMP also committed Defendants to the goal of providing access to GCNP that is appropriate and consistent with the character and nature of each landscape unit and the desired visitor experience. The GMP further directs that the 1989 CRMP “will be updated to be consistent with wilderness management directives,” including the providing of a “wilderness river-running experience” and the addressing of the “non-conforming uses of motorboats and generators.”

45. NPS Management Policies require, among other things, that NPS administrative actions be consistent with “minimum requirements,” and that NPS employ “minimum tools or methods” before undertaking management actions that may adversely affect wilderness values and resources in areas recommended for designation as Wilderness. Since 1988, and continuing until the present time, Defendants have increased the use of motorized watercraft, helicopters, and other mechanized equipment on the Colorado River and in the Grand Canyon backcountry, contrary to these and other requirements of the NPS Management Policies.

46. In 1998 Defendants issued a draft Wilderness Management Plan (WMP) for GCNP. The draft WMP has never been finalized.

47. In 1999, the NPS Director issued Director’s Order #41: Wilderness Preservation and Management (Director’s Wilderness Order) in order “to provide consistency and accountability”

to NPS wilderness management programs, “clarify policies and establish specific instructions and requirements” regarding wilderness management, and “guide NPS efforts in meeting the letter and spirit of the Wilderness Act.” The Director’s Wilderness Order provided that NPS’ Reference Manual #41: Wilderness Preservation and Management (Wilderness Reference Manual) was to be considered a supplement to the terms, conditions, and requirements of the Director’s Wilderness Order.

48. The Prospectus for River Rafting Services, issued by NPS in 1995, requires NPS to contract with concessionaires in a manner consistent with the requirements of the NPS Organic Act, National Park System Concessions Policy Act (CPA), 16 U.S.C. §§ 20-20g (repealed by Pub. L. No. 105-391, 112 Stat. 3503 (1998)), applicable Federal regulations, NPS Management Policies and applicable NPS Director’s Orders, and GCNP Management Plans.

49. NPS and Defendants Arnberger and Stanton renewed existing contracts with commercial concessionaires providing watercraft transportation on the Colorado River through GCNP effective January 1, 1996. The next contract review and re-contracting with such commercial concessionaires is scheduled to occur in 2001.

50. In 1998, NPS announced that the 1989 CRMP would be revised, as required by the provisions of the 1989 CRMP itself, the GMP, and other applicable NPS management policies and Director’s Orders. NPS also justified its decision to revise the 1989 CRMP on the grounds of “dramatically” changing conditions relating to public demand for river recreation at GCNP. The non-commercial boater permit “waiting list” had grown to over 5,500 applicants by 1998. The stated objective of the planned revision of the 1989 CRMP was to “develop a comprehensive plan that will insure resource protection while maximizing the benefits the river can provide to society.” Specific goals of the revised CRMP were to include, among other things: (a) mitigation or elimination of noise; (b) management of areas meeting the criteria for wilderness designation in a manner consistent with the methods that would be used to manage designated Wilderness; (c) active pursuit of Wilderness designation for lands and waters at GCNP recommended for such designation; and (d) management of the Colorado River through GCNP in such a manner as to protect and preserve the resource in a wild and primitive condition, provide primitive recreational activities consistent with Wilderness Act requirements and NPS policies on accessibility, and provide a wilderness river experience on the Colorado River.

51. After a scoping process applicable to the projected revision of the 1989 CRMP was completed, NPS further articulated its objectives to include improvement of river access, evaluation of the impacts of current use of the Colorado River through GCNP, and evaluation of alternative access systems that would enable public use of the river regardless of whether they choose the option of a commercially outfitted tour or self-guided trip.

52. On February 23, 2000 GCNP Superintendent and Defendant Arnberger announced that GCNP and NPS would immediately cease all work on a revised CRMP and on a final WMP. Superintendent Arnberger also announced that GCNP would stop all work aimed at combining the CRMP and WMP into one, comprehensive management plan. Furthermore, Superintendent Arnberger ordered a deferral of “major river decisions that lie outside the park’s discretion,” including “major changes in the river-use allocation system,” until GCNP and/or NPS “have the capacity to properly engage necessary planning requirements.” A copy of Mr. Arnberger’s written announcement of his decision is attached hereto as Exhibit A.

