

FEDERAL DEFENDANTS AND DEFENDANT JOINT RESPONSE TO PLAINTIFFS "STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT"

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

RIVER RUNNERS FOR WILDERNESS, et al.,) Civ. No. 06-0894-PCT-DGC) Plaintiffs,)

v.

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Pursuant to LRCiv 56.1(b), Federal Defendants and Defendant-Intervenors, by and through undersigned counsel of record, hereby respond to Plaintiffs' May 25, 2007 "Statement of Material Facts in Support of Plaintiffs' Motion for Summary Judgment," Dkt. No. 56, as follows:

Prefatory Note: Each of Plaintiffs' claims seeks judicial review of agency actions pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. The Ninth Circuit has held that summary judgment motions are an appropriate vehicle for resolving challenges to agency action under the APA. See *Northwest Motorcycle Assn. v. U.S. Dept. of Agriculture*, 18 F.3d 1468, 1471-72 (9th Cir. 1994). Nonetheless, judicial review of federal agency actions under the APA does not call for this Court to make factual findings on the merits or to determine the existence of genuine issues of disputed material facts on summary judgment. Rather, the Court's task is to review the Administrative Record that was before the federal agencies at the time they made the challenged decisions to determine whether, as a matter of law, that Record supports the agencies' decisions or whether the agencies' decisions are arbitrary, capricious or otherwise contrary to law. 5 U.S.C. § 706; *Florida Power & Light Co. v. Lorion*, 470 U.S. 729 (1985). Because the Court need not, and may not, "find" underlying facts, there are no material facts essential to the Court's resolution of this action. See, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Lujan v. National Wildlife Federation*, 497 U.S. 871, 883 (1990).

Thus, the "facts" necessary for resolution of this case on the pending cross-motions for summary judgment are set forth in the Administrative Record before the Court, and the "Statements of Material Facts" submitted by the Parties in support of their respective motions for summary judgment should be viewed as the Parties' summary and characterization of materials in the Record that support their legal arguments under the APA standard of review.

In accordance with LRCiv 56.1(b), each of the following numbered paragraphs corresponds to the numbered paragraphs in Plaintiffs' Statement of Material Facts, followed by Defendants' response (in bold).

"I. GRAND CANYON NATIONAL PARK"

1. President Theodore Roosevelt, by presidential proclamation, reserved land in the Grand Canyon of Arizona as Grand Canyon National Monument on January 11, 1980. President Roosevelt stated in the proclamation that the Grand Canyon of Arizona "is an object of unusual scientific interest, being the greatest eroded canyon in the United States, and it appears that the public interest would be prompted by reserving it as a National Monument." SAR 010131.

Defendants do not dispute this statement, except that President Roosevelt's

proclamation reserving land as Grand Canyon National Monument was issued on

January 11, 1908, not January 11, 1980. SAR 010131.

2. Grand Canyon National Park ("Grand Canyon") was established on February 26, 1919. SAR 005627.

Defendants do not dispute this statement.

3. Over the "years the park has been enlarged and its boundaries revised." SAR 010131. Congress has recognized that the Grand Canyon "is a natural feature of national and international significance . . . [and]

recognized the need for 'further protection and interpretation of the Grand Canyon in accordance with its true significance." SAR 010131.

Defendants do not dispute this statement.

4. The Grand Canyon is an "outstanding national treasure." SAR 005627. In designating the Grand Canyon, "Congress gave protection to the most complete record of geologic history to be found anywhere in the world, and to the Colorado River ~ the most challenging whitewater river in the United States." SAR 005627. "As well as being a natural phenomenon, the Grand Canyon is also a unique in its cultural resources; the area has been trod by human feet for the past 4,000 years, and contains more than 2,000 known archeological sites. The park's more than one million acres harbors over a thousand plant species and 400 species of wildlife." SAR 005627.

Defendants do not dispute this statement.

5. The Grand Canyon "is to be managed to preserve and protect its natural and cultural resources and ecological processes, as well as its scenic, aesthetic, and scientific values [and] provide opportunities for visitors to experience and understand the environmental interrelationships, resources, and values of the Grand Canyon without impairing the resource." SAR 010132.

Defendants do not dispute this statement.

6. On October [sic--missing date], 1979 Grand Canyon National Park was listed as a World Heritage Site because it is considered "an area of outstanding scenic, cultural, biological, and recreational resources . . . a natural wonder which is probably visited by more people from all over the world than any other single place in the United States." SAR 0005626. As a World Heritage Site, the Grand Canyon joins "the priceless trust of universal treasures by the World Heritage Program." SAR 005627.

Defendants dispute this statement. The Grand Canyon National Park was listed as a World Heritage Site on October 26, 1979. SAR 005629. The quoted language, which is found on SAR 005627, while recognizing that "Grand Canyon National Park is an area of outstanding scenic, cultural, biological, and recreational resources," does not indicate that the Park was listed as a World Heritage Site because of these characteristics as Plaintiffs state. SAR 005627.

7. ["]The Grand Canyon, a natural marvel of immense canyon [sic] and the world renowned Colorado River, is the largest and possibly most diverse wilderness on the Colorado Plateau." SAR 010272.

Defendants dispute this statement to the extent that it suggests that the Grand Canyon has been designated as "wilderness" under the Wilderness Act of 1964. In addition, the quoted language is from the abstract of an article that appears to have been written by a former staff member of Grand Canyon National Park (GRCA), and does not necessarily reflect the views of NPS or GRCA. SAR 010272. "II. THE COLORADO RIVER CORRIDOR IN THE GRAND CANYON"

8. The "Colorado River in Grand Canyon provides a unique combination of thrilling whitewater adventure and magnificent vistas of a remarkable geologic landscape, including remote and intimate side canyons. AR 104600.

Defendants dispute that the referenced page supports Plaintiffs' statement.

9. The 277-mile river corridor is home to unique and abundant natural and cultural resources, including diverse wildlife, threatened and endangered species, hundreds of archeological sites, caves, and natural soundscapes.

For these reasons, a river trip through the Grand Canyon is one of the most sought after backcountry experiences in the country, and nearly 22,000 visitors run the river annually. AR 104600.

Defendants dispute that the referenced page supports Plaintiffs' statement.

10. In 1970, "as required by the Wilderness Act of 1964, the [Grand Canyon] submitted a Preliminary Wilderness Study Report that recommended that the Colorado River be included [as wilderness] and the use of motors phased out." AR 00861.

Defendants do not dispute this statement, except that Plaintiffs' first modification should be "[Grand Canyon National Park]" or "[GRCA]". "III. 1970-1973: THE PARK SERVICE RELEASES THE FIRST RIVER

MANAGEMENT PLAN AND IMPACT STATEMENT FOR THE COLORADO RIVER CORRIDOR"

"The 1972 River Use Plan"

11. On December 11, 1972, the National Park Service ("Park Service") released a River Use Plan for the Colorado River corridor in the Grand Canyon. SAR 000712.

Defendants do not dispute this statement, except that the cited document does not indicate that the Plan was "released" or put in place but "is being developed."

SAR 000712.

12. In the River Use Plan, the Park Service calls for the phase out of motorboat use of the Colorado River by 1977. SAR 000721. The Park Service based this phase out decision "on some preliminary sociological study results." Id.

Defendants do not dispute this statement, except that--as noted above--the cited document does not indicate that the Plan was "released" or put in place but "is being developed." SAR 000712. Thus it is not accurate to state that the Park Service calls for the phase out of motorboat use in the Plan. The referenced document also states:

The January 1971 draft Master Plan stated that the 'most desirable river experience is felt by some persons to be the slow, 10 to 15 day float trip, in small parties without power--a true wilderness experience.' The 15 day oar-powered trip to Diamond Creek (or 18 day to Pierce Ferry) may well be the optimum trip for most visitors. On the other hand, a 10 day motorized trip to Diamond Creek can also be a very rewarding trip, affording the visitor opportunities for extensive off river hiking, and time for leisurely drifting. This assumes a 'quiet' motor and small parties.

SAR 000720.

13. In addition to phasing out motors by 1977, the 1972 River Use Plan establishes strict standards for commercial boating, establishes a carry out policy for waste and trash, calls for the completion of "ecological and sociological studies of the river and its environ[s]" and announces plans to "recommend the status of

potential wilderness for the Colorado River now, and achieve wilderness management standards in 1977." SAR 000706.

Defendants dispute this statement. The document cited is a news release from the Department of the Interior dated December 6, 1972, and does not support Plaintiffs' characterization that the 1972 Plan "establishe[d] strict standards." SAR 000705.

14. For commercial use, the River Use Plan allowed up to 89,000 commercial visitor use days. SAR 000706. The goal of the Park Service "will be to achieve an annual visitor/use/day (commercial and private) level of 55,000 by the 1977 use season. This will also include a setting a maximum of 100 people leaving from Lees Ferry per day in parties whose maximum will be 30 persons." SAR 000707.

Defendants do not dispute this statement.

15. For non-commercial use, the River Use Plan allowed up to 7,600 noncommercial use days. SAR 000707. The Park Service will allow "only one private party [to] depart each day from Lees Ferry. All private party use must be by advance reservation with the National Park Service, Grand Canyon National Park." SAR 000708.

Defendants dispute the statement in the first sentence. The December 6, 1972

news release actually states: "For private use: The number of private visitor/use/days will be held at the 1972 level. This will be 7,600 private visitor/use/days. All private parties will be authorized only by permit, which will list and describe conditions of use." SAR 000707.

"The February 13, 1973 Draft Environmental Impact Statement"

16. On February 13, 1973 the Park Service released a Draft Environmental Statement for "Proposed Establishment of Visitor Use Limits on the Colorado River through Grand Canyon National Park." SAR 000913.

Defendants do not dispute this statement.

17. The goal of the Draft Environmental Statement is to "provide an opportunity for a quality, white water, wilderness experience, and at the same time, to protect the river environment from degradation." SAR 00915. To achieve this goal, the Draft Environmental Statement calls for a reduction in the number of user days and the elimination of motors by 1977. SAR 000929.

Defendants dispute the statement in the first sentence. The quoted section actually states: "Brief Description of Action: To provide an opportunity for a quality, white water, wilderness experience, and at the same time, to protect the river environment from degradation, it is proposed to establish use limit or carrying capacity for the Colorado River through Grand Canyon National Park." SAR 000915. Defendants dispute that the statement in the second sentence is supported by the page cited.

18. In the Draft Environmental Statement, the Park Service states that "use of motors pollutes the river with gasoline and oil, the air with smoke, and assaults the senses with sound and should be eliminated as soon as possible from the river environment. Their elimination will also qualify the river to be officially included in the wilderness areas of Grand Canyon National Park." SAR 000917.

Defendants do not dispute this statement.

19. The Park Service states that "[c]urrent levels of noise, congestion, pollution of air and water, litter, and other environmental insults will all be lowered by the proposed action [to lower user days and eliminate motors.] The proposed elimination of motorized trips will signal a marked improvement in the attitude of management's approach to the river wilderness, as well as having a positive environmental impact." SAR 000929.

Defendants do not dispute this statement.

"Political Controversy"

20. The Park Service's decision to phase out motorboats in the Colorado River corridor by 1977 to protect and preserve the wilderness resource and reduce the amount of user days to commercial operators "caused some controversy." SAR 001033.

Defendants do not dispute this statement.

21. Congressman Steiger "urged the [Park Service] to study the issue prior to any other action regarding the removal of motors from water craft on the Colorado." SAR 001034. In response, the Park Service decided to "have a study conducted on the use of motors on the river ~ the parameters of such a study to be agreed upon by the NPS and the boat concessionaires" and to "determine the feasibility of eliminating the use of all motor over 20 or 25 horse power immediately or in the near future." SAR 001035.

Defendants do not dispute the statement, except that SAR 001035 indicates that

it was the Secretary of the Interior, not the NPS, that made the decision stated in the

second sentence. SAR 001035.

22. In 1973, a lawsuit (*Western River Expeditions, Inc. v. Morton*) was filed by the river concessioners to challenge the Park Service's plan to phase out motorboat use of the Colorado River corridor. AR 000861. As a result of the lawsuit, "the NPS director deferred the decisions made in the [River Use Plan] and directed the Park to conduct research to determine social and ecological carrying capacity, and the impacts of motors." AR 000861.

Defendants do not dispute this statement.

"IV. 1973-1978: THE PARK SERVICE CAREFULLY STUDIES AND EVALUATES HOW BEST TO MANAGE THE COLORADO RIVER CORRIDOR IN THE GRAND CANYON"

23. "By July [1974], the Colorado Research Program was underway. A total of

[29] studies were done to gather data for the development of a comprehensive river management plan." AR 000861.

Defendants do not dispute this statement.

"The 'Twenty-Nine' Studies"

24. Approximately twenty-nine "ecological and social studies" on the carrying capacity of the Colorado River corridor and the use of motorized boats were completed in the mid-1970s. SAR 001787 (listing all twenty-nine studies); SAR 003715 (synthesis of all twenty-nine studies).

Defendants do not dispute this statement.

25. The twenty-nine studies reveal that oar and motor trips are "equally safe" and that the impacts to the Colorado River corridor's wilderness character from motorized uses are insignificant. SAR 004587 (safety); SAR 001040 (safety); SAR 004573-90 (impacts).

Defendants dispute this statement. None of the cited references state that all 29

studies indicate that oar and motor trips are equally safe (as only some of the studies

examined motorized raft trips), although SAR 004587 does indicate that 1979 studies

indicated that oar and motor trips are equally safe. SAR 001040 does not show that oar

and motor trips are equally safe, but states that good statistical data is not available and that it would be difficult to draw sound conclusions from any of the accident data at hand. None of the documents cited state that the studies reveal impacts of motorized uses are significant. Moreover, it is important to note that these studies were based on conditions and circumstances as they existed in the 1970s, and significant changes have occurred since that time, including the conversion of all commercial motor boats on the Colorado River in GRCA from two-stroke motors to much quieter (and cleaner) four-stroke motors. See, e.g., AR 000416.

26. In 1973 a study entitled "Sound-Level Evaluations of Motor Noise From Pontoon Rafts in the Grand Canyon" was published. SAR 001157. The study found that "[m]otor noise . . . masks the natural sounds in the Canyon and, in contrast, its almost unnatural quiet. Although no effects on the boatman's ability to function can be demonstrated, the noise levels border on those which have been shown to adversely affect performance of tasks of this type. For these reasons, it is recommended that the use of outboard motors in the canyon be either discontinued or substantially curtailed." SAR 001161.

Defendants do not dispute this statement to the extent it quotes the source document based on conditions in the 1970s, except that the "study" that Plaintiffs cite is actually a progress report for a study. See SAR 001157 (title page). It is important to note that these studies were based on conditions and circumstances as they existed in the 1970s, and significant changes have occurred since that time, including the conversion of all commercial motor boats on the Colorado River in GRCA from two-stroke motors to much quieter (and cleaner) four-stroke motors. See, e.g., AR 000416 (indicating that use of two stroke motors on the River has been eliminated, and that the primary reason for requiring the change to four stroke motors was "noise pollution").

