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13  
14 IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA  
15

16	River Runners for Wilderness, <i>et al.</i> ,	)	No. CV-06-0894 PCT-DGC
		)	
17	Plaintiffs,	)	
		)	
18	v.	)	MEMORANDUM OF POINTS
		)	AND AUTHORITIES IN
19	Joseph F. Alston, <i>et al.</i> ,	)	SUPPORT OF PLAINTIFFS'
20		)	MOTION FOR SUMMARY
21	Federal-Defendants; and	)	JUDGMENT
		)	
22	Grand Canyon River Outfitters	)	
	Association; Grand Canyon Private	)	
23	Boaters Association,	)	
		)	
24	Defendant-Intervenors.	)	
25	_____	)	

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<u>No.</u>	<u>Description</u>
Exhibit 1	Standing Declaration of Thomas C. Martin
Exhibit 2	Standing Declaration of Russell Y. Minas
Exhibit 3	Standing Declaration of Robert Roark
Exhibit 4	Standing Declaration of Ginger Harmon

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<sup>1</sup> Plaintiffs' Exhibits are properly before the Court. Exhibits 1- 4 are declarations submitted to demonstrate that Plaintiffs meet the minimum requirements for Article III standing.

1 INTRODUCTION

2 Plaintiffs River Runners for Wilderness, *et al.*, organizations committed to  
3 protecting and preserving Grand Canyon National Park’s natural resources and wilderness  
4 values, submit this memorandum in support of their motion for summary judgment. At  
5 issue in this case is the National Park Service’s (“Park Service’s”) decision to authorize  
6 certain commercial services and the use of motorboats, helicopter passenger exchanges,  
7 and generators in the Grand Canyon’s Colorado River corridor – a wild river gorge that  
8 flows through the heart of the Grand Canyon and the largest and possibly most diverse  
9 wilderness on the Colorado Plateau. See Statement of Facts (“Facts”) at ¶ 239.<sup>2</sup>

10  
11 As outlined below, and evidenced by the record, in authorizing motorized activities  
12 and commercial services, the Park Service has violated its duty to preserve the wilderness  
13 character of the Colorado River corridor, and its duties under the National Park Service  
14 Concessions Management Improvement Act (“Concessions Act”), 16 U.S.C. §§ 5901 *et*  
15 *seq.*, the National Park Service Organic Act (“Organic Act”), 16 U.S.C. §§ 1 *et seq.*, and  
16 the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*

17  
18 STANDARD OF REVIEW

19  
20 Plaintiffs challenge under section 706(2)(A) of the Administrative Procedure Act  
21 (“APA”) the Park Service’s Record of Decision (“ROD”) adopting the 2006 Colorado  
22 River Management Plan (“CRMP”) and Final Environmental Impact Statement (“FEIS”).  
23 The Court may review Plaintiffs’ claims under the APA and “may direct that summary

24  
25  
26 <sup>2</sup> Pursuant to Local Rule 56.1(e), in this memorandum Plaintiffs cite to specific  
27 paragraph numbers in the attached Statement of Material Facts. Plaintiffs’ Statement of  
28 Material Facts includes specific citations to documents included in the administrative  
record (“AR”) and supplemental administrative record (“SAR”).

1 judgment be granted to either party based upon . . . review of the administrative record.” 5  
2 U.S.C. § 702(a); Great Basin Mine Watch v. Hankins, 456 F.3d 955, 961 (9<sup>th</sup> Cir. 2006).  
3 The APA provides that the Court “shall hold unlawful and set aside agency action,  
4 findings, and conclusions found to be arbitrary and capricious, an abuse of discretion, or  
5 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); Center for Biological  
6 Diversity v. Norton, 254 F.3d 833, 837-38 (9<sup>th</sup> Cir. 2001). Judicial review must be  
7 “searching and careful.” Ocean Advocates v. U.S Army Corp. of Engineers, 402 F.3d  
8 846, 858 (9<sup>th</sup> Cir. 2005). The Court must “not rubber-stamp” agency decisions but  
9 “ensure that [the] agency has taken the requisite ‘hard look’ at the environmental  
10 consequences of its proposed action, carefully reviewing the record to ascertain whether  
11 the agency decision is ‘founded on a reasoned evaluation of the relevant factors.’”  
12 Wetlands Action Network v. U.S. Army Corp. of Engineers, 22 F.3d 1105, 1114 (9<sup>th</sup> Cir.  
13 2000) (citations omitted).

## 14 15 16 ARGUMENT

### 17 I. THE PARK SERVICE VIOLATED ITS DUTY TO MANAGE THE 18 COLORADO RIVER CORRIDOR AS WILDERNESS

#### 19 A. The Park Service Has a Duty to Preserve the Colorado River Corridor’s 20 Wilderness Character

21 Pursuant to § 3 (c) of the Wilderness Act, 16 U.S.C. § 1132 (c), and § 228i of the  
22 Grand Canyon National Park Enlargement Act (“Grand Canyon Protection Act”), 16  
23 U.S.C. § 228i-1, the Park Service prepared a wilderness recommendation and proposal to  
24 Congress to designate 980,088 acres within the Grand Canyon for “preservation as  
25 wilderness.” See Facts at ¶ 79. This proposal included an additional 131,814 acres of the  
26 Grand Canyon as “potential wilderness,” including the entire 226 mile stretch of the  
27 Colorado River, from Lees Ferry to Diamond Creek (the upper gorge) and an additional  
28

1 51 miles from Diamond Creek to Lake Mead (hereinafter “Colorado River corridor”). Id.;  
2 see also Facts at ¶ 117. The proposal is still pending.

3 By definition, potential wilderness are areas within the National Park system that  
4 possess wilderness characteristics, i.e., are essentially untrammelled by man, natural,  
5 undeveloped, and provide outstanding opportunities for solitude or a primitive and  
6 unconfined type of recreation, but do not “qualify for immediate designation due to  
7 temporary, non-conforming, or incompatible [uses].” 2001 Park Service Management  
8 Policies (“MP”) 6.2.2.1.<sup>3</sup> Potential wilderness areas, therefore, are slated for “future  
9 designation as wilderness [once] the non-conforming use has been removed or  
10 eliminated.” Id.; see also Wilderness Watch v. Mainella, 375 F.3d 1085, 1088 n. 2 (11<sup>th</sup>  
11 Cir. 2004) (discussing potential wilderness areas and Park Service policy). Here, the  
12 Colorado River corridor was “identified as a potential wilderness due to the existing  
13 motorized raft use.” Facts at ¶ 184. In the Park Service’s own words, motorized boat use  
14 is “inconsistent with the wilderness criteria of providing outstanding opportunities for  
15 solitude and for a primitive and unconfined type of recreation.” Id. at ¶ 181 .  
16 Accordingly, “the river corridor would become wilderness upon phase-out of the use of  
17 motors.” Id. at ¶ 184.

18  
19  
20 Having classified the Colorado River corridor as “potential wilderness,” the Park  
21 Service’s 1976 Master Plan, 1995 General Management Plan (“GMP”) and Management  
22  
23  
24  
25

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26 <sup>3</sup> A complete copy of the 2001 MP is included in the Supplemental Administrative  
27 Record (“SAR”). See SAR 016073. The MP were revised in 2006, *after* the Park  
28 Service’s ROD for the new Colorado River Management Plan (“CRMP”) was signed.

1 Policies (“MP”) all mandate that the agency manage the Colorado River corridor for its  
2 wilderness character.<sup>4</sup>

3 The Park Service cannot ignore the Master Plan and the GMP’s prescriptions  
4 because they dictate all development and management of the Grand Canyon, including  
5 the Colorado River corridor. See e.g., Sierra Club v. Dombeck, 161 F.Supp.2d 1052, 1071  
6 (D. Ariz. 2001) (land exchange, that failed to achieve the goals of the 1995 GMP for the  
7 Grand Canyon, was arbitrary and capricious). The 1976 Master Plan outlines the overall  
8 objectives and proposals for managing the Grand Canyon and states that the “goals for  
9 management of the Colorado River in the Grand Canyon will be to *perpetuate the*  
10 *wilderness river-running experience*, and to attempt to mitigate the influences of man’s  
11 manipulation of the river.” Facts at ¶ 36 (emphasis added). To meet this goal, the Master  
12 Plan states that “mechanized access below the rims [of the Grand Canyon]” will be  
13 limited. Id. at ¶ 37.<sup>5</sup> Likewise, pursuant to the 1995 GMP, the Park Service must “protect  
14 the natural quiet and solitude” of the Grand Canyon and “manage areas meeting the  
15

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17  
18 <sup>4</sup> The term “wilderness character” is defined in the FEIS. See Facts at ¶ 197.  
19 Wilderness areas are undeveloped lands that retain their “primeval character [and]  
20 influence without permanent improvements or human habitation . . . [g]enerally appear to  
21 have been affected primarily by the forces of nature, with the imprint of man’s work  
22 substantially unnoticeable” and provide “outstanding *opportunities for solitude or a*  
23 *primitive and unconfined type of recreation.*” Id. (emphasis added). Preserving  
24 “wilderness character” includes two components: (1) protecting the wilderness resources  
25 (i.e., water, land, solitude, wildlife, natural setting and sound); and (2) providing an  
26 opportunity for a primitive wilderness experience. See Wilderness Watch, 375 F.3d at  
27 1093.

28 <sup>5</sup> A year after adopting the Master Plan, the Park Service decided to “ban motor  
use” in the Colorado River corridor to achieve the Master Plan’s goals. See Facts at ¶ 38.  
This decision was based on consideration of “relevant National Park policies, wilderness  
proposals, the park master plan, interpretation, noise, and research, as well as other  
considerations . . .” Id. at ¶ 139.

