

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

COPY

JAMES R. RANDALL, RONALD J. ROMERO,
STANLEY HUTCHINSON, RANELL A. GARCIA,
ALBERT V. VOGEL, SARAH C. MCMAHON,
MARK C. LEACHMAN, JUDITH L. LOVDOKKEN,
and KENNETH R. KYLER,

Plaintiffs,

vs.

No. CIV 00-349 MV/WWD

GALE NORTON, Secretary of the Interior, and
JOSEPH F. ALSTON, Superintendent, Grand
Canyon National Park,

Defendants,

and GRAND CANYON RIVER OUTFITTERS
ASSOCIATION,

Intervenor.

DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS

In the Plaintiffs' Response to Defendants' Motion to Dismiss for Mootness (hereinafter "Plaintiffs' Response") the plaintiffs assert without support that the current allocation of user-days between commercial and noncommercial users on the Colorado River within Grand Canyon National Park (hereinafter "park") is "unreasonable, arbitrary, and inequitable." Based on that unsupported assertion, they then argue that they are entitled to immediate relief from the Court. In essence, then, the plaintiffs' argument assumes its own conclusion.

A party to any litigation is entitled to assert its opinions and positions. However, bald statements of opinion and position should not, and cannot, form the basis for the Court's decision. Furthermore, in this case, the plaintiffs' statements are irrelevant to the pending Defendants' Motion to Dismiss for Mootness.

As discussed in more detail in the Memorandum in Support of Defendants' Motion to Dismiss for Mootness, the salient facts are as follows: As part of the recent settlement of Grand Canyon Private Boaters Ass'n v. Alston (hereinafter "GCPBA"), No. CIV 00-1277 PCT-PGR-TSZ (D. Ariz.), the National Park Service (hereinafter "NPS") has committed to updating the park's 1989 Colorado River Management Plan (hereinafter "CRMP") by December 31, 2004, and has obtained the necessary approvals and funding for the project. In fact, the NPS already has begun the project by reviewing the results of public scoping on an updated plan conducted in 1997-98, by reviewing existing resource data and conducting scientific literature reviews, and by advertising the permanent and temporary positions necessary to complete the work

But the plaintiffs are an impatient lot. Three years is too long for them. They are not interested in an orderly process and a product based on scientific studies (including, for example, studies of ecosystem carrying capacity) that incorporates a rational allocation of access to a sensitive and finite resource. As they put it, the results they seek are "more personal and specific." To put it simply, they want more permits now.

Unfortunately for the plaintiffs, the government cannot legally accede to their self-serving demands. In managing a resource that is valued highly by many thousands of people around the globe, the NPS must consider the desires of more than just **nine** individuals. The NPS must consider and try to balance the desires and demands of myriad individuals and groups who revere

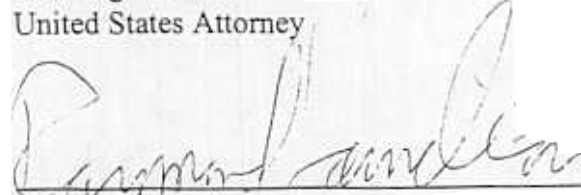
the Grand Canyon, who take an active interest in it, and who have as much "right" to it as the plaintiffs. More importantly, the NPS must manage the Grand Canyon as it manages all of the resources entrusted to its care, i.e., "in such manner and by such means as will leave [it] unimpaired for the enjoyment of future generations." 16 U.S.C. § 1 (2000). That may or may not mean permitting private boaters to have greater access to the river. Only after the NPS goes through the proper process and completes the necessary studies and analyses will we know the answer to that question.

The plaintiffs assert that "[t]here is only one constituent group [with whom the NPS will consult during the CRMP process] and that is the group of commercial operators controlling the commercial permits." Plaintiffs' Response at 4-5. That is patently false. During the process of updating the CRMP, the NPS will consult with numerous groups, including private boaters (including the plaintiffs in the GCPBA litigation and the plaintiffs here, if they so desire); environmental organizations; local counties, cities, and towns; federally recognized Indian tribes; and any other members of the public who express an interest in the process. And yes, with the commercial operators, who, like the plaintiffs and others, have a legitimate interest in the management of the river.

The plaintiffs complain mightily but present no reason why their interests should be elevated above everyone else's. The NPS already is undertaking the actions necessary to update the CRMP and, if necessary, to adjust the allocation of permits between commercial and noncommercial users of the Colorado River within Grand Canyon National Park. Even if the plaintiffs prevailed in this action, they would be entitled to nothing more. Accordingly, the federal defendants again respectfully request that the Court dismiss this action as moot.


Respectfully submitted,

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I CERTIFY that a copy of the foregoing document was mailed to counsel of record on
February 26, 2002.


Raymond Hamilton