53. Superintendent Arnberger justified his decision of February 23, 2000 on the basis of “limitations of funding and personnel, federal requirements for strategic planning, and consideration of the park’s other priorities.” Superintendent Arnberger also indicated that the decision to cease planning activities was the result of “unresolved differences among user groups,” the “difficulties of wilderness management without a decision from Congress on the park’s wilderness designation,” “fragmentation of the issues,” and a lack of improvement in the “possibilities for collaboration where serious division exists among the various interests.”

54. Despite the dramatic increase in demand for non-commercial, “self-guided” river use, the NPS has made no revision or adjustment in allocations between commercial and non-commercial use since 1981; nor have any significant or meaningful refinements in the method of allocating and granting non-commercial permits been instituted in order to ensure full use of even the present non-commercial allocation. Motorized uses, both commercially and administratively, continue to dominate river activities, despite mandates, policies and directives requiring implementation of wilderness management and standards.

55. On April 7, 2000 Plaintiff GCPBA wrote to Defendant Arnberger, demanding that GCNP re-commence required planning activities and requesting that NPS reconsider historic patterns of favoring commercial over private non-commercial access to the Colorado River through GCNP. GCPBA's letter also requested that NPS re-evaluate and adjust river access permit allocations on the basis of data made available since the last time such a re-adjustment occurred. A copy of GCPBA's demand letter is attached hereto as Exhibit B.

56. Defendant Arnberger responded to GCPBA's demand letter on May 9, 2000. Mr. Arnberger summarily rejected GCPBA's complaints and concerns and stated that he would not reverse his decision to suspend planning efforts at GCNP. A copy of Mr. Arnberger's letter is attached hereto as Exhibit C.

### **Claims for Relief**

#### **Claim I:**

##### **National Park Service Organic Act/Redwoods Amendment and APA**

57. The allegations contained in paragraphs 1-56 are incorporated by reference.

58. The National Park Service Organic Act, 16 U.S.C § 1, and the Redwoods Amendment, 16 U.S.C. § 1a-1, establish high standards for national park preservation and management. The purpose of the National Park System, including GCNP, is "to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Furthermore, Defendants must limit authorization of activities in the National Park System, including GCNP, and protect, manage, and administer those areas, "in light of the high public value and integrity of the National Park System." Such authorization of activities and the protection, management, and administration of National Park System units, including GCNP, "shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress." Defendants are required to fulfill a paramount legal duty, pursuant to both a general

public trust obligation imposed by the National Park Service Organic Act, as amended by the Redwoods Amendment, and the specific mandates of that Act, as amended, to protect GCNP.

59. Defendants have failed to abide by these standards and requirements at GCNP. Specifically, Defendants have unlawfully authorized ongoing activities that degrade park resources, violate NPS' obligation to protect GCNP and that are inconsistent with the articulated purposes of the National Park System, including GCNP. Defendants have also issued concessions contracts for commercial motorized watercraft tours of, and issued permits for private motorized watercraft trips on, the Colorado River through GCNP at levels and in numbers that are inconsistent with the mandate to preserve the scenery, natural objects, and wildlife of GCNP and to leave those qualities unimpaired for future generations.

60. Defendants have also failed to reduce or eliminate the environmental and ecological impacts of such motorized watercraft trips; failed to reduce or eliminate the use of helicopters to transport watercraft passengers and crew and to remove sewage waste in areas within and adjacent to GCNP; (c) failed to revise the 1989 CRMP or issue a new Colorado River Management Plan to mitigate or eliminate the impacts of crowding and congestion and other adverse environmental consequences caused by high levels of motorized watercraft use of the Colorado River through GCNP; and (d) failed to revise the current system of allocating river access permits to better serve the demands of park visitors and resource protection, despite data now available to Defendants which demonstrates the need for such changes to the permit allocation system.

61. These actions and failures to perform required, non-discretionary duties are arbitrary and capricious and in violation of the NPS Organic Act and Redwoods Amendment thereto and therefore violate the Administrative Procedures Act, 5 U.S.C. § 706(1), (2).

