

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

ED
DISTRICT COURT
NEW MEXICO

JAMES E. 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,

02 MAR -1 AM 9: 52

Robert M. Marsh
CLERK-ALBUQUERQUE

Plaintiffs,

vs.

No. CIV 00-349MV/WWD-ACE

BRUCE BABBITT, Secretary of the Interior, and
ROBERT ARNBERGER, Superintendent, Grand
Canyon National Park,

Defendants,

And GRAND CANYON RIVER OUTFITTERS
ASSOCIATION,

Intervenor.

**MOTION FOR EXPEDITED
HEARING AND INTERIM RELIEF**

Plaintiffs move the court for an expedited hearing and interim relief and state as grounds therefore:

This administrative appeal was filed March 9, 2000 and briefing on the merits was completed January 11, 2001

2 In their complaint plaintiffs complained that the National Park Service, since 1979, had failed and refused to adjust and correct the unreasonable, arbitrary, and inequitable allocation of Colorado River use within the Grand Canyon National Park between commercial and non-commercial boaters contrary to the requirements of the 1979, 1981, and 1989 Colorado River

Management Plans, contrary to the provisions of 16 U.S.C. § 3 which prohibits the Park Service from leasing, renting, or granting the curiosities, wonders, or objects of any national park to anyone on terms which interfere with free access to them by the public, and despite open recognition by the Park Service of the inequity in the existing allocations.

3 For their remedy, plaintiffs sought an order of this court that the Park Service immediately set aside the allocation established in 1979; that the Park Service immediately review, consider, and adjust the allocation between commercial concessionaires and non-commercial users based on the most current data and information contained within the Administrative Record within a reasonable time not to exceed sixty days; and that the Park Service be enjoined from renewing or extending existing commercial concessionaire contracts until the allocation was adjusted.

4. Since the issues were briefed and submitted to this court, the Park Service has taken no action to consider or adjust the inequitable allocation.

5 Since the issues were briefed and submitted to this court, Intervenor Grand Canyon River Outfitters Association has attempted to introduce legislation which, *inter alia*, would maintain the *status quo* of current allocation for at least another three years. A copy of the proposed legislation is attached as Exhibit "A."

6. Since the issues were briefed and submitted to this court, defendants and intervenors have entered into a settlement agreement in the United States District Court for the District of Arizona pursuant to which defendants will have until December 31, 2004 to begin and complete a Colorado River Management Plan planning process in which it will, *inter alia*, "consider" the allocation of use between commercial and non commercial users, and, in the interim, may extend current commercial concessionaire contracts until December 31, 2005. The current expiration date

for concessionaire contracts is the end of this year, December 31, 2002. A copy of the settlement agreement is attached as Exhibit "B."

7. Since the issues were briefed and submitted to this court, plaintiffs are informed and believe, and therefore allege, that defendants or their representatives have informally attended private meetings arranged by intervenor Grand Canyon River Outfitters Association to discuss and attempt to resolve issues to be raised in the anticipated planning process which would include the issue of allocation of use raised in this case.

8. Since the issues were briefed and submitted to this court, the National Park Service, in its official web cite, admits that there are twice as many non-commercial permit applicants as there were in 1991, that 7202 applicants were on the waiting list after additions in 2001, and that it will take more than 12 years for an applicant joining the waiting list to receive a permit. Exhibit C- Grand Canyon National Park Non-Commercial Waiting List Information.

9. Plaintiffs are informed and believe, and therefore allege that there are now over 7400 applicants on the waiting list.

10. Since the issues were briefed and submitted to this court, the commercial concessionaires continue to advertise the availability of trip openings for the coming 2002 season in national magazines and on the internet: Exhibit D- February Outside Magazine; Exhibit E- March Outside Magazine; Exhibit F-Spring-Summer Speciality Travel; Exhibit G- Action Whitewater Adventures Web cite; Exhibit H- American Overland Expeditions Web Cite; Exhibit I- Arizona River Runners Web Cite; Exhibit J- Canyon Explorations/Expeditions Web Cite; Exhibit K- Canyoneers Web cite; Exhibit L- Colorado River & Trail Webcite; Exhibit M-Diamond River Adventures, Inc. Web cite; Exhibit N-High Desert Adventures, Inc. Web cite; Exhibit O- Moki Mac

Web cite; Exhibit P- O.A.R.S. Web cite; Exhibit Q- Outdoors Unlimited River Trips Web cite; Exhibit R- Tour West Web cite; Exhibit S- Western River Expeditions Web cite; Exhibit T- Western River Expeditions Advertisement.

As shown by Exhibit T, Western Rivers is able to give a free trip in 2002 to any person who books three trips while 7400 applicants for a non commercial permit must wait for at least twelve years for their trip.

1 Taken together, the concessionaires have advertised over 400 trips for the coming 2002 season while applicants for a non commercial permit are placed on a 12 year wait list.

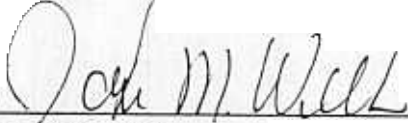
12. This court is the last hope of plaintiffs and the other 7400 applicants for a fair and equitable allocation of use. Without a decision of this court, defendants will simply continue to “study and consider” for another three years as they did in the late 1980s and again between 1996 and 2000. The “settlement agreement”, upon which defendants rely, offers no guaranty that defendants will ever resolve this issue and adjust the inequitable allocation in effect since 1979. Without a decision from this court, plaintiffs and the other 7400 applicants will continue to suffer the unjust and inequitable allocation of river use with no guaranty of just resolution.

13. A fair adjustment of allocation of use for the coming season of 2002 would be to increase the number of non commercial launches between May 1 and September 30, 2002 to two launches per day with a corresponding decrease in commercial use, and to increase the number of non commercial launches between May 1 and September 30, 2003 to three launches per day with a corresponding decrease in commercial use. Such an increase would still not give the non commercial users an equal allocation but at least would take substantial pressure off the waiting list until a final decision is rendered.

14. In the alternative, this court has the authority to order the defendants to reasonably adjust the allocation between commercial and non commercial users within a reasonable period based on studies and data already conducted and collected during the past 23 years. *Forest Guardians v. Babbitt*, 174 F.3d 1178 (10th Cir. 1999). Plaintiffs suggest that under the circumstances, 30 days is more than reasonable in which to reasonably adjust the allocation of use between commercial and non commercial users.

WHEREFORE, Plaintiffs request that this court schedule an expedited hearing on the merits of this appeal and that in the interim, this court issue an order that defendants immediately increase the number of non commercial launches to two per day between May 1 and September 30, 2002 and further increase the number of non commercial launches to three per day between May 1 and September 30, 2003 with a corresponding decrease in the commercial use, or, in the alternative, that this court order that defendants make a reasonable adjustment of allocation of use between commercial and non commercial users, based on the studies and data conducted and performed during the past 23 years, within thirty days of the date of the order.

LAW OFFICES OF JOHN M. WELLS, P.A.

By: 
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I hereby certify that a true and correct copy
of the foregoing pleading was mailed to all
counsel of record on ~~February 28, 2002.~~
March 1,

A handwritten signature in cursive script that reads "John M. Wells". The signature is written in black ink and is positioned above a horizontal line.

John M. Wells