1 criteria for wilderness designation as wilderness.” Id. at ¶ 131. Relevant here, the GMP  
2 “treats all proposed wilderness areas as wilderness” and states that the Park will be  
3 managed in accordance with the Park Service’s “1993 wilderness proposal.” Id. at ¶ 132.  
4 With respect to the Colorado River corridor, the GMP directs the Park Service to “protect  
5 and preserve the resource in a wild and primitive condition” and ensure that all  
6 management plans for the Colorado River be “consistent with NPS wilderness policy  
7 requirements.” Id. at ¶ 133. Similar mandates to preserve the Colorado River’s  
8 wilderness character are found in Park Service Directives.<sup>6</sup>  
9

10 The Park Service’s Management Policies (“MP”) likewise mandate that the  
11 Colorado River be managed as wilderness. MP 6.3.1.; see SAR 016073 (complete copy of  
12 the MP). As the Park Service itself has determined, its MP are binding and mandatory.  
13 See MP, Introduction (“Adherence to policy is mandatory unless specifically waived or  
14 modified by the Secretary . . .”); Sierra Club v. Lujan, 716 F.Supp. 1289, 1293 (D. Ariz.  
15 1989) (same). Indeed, in the FEIS, the Park Service assures the public that the Colorado  
16 River corridor will be “managed as potential wilderness in accordance with the NPS  
17 Management Policies.” Facts at ¶ 181. This means that the Park Service must manage the  
18 Colorado River corridor “for the preservation of physical wilderness resources . . .[and]  
19 ensure that the wilderness character is likewise preserved.” MP 6.3.1. Thus, the Park  
20 Service may allow recreational uses in the Colorado River corridor only that enable the  
21

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22  
23 <sup>6</sup> In Special Directive 95-2, the Director of the Park Service states that all potential  
24 wilderness areas “will be managed under the provisions of the Wilderness Act and NPS  
25 policies to maintain wilderness characteristics and values until Congress decides on the  
26 potential for inclusion in the National Wilderness Preservation System.” Facts at ¶ 129;  
27 see also Facts at ¶ 146 (Director’s Order 41: Wilderness Preservation and Management);  
28 Wilderness Watch, 375 F.3d at 1088 n.2 (discussing Reference Manual 41 which was  
adopted by Director’s Order 41).

1 area to retain its “primeval character . . . and provide outstanding opportunities for  
2 solitude or primitive and unconfined types of recreation.” MP 6.4.3. Recreational “uses  
3 that do not meet the purposes and definitions of wilderness should be prohibited.” Id.  
4 Specifically, the use of “motorized equipment or any form of mechanical transport *will be*  
5 *prohibited* in wilderness except as provided for in specific legislation.” MP 6.4.3.3  
6 (emphasis added). Moreover, in planning for the use of potential wilderness areas, the  
7 Park Service is required to “seek to remove from potential wilderness the temporary, non-  
8 conforming conditions that preclude wilderness designation.” MP 6.3.1; see also  
9 Wilderness Watch, 375 F.3d at 1088, n.2; Facts at ¶ 183 (FEIS) (same); Facts at ¶ 148  
10 (Director’s Order 41). Last, any commercial services authorized in areas to be managed  
11 as wilderness must meet the exception provided in section 4 (d)(5) of the Wilderness Act,  
12 which requires a necessity determination. MP 6.4.4; 16 U.S.C. § 1133(d)(5).  
13

14  
15 B. The CRMP and ROD Violate the Park Service’s Duty to Preserve the  
16 Colorado River Corridor’s Wilderness Character

17 Despite the explicit duty to preserve the Colorado River corridor’s wilderness  
18 character – including the duty to prohibit motorized equipment and mechanized transport  
19 – in this case, the Park Service decided to do just the opposite. On February 17, 2006 the  
20 agency signed the ROD for the CRMP and authorized continued use of motorboats,  
21 helicopter passenger exchanges and generators in the potential wilderness area of the  
22 Colorado River corridor. See Facts at ¶ 239. Without question, these motorized activities,  
23 individually and in the aggregate, are “non-conforming uses” that have impacted, and will  
24 continue to impact, the corridor’s wilderness character.<sup>7</sup>  
25

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26 <sup>7</sup> Plaintiffs do not suggest that there is something wrong with appreciating natural  
27 beauty from a motorboat, helicopter, or motor vehicle. Indeed, “there are many . .  
28 .categories of public land administered by the federal government [that] appropriately

1 In fact, the Park Service concedes in the FEIS that “motorized raft use” is a  
2 “temporary, non-conforming or incompatible use.” Facts at ¶ 183. The “Colorado River  
3 was identified as potential wilderness due to the existing motorized raft use.” Id. at ¶ 184;  
4 see also Facts at ¶¶ 80 -81 (1980 Wilderness Recommendation). As explained by the  
5 Superintendent, “the non-conforming use identified in the 1980 Wilderness  
6 Recommendation was motorboat use that was to be phased out by 1985.” Facts at ¶ 116.  
7 It would be phased out because “motorized boat use [ ]is inconsistent with the wilderness  
8 criteria of providing outstanding opportunities for solitude and for a primitive and  
9 unconfined type of recreation.” Id. at ¶ 81; see also Facts at ¶ 118. In addition, since  
10 1980, “additional non-conforming uses that contradict the intent of wilderness  
11 management policy have either developed or increased.” Id. at ¶ 116. These “non-  
12 conforming uses consist of . . . increases in motorized traffic, increases in helicopter  
13 exchanges, non-emergency administrative use of motorboats, and exacerbation of  
14 crowding and congestion through user day pools.” Id.

16 By the Park Service’s admission, therefore, these motorized uses of the Colorado  
17 River corridor are non-conforming uses that are contrary to preserving its wilderness  
18 character. By definition, “non-conforming uses” are uses that do not comport with  
19 wilderness. Non-conforming uses are “contrary to the definitions of wilderness included  
20 within the Wilderness Act.” Facts at ¶ 154. Indeed, these motorized uses have a profound  
21 impact on the River’s wilderness character. Such uses impact both its wilderness  
22 resources and the opportunity for people to have a wilderness experience. See Facts at ¶¶

24 \_\_\_\_\_  
25 offer this opportunity.” Wilderness Watch, 375 F.3d at 1094. In fact, motorized  
26 whitewater river trips are currently available on other sections of the Colorado River  
27 system, as well as on other western whitewater rivers. This type of motorized use, rather,  
28 is simply not the “type of ‘use and enjoyment’” promoted or allowed by the Park  
Service’s plans, wilderness policies or the Wilderness Act. See id.

1 192-193. In fact, the administrative record in this case is replete with evidence that  
2 motorized uses have had, and continue to have, a significant impact on the corridor’s  
3 wilderness character. In the Park Service’s own words:

4       The use of *motors pollutes the river with gasoline and oil, the air with smoke, and*  
5 *assaults the senses with sound* and should be eliminated as soon as possible from  
6 the river environment. Their elimination will also qualify the river to be officially  
included in the wilderness areas of Grand Canyon National Park.

7 Facts at ¶ 18 (emphasis added).

8       In 1973, the Park Service proposed phasing out all motorized use of the Colorado  
9 River “by the end of the 1976 season” to protect the wilderness resource. Facts at ¶¶ 12,  
10 19. However, because this decision sparked controversy from concessioners, the agency  
11 decided to research and study the impacts of motorized use before making a final  
12 decision. See id. at ¶¶ 21- 22. This effort resulted in approximately *twenty-nine*  
13 “ecological and social studies” on the carrying capacity of the Colorado River corridor  
14 and the use of motorized boats. See Facts at ¶ 24 (synthesis of all twenty-nine studies).

15       Notably, these studies reveal that oar and motor trips are “equally safe” and that  
16 the impacts to the Colorado River corridor’s wilderness character from motorized uses are  
17 significant. See Facts at ¶¶ 25-34. In terms of impacts to water quality, for instance, the  
18 Park Service notes that “[p]ollutants added to the river as a result of motorized travel  
19 include approximately 5,750 pounds of petroleum residue annually, as well as gasoline  
20 from leaking tanks and oil spills.” Id. at ¶ 61; see also Facts at ¶ 178 (“Motorboat use  
21 introduces contaminants such as hydrocarbons and burned and unburned fuel and motor  
22 oil” to the Colorado River corridor). Noise from motorboats, helicopter passenger  
23 exchanges, and generators also invade the natural sounds of the Colorado River corridor.  
24 See e.g., Facts at ¶ 26 (study on the sound-level of motor noise in the Grand Canyon); at ¶  
25 27 (motor and oars analysis); at ¶ 34 (synthesis of research).

1 In terms of impacts to the wilderness experience, extensive research and studies  
2 reveal that overall “non-motorized trips are more pleasing to the visitor.” Facts at ¶ 28.  
3 “[O]ar travel is seen as more consistent with a natural or wilderness experience.  
4 Passengers who had experience with both motor and oar trips preferred the oar trip. They  
5 enjoyed the slower pace, could relax; they become more aware of natural sounds in the  
6 canyon; they were able to observe more closely the unique features along the river and  
7 more easily ask questions of their guide.” Id.; see also Facts at ¶ 31 (“motor-oar  
8 experiment”).  
9

10 Accordingly, in 1979 the Park Service again sought to improve visitor’s  
11 “wilderness experience” and decided to eliminate motorized boat use. See Facts at ¶¶ 74-  
12 75. In the Park Service’s own words, “[s]tudies over the past several years show that the  
13 use of motorboats . . . is incompatible with overall visitor enjoyment and resource  
14 management objectives.” Id. at ¶ 58; see also Facts at ¶ 74 (the use “of motorized  
15 watercraft . . . will be phased out over a 5 year period. This will achieve the objective . . .  
16 to make available the high quality wilderness river-running experience.”).