27. The studies reveal that noise from motorized use of the Colorado River is inconsistent with wilderness values and adversely impacts the natural sounds of the Colorado River corridor. SAR 001449 ("An Analysis of the Motor-Row Conversion Issue of Colorado River Float Trips"); SAR 004049 ("Motors and Oars in the Grand Canyon. River Contact Study Part II"); SAR 002644 ("Findings, Conclusions, Recommendations, and Implications for Management: River Contact Study Final Report"); SAR 003715 (synthesis of research); SAR 002102 (draft environmental statement); SAR 003670 ("Environmental Management of the Colorado River within the Grand Canyon"); SAR 005918 ("Contrasting recreational experiences: Motors and oars in the Grand Canyon").

Defendants do not dispute this statement, except for the implication that all 29 studies support Plaintiffs' statement (as only some of the studies examined motorized raft trips).

28. In terms of impacts to the wilderness experience (a key component of preserving wilderness) studies show that overall "non-motorized trips are more pleasing to the visitor." SAR 004607. Reasons "given suggest that oar travel is seen as more consistent with a natural or wilderness experience." Id.

Defendants do not dispute this statement.

29. Passengers "who had experience with both motor and oar trips preferred the oar trip. They enjoyed the slower pace, could relax; they become more aware of natural sounds in the canyon; they were able to observe more closely the unique features along the river and more easily ask questions of their guide." SAR 004607.

Defendants do not dispute this statement.

30. The studies reveal there "is a strong indication that almost all those who have had the opportunity to experience both motor and oar trips prefer oar trips over motor trips." SAR 004602.

Defendants do not dispute this statement, except for the implication that all 29

studies support Plaintiffs' statement (as only some of the studies examined motorized raft trips).

31. In one study referred to as the "motor-oar experiment" a combination motor/oar trip was devised on which passengers could experience both modes of transportation. SAR 005918. Two "trips, one motor and one oar, were scheduled to leave Lee's Ferry so they would meet halfway through the Canyon. There passengers left one set of boats and switched to the other, then continued to the debarkation point (Diamond Creek, mile 225). The combination trip took 9 days, 5 by oar power and 3 by motor." Id. To determine "overall trip preference," the researchers asked passengers "which type of trip they would choose for another river, which they would recommend to a friend, and which better enabled them to experience the canyon, and which they liked better overall." SAR 005919. In response, 79 to 91 percent chose the oar trip while 4 to 6 percent chose the motor trip. People with both kinds of experiences clearly preferred oar travel." Id.

Defendants do not dispute this statement.

32. Studies show that oar trips (non-motorized) are as safe or safer than motorized trips. AR 092572 (showing lower risk of fatality on oar-powered rafting trips).

Defendants do not dispute this statement.

33. In 1976 "six workshops were held for public input on Colorado River management issues. By September 1976 the draft research findings were available for management review." AR 000861.

Defendants do not dispute this statement.

34. The twenty-nine studies found that the impacts to the Colorado River corridor's natural soundscape and wilderness character from motorized use are serious and severe. SAR 004573-90.

Defendants dispute this statement. The SAR 004573-90 is a section of the FEIS

that discusses the findings of some of the studies. The above statement is not contained in that section of the 1979 document.

"The 1976 Master Plan for Grand Canyon"

35. In August, 1976 the Park Service issued a Final Master Plan for Grand Canyon National Park. SAR 002342.

Defendants do not dispute this statement.

36. The 1976 Master Plan outlines the overall objectives and proposals for managing Grand Canyon National Park and states that the "goals for management of the Colorado River in the Grand Canyon will be to perpetuate the wilderness river-running experience, and to attempt to mitigate the influences of man's manipulation of the river." SAR 002367.

Defendants do not dispute this statement, except to note that the 1995 General Management Plan superseded the 1976 Master Plan and announced other river management objectives.

37. The Master Plan states that "mechanized access below the rims [of the Grand Canyon]" will be limited. SAR 002352.

Defendants do not dispute this statement.

38. A year after adopting the Master Plan, the Park Service reiterated its decision to "ban motor use" in the Colorado River corridor to achieve the Master Plan's goals. SAR 003026; SAR 005244 (calling for the phase out of motorized boats).

Defendants do not dispute this statement.

39. The Park Service's decision to ban motorized use of the Colorado River corridor was based on consideration of "relevant National Park policies, wilderness proposals, the park master plan, interpretation, noise, and research, as well as other considerations . . ." SAR 001444.

Defendants do not dispute this statement.

40. The Park Service stated that the "goals for management of the Colorado River in the Grand Canyon as stated in the Master Plan are to perpetuate the wilderness river-running experience and to attempt to mitigate the influences of man's manipulation of the river. To achieve this, all visitor use of this portion of the river will be without motors, and more nearly like the experience of earlier explorers." SAR 003026.

Defendants do not dispute this statement.

41. According to the Park Service, "a three-year study of the river with public participation has shown that visitor appreciation, understanding, and enjoyment of the Grand Canyon will be enhanced by [non-motorized] . . . use" of the Colorado River corridor. SAR 003026.

Defendants do not dispute this statement.

42. As early as 1976, the Park Service found that "motorized boat use is not necessary for the use and enjoyment of this area but is a convenience which enables the trip to be made in less time and permits the use of large boats, accommodating larger groups. This use is inconsistent with the wilderness criteria of providing outstanding opportunities for solitude and for a primitive and unconfined type of recreation." SAR 005804.

Defendants do not dispute this statement, except to the extent that this language suggests that this is the Park Service's current position.

"The 1977 Wilderness Recommendation"

43. In February, 1977 the Park Service issued a Final Wilderness Recommendation.SAR 002678.

Defendants do not dispute this statement.

44. The 1977 Wilderness Recommendation included "two hundred seventy-sevenmiles of the Colorado River"~"including the entire River corridor from Lees Ferry toDiamond Creek"~"within Grand Canyon National Park as potential wilderness. SAR 002723

Defendants do not dispute this statement, except to clarify that the Park's 1977

Wilderness Recommendation only proposed the river corridor as potential wilderness

but did not actually "include" any area in the national wilderness preservation system.

45. In 1977 Wilderness Recommendation, the Park Service states that "the river passes through some of the most scenic and primitive land remaining in this country."SAR 002723.

Defendants do not dispute this statement.

46. In the 1977 Wilderness Recommendation, the Park Service states that "motorized boat use is not necessary for the use and enjoyment of this area but a convenience whichenables the trip to be made in less time and permits the use of large boats, accommodatinglarger groups. This use is inconsistent with the wilderness criteria of providing outstandingopportunities for solitude and for a primitive and unconfined type of recreation. It is proposed that the river corridor be designated a potential wilderness addition, pendingfinalization of the river management plan." SAR 002723.

Defendants do not dispute this statement, except to the extent that this languagesuggests that this is the Park Service's current position.

47. In the 1977 Wilderness Recommendation, the Park Service notes the "responsefrom individuals and organizations has been overwhelmingly in favor of the current[wilderness] proposal. Only 14 individuals out of 501, and 2 organizations out of 38, wantedless land designated as wilderness. A total of 431 individuals and 25 organizationsrecommended that hand-propelled, rather than motorized, craft be used on the river and thatit be included as wilderness. Some 286 individuals and 25 organizations would furtherenlarge the area recommended for immediate wilderness by including all areas proposed aspotential wilderness." SAR 002693-94.

Defendants do not dispute this statement.

48. The Park Service notes that "13 companies [engaged in commercial river trips]were in favor of retaining motors, while 9 companies favored wilderness designation for theriver and the elimination of motorized craft." SAR 002694.

Defendants do not dispute this statement.

49. The Park Service states that the designation of the Colorado River corridor aspotential wilderness "will further protect one of the world's most awesome natural wondersand ensure that future generations of Americans will have the same opportunities that weenjoy to witness its spectacular beauty." SAR 002814.

Defendants do not dispute this statement.

50. The Park Service states that "studies over the past several years show that the use of motorboats on the Colorado River within the park is incompatible with overall visitor enjoyment and the resource management objectives of the park." SAR 002814.

Defendants do not dispute this statement.

51. The Park Service noted that the decision to ban motorboat use of the Colorado River corridor "was made . . . to comply with a Congressionally mandated wilderness recommendation." SAR 002815.

Defendants do not dispute this statement, except to note that the referenced

document also states that "work on a river management plan now being done by the

National Park Service would continue." SAR 002815.

52. The 1977 Wilderness Recommendation "was held in abeyance by the DOI Legislative Counsel pending completion of the river management plan." AR 00086.

Defendants dispute this statement is supported by the cited reference; which

appears to be only a contact/ mailing list.

53. In January, 1978 the Park Service released a draft Colorado River Management Plan and Environmental Impact Statement for public review and comment. AR 000862.

Defendants do not dispute this statement.

"V. 1979-1980: THE PARK SERVICE RELEASES A NEW COLORADO RIVER MANAGEMENT PLAN AND EIS CALLING FOR THE PHASE OUT OF MOTORBOATS TO PROTECT THE RIVER'S WILDERNESS CHARACTER"

54. Following completion of the twenty-nine studies, a draft and final environmental impact statement, a public comment period, "seven public meetings," and review of the 1977 Wilderness Recommendation, in December, 1979 the Park Service signed a final Colorado River Management Plan ("CRMP"). AR 000862.

Defendants do not dispute this statement.

"The CRMP/EIS"

55. The objective of the Final CRMP is to provide a "wilderness river-running experience in which the natural sounds, silence, sights, and full beauty of the can be experienced, relaxed conversation is possible, and the river is experienced on its own terms." SAR 004857.

Defendants do not dispute this statement.

56. "To accomplish this objective, the use of motorized boats from Lees Ferry to Separation Canyon will be phased out over a 5-year period." SAR 004857. Motorized boats will be phased out by 1985. SAR 004858.

Defendants do not dispute this statement.

57. The Park Service sought to improve visitor's "wilderness experience" by eliminating motorized boat use. SAR 004610.

Defendants do not dispute this statement.

58. The Park Service states that "[s]tudies over the past several years show that the use of motorboats . . . is incompatible with overall visitor enjoyment and resource management objectives." SAR 002814.

Defendants do not dispute this statement.

59. The Park Service determined that the use "of motorized watercraft . . . will be phased out over a 5 year period. This will achieve the objective . . . to make available the high quality wilderness river-running experience." SAR 005244.

Defendants do not dispute this statement.

60. In the CRMP, the Park Service states that the plan to eliminate motorized watercraft use of the Colorado River corridor, "rather than representing an elitist choice among the possible means of enjoying the Grand Canyon, . . . is a plan to preserve and make available the fullness of the unique experience which the Colorado River through the Grand Canyon offers to the river runner. Among other provisions of the plan, the elimination of motor use will enhance the experience of wilderness without appreciably changing the demographic characteristics of river users or their total number." SAR 005242.

Defendants do not dispute this statement.

61. In the EIS for the CRMP, the Park Service notes that "[p]ollutants added to the river as a result of motorized travel include approximately 5,750 pounds of petroleum residue annually, as well as gasoline from leaking tanks and oil spills." SAR 004598.

Defendants do not dispute this statement.

62. In the EIS, the Park Service notes that "[m]otorized whitewater river trips are currently available on other sections of the Colorado River system, as well as on other western whitewater rivers." SAR 004619.

Defendants do not dispute this statement.

63. In the CRMP, the Park Service increases the annual use of the Colorado River corridor "both in numbers of people and user days." SAR 005244.

Defendants do not dispute this statement.

64. In the CRMP, the Park Service increased the user days for commercial concessionaires from 89,000 to approximately 115,500 during the five year phase out period. AR 00862; SAR 005246. A user day is "any person in any part of the canyon for any part of the day." SAR 005244.

Defendants do not dispute the statement of the first sentence. Defendants dispute that the statement in the second sentence is contained in the cited reference.

65. In the CRMP, the Park Service also increased the applicable river use ceilings in order to accommodate growing demand for self-guided access, which had increased from 7,600 to approximately 54,450 potential user days. AR 00862; SAR 005246.

Defendants do not dispute this statement, except that the cited references for the

54,450 user days refer to "noncommercial" user days, which are not necessarily limited to self-guided access but could also include NPS administrative use.

66. In the CRMP, the Park Service allocated approximately 73% of the total number of user days available to the commercial concessionaires and approximately 27% of the total number of user days available to public non-commercial river-runners annually. SAR 005251.

Defendants dispute that this statement is supported by the cited reference.

67. In the CRMP, the Park Service states that "to reduce crowding and congestion, keep related resource impacts at an acceptable level, and provide a quality river-running experience, the number of people launching is set at a fixed level of 65 per day for the summer season of 183 days. This includes two groups of 25 commercial passengers and one group of 15 non-commercial trip participants." SAR 004510.

Defendants do not dispute this statement.

68. In the EIS, the Park Service determined that "[r]apid irreversible physical and ecological changes are occurring in the riparian resources of the Colorado River as a result of the present visitor use levels and patterns. The irreversible changes are not necessarily a simple function of the total number of visitors, but more importantly, of use patterns and activities." SAR 004573.

Defendants do not dispute this statement.

69. In the EIS, the Park Service determined that "motor and oar trips were perceived as equally safe." SAR 004587.

Defendants dispute this statement. The complete quotation is: "The motor and oar trips were perceived as equally safe by combination trip passengers (those who experienced the river trip by both motor and oar). Twenty-five percent considered the oar trip safer, 25 percent the motor, and 46 percent felt there was no difference (Shelby and Nielsen, 1976)." SAR 004587.

70. In the EIS, the Park Service determined that there "is strong indication that almost all those who have had the opportunity to experience both motor and oar trips prefer oar trips over motor trips." SAR 004602.

Defendants do not dispute this statement, except to note that the complete quotation is:

There is a strong indication that almost all those who have had the

opportunity to experience both motor and oar prefer oar trips over motor trips. However, most river runners are on their first river trip and do not have the experience of either type of trip. For these people the choice is limited by what information they can obtain by the concessioner as to relative merits of the two modes of travel. Concessioners will naturally sponsor the type of watercraft best suited to their operation. People with time constraints and money limitations will generally choose the shorter less expensive trip. The shorter less expensive trip at present is the motorized trip. There was some public input to the effect that shorter

lessexpensive full length motorized trips should be retained. Those who want this type of trip will be impacted do to its loss under the proposed action. Those who do choose the shorter less costly trips will not experience a fulllength trip.

SAR 004602.

71. The Park Service notes that "[r]esearch has indicated that non-motorized trips are more pleasing to the visitor . . . Reasons given suggest that oar travel is seen as more consistent with a natural or wilderness experience." SAR 004607.

Defendants do not dispute this statement.

72. In the EIS, the Park Service states that "[u]nnatural sounds will continue to intrude upon the quiet of the canyon and create a disturbance for many users. Noises from low-flying aircraft, helicopters, and subsonic and supersonic airplanes are superimposed upon and mask the natural sounds." SAR 004613.

Defendants do not dispute this statement.

73. The CRMP established a waiting list for persons applying for permits required to access the Colorado River for non-commercial watercraft recreation and monitoring programs to continually assess changes in resource conditions and indicators such as visitor congestion, public demand, and visitor expectations. SAR 005253; SAR 005258.