#### Claim II:

#### Wilderness Act and APA

62. Paragraphs 1-61 are incorporated by reference.

63. The Wilderness Act, 16 U.S.C. § 1132[c], provides in relevant part as follows:

*Within ten years after the effective date of this Act the Secretary of the Interior shall review every roadless area of five thousand contiguous acres or more in national parks . . . under his jurisdiction on the effective date of this Act and shall report to the President his recommendation as to the suitability or unsuitability of each such area or island for preservation as wilderness. The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendation with respect to the designation as wilderness of each such area or island upon which review has been completed . . . Such advice shall be given with respect to not less than one-third of the areas and islands to be reviewed under this subsection within three years after enactment of this Act, not less than two-thirds within seven years after enactment of this Act, and the remainder within ten years of enactment of this Act.*

64. Pursuant to 43 C.F.R. § 19.6, Defendants are required to manage lands proposed for Wilderness designation as if they were designated Wilderness pending Congressional determination as to whether such designation is appropriate.

65. Defendants have authorized and/or permitted commercial activities, including motorized watercraft and helicopter use, at GCNP and private motorized watercraft use of the Colorado River through GCNP at levels, frequencies, and numbers that have caused, and continue to cause, substantial adverse impacts to the wilderness qualities of lands proposed by NPS for Wilderness designation. Accordingly, Defendants' actions in this regard are arbitrary and capricious and in violation of the Wilderness Act and 43 C.F.R. § 19.6 and therefore violate the APA, 5 U.S.C. § 706(1), (2).

### Claim III:

#### Wilderness Act/Grand Canyon Enlargement Act and APA

66. Paragraphs 1-65 are incorporated by reference.

67. 16 U.S.C. § 1132[c] required the Secretary of the Interior to transmit all National Park System wilderness proposals to the President within 10 years of the date on which the Secretary receives such a proposal from a National Park System unit or NPS itself.

68. GCEA, 16 U.S.C. § 228i-1, modified the deadlines specified in the Wilderness Act to require the Secretary of the Interior to report National Park System proposals for designated Wilderness to the President within two years of their issuance.

69. NPS finalized the 1980 Wilderness Recommendation for GCNP approximately twenty years ago, and issued the 1993 Wilderness Update approximately seven years ago. Defendant Babbitt has not transmitted the 1980 Wilderness Recommendation or 1993 Wilderness Update to the President of the United States.

70. Accordingly, Defendants' actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

#### Claim IV:

#### National Park System Concessions Policy Act and APA

71. Paragraphs 1-70 are incorporated by reference.

72. The National Park System Concessions Policy Act, 16 U.S.C. §§ 20 et seq. (repealed by Pub. L. No. 105-391, 112 Stat. 3503 (Nov. 13, 1998)), requires that commercial concession activities in national parks be limited to those that are necessary and appropriate for public use and enjoyment of the park, which are consistent to the highest practicable degree possible with the preservation and conservation of the area, and which do not impair park values.

73. Pursuant to 36 CFR § 51.2:

It is the policy of the Secretary of the Interior, as mandated by law, to permit concessions in park areas only under carefully controlled safeguards against unregulated and indiscriminate use so that heavy visitation will not unduly impair park values and resources. Concession activities in

park areas shall be limited to those that are necessary and appropriate for public use and enjoyment of the park areas in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the park areas.

74. Defendants have authorized commercial concessionaire services that use large, motorized watercraft and helicopter passenger exchanges that are not necessary and appropriate for public use and enjoyment or for realizing park and wilderness values. Such authorization of commercial use of motorized watercraft and helicopters at GCNP have degraded and impaired the resources and wilderness, environmental, ecological, and scenic values of GCNP in violation of the National Park System Concessions Policy Act and 36 CFR § 51.2.