17 The Park Service’s 1979 decision to phase out motorboats was ultimately thwarted  
18 by a one-year rider attached to an appropriations bill. See Facts at ¶ 87. Nonetheless, the  
19 agency remained concerned about the “incremental erosion of [the Colorado River  
20 corridor’s] wilderness resource,” the “resulting . . . degradation of wilderness values  
21 along the Colorado River in the Grand Canyon,” and its own failure to fulfill its  
22 “responsibility of wilderness protection.” Facts at ¶ 112 (Park Service memo). In 1993,  
23 for instance, the agency noted that “the current levels of motorized boat use probably  
24 *contradict the intent of wilderness designation* [and] . . . *is inconsistent with the*  
25 *wilderness criteria* of providing outstanding opportunities for solitude and for a primitive  
26 and unconfined type of recreation.” Id. at ¶ 118 (emphasis added). Ten years later, the  
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28

1 Park Service reiterated this sentiment: “the continued use of [motorized] equipment  
2 within [the Colorado River corridor] violate[s] the letter and intent of the Wilderness Act  
3 and NPS management policies and director’s orders addressing wilderness.” *Id.* at ¶ 162.

4 In the most recent FEIS, the Park Service does not discuss in detail its earlier  
5 findings and determinations, or the approximately twenty-nine studies on carrying  
6 capacity and motorized use of the River. But the agency does acknowledge that noise  
7 intrusions to the natural soundscape of the Park are “adverse, localized, and regional” and  
8 that, when viewed in combination with other sources of noise intrusions (i.e., aircraft  
9 overflights) would be a “*significant adverse effect*” on the Colorado River corridor’s  
10 natural soundscape. *Id.* at ¶ 191 (emphasis added). The Park Service also concedes that  
11 “impacts to wilderness character . . . will be detectable and measurable during most of the  
12 year, but more apparent during the higher mixed-use period, at the frequently visited areas  
13 and passenger exchange points along the river corridor.” *Id.* at ¶ 192 “For visitors  
14 seeking outstanding opportunities for solitude or a primitive and unconfined type of  
15 experience [i.e., a wilderness experience], the impacts would be adverse and of moderate  
16 intensity during the peak use motorized periods.” *Id.* at ¶ 193.

19 C. The Park Service’s Rationale for Authorizing Motorized Activities in the  
20 Colorado River Corridor is Arbitrary and Capricious

21 As outlined above, the Park Service concedes that motorized activities are  
22 nonconforming uses that have adverse impacts on the river’s wilderness character. In the  
23 FEIS and ROD, the Park Service asserts for the first time, however, that such uses do not  
24 violate their duty to manage for wilderness because they: (1) are only a “temporary or  
25 transient” disturbance of wilderness and (2) are “established uses” pursuant to section  
26 4(d)(1) of the Wilderness Act. *See* Facts at ¶ 194. The Park Service is incorrect.

1                   1.       “Temporary or transient” disturbances are not allowed

2                   The Park Service’s assertion that motorized use of the river corridor should be  
3 allowed because it results in only a “temporary or transient” disturbance of wilderness  
4 values is wrong. There is no “temporary or transient” disturbance exception in the  
5 Wilderness Act or Park Service policy. On the contrary, section 4 (c) of the Wilderness  
6 Act includes a blanket prohibition on the use of all “motorized equipment or motorboats”  
7 in wilderness areas, however temporary. 16 U.S.C. § 1133(c); High Sierra Hikers  
8 Association v. Blackwell, 390 F.3d 630, 646 (9<sup>th</sup> Cir. 2004) (noting that the Act  
9 “generally proscribes” activities, and “allows only [ ] narrow exceptions[s]” to the  
10 prohibitions); accord The Wilderness Society v. U.S. Fish & Wildlife Service, 353 F.3d  
11 1051, 1062 (9<sup>th</sup> Cir. 2003); see also Wilderness Watch, 375 F.3d at 1089 (discussing  
12 prohibitions). While there are a few narrow exceptions to this blanket prohibition, no  
13 exceptions for temporary or transient uses that disturb wilderness values exist. See 16  
14 U.S.C. § 1133 (“special provisions”).

15  
16                   Further, there is nothing temporary nor transient about the disturbances caused by  
17 motorized boats, which occupy the Colorado River every day during the summer and  
18 shoulder seasons. As discussed above, motorized uses directly conflict with a wilderness  
19 experience on the river and as discussed below, impair the natural soundscape of the river  
20 corridor. Thus, for the entire summer and shoulder seasons, motorized boats are a  
21 permanent and illegal disturbance to the river’s wilderness character.

22  
23                   Moreover, by definition, the non-conforming uses that the Park Service must “seek  
24 to remove” from potential wilderness areas include any bona fide “temporary or transient”  
25 uses. See MP 6.3.1. As explained by the Eleventh Circuit, “[p]otential wilderness areas  
26 contain certain *temporary conditions* that do not conform to the Wilderness Act.”  
27 Wilderness Watch, 375 F.3d at 1088 n.2. As such, these are precisely the types of uses  
28

1 that the Park Service must “seek to remove.” Id. (citing Ref. Manual 41); see also Facts at  
2 ¶ 154 (non-conforming uses are “contrary to the definitions of wilderness [but are] . . .  
3 considered of a temporary nature which, once removed, should not preclude” wilderness  
4 designation); at ¶¶ 80-83 (Colorado River qualifies as potential wilderness *because*  
5 transient motorboat use can be phased out).

6 Finally, the Park Service’s temporary disturbance argument fails to take into  
7 account that the agency has an *existing* duty to manage and preserve the river corridor’s  
8 wilderness values and provide a “primitive wilderness experience” now. Indeed,  
9 thousands of people each year have been, and will now continue to be, deprived of a true  
10 wilderness experience because of the Park Service’s continued authorization of such  
11 nonconforming, motorized uses.

12  
13 2. The “established use” exception does not apply

14 In the FEIS, the Park Service maintains that the continued use of motorboats will  
15 not preclude wilderness designation because it qualifies as an “established use” pursuant  
16 to section 4(d)(1) of the Wilderness Act, 16 U.S.C. § 1133 (d)(1). See Facts at ¶ 194. The  
17 Park Service misreads the plain language of the Wilderness Act. First, on its face, section  
18 4(d)(1) *applies only* to the Department of Agriculture, not to the Department of Interior.  
19 See 16 U.S.C. § 1133 (d)(1) (uses that “have already become established, may be  
20 permitted . . . [by] the Secretary of Agriculture); Stupak-Thrall v. U.S., 89 F.3d 1269,  
21 1282 n.14 (6<sup>th</sup> Cir. 1996) (section 4(d)(1) permits the Secretary of Agriculture to allow  
22 motorboat use where already established). The Park Service apparently agrees, stating in  
23 the record that “the pre-existing use exception for the Forest Service *does not apply* to the  
24 Dept of Interior units.” Facts at ¶ 123 (emphasis added); see also Facts at ¶ 141  
25 (established use exception “not extended to the Secretary of Interior”); at ¶ 145 (same); at  
26  
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1 ¶ 163 (it “would be a tactical mistake . . .to adopt any of the section 4 (d) language and  
2 apply it to the Colorado River Management Plan”).

3         Second, the Park Service cannot illegally authorize non-conforming motorboats  
4 and then claim that they are properly excepted from the clear prohibition on the use  
5 because they have already become established.

6         Third, motorized use of the Colorado River corridor is not “established” in the  
7 ordinary sense of the word. See The Wilderness Society, 353 F.3d at 1061 (applying  
8 common sense meaning to words in statute). Rather, by definition, established uses are  
9 those that are “recognized *and accepted* in a particular capacity.” NEW OXFORD  
10 DICTIONARY at 580 (2001) (emphasis added). Here, while motorized use of the  
11 Colorado River corridor has occurred over the last 40 years, it is by no means an  
12 established or “accepted” use of the wild river corridor. On the contrary, motorized use  
13 of the river has been, and continues to be, a highly controversial issue. Indeed, in *two*  
14 previous river planning processes the Park Service decided to phase out motorized boat  
15 use. See Facts at ¶ 12 (phase out by 1977); at ¶ 56 (phase out by 1985). Both of these  
16 decisions were never implemented. See Facts at ¶ 21 (1973 political interference); at ¶ 87  
17 (1981 one-year appropriations rider).  
18

19         Fourth, even if one assumes, *arguendo*, that the established use exception applies,  
20 federal agencies retain discretion over whether to allow pre-existing uses to continue. See  
21 16 U.S.C. § 1133 (d)(1) (use “*may* be permitted to continue”). Here, the Park Service’s  
22 “extensive public review process [for the Colorado River] and the existing NPS planning  
23 documents” *do not* permit such uses to continue. Facts at ¶ 135. Instead, the Agency’s  
24 policies state that “[p]ublic use of motorized equipment or any form of mechanical  
25 transport *will be prohibited* in wilderness *except as provided for in specific legislation.*”  
26 Id. (emphasis added). While Congress can extend the established use exception to  
27  
28

1 wilderness units within the National Park system (if it decides to do so), absent a statutory  
2 exception, the Park Service’s plans and policies prevent it from invoking the section  
3 4(d)(1) exception. See id.