Defendants dispute this statement. SAR 005253 states only that a waiting list will

be maintained, but does not indicate monitoring will be conducted "to continually assess

changes" SAR 005258 does not appear to be relevant to this statement.

74. The Park Service states in the CRMP that its decision to phase out motorboat use of the Colorado River corridor by 1985 (over a 5 year period) "will achieve the objective of . . . mak[ing] available the high quality wilderness river-running experience which is inherently offered by the unique nature of the Colorado River through the Grand Canyon. This is also the objective the Grand Canyon National Park Master Plan for the Colorado River corridor, and corresponds with the park wilderness proposal." SAR 005244.

Defendants do not dispute this statement.

75. The Park Service states that its decision to phase out motorboat use in the CRMP is "based on the extensive Colorado River Research project for the Grand Canyon and considers public input from the two series of public meetings on river management." SAR 005244.

Defendants do not dispute this statement.

"The 1980 Update to the 1977 Wilderness Recommendation"

78. In 1980, the Park Service updated its 1977 Wilderness Recommendation. SAR 005746.

Defendants do not dispute this statement.

79. The 1980 Wilderness Recommendation includes a proposal to designate 980,088 acres within the Grand Canyon for preservation as wilderness. AR 104820. The proposal also includes an additional 131,814 acres of the Grand Canyon as "potential wilderness," including the entire 226 mile stretch of the Colorado River, from

Lees Ferry to DiamondCreek (the upper gorge) and an additional 51 miles from Diamond Creek to Lake Mead(hereinafter "Colorado River corridor"). AR 104823; SAR 005770 (Wilderness Recommendation).

Defendants do not dispute this statement, except that the cited references do not appear to contain any reference to "an additional 51 miles" and to clarify that the Park's 1980 Wilderness Recommendation only proposed the river corridor as potential wilderness but did not actually "include" any area in the national wilderness preservation system.

80. The Colorado River corridor was "identified as a potential wilderness due to the existing motorized raft use." AR 104820.

Defendants do not dispute this statement.

81. The Park Service notes that motorized boat use is "inconsistent with the wilderness criteria of providing outstanding opportunities for solitude and for a primitive and unconfined type of recreation." SAR 005804. The "river corridor would become wilderness upon phase-out of the use of motors." AR 104820.

Defendants do not dispute this statement, except to the extent that this language suggests that this is the Park Service's current position.

82. The Park Service determined that motorized use of the Colorado River is a non-conforming use. SAR 005804. Non-conforming uses are "contrary to the definitions of wilderness [but are] . . . considered of a temporary nature which, once removed, should not preclude" wilderness designation). SAR 014841.

Defendants do not dispute this statement.

83. The Colorado River corridor qualifies as "potential wilderness" because motorboat use can, and will, be phased out. SAR 005770; SAR 005804.

Defendants do not dispute this statement, except to the extent that this language suggests that this is the Park Service's current position.

84. On September 11, 1980, the Director of the Park Service sent a memo to the Assistant Secretary for Fish and Wildlife and Parks confirming that the "Colorado River is recommended as potential wilderness. Under the River Management Plan, motorboat use will be phased out by January 1, 1985, at which time the river is recommended for wilderness designation." SAR 005770.

Defendants do not dispute this statement.

"VI. 1980-1990: THE PARK SERVICE ABANDONS THE FINDINGS OF ITS TWENTY NINE STUDIES, EIS, CRMP, AND WILDERNESS RECOMMENDATION" [Defendants dispute Plaintiffs' characterization in this title that NPS "abandoned" the findings in the earlier documents.]

85. In March, 1980 the Mountain States Legal Foundation, on behalf of nine concessioners and 51 private citizens, filed a suit against the Secretary of Interior (Andrus) challenging the portions of the CRMP directing elimination of motorized rafts. AR 00862.

Defendants do not dispute this statement.

"The Hatch Amendment"

86. In November, 1980 the "Hatch Amendment" was added to the one-year 1981 Department of Interior Appropriations Bill. SAR 005901.

Defendants do not dispute this statement.

87. The Hatch Amendment prevented the use of appropriated funds to implement a management plan for the Colorado River which "reduces the number of user days or passenger launches for commercial motorized watercraft excursions, for the preferred use period [May 1 through September 30], from all current launch points below that which was authorized for the same period in calendar year 1978." AR 000862; SAR 005901. The Hatch Amendment caused the Mountain States Legal Foundation lawsuit to be dismissed. AR 000862.

Defendants do not dispute this statement.

88. On December 23, 1980 a number of Senators, including Orrin Hatch, sent the Park Service Director a letter directing that the current CRMP be "amended by the most expeditious methods which are legally defensible to accommodate the 1978 level and pattern of commercial, motorized watercraft access." SAR 005901.

Defendants do not dispute this statement, but note that the quotation is selective and incomplete. The letter actually states, "It is our wish that the current plan be amended by the most expeditious methods which are legally defensible to accommodate the 1978 level and pattern of commercial, motorized watercraft access while at the same time protecting the 'economic base increases' for small concessionaires and the increased non-commercial allocation which the plan provides."

89. The Hatch Amendment "only precluded enactment of the plan for the one-year life of the appropriation bill." SAR 006552.

Defendants do not dispute this statement.

"The 1981 Revisions to the CRMP"

90. On March 3, 1981 the Park Service held a meeting regarding how to revise the CRMP in response to the Hatch Amendment. SAR 006032. The Park Service decided that "no additional NEPA documentation is required" to revise the CRMP.

Defendants do not dispute this statement.

91. The Park Service stated that they have "a political commitment to issue a revised (or amended) plan in a timely manner." SAR 006035.

Defendants do not dispute this statement.

92. The Park Service did not see "a need for extensive public meetings" before amending or revising the CRMP. SAR 006040.

Defendants do not dispute this statement.

93. The Park Service determined that the "Hatch figures should be the basis of the plan until adequate research can prove revised figures are needed." SAR 006044.

Defendants do not dispute this statement.

94. In response to the Hatch Amendment, the Park Service determined that the "overall philosophical approach of the [CRMP] has to be rewritten to reflect the choice of motors or oars and the river experience as opposed to wilderness per se." SAR 006047.

Defendants do not dispute this statement.

95. In response to the Hatch Amendment, the Park Service determined it would need to "eliminate the Wilderness Experience subheading" in the CRMP. SAR 006047.

Defendants do not dispute this statement.

96. In response to the Hatch Amendment, the Park Service determined it would need to "eliminate [the] Phase out Motorized craft" heading in the CRMP. SAR 006047.

Defendants do not dispute this statement, except to note that the document also indicates that the Park Service would "consider possibly oar only periods during year or use period to be decided in alternatives document." SAR 006047-6048.

97. The Park Service concedes that the "revisions to the 1980 CRMP were "politically driven . . . [and] done in the absence of additional public involvement" or NEPA compliance. SAR 011283.

Defendants do not dispute this statement.

98. Virtually all references to wilderness management in the 1980 CRMP were deleted in the 1981 revision. SAR 006067.

Defendants do not dispute this statement, except to note that the ROD, in the section "Rationale for the Decision," explains the relationship of wilderness and motorized use. SAR 006066.

99. The 1981 revisions to the CRMP were made without any input from the public or scientific community or National Environmental Policy Act ("NEPA") compliance. SAR 006067.

Defendants dispute that the citation referenced supports this statement. The NPS Environmental Quality Office determined that additional NEPA was not required except to prepare a ROD. SAR 006032.

100. The Park Service responded to the one-year Congressional appropriations bill "the Hatch Amendment" by revising the CRMP in 1981 and reversing its decision to eliminate motorized use of the Colorado River. AR 104602.

Defendants do not dispute this statement.

101. A new, revised CRMP was finalized in December, 1981. AR 104602. The revised CRMP "retained motorized use and the increase in user-days that had been intended as compensation for the phase-out of motors, resulting in more motorized use of the river." Id.

Defendants do not dispute this statement.

"The 1989 Revisions to the CRMP"

102. In 1989, the Park Service revised the CRMP, once again, to address increasing resource impacts caused by the 1981 revisions to the CRMP. SAR 007522.

Defendants do not dispute this statement.

103. The 1989 revision to the CRMP was intended to "supplement existing management guidelines and directives . . . [and] serve to update and revise the 1981[CRMP]." SAR 007526.

Defendants do not dispute this statement.

104. The Park Service's 1989 CRMP notes that review of the 1981 CRMP indicated a need to provide equal means for the public, non-commercial sector to access its permit allocation in light of a 77% increase in the non-commercial waiting list since 1981. SAR 007526.

Defendants dispute that this statement is supported by the citation referenced.

105. The 1989 CRMP retained the commercial and non-commercial user day allocations established in 1979 but added 38 non-commercial launches in the summer so that non-commercial river runner use approached its allocation capacity. AR 000863.

Defendants do not dispute this statement.

106. The 1989 CRMP retained use levels and use periods established in previous plans. AR 000863.

Defendants do not dispute this statement.

107. The 1989 CRMP retained motorized use of the Colorado River corridor.

SAR 007526.

Defendants do not dispute this statement, but the citation appears incorrect.

108. The Superintendent of the Grand Canyon stated that the 1989 revision to the original 1980 CRMP "did not provide a rationale to explain the incongruity of motorized drivercraft 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 provided by the Wilderness Act and the Service's own management policies concerning the use of motorized equipment within wilderness and the responsibility of the agency to administer potential wilderness areas so as not to degrade their wilderness values." SAR 011066.

Defendants do not dispute this statement.

109. According to the Park Service's Wilderness Coordinator, "[a]lthough [the Hatch] amendment to a single year appropriations bill conflicted with wilderness considerations specified in the Grand Canyon Enlargement Act and the Wilderness Act, the Park Service drastically modified the proposed Colorado River Management Plan to accommodate the Hatch Amendment language." SAR 008255.

Defendants do not dispute this statement.

"VII. 1990-2000: THE PARK SERVICE RENEWS ITS EFFORTS TO PROTECT THE COLORADO RIVER CORRIDOR'S WILDERNESS CHARACTER AND ANNOUNCES PREPARATION OF A NEW RIVER MANAGEMENT PLAN"

110. On June 25, 1990 the Park Service's Chief of Resource Management drafted a memorandum to the Superintendent of the Grand Canyon. SAR 007653. In the memo, the Park Service notes that the 1989 CRMP "does not address wilderness constraints. Several current activities, particularly crowding and congestion, helicopter exchanges at Whitmore, and the administrative use of motorboats appear to contradict the intent of wilderness management policy. The appropriateness of continued existing use levels of concessionaires' motorboats will probably be decided by Congress." SAR 0077653.

Defendants do not dispute this statement, except that the correct citation is

SAR 007653.

111. On October 22, 1991 the Park Service's Wilderness Coordinator sent a memo to the Superintendent regarding the attainment or non-attainment of wilderness values in the proposed wilderness areas, including the Colorado River corridor, in the Grand Canyon. SAR 008033.

Defendants do not dispute this statement.

112. The Park Service's Wilderness Coordinator notes that the "legal obligation to protect wilderness resources is based upon Public Law 93-620 . . . and the specific requirements of NPS Management Policies regarding proposed wilderness . . . Although the goals of the 1976 Master Plan and the 1979 Colorado River Management Plan (CRMP) called for management of the river corridor as wilderness, subsequent CRMPs have excluded wilderness as a management consideration. The result has been an incremental erosion of wilderness resources, particularly the experimental aspects . . . Consequently, the NPS has not fulfilled the agency's responsibilities of wilderness protection, resulting in degradation of wilderness values along the Colorado River in Grand Canyon National Park. Since 1977 (the wilderness recommendation deadline specified by Congress) these impacts to wilderness values include: (1) a 76% increase in the total number of visitors; and a 67% increase in total user-day allocation; (2) Approximately 500% increase in helicopter exchanges with no environmental compliance on impacts to the visitor [sic] experience or GRCA natural and cultural resources . . . (3) Installation of cable cars at three locations and other 'semi-permanent' devices . . . (4) Exacerbation of crowding through implementation of 'user-day pools' for the commercial and a 'double-launch' schedule for the private users . . . (5) Non-compliance with NPS 'minimum tool' policies for proposed wilderness . . . (6) Impacts of large numbers of river runners on backcountry hikers at beaches and attraction sites . . . [and] (7) Continued experimental impacts resulting from aircraft use over the proposed wilderness [sic] of GRCA." SAR 008033-34.

Defendants do not dispute this statement.

113. The Park Service's Wilderness Coordinator states that "the Park Service is required to manage all proposed wilderness (potential and recommended/study) as Wilderness." SAR 008034.

Defendants do not dispute this statement.

114. On March 6, 1992 the Park Service's Wilderness Coordinator drafted a memorandum about the Park Service's wilderness management policy. SAR 008127. In the memo, the Park Service states that the "Colorado River was recommended as potential wilderness, based on the assumption that the existing nonconforming use, in this case motorized concession trips, would be eliminated in 1985. The Park Service recommended that at the time the nonconforming use was eliminated, the river [would] become designated wilderness." SAR 008127.

Defendants do not dispute this statement.

115. The Park Service states that they are to manage all potential wilderness areas like the Colorado River corridor "as wilderness." SAR 008128. The Park Service also states that it is to "seek to eliminate the temporary conditions that precluded wilderness designation." SAR 008128.

Defendants dispute this statement. The referenced document is a memorandum prepared by a now-retired Park Service staff member and does not state that the Colorado River corridor is potential wilderness. It actually states, "At the present, Grand Canyon has neither designated nor 'potential' wilderness, only a wilderness recommendation to Congress asking for both." SAR 008127.

116. On March 25, 1992 the Superintendent of the Grand Canyon sent a memorandum to the Park Service's Wilderness Coordinator. In the memo, the Superintendent states that the Colorado River corridor remains a "potential addition to the Grand Canyon wilderness." SAR 008133. The Superintendent states that the "nonconforming use identified in the 1980 Wilderness Recommendation was motorboat use that was to be phased out by 1985. Since 1980, additional non-conforming uses that contradict the intent of wilderness management policy have either developed or increased." SAR 008133. These "non-conforming uses consist of . . . cable crossing for research purposes, increases in motorized traffic, increases in helicopter exchanges, non-emergency administrative use of motorboats, and exacerbation of crowding and congestion through user day pools." SAR 008155.

Defendants do not dispute this statement.

"The 1993 Update to the 1980 Wilderness Recommendation"

117. In 1993, the 1980 Wilderness Recommendation was updated to reflect boundary adjustments and address the dispute over the motorized use of the Colorado River corridor. SAR 008274. The Colorado River corridor was included in the 1993 Wilderness Recommendation as "potential wilderness." SAR 008289.

Defendants do not dispute this statement, except to clarify that the 1993 Wilderness Recommendation only proposed the Colorado River corridor as potential wilderness and does not actually "include" any area in the national wilderness preservation system.