75. Accordingly, Defendants actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

#### Claim V:

#### National Environmental Policy Act and APA

76. Paragraphs 1-75 are incorporated by reference.

77. The National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., requires Defendants to prepare environmental impact review and planning documents pursuant to a public planning process. An environmental impact statement (EIS) must be drafted, and public comment solicited, on all major Federal actions having a significant impact on the human environment. An environmental assessment (EA) with a finding of no significant impact (FONSI) must be prepared in the event of a finding that the proposed federal action will have no significant environmental impact.

78. Defendants have unlawfully failed to prepare an EIS in connection with their renewal of existing contracts with commercial concessionaires engaged in the provision of watercraft tours of the Colorado River through GCNP in 1996. Such renewals of concessionaire contracts are major federal actions having a significant effect on the human environment. Defendants' decision to renew such concessionaire contracts is likely to result in severe short-term and long-

term direct, indirect, and secondary impacts to the resources of GCNP. Some of those environmental impacts are uncertain or unknown, and such impacts, considered cumulatively, will be significant. Defendants' renewal of the concessionaire contracts will have an adverse environmental impact on the unique characteristics of GCNP, especially the Colorado River corridor, and is highly controversial.

79. Even if such contract renewals do not have a significant impact on the human environment, Defendants were obligated to prepare an EA/FONSI in connection with them. Upon information and belief, Defendants failed to do so.

80. Defendants have also unlawfully failed to prepare or update an EIS in connection with other new or ongoing management activities at GCNP, including issuance of annual operating permits to commercial concessionaires offering motorized watercraft tours of the Colorado River and authorization of such commercial concessionaire use of helicopters to ferry passengers in and out of GCNP; use of motorized watercraft and helicopters by GCNP management and staff to accomplish administrative and maintenance tasks at the park; and construction of infrastructure and purchase and installation of machinery intended to facilitate such use of motorized watercraft and helicopters by GCNP management and staff. Such actions by Defendants are major federal actions having a significant effect on the human environment. They are likely to result in substantial short-term and long-term direct, indirect, and secondary impacts to the resources of GCNP. Some of those environmental impacts are uncertain or unknown, and such impacts, considered cumulatively, will likely be significant. Defendants' actions will have an adverse environmental impact on the unique characteristics of GCNP, especially the Colorado River corridor, and are highly controversial.

81. Even if such new or ongoing management activities at GCNP, including issuance of annual operating permits to commercial concessionaires offering motorized watercraft tours of the Colorado River and authorization of such commercial concessionaire use of helicopters to ferry passengers in and out of GCNP; use of motorized watercraft and helicopters by GCNP management and staff to accomplish administrative and maintenance tasks at the park; and construction of infrastructure and purchase and installation of machinery intended to facilitate such use of motorized watercraft and helicopters by GCNP management and staff do not have a

significant impact on the human environment, Defendants were obligated to prepare an EA/FONSI in connection with them. Upon information and belief, Defendants failed to do so.

82. Pursuant to 40 C.F.R. § 1508.18, Defendants' inaction in failing to update, revise, or replace the 1989 CRMP; failing to reduce existing levels of motorized watercraft use of the Colorado River through GCNP; and failing to modify the existing allocation of river access permits between commercial and non-commercial rafters requires preparation of an EIS. Defendants have failed to prepare an EIS in connection with these failures to act.

83. Even if Defendants' inaction in failing to update, revise, or replace the 1989 CRMP; failing to reduce existing levels of motorized watercraft use of the Colorado River through GCNP; and failing to modify the existing allocation of river access permits between commercial and non-commercial rafters has no significant environmental impact, Defendants were obligated to prepare an EA/FONSI in connection with such inaction. Upon information and belief, Defendants failed to do so.

84. Accordingly, Defendants actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

#### Claim VI:

##### NPS Management Policies/Director's Wilderness Order and APA

85. Paragraphs 1-84 are incorporated by reference.

86. NPS has issued Management Policies to provide direction to administrators of National Park System units, including GCNP, as to the management of lands and waters proposed for Wilderness designation. The NPS Management Policies have the force of law.

87. Pursuant to NPS Management Policies § 6.3.1, "the term "wilderness" includes the categories of suitable, study, proposed, recommended and designated wilderness. NPS wilderness policies apply regardless of category . . . In addition to managing these classified

areas for the preservation of their wilderness values, planning for these areas must ensure that the wilderness character is likewise preserved.”