4 Finally, if motorboats are deemed an “established” use pursuant to section 4(d)(1),  
5 a plain reading of the Wilderness Act means that such uses would have to have been  
6 established *before* the September 3, 1964 Wilderness Act was enacted. See 16 U.S.C. §  
7 1133 (d)(1) (referring only to uses that “have already become established”); United States  
8 v. Gregg, 290 F.Supp. 706, 708 (D.C. Wash. 1968) (use must have been established  
9 “before the passage of the Act”); see also Facts at ¶ 135 (“strict interpretation of the  
10 Wilderness Act supports pre-1965 use, not subsequent motorized levels, as the  
11 established use”). In 1964, total river use was “about 550 people.” Facts at ¶ 135. In  
12 2007, the Park Service estimates that over 24,000 people will use the river. Id. at ¶ 244.

13  
14  
15 D. The Park Service Allows Commercial Services on the Colorado River that  
16 Are Not Necessary and Proper for Realizing the Recreational or Wilderness  
Purposes of the Area

17 The Park Service may allow concessioners to operate in potential wilderness only  
18 if they meet the Wilderness Act’s exception for commercial services. See MP 6.4.4. The  
19 narrow exception, adopted by the MP and relevant here, provides:

20 Commercial services may be performed within the wilderness areas designated by  
21 this chapter to the extent necessary for activities which are proper for realizing the  
22 recreational or other wilderness purposes of the areas.

23 16 U.S.C. § 1133 (d)(5); see also MP 6.4.4; Blackwell, 390 F.3d at 646. The Park  
24 Service has illegally allowed certain commercial uses of the Colorado River without a  
25 determination that such uses are necessary for activities which are proper for recreating in  
26 wilderness or consistent with managing the area as wilderness. Further, the agency has  
27 illegally allowed certain commercial uses of the area that are inconsistent with managing  
28

1 the area as wilderness. Even the levels of appropriate commercial services authorized by  
2 the ROD exceed what is necessary and proper to enable the public to recreate on the  
3 Colorado River.

4 1. The Park Service Illegally Allows Motorized Commercial Uses  
5 Without Finding that they Are Necessary

6 In Blackwell, the Ninth Circuit interpreted section 4(d)(5) to require two things.  
7 First, an agency must make a finding of “necessity” before authorizing commercial  
8 services in wilderness. 390 F.3d at 647. Second, the “finding of necessity is a specialized  
9 one. The [agency] may authorize commercial services only ‘to the *extent* necessary.’” Id.  
10 at 648 (emphasis original) (ruling that the Forest Service violated the Wilderness Act,  
11 because it did not establish that the extent of packstock services it authorized was  
12 necessary). Here, the Park Service illegally allows commercial motorized uses of the  
13 Colorado River without determining that such uses are necessary for activities that are  
14 proper for realizing the recreational or other wilderness purposes of the park. As  
15 discussed below in an analogous claim under the Concessions Act (see Section II) the  
16 agency has found only generally that “the service provided by commercial concessioners,  
17 which enable thousands of people to experience the river in a relatively primitive and  
18 unconfined manner and setting (when many of them otherwise would be unable to do so),  
19 are necessary to realize the recreational and other wilderness purposes of the park.” Facts  
20 at ¶ 200. But, the Park Service has illegally never found that *motorized* commercial  
21 services, which make up roughly 75 percent of the allocated commercial use, are  
22 necessary. See Facts at ¶ 218 (75 percent of use).

23  
24  
25 2. Motorized Commercial Uses are Not Necessary or Consistent with  
26 Managing the Area as Wilderness

27 The record proves that motorized commercial services are not necessary. During  
28 preparation of the CRMP, GCNP Deputy Wilderness Program Coordinator wrote:

1 The NPS has no current authority to allow motorized equipment use within the  
2 Colorado River Corridor except that which might be “necessary to meet minimum  
3 requirements of the administration of the area for the purpose of [the Wilderness  
4 Act].” By any measure, the current concession operations using motorized  
5 equipment exceeds that which is needed to meet established “minimum  
6 requirement” tests. The continued use of this equipment within wilderness  
7 violated the letter and inten[t] of the Wilderness Act and NPS management  
8 policies and director’s orders addressing wilderness.

9 Facts at ¶ 162. The Park Service has also previously found that commercial motorized  
10 uses of the Colorado River are not necessary to realize the recreational or other  
11 wilderness purposes of the park. Facts at ¶ 205 (motorized boats are unnecessary); at ¶  
12 206 (special needs groups can access the river on oar-powered trips); see also Facts at ¶  
13 208 (study for NPS finding that “eliminating motor . . . trips would not appear to exclude  
14 any specific group”); at ¶ 208 (passengers on self-guided and commercial trips range in  
15 age between 10 and 82 years old). Studies show that oar trips (non-motorized) are as safe  
16 or safer than motorized trips. Id. at ¶ 32 (showing lower risk of fatality on oar-powered  
17 rafting trips).

18 Even where the Park Service, in another instance, found that motorized uses were  
19 necessary in wilderness, a court disagreed. In Wilderness Watch, for instance, the  
20 Eleventh Circuit set aside a Park Service decision to allow members of the public who  
21 wished to reach certain wilderness destinations to ride agency motor vehicles. 375 F.3d at  
22 1092. The agency asserted that it could do so, despite the Act’s prohibition on motor  
23 vehicles, because the trips were “‘necessary to meet minimum requirements for the  
24 purpose of [the Wilderness Act].’” Id. The Eleventh Circuit rejected the argument, ruling  
25 that the decision to “administer” the wilderness by “using a fifteen-passenger van filled  
26 with tourists simply cannot be construed as ‘necessary’ to meet the ‘minimum  
27 requirements’ for administering the area ‘for the purpose of [the Wilderness Act].’” Id.  
28 The Eleventh Circuit stated that “of course there is nothing wrong with appreciating

1 natural beauty from inside a passenger van, and many other categories of public land  
2 administered by the federal government appropriately offer this opportunity. It simply is  
3 not the type of ‘use and enjoyment’ promoted by the Wilderness Act.” Id. at 1093.

4 Thus, given these facts and the prohibition against motorized uses in wilderness,  
5 the Park Service cannot legally authorize commercial motorized services on the Colorado  
6 River.

7  
8 3. The Amount of Overall Commercial Use is Not Necessary to Realize  
the Recreational or Wilderness Purposes of the River

9 The Park Service must not only prove that commercial services it authorizes are  
10 necessary, but also that it authorizes such services only “‘to the *extent* necessary.’”  
11 Blackwell, 390 F.3d at 648 (emphasis original). This “limitation on the [agency’s]  
12 discretion to authorize commercial services only to ‘the extent necessary’ flows directly  
13 out of the agency’s obligation to protect and preserve wilderness areas.” Id. The Park  
14 Service “must show that the number of permits granted was no more than was necessary  
15 to achieve the goals of the Act.” Id. at 647.

16  
17 Because neither the MP nor the Wilderness Act define “necessary,” the first step in  
18 interpreting the word is to determine its common sense meaning. The Wilderness Society,  
19 353 F.3d at 1061. “Necessary” means “indispensable” or “essential.” WEBSTERS NINTH  
20 NEW COLLEGIATE DICTIONARY 790 (1989). Thus, commercial services may be necessary  
21 for certain people who cannot row themselves or do not have able trip leaders who can  
22 take them on a non-commercial trip down the Colorado River. Indeed, the Ninth Circuit  
23 noted that certain commercial services “needed to provide access to people who would  
24 otherwise not be able to gain access for themselves or their gear, can support a finding of  
25 necessity.” Blackwell, 390 F.3d at 647. However, in the FEIS, the Park Service never  
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1 links the amount of commercial services authorized with a finding that the amount is  
2 essential.

3       As described more fully below, the demand for public access to the Colorado  
4 River greatly exceeds the supply of available permits, a situation resulting from the need  
5 to protect the resource from overuse and degradation. See Section II. Evidence also  
6 demonstrates that the concessioners do not use all of their commercial allocation. See id.  
7 Further, because of the historic long waits for the public to gain access to the Colorado  
8 River on a noncommercial trip, some people who use the concessioners would prefer to  
9 take a noncommercial trip if they were able to obtain permits. See e.g. Facts at ¶ 72  
10 (people hire commercial outfitters because they cannot get a noncommercial permit).  
11 Thus, at least some of the commercial allocation is unnecessary.

12       Without an analysis of the amount of commercial services that are necessary,  
13 which considers the incompatibility of motors in wilderness, protecting the resource,  
14 unused allocation by the concessioners, the number of commercial users who would  
15 rather take a noncommercial trip and the relative demand for noncommercial trips, there  
16 is no “rational validity” to the Park Service’s decision to allocate the amount of use in the  
17 CRMP to the concessioners. See Blackwell, 390 F.3d at 647-648.

## 20 II. THE PARK SERVICE AUTHORIZES COMMERCIAL SERVICES IN 21 VIOLATION OF THE CONCESSIONS ACT

22       The CRMP and ROD violate the Concessions Act by authorizing unnecessary  
23 commercial services and services that are inappropriate and inconsistent with preserving  
24 the resources and values of the Colorado River. Congress has mandated that in national  
25 parks, commercial services “shall be limited to those . . . that are [ ] necessary and  
26 appropriate for public use and enjoyment of the unit of the National Park System in which  
27 they are located; and [ ] are consistent to the highest practicable degree with the  
28

1 preservation and conservation of the resources and values of the unit.” 16 U.S.C. §  
2 5951(b); see also MP 6.4.4. Thus, the Park Service must limit commercial services on the  
3 Colorado River to only those that are necessary, but also to those that preserve the  
4 wilderness character of the river. See Section I (discussing the value of wilderness and  
5 requirement of wilderness preservation).