118. In the 1993 Wilderness Recommendation, the Park Service notes that "the current levels of motorized boat use probably contradict the intent of wilderness designation [and] . . . is inconsistent with the wilderness criteria of providing outstanding opportunities for solitude and for a primitive and unconfined type of recreation." SAR 008307.

Defendants do not dispute this statement.

119. The 1993 "Final Wilderness Recommendation was . . . submitted to the director. As far as we know, it was never forwarded to the Secretary." AR 000864.

Defendants do not dispute this statement.

120. On May 10, 1994 the Superintendent of Grand Canyon sent a memo to the Regional Director of the National Park Service regarding clarification of the Hatch Amendment on Park management. SAR 008664. In the memo, the Superintendent states that the "Colorado River is recommended as 'potential wilderness' and, according to NPS Policies . . . should be managed as wilderness until the wilderness legislative process is completed." SAR 008664. The provisions in the Hatch Amendment "appear to contradict the intent of the 1964 Wilderness Act . . . and the 1975 Grand Canyon Enlargement Act. As far as we know, the Hatch provisions have not been specifically repeated in subsequent appropriations bills or other legislation." SAR 008664.

Defendants do not dispute this statement.

"1994 Wilderness Task Force"

121. On September 3, 1994 the Park Service's "Wilderness Task Force" published a "Report on Improving Wilderness Management in the National Park Service." SAR 008713.

Defendants do not dispute this statement.

122. In the Report, the Park Service notes that under the Wilderness Act, "no commercial enterprise is allowed . . . however, commercial services (e.g., guide services) can be permitted to the extent necessary for realizing purposes of wilderness recreation." SAR 008725.

Defendants do not dispute this statement.

123. In the Report, the Park Service states that "generally, with exceptions authorized for emergency or minimal administrative needs, no use can be made of motor vehicles or motorized equipment or motorboats (the pre-existing use exception for the Forest Service does not apply to the Dept of Interior units)." SAR 008725.

Defendants do not dispute this statement.

124. On September 26, 1994 the Superintendent sent a memo to the Division Chief on the status of wilderness in the Grand Canyon. SAR 008756. In the memo, the Superintendent states that he will "manage park lands according to the 1993 Wilderness Recommendation. This means lands which were 'recommended for immediate designation' will be managed as de facto wilderness and lands which were 'recommended for designation as 'potential wilderness' will be managed as potential wilderness." SAR 008756.

Defendants do not dispute this statement.

125. On November 4, 1994 the Director of the Park Service issued a memo to all Superintendents on implementing the recommendations of the 1994 Wilderness Task Force Report. SAR 008765. The Director stated that "NPS areas under study or recommended to Congress for wilderness designation must be planned and managed as wilderness unless such time as Congress decides otherwise." SAR 008766.

Defendants do not dispute this statement.

126. On November 14, 1994 the Park Service prepared a paper on the history and interim of wilderness management for the Grand Canyon and the Colorado River. SAR 008767. The Park Service notes that throughout "the 10 year wilderness and river management planning process, river running concessionaires consistently opposed the removal of motors on the river, primarily for economic reasons. The larger motorized craft provided significantly higher profitability through a lower staff-customer ratio, a shorter trip, and a resulting higher economic value user day. While concern for safety was given as a principal reason for continuing motorized use, this argument was unsubstantiated." SAR 008775.

Defendants do not dispute this statement.

127. The Park Service notes in its November 14, 1994 paper that the "Hatch Amendment was a successful backdoor attempt to circumvent a legitimate public involvement process for economic benefit of a special interest group, the river concessioners." SAR 008776.

Defendants dispute that the quotation in this statement is attributable to the Park Service. The November 14, 1994 paper was presented by a former Park staff member and does not represent the position of the Park Service. Plaintiff attribution of this statement to the Park Service is therefore misleading.

"Special Directive 95-2"

128. On February 1, 1995 the Director of the Park Service issued Special Directive 95-2 to "reemphasize and clarify" the Park Service's obligations with respect to managing potential wilderness areas such as the Colorado River corridor. SAR 009148. In the Special Directive, the Director notes that it is "the policy of the NPS that land classified [as potential wilderness be] . . . managed so as not to impair its wilderness characteristics until Congress decides the fate of these areas." SAR 009148.

Defendants do not dispute this statement.

129. Pursuant to the Special Directive, all "planning for these areas must be oriented toward ensuring the preservation of their wilderness character." SAR 009148. All potential wilderness areas "will be managed under the provisions of the Wilderness Act and NPS policies to maintain wilderness characteristics and values until Congress decides on the potential for inclusion in the National Wilderness Preservation System." SAR 009150.

Defendants do not dispute this statement.

"The 1995 General Management Plan"

130. In 1995, the Park Service issued a General Management Plan ("GMP") for the Grand Canyon. SAR 010126.

Defendants do not dispute this statement.

131. Pursuant to the 1995 GMP, the Park Service is to "protect the natural quiet and solitude" of the Grand Canyon and "manage areas meeting the criteria for wilderness designation as wilderness." SAR 010138.

Defendants do not dispute this statement, except to note that these statements are only partial quotations from two of the many objectives.

132. The GMP "treats all proposed wilderness areas as wilderness" and states that the Park will be managed in accordance with the Park Service's "1993 wilderness proposal." SAR 010147; SAR 010188.

Defendants do not dispute this statement, except to note that the full quotation for the first quotation in this statement is: "Therefore, this General Management Plan

treats all proposed wilderness areas as wilderness and anticipates the final resolution of wilderness issues and the preparation of a wilderness management plan as future actions." SAR 010188.

133. With respect to the Colorado River corridor, the GMP directs the Park Service to "protect and preserve the resource in a wild and primitive condition" and ensure that all management plans for the Colorado River be "consistent with NPS wilderness policy requirements." SAR 010138; SAR 010188.

Defendants dispute this statement. The first quotation from the GMP is a partial quote from one of many "management objectives" specified in the document and does not itself "direct" any action. The second quotation is from a section of the GMP titled "Interrelationship of this Plan with Other Plans and Projects"; the full sentence "the same sentence quote in paragraph 134 below" states that all actions proposed in the GMP, and all future implementation plans based on it, "will be consistent with NPS wilderness policy requirements."

134. The Park Service's GMP states that all actions and all future plans such as "the Colorado River Management Plan . . . will be consistent with NPS wilderness policy requirements." SAR 010188.

Defendants do not dispute this statement, except that the quotation does not refer to "all actions" but rather "all actions proposed in this document." SAR 010188.

135. In May, 1996 the Park Service's resource management specialist and wilderness coordinator for the Grand Canyon published a paper on wilderness management at the Grand Canyon. SAR 010272. In the paper, the resource management specialist states that the Park Service's "extensive public review process [for the Colorado River] and the existing NPS planning documents" do not permit motorized uses to continue. SAR 010275. The Park Service's policies state that "[p]ublic use of motorized equipment or any form of mechanical transport will be prohibited in wilderness except as provided for in specific legislation." SAR 016142; SAR 007300. The Park Service also states that strict interpretation of the Wilderness Act supports pre-1965 use, not subsequent motorized levels, as established use. Id. The Park Service notes that total river use was "about 550 people" in 1964. SAR 010275.

Defendants do not dispute this statement, but note that the quotations represent the opinions of a staff employee and not the Park or NPS.

136. In 1995, the Park's wilderness coordinator wrote that, noncommercial boaters represent "a broad spectrum of the 'general public' which has a much more difficult time obtaining a river trip than the commercial passenger who can generally purchase a trip for the summer season." SAR 009145.

Defendants do not dispute this statement, but note that it represents the opinions of a staff member and not of the Park or the Park Service.

"Notice of Intent to prepare a new CRMP"

137. In 1998, the Park Service announced its intent to revise the 1989 CRMP. SAR 010585.

Defendants do not dispute this statement, but note that it is not accurately referenced. NPS issued a Press Release on August 21, 1997, announcing the public meetings "marking the beginning of the revision process" of the 1989 CRMP.

SAR 10432.

138. The new, revised "Colorado River Management Plan will attempt to bring the Service back into compliance by addressing wilderness management responsibilities and the need to accommodate the public within this world class resource." SAR 011066.

Defendants do not dispute this statement.

139. On March 13, 1998, the Park Service received an e-mail regarding how to make the permit allocation for the Colorado River corridor more fair and equitable. SAR 011158. The e-mail notes that "[c]ommercial pricing is too high. This has limited its demand and created excess supply. Private costs are so low they create truly infinite demand far above the available supply . . . The commercial owners are monopolists who control their prices (the NPS is supposed to review them but has no rewards system for keeping prices low). These owners . . . have been given a very rewarding situation with no effective controls so they price to keep demand below supply knowing there won't be any competitors. Their customers then become an elite cross section of America who can best afford their services at any price. The commercial sector milks those who can afford to pay, denying access to those who can't, through high prices. Naturally, their affluent customers don't want to be inconvenienced. Naturally, they don't want to launch on weekends to minimize their lost earnings and use helicopters to speed up their trip. Those who aren't doctors, lawyers, or other highly paid professionals then must seek out and find the private sector to acquire access." SAR 011158.

Defendants do not dispute that the language quoted in this statement is contained

in the source document, but dispute that the information contained in the quotation is

factual rather than opinion of the author. This email was only one of many comments

received, and some had opposing views to those expressed in this email. The analysis of

impacts to socioeconomic conditions in the FEIS (Chapter 4.5.4, pages 698-720) assumes,

that demand for commercial and non-commercial trips exceeds supply and acknowledges

that price levels for commercial trips are set by NPS, rather than market equilibrium,

and are not expected to change as a result of supply. AR 105739 (FEIS Vol. II at 702).

Further, Modified Alternative H, which was implemented in the Record of Decision,

increases non-commercial use as follows: yearly user-days increase from 58,048 to

113,486; yearly passengers increase from 3,571 to 7,051; and yearly launches increase from 253 to 503. AR 104648 (FEIS Vol. I at 61).

140. The e-mail also notes that as "more and more people become familiar with private non-commercial rafting they recognize it as a great bargain and everyone wants a piece of it. This demand manifests itself in a huge backlog of people on a wait list who want to organize a low cost private trip because it is the only way they can go. They have no other option because they can't afford a commercial trip. The question during this CRMP review becomes which sector best serves the public while protecting the resource. The answer seems obvious. The private sector is the most egalitarian, it is the people's boating. Unfortunately, it also has the least connections and support in Congress and the Administration. Why are we surprised that the commercial sector, which serves the movers and shakers, has the best access to politicians and can even intimidate the NPS?" SAR 011158.

Defendants do not dispute that the language quoted in this statement is contained

in the source document, but dispute that the information contained in the quotation is factual rather than opinion of the author. This email was only one of many comments

received, and some had opposing views to those expressed in this email.

141. On October 12, 1998, the Park Service issued a "Issue and Policy Analysis" on the protection of wilderness suitability and the use of motorized rafts on the Colorado River within Grand Canyon National Park. SAR 011281. In this analysis, the Park Service states that the authority in section 4 (d)(1) of the Wilderness Act with respect to established uses "was not extended to the Secretary of the Interior." SAR 011286. The Park Service determined that in "the absence of a document motor-phase out plan, the continuation of the "Potential Wilderness" classification for the river corridor in the Park Wilderness Recommendation was not consistent with the intent of the Wilderness Act to prohibit motorized use in National Park Wilderness areas, nor was it consistent with NPS policy to seek to eliminate public uses that would be inconsistent with future Wilderness designation. The failure of the NPS to remedy this problem has continued and intensified the outstanding issue of the use of motors within the area included in the Grand Canyon National Park Wilderness Recommendation." SAR 011287.

Defendants do not dispute that the language quoted in this statement is contained

in the source document, but note that the referenced document was prepared by a Park

staff member, memorializes an internal Park discussion, and does not announce or

represent any NPS policy or decision. See SAR 011281-88.

142. The Park Service notes that the "Colorado River Management planning process conducted between 1976 and 1979 culminated in a publicly supported plan to phase out the use of motors on the river by 1985. The largest Grand Canyon river concession outfitters who prefer to offer only motorized river trips were not in favor of this plan and were able to convince Senator Hatch to attach a rider to the FY1981 Interior Appropriations Bill. This action together with similar pressures from Secretary of Interior, convinced the NPS to rewrite the plan and drop all wilderness dependent provisions." SAR 011288.

Defendants do not dispute that the referenced document contains the quoted

language, but note that the referenced document was prepared by a Park staff member,

memorializes an internal Park Service discussion, and does not announce or represent any NPS policy or decision. See SAR 011281-88.

143. The Park Service notes that it "was unfortunate that the many citizens that supported the motor phase out during the public involvement process were not allowed the opportunity to equally affect the political process." SAR 011288.

Defendants do not dispute that the referenced document contains the quoted language, but note that the referenced document was prepared by a Park staff member, memorializes an internal Park Service discussion, and does not announce or represent any NPS policy or decision. See SAR 011281-88.

144. The Park Service notes that the "newly formed Grand Canyon River Outfitters Association (GCROA), has strengthened the ability of the outfitters to [a]ffect the political process." SAR 011288.

Defendants do not dispute that the referenced document contains the quoted language, but note that the referenced document was prepared by a Park staff member, memorializes an internal Park Service discussion, and does not announce or represent any NPS policy or decision. See SAR 011281-88.

145. On October 26, 1998 the Superintendent drafted a memo to the Associate Director of Park Operations and Education. SAR 011416. In the memo, the Superintendent states that section 4 (d)(1) of the Wilderness Act, which creates special provisions for the Secretary of Agriculture to allow motorboats under certain conditions "clearly does not convey the same authority to the Secretary of Interior. Departmental and NPS policy require that NPS areas recommended for wilderness be managed as designated wilderness until such time as Congress acts on the recommendation." SAR 011416.

Defendants do not dispute this statement.

"Director's Order 41"

146. In 1999, the Park Service Director issued Director's Order 41: Wilderness Preservation and Management (Director's Wilderness Order) in order "to provide consistency and accountability" among Park Service wilderness management programs, "clarify policies and establish specific instructions and requirements" regarding wilderness management, and "guide Park Service efforts in meeting the letter and spirit of the Wilderness Act." SAR 013520.

Defendants do not dispute this statement.

147. Director's Order 41 adopts Reference Manual 41. SAR 012314.

Defendants do not dispute this statement.

148. Pursuant to Director's Order 41, the Park Service is to "ensure that wilderness resources are afforded maximum protection" by administering and "protect[ing] the wilderness resource." SAR 013523. With respect to

potential wilderness areas such as the Colorado River corridor, the Park Service is to manage such areas "as wilderness to the extent that existing nonconforming uses will allow; temporary (nonconforming) uses will be eliminated as soon as practicable in keeping with National Park Service authorities and budgets." SAR 013524.

Defendants do not dispute this statement.

"VIII. 2000-2005: THE PARK SERVICE ABANDONS ITS PLAN (ONCE AGAIN) TO PROTECT THE RIVER'S WILDERNESS CHARACTER, PHASE OUT MOTORBOAT USE, AND PREPARE A NEW RIVER MANAGEMENT PLAN" [Defendants dispute Plaintiffs' characterization in this heading that the Park Service "abandoned" any of its earlier plans.]