88. Pursuant to NPS Management Policies § 6.3.5, “[a]ll management decisions affecting wilderness must be consistent with a minimum requirement concept . . . When determining minimum requirement, the potential disruption of wilderness character and resources will be considered before, and given significantly more weight than, economic efficiency and convenience. If a compromise of wilderness resource or character is unavoidable, only those actions that preserve wilderness character and/or have localized, short-term adverse impacts will be acceptable.” The Minimum Requirement mandate applies to renewal of commercial concessionaire contracts and to issuance of annual operating permits to such concessionaires. The Minimum Requirement mandate also applies to NPS management use of equipment, including motorized watercraft and helicopters and infrastructure and other items installed and/or used to facilitate such motorized watercraft and helicopter use, in areas of GCNP proposed for Wilderness designation.

89. Pursuant to NPS Management Policies § 6.4.4, “Wilderness-oriented commercial services that contribute to achieving public enjoyment of wilderness values or provide opportunities for primitive and unconfined types of recreation may be authorized if they meet the necessary and appropriate tests of the Concessions Policy and Wilderness Acts and if they are consistent with the wilderness management objectives contained in the park’s Wilderness Management Plan.”

90. The Director’s Wilderness Order is intended to clarify, where necessary, specific provisions of the NPS Management Policies and to establish specific instructions and requirements concerning the management of all NPS wilderness areas. The Director’s Wilderness Order is also intended to “provide accountability, consistency, and continuity to [NPS’] wilderness management program and to otherwise guide Service-wide efforts in meeting the letter and spirit” of the Wilderness Act. The Director’s Wilderness Order incorporates and applies the definition of “wilderness” adopted by NPS Management Policies § 6.3.1 and incorporates Reference Manual #41: Wilderness Preservation and Management (Wilderness Reference Manual) as a supplement. The Director’s Wilderness Order has the force of law.

91. Pursuant to the Director's Wilderness Order, Defendants must refrain from taking any action "that would diminish the wilderness suitability of an area possessing wilderness characteristics until the legislative process of wilderness designation has been completed. Until that time, management decisions pertaining to lands qualifying as wilderness will be made in expectation of eventual wilderness designation. This policy also applies to potential wilderness, requiring it to be managed as wilderness to the extent that existing non-conforming uses allow. The [NPS] will seek to remove the temporary, non-conforming conditions that preclude wilderness designation."

92. The Director's Wilderness Order specifically prohibits the use of motorized watercraft or helicopters by NPS managers to facilitate administration of areas recommended for Wilderness designation "except as necessary to meet minimum requirements of administration" and, in any event, such use of motorized watercraft or helicopters is permissible only when such actions preserve the wilderness values and character of areas recommended for Wilderness designation and/or cause adverse impacts that are only localized and short-term in nature. Motorized watercraft or helicopter use by park management within areas recommended for Wilderness designation is specifically prohibited "when other reasonable alternatives are available."

93. The Director's Wilderness Order directs GCNP managers to "ensure that wilderness resources [are] afforded maximum protection" through the implementation of certain actions, including completion of planning processes and the use of such processes to protect wilderness resources. Accordingly, the Director's Wilderness Order requires Defendants to make annual progress toward processes for (a) identifying Minimum Requirements for administrative actions in areas proposed for Wilderness designation; (b) evaluating the appropriateness of recreational activities in context of their compatibility with preservation of resources eligible for and/or proposed for Wilderness designation; and (c) the management of lands and waters, including the Colorado River through GCNP, to preserve wilderness character and values undiminished until Congress acts on the pending proposals and/or recommendations to designate such lands and waters as Wilderness.

94. The Director's Wilderness Order requires the NPS Director to submit, "in a timely fashion," the GCNP Wilderness Recommendation and 1993 Update to the appropriate Assistant Secretary of the Interior and Secretary of Interior for approval.