6           The ROD contends that the CRMP analyzed the types and level of commercial  
7 services that are necessary and appropriate for the Colorado River through the Park.  
8 However, the only specific discussion of the necessity or propriety of commercial  
9 services is found on three pages of the CRMP. There, the CRMP states that “since  
10 visitors who wish to raft on the Colorado River through the Grand Canyon possess neither  
11 the equipment nor the skill to successfully navigate the rapids and other hazards of the  
12 river, the [Park Service] has determined that it is necessary and appropriate for the public  
13 use and enjoyment of the park to provide for experienced and professional river guides  
14 who can provide such skills and equipment.” Facts at ¶ 201. The Park Service also  
15 “determined that the service provided by commercial concessioners, which enable  
16 thousands of people to experience the river in a relatively primitive and unconfined  
17 manner and setting (when many of them otherwise would be unable to do so), are  
18 necessary to realize the recreational and other wilderness purposes of the park.” Facts at ¶  
19 200.  
20  
21

22           Notably, the Park Service never found that commercial *motorized* use of the  
23 Colorado River corridor is necessary or appropriate for the public to realize the  
24 recreational and other wilderness purposes of the river. Without a finding of necessity, it  
25 may not authorize this unnecessary commercial service. See 16 U.S.C. § 5951(b).  
26 Moreover, even if the Park Service’s general statement of need for professional guides  
27 could suffice for a finding of necessity for motorized services, the evidence shows that  
28

1 commercial motorized use of the Colorado River corridor is not necessary and  
2 appropriate for the public to realize the recreational and other wilderness purposes of the  
3 river. The public can recreate and enjoy the wilderness character of the area by taking a  
4 non-motorized commercial trip or a non-motorized non-commercial trip down the river.  
5 As early as 1976, the Park Service found that “motorized boat use is not necessary for the  
6 use and enjoyment of this area but is a convenience which enables the trip to be made in  
7 less time and permits the use of large boats, accommodating larger groups. This use is  
8 inconsistent with the wilderness criteria of providing outstanding opportunities for  
9 solitude and for a primitive and unconfined type of recreation.”<sup>8</sup> Facts at ¶ 42. Park  
10 studies have demonstrated that most people prefer smaller groups on the river and when  
11 commercial passengers took an experimental combination “motor-oar” trip, “92%  
12 reported that oar trips better enabled them to ‘experience the Grand Canyon  
13 environment.’” Id. at ¶ 210. Even for special needs groups, the Park Service has found,  
14 since at least the late 1970s, that “[o]ar-powered rafts [ ] provide safe trips for aged,  
15 handicapped, and young people.” Id. at ¶ 206. Indeed, the agency found that eliminating  
16 motor trips “would not appear to exclude any specific group.” Id. at ¶ 208.

17  
18 The Park Service also failed to identify in the ROD or CRMP any specific amount  
19 of commercial services that meet its finding of “necessary and appropriate” commercial  
20 services. The ROD authorizes set amounts of commercial use independent of any finding  
21 regarding the necessity of the amount of use. Without stating a quantity of appropriate  
22 and necessary commercial services on the river, the Park Service violates Congress’  
23 mandate that commercial services “shall be *limited* to those . . . that are [ ] necessary  
24 and appropriate . . .” 16 U.S.C. § 5951(b) (emphasis added); MP 6.4.4 ; see also Facts at ¶  
25

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26  
27 <sup>8</sup> Even for administrative resource trips, Park Service experts have said that there  
28 is “no reason to use motors” other than to placate motorized user. See Facts at ¶ 209.

1 212 (the decision as to whether a service is necessary and appropriate, and at what level,  
2 is a management decision based on park planning). The FEIS’s analysis of the allocation  
3 system does not account for what level of commercial services are necessary and  
4 appropriate. See Facts at ¶ 214. Nor does the discussion of alternatives or carrying  
5 capacity address what level of commercial services are necessary and appropriate. See  
6 e.g. Facts at ¶ 213. But the Park Service has known for years that it must address “[h]ow  
7 ‘necessary and appropriate’ is the current concession allocation level” and the “National  
8 Park Service preference for motorized concession operations.” Id. at ¶ 168 (planning  
9 document for CRMP). The current levels of commercial services authorized by the Park  
10 Service's ROD and CRMP go beyond what is "necessary and appropriate" to enable the  
11 public to realize the recreational and other wilderness purposes of the Park.  
12

13         In further violation of the Concessions Act, the Park Service's authorization of  
14 continued commercial motorized use fails to preserve the wilderness character of the river  
15 to the *highest practicable degree* as required by law. See 16 U.S.C. § 5951(b).

16 Repeatedly, throughout its management of the river, the Park Service has conceded that  
17 allowing motorized boats on the river is inconsistent with protecting its wilderness  
18 character and inconsistent with providing outstanding opportunities for solitude and for a  
19 primitive and unconfined type of recreation. See Section I.B. Studies, relied upon by the  
20 Park Service, make clear that non-motorized trips not only better protect the wilderness  
21 experience of all, but better enable visitors to experience the river as wilderness. See  
22 Facts at ¶¶ 24-34 (twenty-nine studies). Accordingly, the Park Service’s authorization of  
23 commercial services on the Colorado River is “arbitrary and capricious, an abuse of  
24 discretion, and not in accordance with law.” 5 U.S.C. § 706 (2).  
25  
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1 III. THE PARK SERVICE VIOLATED THE ORGANIC ACT

2 A. The Park Service’s Inequitable Allocation of River Permits to Commercial  
3 Operators Interferes With Free Access to the Colorado River by the Public

4 Congress directed that the Secretary of the Interior “may [ ] grant privileges,  
5 leases, and permits for the use of land for the accommodation of visitors in the various  
6 parks, monuments or other reservations [ ] but for periods not exceeding thirty years.” 16  
7 U.S.C. § 3. However, the Organic Act mandates that “[n]o natural, curiosities, wonders,  
8 or objects of interest shall be leased, rented, or granted to anyone on such terms as to  
9 interfere with *free access* to them by the public.” Id. (emphasis added).  
10

11 The ROD and CRMP violate the Organic Act by allowing the Colorado River to  
12 be leased for use by commercial concessioners at use levels that interfere with free access  
13 to the river by the public. In other words, to the extent that commercial services are  
14 necessary and appropriate under other laws, they must be allocated equitably with  
15 noncommercial uses.

16 Because the overall use of the river must be limited to protect its natural resources  
17 and the wilderness character of the Colorado River corridor, user access must necessarily  
18 be limited. The Park Service has chosen to limit and allocate use in a split allocation  
19 system between commercial and noncommercial user groups, providing the majority of  
20 the allocated use to motorized commercial use. Facts at ¶ 227. Pursuant to the ROD and  
21 CRMP, the public gains access to travel down the river by either: (1) applying for a  
22 non-commercial permit through the lottery system and coordinating a river trip<sup>9</sup>; or (2)  
23 paying a commercial concessioner, which already has an allocated use of the river, to take  
24

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25  
26 <sup>9</sup>The ROD eliminates the waiting list for non-commercial permits and replaces it  
27 with a weighted lottery system. Facts at ¶ 249. Under the new system, trip leaders on the  
28 old waitlist would obtain launch dates within 10 to 20 years. Id.

1 people on a commercial trip down the river via motorized or non-motorized raft. Facts at  
2 ¶ 246. Members of the public who have the financial means and inclination to gain river  
3 access by paying for a private commercial trip are assured a trip down the river.<sup>10</sup> Facts at  
4 ¶ 171 (commercial trips are priced to keep demand below supply); at ¶ 171 (“the [split  
5 allocation commercial] access system favors the affluent” and a commercial user can  
6 generally go in the summer she chooses). Members of the public who are not already on  
7 the noncommercial waitlist and who cannot afford to pay a commercial outfitter and/or do  
8 not wish to take a commercial trip, however, are highly unlikely to be able to take a trip  
9 down the Colorado River, ever. See e.g., Facts at ¶ 233 (the new permit system would  
10 favor those who have been unsuccessful in obtaining a permit in prior years, but does not  
11 guarantee a permit); at ¶ 233 (noncommercial demand has exceeded supply of permits  
12 since 1973); at ¶ 233 (“Based on the exponential growth of the waitlist, demand  
13 undeniably exceeds supply.”)

14  
15 The Ninth Circuit has found that the pertinent issue in protecting free access by the  
16 public in 16 U.S.C. § 3 is “whether allocation has been fairly made pursuant to  
17 appropriate standards.” Wilderness Preservation Fund v. Kleppe, 608 F.2d 1250, 1254 (9<sup>th</sup>  
18 Cir. 1972).

19  
20 If the over-all use of the river must, for the river's protection, be limited, and if the  
21 rights of all are to be recognized, then the "free access" of any user must be limited  
22 to the extent necessary to accommodate the access rights of others. We must  
23 confine our review of the permit system to the question whether the NPS has acted

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24  
25 <sup>10</sup> The reality is that commercial river travelers are a select group with high  
26 incomes and educational levels. Facts at ¶ 231. A commercial motorized trip down the  
27 river costs approximately \$300 per day. Facts at ¶ 232. Studies show that “[f]orty seven  
28 percent of commercial passengers have a household income over \$100,000 while only  
12% of the national population have a household income over \$100,000. The household  
income of self-guided boaters i[s] very close to the national average.” Id.

1 within its authority and whether the action taken is arbitrary. Citizens to Preserve  
2 Overton Park v. Volpe, 401 U.S. 402, 414, 91 S.Ct. 814, 28 L.Ed.2d 136 (1971).  
3 Allocation of the limited use between the two groups is one method of assuring  
4 that the rights of each are recognized and, if fairly done pursuant to appropriate  
5 standards, is a reasonable method and cannot be said to be arbitrary.