149. On February 23, 2000 Grand Canyon Superintendent Arnberger announced that the Park Service would immediately cease all work on a revised CRMP. SAR 014305.

Defendants do not dispute this statement, but note that the Superintendent's

letters further explain: "Due to the inability to resolve several of these issues prior to resolution of the park's Wilderness Recommendation, and lack of available fiscal and

human resources to complete a comprehensive planning effort, we are ceasing work on

any combined planning effort and on the Colorado River Management Plan. In addition

we are halting progress on the Wilderness Management Plan until we can thoroughly

analyze the feasibility of successfully completing this planning effort." SAR 014305.

150. Superintendent Arnberger justified his decision to cease all work on a new CRMP on "the inability to resolve several . . . issues prior to resolution of the park's Wilderness Recommendation, and lack of available fiscal and human resources to complete a comprehensive planning effort." SAR 014305.

Defendants do not dispute this statement, except to note that it oversimplifies the

justification for the decision, as noted in response to paragraph 149.

151. The Park Service took the position that "motor use will continue on the river and user allocation will not change greatly." SAR 014306.

Defendants dispute the statement because it is taken out of context and therefore

misleading. The letters actually state:

Neither the decision to cease work on the combined planning effort and Colorado River Management Plan nor the actions outlined above should be construed as an attempt to resolve the core issues of user allocation and motor use. It is clear that these actions will not be fully resolved without resolution of the Wilderness Recommendation and/or sufficient funding and staffing to complete an extensive planning effort and associated compliance. It is our position that motor use will continue on the river and user allocation will not change greatly without one or both of these actions.

SAR 014306.

152. On March 6, 2000 the Grand Canyon Private Boaters' Association (GCPBA) wrote Superintendent Arnberger expressing their "deep disappointment in and strong disagreement with your decision to abandon the public participation process. The difficulty of decisions to be made should not warrant the abdication of the responsibility to make the decisions." SAR 014317.

Defendants do not dispute this statement.

153. After the Park Service refused to prepare a new CRMP, GCPBA and other plaintiffs filed a lawsuit in 2000 to compel preparation of the new CRMP. In 2002, the Park Service settled the case by agreeing to reinstate the CRMP planning process. AR 000805.

Defendants do not dispute this statement, but note that the source document reads

as follows:

Under the settlement entered into by the parties to Grand Canyon Private Boaters Ass'n v. Alston, No. CV-00-1277 PCT-PGR-TSZ (D. Ariz.), the parties agreed that the National Park Service may extend the river outfitters' concession contracts for up to three years from the expiration date of those contracts, which was December 31, 2002, and that neither the plaintiffs nor the intervening defendant would challenge, obstruct, delay, or otherwise seek to prevent such extensions. Compliance requirements for these extensions were completed on December 10, 2002. The Director's office provided notification to proceed with issuing a Federal Register Notice and to extend the contracts on February 4, 2003. Under 36 CFR 51.23, the Director may award noncompetitively a three-year contract extension. Furthermore, the regulations stipulate that the Director 'must publish notice in the Federal Register of the proposed extension at least 30 days in advance of the award of the extensions (except in emergency situations).' Commercial rafting trips, including passenger trips and safety training, are currently scheduled to occur during the next 30 days. The need for an immediate extension has created an emergency situation, whereby contract extensions will be issued immediately. A Federal Register Notice of the extensions will occur as soon as possible. Due to the highly public nature of the above mentioned settlement agreement, it is our position that all interested parties have had adequate notice of our intent to extend these contracts. It is in the public's best interest to allow the previously scheduled trips to proceed by immediately issuing contract extensions. An alternative basis for extending the contracts immediately would have been subsection 12(d) of the contracts, which reads, 'To avoid interruption of services to the public upon expiration or termination of the CONTRACT for any reason, the Concessioner, upon the request of the Secretary [of the Interior], shall . . . (i) continue to conduct all operations hereunder for a reasonable period of time to allow the Secretary to select a successor Concessioner.' That provision does not require any notice to be published in the Federal Register.

AR 00805-06.

154. On April 5, 2000 the Deputy Wilderness Program Coordinator drafted a memo to Craig Sheldon, Office of Legislative Affairs regarding the authorization for Park Service "potential wilderness." SAR 014841. In the memo, the Park Service explains that "non-conforming uses" are uses that do not comport with wilderness management. Nonconforming uses are "contrary to the definitions of wilderness included within the Wilderness Act." SAR 014841. Such uses are "considered of a temporary nature which, once removed, should not preclude the final designation of the areas as wilderness." Id. This is why the Park Service's regulations establishing "potential wilderness generally provide for the conversion of these areas into 'designated' wilderness . . . [once] the nonconforming use has been terminated or extinguished through authorized procedures." SAR 014842.

Defendants do not dispute that the Deputy Wilderness Program Manager drafted

a memo on that date and that it contains the quoted language. Defendants note,

however, that there is no indication that the referenced memorandum ever was finalized, approved, adopted, or even sent to the Office of Legislative Affairs. By itself, it does not announce or represent any Park Service decision or policy. Defendants dispute the statements in the second, third, and fourth sentences, because the quotations are taken

out of context and misinterpreted. The memorandum actually states: "The Service's response to the issue of non-conforming uses addressed situations such as valid mining claims, roads, deeded lands, etc., which were immediately contrary to the definitions of wilderness included within the Wilderness Act, but were considered of a temporary nature which, once removed, should not preclude the final designation of the areas as wilderness." Defendants dispute the statement in the fifth sentence. The memorandum actually states: "The laws establishing potential wilderness generally provide for the conversion of these areas into 'designated wilderness' through Federal Register notice once the Secretary of the Interior declares that the non-conforming use has been terminated or extinguished through authorized procedures." SAR 014842. As the FEIS notes, "[N]either law nor policy requires the NPS to remove all 'non-conforming uses' from areas identified as 'potential wilderness.'" AR 105412 (FEIS Vol. III at 375). Chapter 6 of the NPS Management Policies 2001 states in pertinent part: "The National Park Service will seek to remove from potential wilderness the temporary, non-conforming conditions that preclude wilderness designation." AR 104821 (FEIS Vol. I at 234). In the FEIS the NPS expressly determined that the continued use of motorized rafts (1) does not preclude wilderness designation because this use is only a temporary or transient disturbance of wilderness values on the river, (2) could qualify as an "established use," and thus (3) is not a legal impediment to wilderness designation either way. AR 104591 (FEIS Vol. I at 17); AR 104822 (FEIS Vol. I at 235); and AR 105214-15 (FEIS Vol. II at 377-78).

155. On December 1, 2000 the Park Service adopted Director's Order 47: Soundscape Preservation and Noise Management. SAR 016067.

Defendants do not dispute this statement.

156. In 2003, in preparing a new CRMP, the Park Service stated that "the continued use of [motorized] equipment within [the Colorado River corridor] violate[s] the letter and intent of the Wilderness Act and NPS management policies and director's orders addressing wilderness." AR 000813.

Defendants do not dispute that the referenced document contains the quoted language, but note that it is an internal Park draft memorandum prepared by a staff member. There is no indication that it was ever finalized, and by itself it does not announce or represent any NPS policy or decision. This document simply was part of the Park Service's ongoing internal deliberations about how to address wilderness issues in the new CRMP.

157. In preparing a new CRMP, the Park Service noted that "the cumulative impacts of related actions may result in impairment to resources even though the effects associated with a single event might not constitute impairment." AR 023178.

Defendants dispute this statement. The quotation is from draft notes from a national natural resource meeting in Tucson, Arizona, in August 2002. The notes do not represent Park Service policy, and there is no indication that they had anything directly

to do with the CRMP, as implied in the statement above. AR 023178. Nevertheless, the

CRMP team carefully considered the subject of impairment in developing the CRMP.

The FEIS states:

An impairment to a particular park resource or park value must rise to the magnitude of a major impact, as defined by its context, duration, and intensity and must also affect the ability of the NPS to meet its mandates as established by Congress in Grand Canyon National Park's enabling legislation. For each resource topic, the Final Environmental Impact Statement establishes thresholds or indicators of magnitude of impact. An impact approaching a 'major' level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached 'major,' the interdisciplinary planning team would consider mitigation measures to reduce the potential for 'major' impacts, thus reducing the potential for impairment. The NPS finds that the Modified Preferred Alternative H as presented in the Final Environmental Impact Statement would not result in the impairment of park resources and values for which Grand Canyon National Park was established.

AR 104920 (FEIS Vol. III at 80).

158. In preparing a new CRMP, the Park Service noted that "[n]early 11,000 commercial passengers currently put-in or take-out at the Whitmore helipad (mile 187) via helicopter shuttles from the rim." AR 024083.

Defendants do not dispute that this statement is an accurate quote from the source

document, which is a draft impacts analysis as of January 9, 2004 by Whittaker and

Shelby (contractors for NPS). As numbers were checked and cross-checked for the EIS,

the FEIS shows an average of 6,630 passengers out at Whitmore and 3,635 in, which

adds to 10,265. AR 104631-32 (FEIS Vol. I at 44-45).

159. In preparing a new CRMP, the Park Service notes that helicopter passenger exchanges at Whitmore, by themselves, severely impact the River's wilderness character and create "dramatic contrast" to the river-running experience. AR 024083. The adverse impacts from helicopters include noise, physical impacts (downwash from rotors blows sand and gear), visual impacts, congestion, safety risks from low flying aircraft, camp competition for sites near the helipad, and creation of an artificial end to the trip. AR 024087.

Defendants dispute the statement of the first sentence. The referenced document does not contain the paraphrased statement relating to impacts to wilderness character and, moreover, is a draft memorandum from a contractor that does not represent any position or conclusion of the Park Service. AR 024083. Defendants dispute the statement of the second sentence. The actual document (again, which is only a draft) states only that adverse impacts from helicopters "may" include certain impacts, and among those possible impacts are "perceived safety risks" rather than "safety risks," and also includes "contrasting experiences for visitors who do and do not participate in helicopter use" (later listing some potential benefits to visitors who use the helicopters). AR 024087.

160. In the Quartermaster area (between Diamond Creek and Lake Mead) "approximately 600 to 800 helicopter flights per week [already] land and take off at 15 helipads." AR 017319.

Defendants do not dispute this statement, except to the extent it is corrected with the insertion above. AR 017319.

161. In preparing a new CRMP, the Park Service notes that they have huge cumulative effects from such things as Glen Canyon Dam and overflights, for example, that when you add such cumulative effects to the impacts of the CRMP actions all the alternatives end up with the same overall impact (i.e., major)." AR 015344.

Defendants dispute this statement. The referenced document is an email dated August 20, 2004 between Park Service employees concerning the organization of impacts and impacts analysis in the DEIS. Thus, it does not represent the final view of NPS; it merely memorializes one of many internal, deliberative discussions between or among Park Service employees relating to the DEIS. As a result of those internal discussions NPS reorganized and changed the impacts analysis and discussion of cumulative effects in the DEIS. Also, although NPS policy states that impacts must be major before there is a possibility of impairment, the existence of major impacts does not imply impairment. For example, the FEIS states:

Section 4.1 contains a discussion of the requirements of an impairment

analysis and both the Draft and Final EIS contain impairment evaluations and determinations for applicable impact topics for each alternative (chapter 4). The impairment determinations presented in this EIS indicate that no impairment of park resources or values is expected to occur from activities associated with river recreation under any of the alternatives. In addition, the monitoring and implementation plan will determine and implement measures required to reduce impacts to appropriate levels.

AR 105065 (FEIS Vol. III at 229). The FEIS also explains:

In both the Draft and Final EIS, the NPS has determined that no impairment of park resources or values is expected to occur from activities associated with river recreation under any of the alternatives. Additionally, there has never been a determination by the NPS of impairment of the natural soundscape or other resources at Grand Canyon in any EIS or Record of Decision or other decision document. The definition of impairment in NPS policies is very specific, and is not met in this case (see Section 4.1).

AR 105069 (FEIS Vol. III at 232).

162. In preparing a new CRMP, the Park Service noted, in a February 17, 2003 memo that the "NPS has no current authority to allow motorized equipment use within the Colorado River corridor except that which is might be 'necessary to meet minimum requirements of the administration of the area for the purpose of [the Wilderness Act]. By any measure, the current concession operations using motorized equipment exceeds that which is needed to meet established 'minimum requirement' tests. The continued use of this equipment within wilderness violated the letter and intent of the Wilderness Act and NPS management policies and director's orders addressing wilderness." AR 00813.

Defendants dispute this statement as legal conclusion, but note that it is an

internal Park draft memorandum prepared by a staff member. See AR 00813. There

is no indication that it was ever finalized, and by itself it does not announce or represent

any NPS policy or decision. This document simply was part of the Park Service's

ongoing internal deliberations about how to address wilderness issues in the new CRMP.

163. The Park Service also noted in the February 17, 2003 memo that section 4 (d)(1) of the Wilderness Act does not apply to the Secretary of Interior. AR 00813. The Park Service states that it "would be a major tactical mistake on the part of the NPS to attempt to adopt any of the section 4 (d) language and apply it to the Colorado

River Management Plan without stating that the Congress would need to provide specific authority to do so." AR 00813.

Defendants do not dispute that the referenced document contains the quoted language, but note that it is an internal Park draft memorandum prepared by a staff member. There is no indication that it was ever finalized, and by itself it does not announce or represent any NPS policy or decision. This document simply was part of the Park Service's ongoing internal deliberations about how to address wilderness issues in the new CRMP.

164. In preparing a new CRMP, the Park Service states that the "[s]econd to last sentence of the response should be rewritten to read '. . . the determination presented in the EIS (impairment) . . . is expected to occur from motorized recreation under any of the alternatives.' My point is that I would like to see this response rewritten to better clarify the limited scope of the impairment determination in the CRMP, and to not have a great influence (or precedent) on future aircraft use planning documents and potential impairment determinations." AR 005821.

Defendants do not dispute that the referenced document contains the quoted language, but note that it is an internal Park memorandum prepared by a staff member. Thus, it does not represent the final view of NPS; it merely memorializes one of many internal, deliberative discussions between or among Park Service employees relating to the DEIS. It refers to a draft response to the public comment coded NS8, and was considered and discussed more completely after the memo was sent to the CRMP Team. The NPS's final response to the comment does not contain the suggested language, but addresses the point, which is that any impairment decision concerning aircraft overflights should be made as part of the separate interagency planning effort regarding aircraft overflights, and not as part of a cumulative effects analysis in the CRMP. AR 105066 (FEIS Vol. III at 229).

165. In preparing a new CRMP, the Park Service notes in terms of wilderness impacts, the Park Service can consider "Wilderness Act provisions/goals, Opportunities for solitude, Lack of motors, Zoning-bottlenecks/attraction sites, Generators including blowers, blenders, Power Point presentations, ice cream makers, stereos . . ." AR 010032.

This statement selectively quotes a partial list of items in the category "Wilderness" from Flip Chart Notes from a Preliminary Alternatives Development Workshop on March 25-26, 2003. The list only represents "brainstorming" of all the potential issues related to wilderness that might have a bearing on developing draft alternatives for the EIS, but does not announce or represent any NPS policy or decision.