95. The Director's Wilderness Order requires GCNP managers to follow a specified two-step process when considering whether planned or proposed management actions as appropriate or necessary. First, GCNP managers must determine whether the planned or proposed action may result in significant adverse impacts to the wilderness resources and character of areas proposed for Wilderness designation. Second, GCNP managers must evaluate and employ the tool or method of accomplishing their objective that causes the least amount of adverse impact to physical resources and the experiential qualities and character of areas proposed for Wilderness designation. Defendants may not make any exceptions to this requirement unless such exceptions are consistent with an approved Wilderness Management Plan, and such exceptions must be documented in a manner consistent with GCNP's officially promulgated Minimum Requirements process and accompanied by appropriate environmental impact review analysis. These requirements also apply to Defendants' authorization of scientific studies and activities in GCNP areas that have been proposed for designation as Wilderness.

96. Additionally, the Director's Wilderness Order requires Defendants to ensure that commercial services providers operating at GCNP, including commercial river recreation concessionaires, adhere to Minimum Requirement concepts in all aspects of their business operations (including helicopter transport of river passengers). Defendants may authorize such commercial services to operate at GCNP only if they are "necessary and appropriate" for achieving public enjoyment of wilderness values or result in the provision of opportunities for primitive and unconfined types of recreation, consistent with wilderness management objectives contained in GCNP's WMP (if in effect), the Wilderness Act, and the National Park System Concessions Policy Act.

97. The Director's Wilderness Order also requires Defendants to address, "within the park's WMP and associated environmental compliance document," and with full public involvement afforded, the "appropriate and fair ratio between commercial and private use allocation."

98. The Director's Wilderness Order requires GCNP managers "contemplating the use of aircraft or other motorized equipment within wilderness [to] consider impacts to the aesthetics and traditions of wilderness, as well as the costs and efficiency of the equipment."

99. The Director's Wilderness Order requires Defendants to ensure that administration of all areas proposed for Wilderness designation is conducted in a manner consistent with provisions specifying Minimum Requirements analyses. The Director's Wilderness Order further requires, as part of the Minimum Requirements process, management to use the least intrusive method, or Minimum Tool, required to achieve administrative or management objectives. The Director's Wilderness Order also requires GCNP managers to evaluate the "appropriateness" of recreational activities on the Colorado River "when changes in the nature and significance of the activities affect their compatibility with wilderness preservation and the statutory purpose of wilderness."

100. The Director's Wilderness Order provides that "the minimum requirements process will be conducted through appropriate environmental analysis (e.g., categorical exclusions, environmental assessment/FONSI, or an environmental impact statement/Record of Decision)."

101. The NPS Management Policies and Director's Wilderness Order have the force of law.

102. Defendants have violated NPS Management Policies and/or the Director's Wilderness Order by failing to evaluate the appropriateness of ongoing high levels of commercial and private motorized watercraft use of the Colorado River through GCNP; by issuing or renewing contracts with and granting and/or renewing annual operating permits for commercial concessionaires operating motorized watercraft tours of the Colorado River; and by allowing some or all of such commercial concessionaires to utilize helicopters within the boundaries of lands at GCNP proposed for Wilderness designation, without compliance with the specified Minimum Requirements process and without assuring that such authorization is consistent with the requirement to maintain opportunities for a primitive, unconfined type of recreation at GCNP.

103. Defendants have violated NPS Management Policies and/or the Director's Wilderness Order by authorizing use of motorized watercraft and helicopter use at levels, frequencies, and numbers that are not appropriate and necessary, as those terms are defined in the CPA and Wilderness Act.

104. Defendants have further violated NPS Management Policies and/or the Director's Wilderness Order by authorizing the use of helicopters by park employees, contractors, and/or

commercial concessionaires to transport watercraft passengers and crew, materials, and waste; by purchasing, authorizing, and engaging in the use of motorized watercraft and helicopters by park management and staff for administrative and management purposes, and for scientific and research purposes; and by installing and using infrastructure and other equipment intended to facilitate motorized watercraft and helicopter use at GCNP without the prior completion of an EA/FONSI or EIS or final WMP.

105. Defendants have violated NPS Management Policies and the Director's Wilderness Order by failing to continue efforts to finalize a Wilderness Management Plan and by failing to continue efforts to revise the 1989 CRMP or prepare and issue a new CRMP and by failing to revise and adjust existing allocations of river access permits between commercial concessionaires and private rafters on the basis of data obtained since the allocation was last reconsidered.