6 Id. at 1253.

7 The Park Service has not fairly allocated use pursuant to any identifiable or  
8 appropriate standards. The resulting inequity in the allocation system interferes with free  
9 access by the public because there is generally greater supply of than demand for  
10 expensive commercial services, but unquestionably greater demand for than supply of  
11 noncommercial permits. Rather than limiting use fairly among user groups, the  
12 noncommercial users bear the brunt of the capacity limits intended to protect the resource  
13 and are allocated roughly one-quarter of their use in the far less preferred winter season.

14 The waiting period on the old permit system provides evidence of the inequity in  
15 allocation. Under the old permit system, a member of the public (a trip leader) would  
16 wait between 10 and 20 years to obtain a permit to take a non-commercial trip down the  
17 river. Facts at ¶ 234. At the time of the FEIS, there were approximately 8,000 trip leaders  
18 on this list who were waiting to obtain a permit, and roughly 1000 new applicants each  
19 year. Id. at ¶ 235 Based on an average group size of 13, these 8,000 trip leaders represent  
20 approximately 104,000 members of the public who would go down the river on permits  
21 for noncommercial trips. See id. Under the new system, the Park Service estimates that  
22 over half of these waitlist applicants will receive a launch date within ten years and in  
23 twenty years, the majority of the waitlist will have successfully obtained a launch date.  
24 Facts at ¶ 236. However, river runners not on the old waitlist might have to reapply for  
25 years to gain a permit through the lottery and still, may never obtain one.

26 In contrast, there is no evidence in the FEIS that commercial river runners have  
27 had to wait to obtain access through the concessioners' user days. In 1995, the Park's  
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1 wilderness coordinator wrote that, noncommercial boaters represent “a broad spectrum of  
2 the ‘general public’ which has a much more difficult time obtaining a river trip than the  
3 commercial passenger who can generally purchase a trip for the summer season.” Facts at  
4 ¶ 136. Other evidence also supports the fact that a commercial passenger can generally  
5 take a trip in the year she wants. See Facts at ¶ 229. In fact, the FEIS indicates that the  
6 commercial outfitters do not even use their full allocation of use. Id. at ¶ 228. Worse still,  
7 the record shows that members of the public who do not need a guide pay concessioners  
8 to gain access to the river because they are unable to gain access through the  
9 noncommercial permit system. See e.g. Facts at ¶ 172. In assessing impacts to visitors  
10 from the allocation system, the FEIS also finds that “noncommercial groups generally  
11 believe their proportion of the overall allocation is unfairly small,” while “[c]ommercial  
12 users generally believe their allocation is either appropriate, somewhat below where it  
13 should be, or slightly higher than it needs to be.” Facts at ¶ 237.

15 While the FEIS and ROD eliminate the non-commercial waiting list, the use  
16 allocated for commercial and non-commercial remains inequitable. Before the 2006  
17 ROD, an average of 18,891 commercial passengers took trips down the river annually,  
18 while 3,570 noncommercial passengers took trips. Facts at ¶ 245 (no action alternative).  
19 Commercial use was capped at 115,500 user-days and noncommercial use was capped at  
20 54,450 user days annually.<sup>11</sup> Id. Of the commercial passengers, 14,487 took motorized  
21 trips, accounting for 74,260 user-days. Id. The FEIS continues to cap commercial user-  
22 days at 115,500, finding that approximately 17,606 passengers will take a commercial trip  
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27 <sup>11</sup> User-days and numbers of passengers are a function of the launches per day,  
28 group sizes and trip lengths. See Facts at ¶ 215 (key trip variables).

1 annually, but allows for an increase in commercial motorized use.<sup>12</sup> Facts at ¶ 216. The  
2 FEIS does not cap noncommercial user days, but estimates they will reach 113,486 per  
3 year for an estimated 7,051 passengers. Id. at ¶ 222. However, these estimates are based  
4 upon allocating noncommercial use primarily in the less-preferred winter season and in  
5 the shoulder seasons of spring and fall and by reducing the trip length for noncommercial  
6 oar-powered trips in order to increase the number of launches.<sup>13</sup> Id. (summer is preferred  
7 and winter is not). Thus, all commercial users will be able to take their river trips in the  
8 summer and shoulder seasons, but over one-quarter of the annual noncommercial users  
9 will be forced to take a winter trip in order to float the river. Id. at ¶ 223. In the past, only  
10 an average 318 noncommercial passengers per year have run the river in the winter. Id. at  
11 ¶ 224. Without evidence to support its assumption, the Park Service estimates that 1,855  
12 noncommercial passengers will now want to run the river in the winter.<sup>14</sup>

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15 <sup>12</sup> One way in which the Park Service provides greater commercial access is by  
16 allowing 32 people on each commercial trip during the summer season and 24 people  
17 during the shoulder season, in contrast to 8 and 16 people for noncommercial trips. Facts  
18 at ¶ 217. This level of commercial access is inequitable from an allocation standpoint,  
19 but also harms the wilderness character of the River because of the large group sizes.

20 <sup>13</sup> For summer trips, the FEIS estimates that an additional 387 noncommercial  
21 passengers will be able to run the river. However, the majority of the theoretical increase  
22 in noncommercial passengers comes in the winter with an estimated 1,537 additional  
23 passengers and in the shoulder season with an estimated 1,556 additional passengers. See  
24 Facts at ¶ 225. Thus, nearly 89 percent of the estimated increase in noncommercial  
25 passengers annually is allocated to the winter and shoulder seasons, while the commercial  
26 users maintain the majority of their allocation in the summer. Id. (91,909 of 115,500  
27 commercial user days in summer season).

28 <sup>14</sup> Another inequitable result of the allocation system is that the CRMP allows all  
recreational passengers to take one trip per year. But this only benefits commercial users  
who can gain river access on a yearly basis. The yearly allowance is essentially  
meaningless to those who must participate in the hybrid weighted lottery system, which  
gives preference to those who have not taken a river trip in the last *four* years. Facts at ¶

1           The Park Service’s methodology for estimating use levels for all of its alternatives  
2 was premised upon actual launch data between 1998 and 2003. Facts at ¶ 219. The range  
3 of alternatives was developed by setting separate limits for the different variables (such as  
4 launches per day, group size limits, trip length) for each type of trip. Id. The Park Service  
5 does not disclose how it arrived at these separate limits. However, the agency never  
6 factored into its analysis the relative demand for commercial and noncommercial trips and  
7 methods for fairly allocating use between those two user groups. See Facts at ¶ 220  
8 (“because we do not have and cannot obtain concrete data on relative demand from user  
9 groups, we can expect a lawsuit both if we change and if we do not change the  
10 allocations.”); Id. (speculating that it would cost the Park around \$2.5 million to conduct  
11 a demand study). There is no analysis or discussion anywhere in the FEIS of how to  
12 fairly allocate use between commercial and noncommercial users, even though equitable  
13 allocation is legally required and was one of the primary issues raised during public  
14 scoping for the CRMP. 16 U.S.C. § 3. Even in its internal planning document for the  
15 CRMP, the Park Service determined it needed information on the “relative demand for  
16 motor trips vs. oar trips” and “relative demand for different types of use over different  
17 seasons within the year (i.e. commercial, noncommercial, educational, research, etc.)”  
18 Facts at ¶ 169 (emphasis original). The Park Service may have discretion to choose a  
19 split allocation system, but it must allocate use fairly under appropriate standards.  
20 Wilderness Preservation Fund v. Kleppe, 608 F.2d at 1254 (finding the question of equity  
21 moot because of a new management plan superseding interim allocation levels on the  
22 Colorado River).

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1 Individuals who develop the skill to take a trip down the river should not be  
2 penalized because they do not want to pay a commercial outfitter to row them or  
3 motorboat them down the river. It is just as important to protect access to wild places for  
4 members of the public who want to engage in primitive recreation and use their skills of  
5 self-reliance in a place of wilderness as it is to allow access for people who need (and can  
6 afford) commercial assistance. In fact, the Park Service has long understood that the  
7 “primary user group that most needs access, and constitutes a broader range of economic  
8 levels, is the private [public] user.” Facts at ¶ 170. The ROD and CRMP's allocation  
9 system - a system that inequitably favors access, temporally and in quantity, by private  
10 commercial users who can afford to pay for guided trips -- is therefore arbitrary and  
11 capricious, an abuse of discretion, and not in accordance with the Organic Act. 5 U.S.C. §  
12 706 (2).  
13

14 B. The Park Service’s Determination that Motorized Activities in the Colorado  
15 River Corridor Do Not “Impair” the Grand Canyon’s Natural Soundscape is  
16 Arbitrary and Capricious

17 Pursuant to the Organic Act, the Park Service must leave the Grand Canyon’s  
18 resources and values “unimpaired for the enjoyment of future generations.”<sup>16</sup> U.S.C. § 1.  
19 No impairment or derogation to the Grand Canyon’s resources or values is allowed. See  
20 Facts at ¶ 259 (ROD).<sup>15</sup> In the Park Service’s own words, “[w]hile Congress has given  
21 the [agency] the management discretion to allow certain impacts within parks, that  
22 discretion is limited by the statutory requirement (enforceable by the federal courts) that  
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24 <sup>15</sup> Congress supplemented and clarified the Organic Act’s no impairment mandate  
25 through enactment of the General Authorities Act (“GAA”) in 1970, and again through  
26 enactment of a 1978 amendment (the “Redwood Amendment”). Both the GAA and the  
27 Redwood Amendment use the word “derogation” instead of impairment. The Park  
28 Service treats the mandate to avoid “impairment” and “derogation” of park resources and  
values as “a single standard for the management of the national park system.” MP 1.4.2.