166. In preparing a new CRMP, the Park Service notes that "I spoke with Laurie Domler regarding the question of whether or not Wilderness Character should be an impact topic The answer is Yes. . . . at one time prepared [a] wilderness affected environment section . . It was incorporated into Chapter 1. Politics got the best of us?" AR 001003.

This statement selectively quotes an internal Park email by a staff employee and does not announce or represent any NPS policy or decision. The email exchange demonstrates NPS's responsiveness to public comments that wilderness characters should

be an impact topic analyzed in the EIS. In the FEIS, NPS stated:

The NPS believes it is managing the river corridor consistent with wilderness policy and law, and that the Modified Preferred Alternative H provides a wilderness river experience consistent with the plan's vision

and objectives. New sections on 'Wilderness Character' have been added (Sections 3.8 and 4.8) in the Final EIS to clarify this. The NPS has determined that the continued use of motorized rafts does not preclude possible wilderness designation because this use is only a temporary or transient disturbance of wilderness values on the river. The Modified Preferred Alternative H proposes more than six months of the year when people who do not want to experience any motorized boat noise can do so.

AR 105071 (FEIS Vol. III at 234).

167. In preparing the new CRMP, the Deputy Wilderness Program Coordinator wrote: "The NPS has no current authority to allow motorized equipment use within the Colorado River Corridor except that which might be "necessary to meet minimum requirements of the administration of the area for the purpose of [the Wilderness Act]." By any measure, the current concession operations using motorized equipment exceeds that which is needed to meet established "minimum requirement" tests. The continued use of this equipment within wilderness violated the letter and intent of the Wilderness Act and NPS management policies and director's orders addressing wilderness." AR 000813.

Defendants do not dispute that the referenced document contains the quoted language, but note that it is an internal Park draft memorandum prepared by a staff member. There is no indication that it was ever finalized, and by itself it does not announce or represent any NPS policy or decision. This document simply was part of the Park Service's ongoing internal deliberations about how to address wilderness issues in the new CRMP.

168. The Park Service has stated that it must address "[h]ow 'necessary and appropriate' is the current concession allocation level" and the "National Park Service preference for motorized concession operations." SAR 009145; AR 000334 (planning document for CRMP).

Defendants dispute this statement. The quotations are not NPS policies or positions, and are taken out of context and misleading. SAR 009145 is a March 20, 1995 memorandum from a Park staff member. The memorandum actually states:

In light of the high overall demand for river trips, the National Park Service must ask and ultimately answer several hard questions regarding river allocation. How 'necessary and appropriate' is the current concession allocation level? How appropriate is the current National Park Service preference for motorized concession operations, given that shorter, motorized trips actually generate additional demand for an already scarce recreational opportunity? Finally, what is the Grand Canyon's overall 'carrying capacity,' and how will it be defined (wilderness or non-wilderness)?

SAR 009145. AR 000334 is a list of potential CRMP issues from internal scoping in the August 2002 Draft Project Agreement for the CRMP that was never finalized (the list also considers the input from the earlier public scoping effort in 1997-98). The cited page does not contain the words "necessary and appropriate" or any sort of preference

for motorized use as implied by its use as a citation. The FEIS states:

The Final EIS on the Colorado River Management Plan determines the types and levels of commercial services that are necessary and appropriate for the Colorado River through Grand Canyon National Park ...

The Modified Preferred Alternative H provides for a range of experience for a variety of park visitors, and the NPS believes it best meets the needs of park resources and visitor experience for the life of this plan.

P.L. 105-391 and its attendant regulations dictate rates charged by concessionaires on the river. There is no provision in the law or regulations to allow a concessionaire to raise its rates simply to compensate for decreased allocation.

If the NPS determines such services are no longer necessary and appropriate, they must be ended. There is no provision for the NPS to "buy" permits back from those to whom they have been issued. If the service is still considered necessary and appropriate, the NPS will issue a new contract for those services. If the service is no longer determined to be necessary and appropriate by the NPS, no such contract will be issued.

AR 104889-104890 (FEIS Vol. III at 52-68).

169. In its internal planning document for the CRMP, the Park Service determined it needed information on the "relative demand for motor trips vs. oar trips" and "relative demand for different types of use over different seasons within the year (i.e. commercial, noncommercial, educational, research, etc.)." AR 000354-355 (emphasis original).

Defendants do not dispute this statement, but note that it is from a table assessing issues and information needs from the Draft Programmatic Agreement for the CRMP dated August 2002, which was drafted before public scoping for the EIS began. The Programmatic Agreement was never signed or finalized. During the course of the planning process, NPS determined that assessing relative demand was neither feasible nor necessary:

In January 2003 two expert panels were held and covered some of the important and controversial subjects included in the Colorado River Management Plan. The purpose of the panels was to provide the park with input from academics, researchers, practitioners, and the like. One of the questions asked to this panel of experts concerned what could be done to determine relative demand for commercial versus noncommercial trips.

In short, the expert panel's response was that a survey would probably cost around \$2 million and be of limited use.

AR 105014 (FEIS Vol. III at 177).

170. The Park Service stated that the "primary user group that most needs access, and constitutes a broader range of economic levels, is the private [public] user." SAR 011162.

Defendants dispute this statement. This quotation is part of a long string of

emails (SAR 011158 to SAR 011170) that is clearly a candid, uncensored dialogue in 1998, rather than a statement of any NPS policy or decision. It is superseded by what is in the FEIS and ROD, and also by dialogue from 2002-2006.

171. Members of the public who have the financial means and inclination to gain river access by paying for a private commercial trip are assured a trip down the river. SAR 011158 (commercial trips are priced to keep demand below supply); SAR 011161 ("the [split allocation commercial] access system favors the affluent["); SAR 9145 (a commercial user can generally go in the summer she chooses).

Federal defendants do not dispute that this statement is supported by the source document, but note that it is derived from a long string of emails (SAR 011158 to SAR 011170) that is clearly a candid, uncensored dialogue in 1998 rather than a statement of any NPS policy or decision. It is superseded by the information presented in the FEIS and ROD. SAR 009145 is a March 20, 1995 memorandum from the former GRCA Wilderness Coordinator) to the Superintendent, and actually states: "This constituency [noncommercial boaters ("privates")] represents a broad spectrum of the "general public" which has a much more difficult time obtaining a river trip than the commercial passenger who can generally purchase a trip for the summer season."

172. Public comments demonstrate that people take commercial trips down the river because they cannot gain access through the noncommercial permit system. AR 033403 ("At present, some companies allow clients to bring their rafts or kayaks; however they do not allow passengers on these boats and do not allow non-owners to paddle kayaks. However, there is a definite demand for these services within the paddling community. For instance, A[merican] W[hitewater]'s President Barry Tuscano, as well as other board members, have hired commercial outfitters to let them tag along in their personal kayaks or rafts since they could not get a private boater permit."); AR 027553 ("I would like to let you know that I signed up with a rather expensive outfitter so I would be able to get to paddle the Colorado River through the Grand Canyon. I feel that the commercial outfitter is my only chance to get to run the river while I am still young enough to paddle it. I believe there ought to be many more opportunities for private boaters than the current system allows."); AR 027700 ("I have pretty much written it off as impossible due to the 10 year waiting list to get in unless you pay thousands of dollars to a guide company."); AR 039423 ("This summer I organized a group of 21 canoeists and 3 kayakers on a commercial raft supported tripping the Grand Canyon. It is my second such trip, the last being 1999. I had to wait 3 years to get this commercial trip organized. I have been on the private trip waiting list since 1999. If it goes as it has been, it looks like I'll be 65 before I can organize a trip of my choosing down the canyon."); AR 039452 ("Eliminate commercial outfitters offering 'kayak support trips.' Kayakers have a huge and unfair loophole in the system. They are literally buying private access to run their own boats. If kayakers can do this, why can't rafters buy rafting support trips?"); AR 040394 ("I've twice paid to kayak this river. I hope to have my waiting list number come up before I'm too old to paddle or I die while waiting!"); AR 040946 ("With commercial companies, we didn't have to wait for years for a permit.").

Defendants do not dispute that the language quoted in this statement appears in the source documents, but dispute this statement to the extent that it suggests that the cited and quoted documents prove the statement asserted in the first sentence. The June 2003 Summary Public Scoping Analysis, found at AR 105921-105936 (FEIS Appendix B), summarizes comments received during the 2002 public scoping period. It also incorporates comments from previous public scoping efforts. This document shows the range of opposing concerns and opinions presented in the 55,165 comments received from the public. Consideration of the issue of equality of access is evident in implementation of the FEIS preferred alternative in which non-commercial use increases as follows: yearly user-days increase from 58,048 to 113,486; yearly passengers increase from 3,571 to 7,051; and yearly launches increase from 253 to 503. AR 104648 (FEIS Vol. I at 61). Additionally, the Record of Decision implements changes to the non-commercial permit system that meets NPS objectives of simplifying the application process, favoring access for applicants who have been unsuccessful in recent attempts to gain a permit, fairly expedites transition from the waitlist to the new system, and encourages people to apply for trips only in the years that they are interested in taking a trip. AR 1096111 (ROD at 20).

173. Many members of the public would like a chance to take a noncommercial trip down the Colorado River through the Grand Canyon and because of the preference given to commercial users, they fear that they will never have the opportunity. AR 027512, 027543, 027933.

Defendants dispute this statement to the extent that it purports to represent the views of "[m]any members of the public," and repeat their response to paragraph 172.

174. The Park Service received many comments about the inequity in access for the public and the impairment of their experience when motorized boats are in the Grand Canyon. AR 027590

Defendants dispute this statement in part. Several comments on the DEIS from prominent environmental or wilderness advocacy groups acknowledged that motors do not need to be immediately removed from the park to fulfill the Park Service's management duties. For example, the Grand Canyon Trust stated:

The Park Service' preferred alternative H cuts the period of time in which motorized uses are permitted from nine to six months. This is a step in the right direction. We appreciate the highly charged politics of the wilderness/motors issue and the complexity of decision making involved. Nonetheless, we encourage the park to gradually phase-out motorized use, a policy that is consistent with wilderness management and use.

AR 050381. The Wilderness Society recognized "the controversy with motorized use in the Colorado River corridor and the historic difficulty in implementing the mandate of the Wilderness Act," and endorsed "phasing out motorized use over a reasonable time period." AR 050262-67.

Three of the four plaintiff groups submitted joint comments on the DEIS recognizing that the preferred alternative would not include immediate removal of motorized boats from the Colorado River corridor and instead endorsing a plan to "phas[e] out motorized use over a reasonable time period not to exceed 10 years." AR 050222.

"IX. THE 2005 CRMP, FEIS, AND RECORD OF DECISION" "The Final Environmental Impact Statement ("FEIS")"

175. In November, 2005 the Park Service released a Final Environmental Impact Statement ("FEIS") for a new Colorado River Management Plan ("CRMP"). AR 014555.

Defendants do not dispute this statement.

176. In the FEIS, the Park Service states that the cumulative effects of the management of backcountry toilets, trails and facilities . . . would have adverse, localized, short term, year-round impacts on wilderness character." AR 105828.

Defendants do not dispute this statement, and note that the conclusion has been incorporated into the summary of effects. AR 105829. NPS reached the same conclusion relative to cumulative effects from the Backcountry Management Plan for each of the alternatives. AR 105819-29.

177. In the FEIS, the Park Service states that cumulative impacts are "described for each alternative for natural and cultural resources and visitor use and experience." AR 105818. The FEIS includes two non-motorized alternatives. AR 109601.

Defendants do not dispute this statement.

178. In the FEIS, the Park Service states that "[m]otorboat use introduces contaminants such as hydrocarbons and burned and unburned fuel and motor oil" to the Colorado River corridor. AR 105321.

Defendants do not dispute this statement, but note that NPS also concluded:

"While motorized trips contribute contaminants to the mainstem of the river, their effect to tributaries, seeps and springs is considered negligible." AR 105327 (FEIS Vol. II at 290) (emphasis added). See also AR 105330 (FEIS Vol. II at 293):

Effects of recreational use on water quality of the Colorado River include gasoline and motor oil pollution from motorized watercraft. Before conversion from two-stroke to four-stroke motors (completed in 2001), it was estimated that approximately 5,750 pounds of petroleum residue, as measured by non-volatile suspended solids, entered the Colorado River annually (NPS 1979). The primary source was exhaust in the water, although leakage from gas tanks and accidental spills contributed pollutants as well. That amount, while seeming large, was too small compared to the volume of river flow to be measurable River dynamics and the large volume of the Colorado River diffuse and disperse these contaminants.

179. The Park Service's "wilderness character" section of the FEIS was not included in the draft EIS ("DEIS") which was submitted and circulated for public review and comment. AR 001003.

Defendants do not dispute this statement.

180. The wilderness section of the FEIS was only added "[i]n response to comment" on the DEIS. AR 105207.

Defendants dispute this statement. A discussion on the interrelationship of the

Park's wilderness recommendation and relevant policy was included in the DEIS, which

also included a discussion of subjective wilderness values and experience in the visitor

use and experience sections. AR 102418 (DEIS Vol. I at 16); AR 102566-102567 (DEIS

Vol. I at 164-65); AR 102992 (DEIS Vol. II at 580). Defendants admit, however, that

in the FEIS they expanded various discussions of wilderness character and impacts on

wilderness character in response to public comments.

181. In the FEIS, the Park Service commits to managing the Colorado River corridor "as potential wilderness in accordance with NPS Management Policies." SAR 104821.

Defendants do not dispute this statement, except that the correct citation is

AR 104821 (FEIS Vol. I at 234).

182. In the FEIS, the Park Service determined that its continued authorization of motorboats, generators, and helicopter passenger exchanges in the Colorado River corridor does not "result in the impairment of the [Grand Canyon's] natural soundscape." AR 105424.

Defendants do not dispute this statement.

183. In the FEIS, the Park Service states that "motorized raft use" is a "temporary, non-conforming or incompatible use." AR 104820. "The river corridor would become wilderness upon phase-out of the use of motors." Id.

Defendants do not dispute this statement.

184. The FEIS states, the "Colorado River was identified as potential wilderness due to the existing motorized raft use." AR 104820.

Defendants do not dispute this statement.

185. In the FEIS, the Park Service finds that the "Grand Canyon's natural soundscape is considered a disappearing resource that requires restoration, protection, and preservation." AR 104728-29.

Defendants do not dispute this statement.

186. In the FEIS, the Park Service admits that there continues to be a "significant adverse effect" on the Grand Canyon's "natural soundscape" that will not be alleviated by its decision to authorize motorboats, generators, and helicopters in the Colorado River corridor. AR 105424.

Defendants do not dispute this statement, but it is taken out of context. In

discussing cumulative effects in the Conclusion to the Impacts Analysis for Modified

Alternative H, the FEIS states:

Although Modified Alternative H would contribute to the overall cumulative effects of noise on the park natural soundscape, even if all noise from all river recreation was eliminated from the park (including river-related helicopter flights at Whitmore), the cumulative effects of aircraft noise would still be adverse, short- to long-term, and major. There would still be 'significant adverse effects' on the natural soundscape due to frequent, periodic and noticeable noise from aircraft overflights, and 'substantial restoration of natural quiet' would not be achieved as required by Public Law 100-91 and other mandates.