106. Defendants' refusal to take steps to remove motorized watercraft and helicopters from GCNP, which are non-conforming uses, violates NPS Management Policies and/or the Director's Wilderness Order.

107. Defendants' authorization of and/or engagement in the above-specified activities violates the NPS Management Policies and Director's Wilderness Order because such actions diminish the wilderness suitability of the areas of GCNP proposed for Wilderness designation, are inconsistent with the requirement to afford maximum protection to wilderness resources, and do not preserve the wilderness character and values of lands and waters at GCNP proposed for Wilderness designation; are not necessary to achieve the minimum requirements of administration of park resources; result in long-term and non-localized environmental, aesthetic, and scenic impacts; and are unnecessary in light of the availability of other alternatives.

108. Defendants have violated the NPS Management Policies and/or the Director's Wilderness Order by failing to transmit the 1980 Wilderness Recommendation and/or 1993 Wilderness Update to the Secretary of Interior and/or President of the United States.

109. Accordingly, Defendants' actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

## Claim VII:

### GCNP Master Plan/General Management Plan and APA

110. Paragraphs 1-109 are incorporated by reference.

111. NPS issued the GCNP Master Plan in 1976 and the GCNP GMP in 1995. The GCNP Master Plan and GMP have the force of law.

112. Both the GCNP Master Plan and the GCNP GMP require Defendants to adhere to certain specified management objectives at GCNP, including but not limited to management of the Colorado River in such a manner as to ensure the availability of a wilderness river-running experience.

113. The GCNP Master Plan states that preservation of the Grand Canyon natural environment is the fundamental requirement for its continued use and enjoyment as an unimpaired natural area. Park management therefore looks first to the preservation and management of the natural resources of the park. The management concept is the preservation of the total environments, as contrasted with the protection of only a single feature or species.

114. The GCNP GMP specifies that GCNP management must: (a) “protect and preserve the resource in a wild and primitive condition;” (b) reduce or eliminate noise caused by watercraft and helicopter motors and large numbers of people on the river; (c) result in a timely and regular revision of applicable GCNP resource management plans, including the CRMP and the Backcountry Management Plan (BMP); and (d) assure the reconsideration and, if appropriate, re-allocation of river access permits between commercial and non-commercial recreational users of the Colorado River. The GMP also requires Defendants to “address” the use of motorized watercraft on the Colorado River.

115. The GCNP GMP also requires Defendants to “actively pursue designation of eligible segments of the Colorado River as part of the Wild and Scenic Rivers System.”

116. Defendants have failed to comply with these requirements of the GCNP Master Plan and GMP, and in fact have affirmatively announced their intention not to comply with these requirements by halting all efforts to revise the 1989 CRMP and/or 1988 BMP.

117. Defendants are also in violation of the GCNP Master Plan and BMP because they have failed, despite knowing of recent reliable data justifying changes in the existing allocation of river access permits to private rafters, to begin or engage in a process that may lead to such an equitable re-allocation of river access permits.

118. Accordingly, Defendants' actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

#### Claim VIII:

#### Colorado River Management Plan and APA

119. Paragraphs 1-118 are incorporated by reference.

120. The 1989 CRMP has the force of law.

121. The 1989 CRMP lists several goals and a number of management objectives that must guide administrative and management decisions at GCNP. The goals and management objectives include: (1) preservation of the natural resources and environmental processes of the Colorado River corridor and the associated riparian and river environments; (2) provision to Colorado River users of the opportunity to participate in and appreciate a variety of the unique experiences offered by Grand Canyon National Park as a whole and by the riverine environment in particular; (3) provision of a quality Colorado River experience through Grand Canyon National Park (a) by determining the impact of crowding and use levels on visitor experience through social science research, (b) by then establishing a human use capacity and a limitation on use based on the results of the above research and related management considerations, and (c) by managing visitor use to provide opportunities and settings for certain experiences and critical attributes as defined in the Limits of Acceptable Change guidelines found in Appendix B of the 1989 CRMP; (4) reduction of social conflicts and activities which result in resource degradation

involving backcountry and river users; and (4) provision of opportunities for people of most ages, abilities, and physical disabilities to participate in river trips.