1 the Park Service must leave park resources and values unimpaired.” MP 1.4.4. This no  
2 impairment mandate is the “cornerstone of the Organic Act” which “establishes the  
3 primary responsibility of the . . . Park Service.” Id.<sup>16</sup> Among the resources and values that  
4 cannot be impaired is a park’s “natural soundscape.” See MP 1.4.6. Indeed, the natural  
5 sounds of the Grand Canyon are considered to be “an inherent component of the scenery,  
6 natural and historic properties, wildlands, and recommended wilderness that constitute the  
7 bulk of the park (94%)” and a “key component of the wilderness river experience.” Facts  
8 at ¶ 188; at ¶ 155 (same).

9  
10 In this case, the Park Service determined that its continued authorization of  
11 motorboats, generators, and helicopter passenger exchanges in the Colorado River  
12 corridor does not “result in the impairment of the [Grand Canyon’s ] natural soundscape.”  
13 Facts at ¶ 182. This determination is illegal for four reasons.

14 1. Wrong baseline

15 Pursuant to Park Service policy and Director’s Order 47, the “natural ambient  
16 sound level – that is, the environment of sound that exists *in the absence of human-caused*  
17 noise – is the baseline condition, and the standard against which current conditions in  
18 soundscape will be measured and evaluated.” MP 8.2.3 (emphasis added); Facts at ¶ 155  
19 (Director’s Order 47). In the Grand Canyon, the baseline condition is the natural sound  
20 of the river corridor in the absence of human-caused noise, i.e., the flowing water and  
21 rapids of the river, wind, storm activity, wildlife activity, and other natural sound  
22 generation such as rock and mud slides. See Facts at ¶ 198. When evaluating the  
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<sup>16</sup> The Park Service notes that “[i]mpairment may occur from visitor activities;  
27 NPS activities in the course of managing a park; or activities undertaken by  
28 concessioners, contractors, and other operating in the park.” MP 1.4.5.

1 impairment to the Grand Canyon’s natural soundscape, however, the Park Service failed  
2 to apply the proper natural ambient sound level or baseline standard. See id.

3         The Park Service measured its authorization of motorized activities against  
4 “natural ambient sound levels . . . *in the presence* of audible human-caused noise  
5 including aircraft overflights.” Facts at ¶ 202 (emphasis added). By lumping the presence  
6 of human-caused noise levels from aircraft into the baseline standard, and conceding that  
7 such “outside” sources are already impacting the Park’s natural soundscape, the Park  
8 Service asserts that the contribution of additional sources of noise intrusion from  
9 motorboats, helicopters, and generators in the river corridor is relatively minor,  
10 insignificant, and does not result in any “impairment” to the Park’s natural soundscape.  
11 See e.g., Facts at ¶ 203 (“even if all river-related noise was removed from the park,” the  
12 impacts would still be severe).

14         This defeatist approach to protecting the Grand Canyon’s natural soundscape is as  
15 illogical as it is illegal. See Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci, 857  
16 F.2d 505, 510 (9th Cir. 1988) (“[w]ithout establishing the baseline conditions that exist . .  
17 . there is simply no way to determine what effect [an action] will have on the environment  
18 . . .”). The Park Service must do what it can to protect and preserve the Park’s natural  
19 soundscape (see MP 4.9). At the very least, this means making an accurate impairment  
20 determination and measuring the impacts of authorizing continued motorboat use,  
21 generators, or helicopter passenger exchanges – in conjunction with other sources of  
22 noise intrusions (i.e., aircraft tours) – against the *natural* sounds of the river. See MP  
23 8.2.3; Facts at ¶ 155 (Director’s Order 47).

1                   2.       Failure to consider the cumulative effects

2                   The Park Service is required to take into account the *cumulative* impacts to the  
3 Grand Canyon’s natural soundscape before making a final impairment determination. See  
4 MP 1.4.5. This is because “the cumulative impacts of related actions may result in  
5 impairment to resources even though the effects associated with a single event might not  
6 constitute impairment.” Facts at ¶ 152. By definition, cumulative effects are “the impacts  
7 on the environment which result from the incremental impact of the action when added to  
8 other past, present, and reasonably foreseeable future actions regardless of what agency  
9 (Federal or non-Federal) or person undertakes such other actions.” 40 C.F.R. § 1508.7.  
10 Cumulative impacts can result from “individually minor but collectively significant  
11 actions taking place over a period of time.” Id. The requirement to consider cumulative  
12 impacts, therefore, is designed to avoid the “combination of individually minor” effects –  
13 to avoid the “tyranny of small decisions” or “death by a thousand cuts” scenario. See e.g.,  
14 Grand Canyon Trust v. FAA, 290 F.3d 339, 346 (D.C. Cir. 2002); see also Section II.A.  
15 below (cumulative impacts discussion)

16                   In the Colorado River corridor, for instance, motorboats, generators, helicopters  
17 (including passenger exchanges at Whitmore and Quartermaster), commercial air tours,  
18 commercial jets, military jets, administrative and tribal aircraft operations, and continued  
19 visitor crowding and congestion all have a combined effect on the Grand Canyon’s  
20 natural soundscape. Collectively, the impacts of all of these activities – whether  
21 conducted by private individuals, concessioners, state agencies, or other federal and tribal  
22 entities – may rise to the level of impairment, and, as such, must be considered when  
23 making an impairment determination. See MP 1.4.5.<sup>17</sup>  
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27                   <sup>17</sup> The Park Service’s own Wilderness Coordinator notes there has been an  
28 “incremental erosion of [the Colorado River corridor’s] wilderness resource” since 1977.

1           The Park Service failed to analyze and consider the overall, combined effects from  
2 *all* noise intrusions on the Park’s natural soundscape. See Facts at ¶¶ 195-196. The  
3 agency never assessed how its authorization of motorboats, generators, and helicopter  
4 exchanges in relation to other past, present, or future actions occurring in, above, or  
5 adjacent to the river *impair* the its natural soundscape. See id. In response to comments,  
6 for instance, the Park Service states that “no impairment of park resources or values is  
7 expected to occur from activities *associated with river recreation* under any of the  
8 alternatives.” Facts at ¶ 188 (emphasis added). This statement illustrates how the Park  
9 Service artificially limited the scope of its analysis to impacts associated with river  
10 recreation. See also Facts at ¶ 164 (e-mail regarding the need to limit the scope of the  
11 impairment determination). In the FEIS, the Park Service does provide a *partial list* of  
12 other sources of noise pollution (see Facts at ¶ 189) and even concedes that its  
13 authorization of motorboats will “contribute to the overall cumulative effects of noise on  
14 the park’s natural soundscape.” See id. at ¶ 190. The Park Service, however, never takes  
15 the next step and applies and evaluates these findings when making its impairment  
16 determination. Nor is the perfunctory cumulative impacts analysis in the FEIS enough.  
17 See Great Basin Mine Watch, 456 F.3d at 971 (when assessing cumulative impacts, some  
18 “quantified or detailed information” must be provided – “general statements about  
19 possible effects and some risk” is not enough); Klamath-Siskiyou Wildlands Center v.  
20 BLM, 387 F.3d 989, 993 (9<sup>th</sup> Cir. 2004) (same).

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24           Facts at ¶ 112. The incremental impacts are from a “76% increase” in the total number of  
25 visitors, an approximately “500% increase in helicopter exchanges,” the installation of  
26 new cable cars at three locations, exacerbation of crowding through implementation of  
27 “user-day pools,” aircraft use over the corridor, and motorized boat use of the River. See  
28 id.; see also Facts at ¶ 116 (Superintendent Memo discussing concerns over cumulative  
impacts to wilderness character).

1                   3.     Failure to consider previous NEPA documents and relevant scientific  
2                                    studies

3                   In making an impairment determination, the Park Service must “consider any  
4 environmental assessments or environmental impact statements . . . relevant scientific  
5 studies, and other sources of information; and public comments.” MP 1.4.7. Here, the  
6 Park Service failed to comply with this obligation. As mentioned earlier, in issuing a  
7 final decision to phase out motorboats in 1980, the Park Service extensively researched  
8 and studied the issue, reviewed twenty-nine studies, and ultimately found that the impacts  
9 to the river’s natural soundscape and wilderness character from motorized use were  
10 significant. See Section I.B.; Facts at ¶¶ 24-34 (twenty-nine studies). Yet, in this case,  
11 when issuing its impairment determination, the agency inexplicably failed to consider (let  
12 alone reference) these findings, the earlier EIS, or the overwhelming amount of public  
13 support for its phase out decisions. Nor does the Park Service provide *any* convincing  
14 statement of reasons, rationale, or explanation for abandoning its earlier EIS and CRMP  
15 which called for the phase out of motorboats to preserve the river’s wilderness character.  
16 See The Wilderness Society, 353 F.3d at 1068; see also Louisiana Public Service Corp. v.  
17 FERC, 184 F.3d 892, 897 (D.C. Cir. 1999) (“for the agency to reverse its position in the  
18 face of precedent it has not persuasively distinguished is quintessentially arbitrary and  
19 capricious”).<sup>18</sup> Instead, the Park Service simply concludes without *any* supporting  
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22                   <sup>18</sup> The Park Service’s 1980 EIS/CRMP calling for the phase out of motorboats (see  
23 Facts at ¶ 74) was revised in 1981 following the Hatch rider and again in 1989. See Facts  
24 at ¶ 89. These revisions to the 1980 CRMP were “politically driven . . . [and] done in the  
25 absence of additional public involvement” or NEPA compliance. Facts at ¶ 97. As  
26 described by the Superintendent of the Grand Canyon, the 1989 revision to the 1980  
27 EIS/CRMP “did not provide a rationale to explain the incongruity of motorized rivercraft  
28 being used with the river corridor’s potential wilderness designation. We can only state  
that the 1989 [Revision] was developed in response to the perceived regional political  
environment at that time. The [Revision], however, is clearly contrary to the instructions

1 documentation that the authorization of motorboats, generators, and passenger helicopter  
2 exchanges “would not result in the impairment of the natural soundscape in Grand  
3 Canyon National Park.” Id.