AR 105424 (FEIS Vol. II at 387). It should also be noted that "significant adverse

effect" in this context is as it is used in Public Law 100-91 regarding aircraft

overflights, and does not equate to a similar term related to the National Environmental Policy Act.

187. The Park Service's own "criteria" for defining impairment is an action that causes an "unacceptable [noise] disturbance" or results "in sound pollution that intrudes upon the tranquility and peace of visitors" results in impairment. AR 023176-77.

Defendants dispute this statement. AR 023175 clarifies that these are "some possible criteria" to define impairment.

188. In the FEIS, the Park Service states that "no impairment of park resources or values is expected to occur from activities associated with river recreation under any of the alternatives." AR 105066. The natural sounds of the Grand Canyon are considered to be "an inherent component of the scenery, natural and historic properties, wildlands, and recommended wilderness that constitute the bulk of the park (94%)" and a "key component of the wilderness river experience." SAR 016067.

Defendants do not dispute this statement, but note that the FEIS contains a thorough discussion of the impacts of the various alternatives on natural soundscape and the mitigation of those impacts. AR 104728-30 (FEIS Vol. I at 141-43); AR 105385-441 (FEIS Vol. II at 348-403).

189. In the FEIS, the Park Service provides a partial list of actions that may cumulatively impact the Grand Canyon's natural soundscape. AR 105286; AR 105394.

Defendants dispute this statement. As the FEIS indicates, NPS examined all potential cumulative impacts on the natural landscape: "For each impact topic, the analysis for each alternative includes an impact rating that represents the sum total of the cumulative effects plus the effects from the alternative. The analysis then presents the degree to which the alternative contributes to the sum total rating. Major past, present, and reasonably foreseeable future actions considered in this analysis include the following." AR 105286 (FEIS Vol. II at 249).

190. In the FEIS, the Park Service concedes that its authorization of motorboats will "contribute to the overall cumulative effects of noise on the park's natural soundscape." AR 105424; AR 105423-24.

Defendants do not dispute this statement, except to note that it is not a concession, just a conclusion.

191. In the FEIS, the Park Service acknowledges that noise intrusions to the natural soundscape of the Park are "adverse, localized, and regional" and that, when viewed in combination with other sources of noise intrusions (i.e., aircraft overflights) would be a "significant adverse effect" on the Colorado River corridor's natural soundscape." AR 105424.

Defendants do not dispute the statement, but again note that the noise impacts from the selected alternative would be of minor to moderate intensity. When added to the cumulative effects of aircraft overflights not associated with river recreation, the cumulative effects were determined to be of major intensity, but Modified Alternative H "would contribute an adverse, negligible increment to cumulative effects." Thus, "even if all noise from all river recreation was eliminated from the park . . . the cumulative

effects of aircraft noise would still be adverse, short- to long-term, and major." See AR

105423-24 (FEIS Vol. II at 386-387); response to paragraph 186 supra. Aircraft

overflight impacts on the park are being addressed in a separate interagency planning

effort. AR 093676 (FEIS Vol. I at 18).

192. In the FEIS, the Park Service concedes that "impacts to wilderness character . . . will be detectable and measurable during most of the year, but more apparent during the higher mixed-use period, at the frequently visited areas and passenger exchange points along the river corridor." AR 109612.

Defendants do not dispute this statement, except to note that NPS did not

"concede," but rather determined through analyses, impacts to all affected resources.

Through these analyses, NPS concluded:

Natural conditions will predominate . . . Overall, this alternative [Modified Alternative H, the selected alternative] will provide a range of beneficial and adverse, localized to regional, short- to long-term, seasonal to year-round, negligible to moderate impacts on wilderness character in Zone 1. Impacts to the natural conditions (except soundscape) and undeveloped character will be of minor intensity. For visitors seeking outstanding opportunities for solitude or a primitive and unconfined type of experience, the impacts will be adverse and of moderate intensity during the peak-use motorized periods, with beneficial and negligible impacts during the longer non-motorized use period with smaller group size.

AR 109612-13 (ROD at 22-23).

193. In the FEIS, the Park Service states that "[f]or visitors seeking outstanding opportunities for solitude or a primitive and unconfined type of experience [i.e., a wilderness experience], the impacts would be adverse and of moderate intensity during the peak use motorized periods." AR 105829.

Defendants do not dispute this statement, except that it is taken out of context.

The entire quotation reads: "For visitors seeking outstanding opportunities for solitude

or a primitive and unconfined type of experience, the impacts would be adverse and of

moderated intensity during the peak motorized periods, with beneficial and negligible

impacts during the longer non-motorized use period with smaller group size." AR

105829 (FEIS Vol. II at 792).

194. In the FEIS, the Park Service justifies its decision to authorize motorized use of the Colorado River corridor by stating that such uses are only a "temporary or transient" disturbance of wilderness and are "established uses" pursuant to § 4 (d)(1) of the Wilderness Act that do not preclude wilderness designation. AR 104822.

Defendants do not dispute this statement, but note that the quotation concerning "temporary or transient disturbances" states more fully: ". . . the continued use of motorboats does not preclude wilderness designation because this use is only a temporary or transient disturbance of wilderness values on the river, and it does not permanently impact wilderness resources or permanently denigrate wilderness values." AR 104822 (FEIS Vol. I at 235).

195. In the FEIS, the Park Service failed to analyze and consider the overall, combined effects from all noise intrusions on the Park's natural soundscape. AR 105394; AR 105423-24.

Defendants deny this statement, which states a conclusion of law, not a factual matter. Furthermore, the referenced page of the FEIS (AR 105394 (FEIS Vol. II at 357)) presents a partial list of cumulative actions applicable to soundscapes, but the text of the FEIS applies to all impact topics, including soundscapes. AR 105286 (FEIS Vol. II at 249). See also response to paragraph 189, *supra*, concerning how NPS analyzed cumulative effects in the FEIS.

196. In the FEIS, the Park Service never assessed how its authorization of motorboats, generators, and helicopter exchanges in relation to other past, present, or future actions occurring in, above, or adjacent to the Colorado River corridor impair the Park's natural soundscape. AR 105394; AR 105423-24.

Defendants deny this statement, which states a legal conclusion, not a factual matter. Furthermore, the statement refers to page 357 of the FEIS, which presents a partial list of cumulative actions applicable to soundscapes, but the text on page 249 of the FEIS applies the cumulative effects analysis to all impact topics, including soundscapes. AR 105286 (FEIS Vol. II at 249). See also response to paragraph 189, *supra*, concerning how NPS analyzed cumulative effects in the FEIS. The cumulative effects analysis for soundscapes is presented in AR 105423-105424 (FEIS Vol. II at 386-387).

197. In the FEIS, the Park Service defines the term "wilderness character." AR 104822. Wilderness, "in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain." AR 104822. Wilderness areas are undeveloped lands that retain their "primeval character [and] influence with permanent improvements or human habitation . . . [g]enerally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable" and provide "outstanding opportunities for solitude or a primitive and unconfined type of recreation." AR 104822-23.

Defendants do not dispute that the FEIS defines the term "wilderness character." AR 104822-23 (FEIS Vol. I at 235-36). However, the definition quoted above by Plaintiffs is the definition of "wilderness" from the Wilderness Act itself, 16 U.S.C. § 1131(c). For purposes of its impacts analysis, the FEIS defines "wilderness character" to include the following qualities or characteristics of wilderness derived from the statutory definition: "natural," "undeveloped," and "outstanding opportunities for solitude or a primitive and unconfined type of recreation." AR 104822-23 (FEIS Vol. I at 235-36); AR 105816-17 (FEIS Vol. II at 779-80). The FEIS does not include "untrammelled" in its impacts analysis because the Colorado River corridor in the Grand Canyon has been greatly affected by the operation of Glen Canyon Dam and therefore cannot be considered "untrammelled." AR 105816-17 (FEIS Vol. II at 779-80).

198. In the FEIS, the Park Service states that the baseline condition upon which impacts are to be measured, is the natural sound of the Colorado River corridor in the absence of human-caused noise, i.e., the flowing water and rapids of the River, wind, storm activity, wildlife activity, and other natural sound generation such as rock and mud slides. AR 104728; SAR 016069-72 (defining the natural ambient sound level or baseline condition).

Defendants do not dispute this statement. The natural ambient condition is the baseline condition for the Affected Environment, and impacts are assessed upon the Affected Environment. In the methodology for the soundscapes impact analysis, the FEIS discusses the varying natural ambient sound levels used in the analysis, and also discusses how "impacts are evaluated for the noise produced at various locations along the river corridor (percent time audible), and contrasted to the amount of unaffected natural sounds (noise-free interval) to be expected or desired in the particular zone." AR 105389 (FEIS Vol II at 352); AR 105391 (FEIS Vol. II at 354). "Unaffected natural sounds" are the natural ambient sounds within the noise-free intervals. AR 105389-91 (FEIS Vol. II at 352-54).

199. In the FEIS, when evaluating the impairment to the Grand Canyon's natural soundscape in this case, the Park Service failed to apply the proper natural ambient sound level or baseline standard. AR 104729.

Defendants dispute this statement, which states a conclusion of law, not a factual matter. The FEIS does consider the natural ambient sounds in coming to its conclusions.

AR 104728-29 (FEIS Vol. I at 141-42); AR 105286 (FEIS Vol. II at 249); AR 105394 (FEIS Vol. II at 357); AR 105423-24 (FEIS Vol. II at 386-87).

200. The FEIS states that "the service[s] provided by commercial [outfitters] concessioners, which enable thousands of people to experience the river in a relatively primitive and unconfined manner and setting (when many of them otherwise would be unable to do so), are necessary to realize the recreational and other wilderness purposes of the park." AR 104606.

Defendants do not dispute this statement, with the corrections noted above.

201. The FEIS states that "since [many] visitors who wish to raft on the Colorado River through the Grand Canyon possess neither the equipment nor the skill to successfully navigate the rapids and other hazards of the river, the [Park Service] has determined that it is necessary and appropriate for the public use and enjoyment of the park to provide for experienced and professional river guides who can provide such skills and equipment." AR 104606.

Defendants do not dispute this statement, with the corrections noted above.

202. In the FEIS, the Park Service measured its authorization of motorized activities against "natural ambient sound levels . . . in the presence of audible human-caused noise including aircraft overflights." AR 104729.

Defendants dispute this statement. The decision to allow motorized use to continue on the river considered everything in the Administrative Record, not just "measured" against sound levels of any type. The noise levels presented in the table cited (FEIS Vol. I at 142) were representative samples; the notation about "in the presence of human noise from aircraft or other human-caused noise sources" was a technical note indicating the limitations of the equipment and measurement methodology. The methodology used in the soundscape impact analysis is not affected by those limitations because it used audibility and noise-free intervals which are based upon natural ambient sound levels unaffected by human sources. See AR 105388-98 (FEIS Vol. II at 351-61).

203. In the FEIS, the Park Service notes that "[a]ircraft overflights have an adverse, long-term, major cumulative effect on the park's natural soundscape. Even if all river-related noise was removed from the park, the park would still experience adverse, major effects from aircraft overflights independent of [the] river management plan." AR 105423.

Defendants do not dispute this statement, except to note that this analysis indicates that river-related noise contributes very little to the cumulative noise in the Park.

204. In 2007, the Park Service estimates that over 24,000 people will use the Colorado River corridor. AR 109592.

Defendants do not dispute this statement.

205. The Park Service has stated that commercial motorized uses of the Colorado River are not necessary for the public to realize the recreational or other wilderness purposes of the park. SAR 005804 (motorized boats are unnecessary); SAR 005100 (special needs groups can access the river on oar-powered trips).

Defendants dispute the statement to the extent that Plaintiffs suggest, by including it under the FEIS heading, that it appears in the FEIS. Defendants note that the referenced document (the 1980 Wilderness Recommendation) does not use the term "commercial" motorized uses; instead, it states that "motorized boat

use is not necessary for the use and enjoyment of this area but is a convenience that enables the trip to be made in less time, and permits the use of larger boats accommodating larger groups." SAR 005804. This statement has been superseded by the FEIS and ROD and does not reflect current NPS policy.

206. Even for special needs groups, the Park Service has found, since at least the late 1970s, that "[o]ar-powered rafts [] provide safe trips for aged, handicapped, and young people." SAR 005100.

Defendants do not dispute that the referenced document contains the quoted language, but again note that it is not part of the FEIS.

207. Eliminating motorized trips would not sharply reduce recreational opportunity and use. SAR 011164.

Defendants dispute this statement. The referenced document provides only the opinion of a former Park staff member, and does not announce or represent a Park Service policy or decision. SAR 011164-65. In the FEIS, NPS analyzed two no-motor alternatives for the upper portion of the Grand Canyon (Alternatives B and C) but did not select either, in part because they would have eliminated the recreational opportunity for shorter (i.e., approximately one-week-long), full-canyon trips and therefore would not have satisfied the management objective of providing "a diverse range of quality recreational opportunities for visitors to experience and understand the environmental interrelationships, resources, and values of Grand Canyon National Park." AR 104653-60 (FEIS Vol. I at 66-73) (Table 2-5: "How Well the Alternatives Meet Colorado River Management Plan Objectives"); AR 109616-17 (ROD at 26-27) (similar); see also AR 105659-68 (FEIS Vol. II at 623-30). The Park Service recognized that shorter motorized trips fill a particular market niche and that they can alleviate crowding and competition at popular attraction sites and campsites because they are capable of traveling quickly and safely to alternative locations. E.g., AR 105139-40 (FEIS Vol. III at 302-03).

208. Evidence in the record shows that commercial motorized uses of the Colorado River are not necessary for the public to realize the recreational or other wilderness purposes of the park. SAR 002647 (study for NPS finding that "eliminating motor . . . trips would not appear to exclude any specific group"); AR 092571 (passengers on self-guided and commercial trips range in age between 10 and 82 years old).

Defendants dispute this statement. The actual quotation states: "Eliminating either motor or oar trips would not appear to exclude any specific group described by measured demographic values." SAR 002647 (emphasis added).

209. Even for administrative resource trips, Park Service experts have said that motorized boats are unnecessary: "There is no reason to use motors, other than to placate the motor heads." SAR 011163.

Defendants dispute this statement. The quotation represents the opinion of one former Park staff member only.

210. Park studies have demonstrated that most people prefer smaller groups on the river and when commercial passengers took an experimental combination "motor-oar" trip, "92% reported that oar trips better enabled them to 'experience the Grand Canyon environment.'" AR 106062.

Defendants do not dispute this statement.

211. In the FEIS, the Park Service never links the amount of commercial services authorized with a finding that the amount is essential. AR 104555.

Defendants do not dispute the statement, but dispute the underlying premise for the statement. NPS is not required to determine what levels of commercial services are essential; rather, a decision to authorize a park concession will be based on a determination that the service is "necessary and appropriate for the public use and enjoyment." AR 104605 (FEIS Vol. I at 18).