122. The 1989 CRMP included a commitment by GCNP management to reconsider, on a regular basis and in response to public concern and input, the allocation of river access permits between commercial concessionaires and private rafters.

123. The 1989 CRMP, by its own language and terms, required Defendants to engage in a comprehensive review of its terms, conditions, requirements and objectives within five to ten years of its issuance. The 1989 CRMP, pursuant to specific language contained therein, had a maximum lifespan and effective period of five to ten years.

124. The 1989 CRMP included, as a device intended to guide management decisions at GCNP pursuant to its terms, an Appendix that set forth “Limits of Acceptable Change” (LAC). The purpose of the LAC included the provision, to the extent possible, of a “primitive river experience.” Defendants are required to modify management actions at GCNP when the specified LAC is reached.

125. Defendants have failed to revise or replace the 1989 CRMP and have authorized continued use of motorized watercraft and helicopters by commercial concessionaires, private rafters, and GCNP management and staff at levels, numbers, and frequencies that are inconsistent with the goals and management objectives specified by the 1989 CRMP and with the LAC specified in the 1989 CRMP. Defendants have also failed to revise the allocation of river use permits between commercial concessionaires and private rafters despite their awareness of substantial data that amply justifies such an equitable re-allocation, thus resulting in the perpetuation of a lengthy, unnecessary, and unfair waiting list for private rafters.

126. Accordingly, Defendants’ actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

## Claim IX:

### Backcountry Management Plan and APA

127. Paragraphs 1-126 are incorporated by reference.

128. According to the terms of the 1988 BMP, it had a lifespan and effective period of three years. The 1988 BMP also required Defendants to review the plan at the end of each three-year period in the event of renewal.

129. The BMP required such a review in order to assure that GCNP management takes account of public concerns and to increase the likelihood that park visitors will have a quality backcountry experience.

130. The BMP has the force of law.

131. Defendants are in violation of the BMP by continuing to fail to renew, update or replace it, despite its life span having expired in 1991, and by their continuing failure to engage in a required plan review at the end of each three-year period since the BMP was adopted.

132. Accordingly, Defendants' actions are arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law, in violation of APA, 5 U.S.C. § 706(1), (2).

### Requests for Relief

1. Plaintiffs respectfully request that this Court declare that Defendants have violated the National Park Service Organic Act and Redwoods Amendment thereto, Wilderness Act, National Environmental Policy Act, Grand Canyon Enlargement Act, National Park System Concessions Policy Act, as well as various Federal regulations, NPS Management Policies and Director's Orders, and GCNP management plans, including the 1976 Grand Canyon National Park Master Plan, 1995 General Management Plan, 1989 Colorado River Management Plan, and 1988 Backcountry Management Plan, and accordingly that Defendants have violated the Administrative Procedures Act, for the reasons and in the manner alleged above;

2. Plaintiffs further respectfully request that this Court issue a writ of mandamus preventing Defendants from, and/or enjoin Defendants from, acting in the unlawful manner detailed in this Complaint and requiring Defendants to act in such a manner as Plaintiffs will request during pendency of this action;
  
3. Plaintiffs further respectfully request that this Court, pursuant to a writ of mandamus and/or declaratory judgment and injunction, order and compel Defendants to re-initiate the Wilderness and Colorado River planning processes, as a comprehensive and coordinated process, with a specific requirement that Defendants assure that such planning processes achieve complete compliance with the requirements, mandates, goals, objectives, and policies imposed upon Defendants pursuant to statutory and regulatory authority as alleged above;
  
4. Award to Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees; and
  
5. Grant Plaintiff such further relief as this Court deems just, proper, and equitable.

DATED this 28th day of July 2000.

LAW OFFICE OF HENRY B. LACEY

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Henry B. Lacey

LAW OFFICE OF ROBERT P. LIPPMAN

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Robert P. Lippman

Attorneys for Plaintiffs