4 4. The Park Service’s authorization of motorboats, generators, and  
5 helicopter passenger exchanges “impairs” the Grand Canyon’s  
6 natural soundscape

7 The record in this case reveals that if the Park Service had properly defined the  
8 baseline standard, adequately analyzed the cumulative impacts, and considered previous  
9 NEPA documents and relevant scientific studies, it would have had no choice but to  
10 determine that the authorization of these motorized uses “harms the integrity” of the  
11 Grand Canyon’s natural soundscape and results in “impairment.” See MP 1.4.5.

12 Indeed, in the FEIS, the Park Service concedes as much – noting that the “Grand  
13 Canyon’s natural soundscape is considered a *disappearing resource* that requires  
14 restoration, protection, and preservation.” Facts at ¶ 185 (emphasis added). The Park  
15 Service even admits that there continues to be a “*significant adverse effect*” on the Grand  
16 Canyon’s “natural soundscape” that will not be alleviated by its decision to authorize  
17 motorboats, generators, and helicopters in the Colorado River corridor. See Facts at ¶  
18 186. In fact, the Park Service’s own “criteria” for defining impairment notes that an  
19 action that causes an “unacceptable [noise] disturbance” or results “in sound pollution  
20 that intrudes upon the tranquility and peace of visitors” results in impairment. See id. at ¶  
21 187.  
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26 provided by the Wilderness Act and the Service’s own management policies concerning  
27 the use of motorized equipment within wilderness and the responsibility of the agency to  
28 administer potential wilderness areas so as not to degrade their wilderness values.” Id. at ¶  
108.

1 C. The Park Service’s Failure to Conserve the Colorado River Corridor’s  
2 Natural Soundscape and Wilderness Characteristics

3 The “fundamental purpose” of the Organic Act and the creation of the National  
4 Park System is to “conserve” park resources and values. See 16 U.S.C. § 1. This  
5 conservation “mandate is independent of the separate prohibition on impairment, and so  
6 applies all the time, with respect to all park resources and values,” including a park’s  
7 natural soundscape and wilderness characteristics. MP 1.4.3. Pursuant to this  
8 conservation duty, the Park Service has “discretion to allow impacts to park resources and  
9 values.” Id. Such discretion, however, is not unlimited. Rather, impacts to park resources  
10 and values are *only* allowed “when *necessary and appropriate* to fulfill the purposes of  
11 the park, so long as the impact does not constitute impairment.” Id. As mentioned above,  
12 motorized activities are not “necessary and appropriate.” See Section II.

13  
14 Moreover, the Park Service is directed to “preserve, *to the greatest extent possible*,  
15 the natural soundscapes of parks” and, when impacts exist, “restore degraded  
16 soundscapes to the natural condition *wherever possible*.” MP 4.9 (emphasis added). Here,  
17 the agency cannot claim that it is impossible to, at the very least, attempt to restore the  
18 Grand Canyon’s natural soundscape. Indeed, there are two viable, non-motorized  
19 alternatives (Alternatives B and C) presented in the FEIS. See Facts at ¶ 177  
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21 IV. THE PARK SERVICE VIOLATED NEPA

22 A. The Park Service Failed to Take a Hard Look at the Cumulative Impacts to  
23 the Colorado River Corridor’s Wilderness Character

24 Pursuant to NEPA, the Park Service must take a “hard look” at the cumulative  
25 impacts to the river’s wilderness character. See 40 C.F.R. §§ 1502, 1508.7. The Park  
26 Service must provide “quantified or detailed information” of past, present and future  
27 projects in the EIS. Great Basin Mine Watch, 456 F.3d at 971 (citing Klamath-Siskiyou  
28

1 Wildlands Center v. BLM, 387 F.3d 989, 993 (9<sup>th</sup> Cir. 2004)). When assessing  
2 cumulative impacts, the Park Service cannot “isolate the proposed project, viewing it in a  
3 vacuum.” Grand Canyon Trust, 290 F.3d at 342-343, 346 (discussing impacts to Zion  
4 National Park).

5 Here, this means that the Park Service must provide a careful analysis of how  
6 collectively motorboats, generators, helicopters, administrative and tribal use of  
7 motorized vehicles (for both emergency and non-emergency service), aircraft tours,  
8 commercial jets, military jets, existing structures and improvements, congestion and  
9 crowding (from large groups and six launches per day), and the operation of Glen Canyon  
10 Dam impact the river’s wilderness character. See id; see also Wilderness Watch, 375 F.3d  
11 at 1093.<sup>19</sup> Such an evaluation, however, is missing from the FEIS. The FEIS’s analysis  
12 of cumulative impacts on wilderness character is conclusory and does not detail or  
13 analyze the factors listed above even though there are “*huge* cumulative effects” to the  
14 resource. See Facts at ¶ 161.<sup>20</sup>

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18 <sup>19</sup> The Park Service notes that helicopter passenger exchanges at Whitmore, *by*  
19 *themselves*, severely impact the River’s wilderness character and create “dramatic  
20 contrast” to the river-running experience. Nearly “11,000 commercial passengers  
21 currently put-in or take-out at the Whitmore helipad (mile 187) via helicopter shuttles  
22 from the rim.” Facts at ¶ 159. The adverse impacts from helicopters include noise,  
23 physical impacts (downwash from rotors blows sand and gear), visual impacts,  
24 congestion, safety risks from low flying aircraft, camp competition for sites near the  
25 helipad, and creation of an artificial end to the trip. See id. In the Quartermaster area  
(between Diamond Creek and Lake Mead), the impacts are even more severe where  
26 “approximately 600 to 800 helicopter flights per week land and take off at 15 helipads.”  
27 Facts at ¶ 160 (EPA letter expressing concern about water quality impacts from  
28 helicopters and pontoon jet boats in the Quartermaster area).

29 <sup>20</sup> Notably, the Park Service’s “wilderness character” section of the FEIS was not  
30 included in the draft EIS (“DEIS”) which was submitted and circulated for public review  
31 and comment. See Facts at ¶ 179. Rather, the wilderness section was only added later,

1 B. The FEIS Does Not Use High-Quality Information or Accurate Scientific  
2 Analysis

3 The FEIS is not based on either high-quality information or accurate scientific  
4 analysis about the need for, propriety of or equity in allocation of commercial uses. An  
5 EIS must contain “high-quality information and accurate scientific analysis.” The Lands  
6 Council v. Powell, 395 F.3d 1019, 1027, 1031 (9th Cir. 2005) (citing 40 C.F.R. §  
7 1500.1(b)). This requirement applies in the context of programmatic plans. See Natural  
8 Resources Defense Council v. United States Forest Serv., 421 F.3d 797, 812-813 (9th Cir.  
9 2005) (finding inaccurate economic analysis in Forest Plan EIS); Ecology Center v.  
10 Austin, 430 F.3d 1057, 1065 (9th Cir. 2005) (finding inadequate data and analysis in  
11 Forest Plan EIS). “If there is incomplete or unavailable relevant data, the EIS must  
12 disclose this fact. 40 C.F.R. § 1502.22.” The Lands Council, 395 F.3d at 1031. The  
13 CRMP acknowledges protecting wilderness and visitor’s experience as goals, but fails to  
14 provide a proper analysis, based on high quality data, of how those goals are achieved in  
15 light of ongoing harm to the wilderness character of the river and evidence of the  
16 inequitable and unnecessary allocation of use for commercial services. Without  
17 supporting information and scientific analysis, “general statement[s] regarding the  
18 possible impact and risk involved ‘do[es] not constitute a ‘hard look’ absent a  
19 justification regarding why more definitive information could not be provided.” Ecology  
20 Center, 430 F.3d at 1067 (finding that the Forest Service's general conclusions about  
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24 “[i]n response to comment” on the DEIS. See id. at ¶180. As such, the public was never  
25 given the opportunity to review and submit meaningful comment on the Park Service’s  
26 impacts analysis on wilderness character. The Park Service’s failure in this regard,  
27 undermines their claim to have taken a “hard look” at the impacts to wilderness character.  
28 See 40 C.F.R. § 1500.1 (purpose of NEPA); Fund for Animals v. Norton, 281 F.Supp.2d  
209, 226 (D.D.C. 2003) (lack of meaningful public review and comment undermined  
agency’s hard look argument).

1 impacts to black-winged woodpeckers were not supported by meaningful explanation and  
2 evidence).

3  
4 CONCLUSION

5 Wherefore, Plaintiffs respectfully request that the Court grant their motion for  
6 summary judgment, issue a declaratory judgment that the Park Service has violated its  
7 duty to preserve the Colorado River corridor's wilderness character, the Organic Act,  
8 Concession's Act, and NEPA as described above and, pursuant to the Court's February 2,  
9 2007 Case Management Order (Docket # 48), schedule a Rule 16 conference to address  
10 the remedy phase of this litigation.

11 Respectfully submitted this 25<sup>th</sup> day of May, 2007.

12  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 25<sup>th</sup> day of May, I electronically transmitted a complete  
3 copy of Plaintiffs' motion for summary judgment, statement of material facts, and  
4 memorandum of points and authorities in support of Plaintiffs' motion for summary  
5 judgment to the following CM/ECF registrants:  
6

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17 /s/ Matthew K. Bishop  
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