212. The Park Service failed to identify in the ROD or FEIS any specific amount of commercial services that meet its finding of "necessary and appropriate" commercial services. AR 104555; AR 109590.

Defendants dispute this statement, and object to it as argument, not a statement of fact. Through the public planning and NEPA process, the Park Service developed a range of alternatives that included various kinds and levels of commercial services. AR 104614-22 (FEIS Vol. I at 27-35); AR 105002-13 (FEIS Vol III at 165-76); AR 109596 (ROD at 6). The Park Service then determined that its preferred alternative (Modified Alternative H) best met its management objectives as described in the FEIS. AR 109604-11 (ROD at 14-21); AR 109616-109617 (ROD at 26-27).

213. The only specific discussion of the necessity or propriety of commercial services is found on three pages of the FEIS. AR 104605-07. This discussion was not included in the DEIS. Id.

Defendants dispute this statement. Discussions of the necessity and propriety of commercial services are embedded in the FEIS in many places, particularly in the discussions of the criteria for developing alternatives, e.g., AR 104614-21 (FEIS Vol. I at 27-35); AR 105002-13 (FEIS Vol. III at 165-76); in the discussions and analyses of visitor use and experience, e.g., AR 104769-71 (FEIS Vol. I at 182-84); AR 105645 (FEIS Vol. II at 608); AR 105137-53 (FEIS Vol. III at 300-16); in the discussions and analyses of allocation of use, e.g., AR 104889-905 (FEIS Vol. III at 52-68); and in the discussions and analyses of motorized trips (which are mostly commercial) vs. non-motorized trips (which are mostly noncommercial). E.g., AR 104771-73 (FEIS Vol. I at 184-86), AR 105650-90 (FEIS Vol. II at 613-53), and AR 104925-41 (FEIS Vol. III at 85~101). The subject is also addressed in the ROD at 6 (AR 109596).

214. The FEIS's analysis of the allocation system does not account for what level of commercial services are necessary and appropriate. AR 104614-17.

Defendants dispute this statement, and object to it as argument, not a statement of fact. The FEIS analyzes the reasonable range of alternatives for the levels of each type of use (for both commercial services and noncommercial use) in the FEIS alternatives. The FEIS also includes a discussion on the merits of an Adjustable Split Allocation system (Option C) that could provide information on the relative demand for different types of trips and commercial services. Ultimately, this option was not selected because it did not meet all the objectives described by the Park (via public input) for allocating recreational use. AR 104616-17 (FEIS Vol. I at 29-30); see also AR 104951 (FEIS Vol. III at 111).

215. User-days and numbers of passengers are a function of the launches per day, group sizes and trip lengths. See AR 104645-46 (key trip variables).

Defendants dispute this statement to the extent that it suggests that user-days and numbers of passengers are not themselves independent variables subject to management control. To accomplish its management objectives without exceeding the carrying capacity of the Colorado River corridor, the Park Service considered and adjusted five key trip variables: launches per day, group size, trip length, seasonality, and user-day limits. NPS determines carrying capacity based on an evaluation of the condition of Park resources and the quality of visitor experience. AR 104617-21 (FEIS Vol. I at 30~34).

216. The FEIS caps commercial user-days at 115,500, finding that approximately 17,606 passengers will take a commercial trip annually, but allows for an increase in commercial motorized use. AR 104646-47; AR 109593.

Defendants do not dispute that the 2006 CRMP continues to cap commercial user-days at 115,500. Defendants note, however, that under the 2006 CRMP the number of commercial motor launches and commercial passengers actually will decrease. AR 104632 (FEIS Vol. I at 45); AR 104647 (FEIS Vol. I at 60).

217. One way in which the Park Service provides greater commercial access is by allowing 32 people on each commercial trip during the summer season and 24 people during the shoulder season, in contrast to 8 and 16 people for noncommercial trips. AR 104646.

Defendants dispute the statement of the first sentence. The 2006 CRMP reduces maximum commercial group size from 36 passengers plus guides to 32 people including guides in the summer season, and to 24 people including guides in the shoulder season. AR 104646 (FEIS Vol. I at 59).

218. Motorized trips make up roughly 75 percent of the allocated commercial use. AR 104647.

Defendants do not dispute that under the 2006 CRMP an estimated 71.7 percent of commercial launches will be motorized launches and an estimated 74.8 percent of commercial passengers will travel on motorized trips; however, only an estimated 66.6 percent of commercial user-days will be used on motorized trips. AR 104647 (FEIS Vol. I at 60).

219. In the FEIS, the Park Service's methodology for estimating use levels for all of its alternatives was premised upon actual launch data between 1998 and 2003. AR 106088. The range of alternatives was developed by setting separate limits for the different variables (such as launches per day, group size limits, trip length) for each type of trip. *Id.* The Park Service does not disclose how it arrived at these separate limits. *Id.*

Defendants do not dispute the statement of the first and second sentences, but do dispute the statement of the third sentence. Chapter 2 of the FEIS describes the limits and how they were set, and the CRMP Team explained how the limits were set during public open houses. AR 104614-22 (FEIS Vol. I at 27-35). Also, the ROD describes how resource and visitor use specialists used the river trip simulator, public comments, and staff expertise to determine an range of reasonable alternatives that met established management objectives for the Park. AR 109609 (ROD at 19); see also AR 104969 (FEIS Vol. III at 129).

220. The Park Service never factored into its analysis the relative demand for commercial and noncommercial trips and methods for fairly allocating use between those two user groups. AR 023285 ("because we do not have and cannot obtain concrete data on relative demand from user groups, we can expect a lawsuit both if we change and if we do not change the allocations."); AR 105716 (speculating that it would cost the Park around \$2.5 million to conduct a demand study).

Defendants dispute this statement, and object to it as argument, not a statement of fact. In developing alternatives for the DEIS, the Park Service considered various allocation systems, including an "adjustable split allocation" that would have allowed NPS to make "demand-responsive transfers between commercial and noncommercial sector allocations." AR 104615-17 (FEIS Vol. I at 28-30); AR 107995-8003. The Park Service ultimately decided to retain the existing split allocation system. Furthermore, the Park Service considered the fact that although it is difficult, if not impossible, to measure relative demand for commercial and noncommercial trips, multiple sources indicate that demand exceeds supply for both. AR 104785-86 (FEIS Vol. I at 198-99); see also AR 104684-93, 104793-96 (FEIS Vol. I at 97-106, 206-209); AR 104889-905, 105048 (FEIS Vol. III at 52-68, 211).

221. How to fairly allocate use between commercial and noncommercial users was one of the primary issues raised during public scoping for the CRMP. AR 104591.

Defendants do not dispute this statement, except to note that the page of the FEIS referenced only provides a list of "[p]ublic issues and concerns . . . raised during the 2002 public and internal scoping process," including "[a]llocation of use between commercial and noncommercial groups." The FEIS does not use the word "fairly" and "primary" on this page. AR 104591 (FEIS Vol. I at 4).

222. The FEIS does not cap noncommercial user days, but estimates they will reach 113,486 per year for an estimated 7,051 passengers. AR 104647. These estimates are based upon allocating noncommercial use primarily in the less-preferred winter season and in the shoulder seasons of spring and fall and by reducing the trip length for noncommercial oar-powered trips in order to increase the number of launches. AR 104647; AR 109593; AR 065795 (summer is preferred and winter is not).

Defendants do not dispute the statement of the first sentence. Defendants dispute the statement of the second sentence. The estimates are not based upon allocating use in the "less-preferred" seasons. The 2006 CRMP increases the overall noncommercial use by increasing the number of launches in each use season, and the estimated number of user-days is based on the number of launches multiplied by group size/trip and trip length. Although the trip length was decreased by 2 days for the summer season, 56 additional launches were made available for noncommercial users. In addition, the park increased the number of noncommercial launches in the spring and fall (also very favorable seasons) by 53 percent, and increased trip length by 3 days for most of the shoulder seasons. AR 065795 is a memo related to commercial user-day caps, but does not make reference to "preferred" use for the either sector. In any event, the use of "preferred" is subject to interpretation. There are many reasons why recreational river runners (commercial and noncommercial) would prefer to take a summer river trip (i.e. typical summer vacation, kids in school, etc.), but there also are many reasons why individuals would prefer other seasons (longer trips, cooler weather (more conducive to off-river hiking, etc.)). AR 104621 (FEIS Vol. I at 34). From 1998 through 2002 the Park made available additional launches during the winter months to noncommercial boaters. More than 90 percent of the 153 launch dates offered were used; 100 percent were used when they were made available six months in advance. The cancellation rate for those launches was lower than for launches in the spring, summer, and fall. AR 107920 and AR 109498.

223. All commercial users will be able to take their river trips in the summer and shoulder seasons, but over one-quarter of the annual noncommercial users will be forced to take a winter trip in order to float the river. AR 104647.

Defendants dispute this statement to the extent that it implies that commercial users may take trips any time of the year. The 2006 CRMP limits commercial launches to the period from April 1 to October 31. Furthermore, noncommercial users are not "forced" to take a winter trip, but may obtain permits for any time of the year through the noncommercial permit system. AR 104647 (FEIS Vol. I at 60).

224. In the past, only an average 318 noncommercial passengers per year have run the river in the winter. AR 104632. The Park Service estimates that 1,855 noncommercial passengers will now want to run the river in the winter. Id.

Defendants do not dispute this statement. Through a series of experimental winter launch dates, the Park Service concluded that there is significant public interest in longer winter trips. AR 104621 (FEIS Vol. I at 34). Through the 2006 CRMP, NPS has provided the opportunity for an estimated 1,500 more people to participate in noncommercial trips in the winter, an estimated 1,556 more people to participate in noncommercial trips in the spring or fall, and an estimated 387 more people to participate in noncommercial trips in the summer. AR 104632 (FEIS Vol. I at 45).

225. For summer trips, the FEIS estimates that an additional 387 noncommercial passengers will be able to run the river. However, the majority of the theoretical increase in noncommercial passengers comes in the winter with an estimated 1,537 additional passengers and in the shoulder season with an estimated 1,556 additional passengers. Compare AR 104647; AR 104632. Thus, nearly 89 percent of the estimated increase in noncommercial passengers annually is allocated to the winter and shoulder seasons, while the commercial users maintain the majority of their allocation in the summer. Id. (91,909 of 115,500 commercial user days in summer season).

Defendants do not dispute this statement, but note that under the 2006 CRMP the number of commercial passengers and commercial launches will decrease. AR 104632, 104647 (FEIS Vol. I at 45, 60).

226. The FEIS's discussions of alternatives and carrying capacity do not address what level of commercial services are necessary and appropriate. AR 104617-22; AR 104645-46.

Defendants dispute this statement, and object to it as argument, not a statement of fact. Embedded in the FEIS is a thorough analysis of the need for commercial trips, e.g., AR 104605-07 (FEIS Vol. I at 18-20), and the public demand for commercial trips, e.g., AR 104785-86 (FEIS Vol. I at 198-99). The ROD describes how resource and visitor use specialists used the river trip simulator, public comments, and staff expertise to determine a range of reasonable alternatives that met established management objectives for the Park. AR 109609 (ROD at 19); AR 109596 (ROD at 6).

227. The Park Service limits and allocates use in a split allocation system between commercial and noncommercial user groups, providing the majority of the allocated use to motorized commercial use. AR 104645-47.

Defendants dispute the statement that the majority of use is commercial motorized. For annual launches and user days, commercial motorized use is less than the combination of the other two major segments of use (i.e., commercial nonmotorized and noncommercial). Only for passengers is commercial motorized expected to be the majority on an annual basis. AR 104631, 104646 (FEIS Vol. I at 45, 60). The split allocation system allocates use between the commercial and noncommercial sectors. The launch system, based on carrying capacity standards, sets limits for numbers and types of trips. The summer calendar allows for up to three commercial motor, one commercial oar, and two noncommercial (motor or oar) trips per day. AR 104645-47 (FEIS Vol. I at 58-60).

228. Commercial outfitters do not always launch the maximum number of trips allowed per day, do not always launch at the maximum group size and do not always take the maximum trip length. AR 106089.

Defendants do not dispute this statement, except to note that use-level estimates for the new CRMP were based on actual use under the old plan. AR 106088-106091 (FEIS Appendix K). Commercial outfitters used approximately 97.9 percent of their allocation under the old plan. AR 104631-32 (FEIS Vol. I at 44-45). One could make the same statement for noncommercial users with respect to maximum number of trips, group size, and trip length. AR 106089 (FEIS Appendix K).

229. Other evidence also supports the fact that a commercial passenger can generally take a trip in the year she wants. See AR 000370, 000392-393.

Defendants dispute this statement. This "evidence" is drawn from articles written in local newspapers, and are not necessarily fact. AR 000370; AR 000392-93.

230. There is no evidence in the FEIS that commercial river runners have had to wait to obtain access through the concessioners' user days. AR 104555.

Defendants do not dispute this statement.

231. Commercial river travelers are a select group with high incomes and educational levels. SAR 002646.

Defendants do not dispute this statement. Defendants note, however, that noncommercial boaters also are a "select group" with incomes and educational levels well above the national averages. SAR 015496-98.

232. A commercial motorized trip down the river costs approximately \$300 per day. AR 092571. Studies show that "[f]orty seven 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.

Defendants do not dispute the statements of the first and second sentences. Defendants dispute the statement of the third sentence. According to expert research, "[c]ommercial boaters had higher family incomes than private boaters, though both groups had average incomes well above the national average." SAR 015498.

233. Members of the public who are not already on the noncommercial waitlist and who cannot afford to pay a commercial outfitter and/or do not wish to take a commercial trip, have no guarantee they will be able to take a trip down the Colorado River, ever. AR 104700 (the new permit system would favor those who have been unsuccessful in obtaining a permit in prior years, but does not guarantee a permit); AR 109609 (noncommercial demand has exceeded supply of permits since 1973); AR 105715 ("Based on the exponential growth of the waitlist, demand undeniably exceeds supply.")

Defendants do not dispute the statement, but it is out of context. Consideration of the issue of equality of access is evident in the FEIS's preferred alternative, in which non-commercial use increases as follows: yearly user-days increase from 58,048 to 113,486; yearly passengers increase from 3,571 to 7,051; and yearly launches increase from 253 to 503. AR 104648 (FEIS Vol. I at 61). Additionally, the ROD announces changes to the non-commercial permit system that meet NPS's objectives of simplifying the application process, favoring access for applicants who have been unsuccessful in recent attempts to gain a permit, fairly expedites transition from the waitlist to the new system, and encourages people to apply for trips only in the years that they are interested in taking a trip. AR 109610 (ROD at 20). Again, it is important to clarify that the wait associated with obtaining a noncommercial permit applies to trip leaders, not to trip participants. Individuals seeking to join noncommercial or commercial trips may join up to one trip per year, based on availability, by contacting other noncommercial boaters or commercial outfitters.

234. Under the old permit system, a member of the public (a trip leader) would wait between 10 and 20 years to obtain a permit to take a non-commercial trip down the river. AR 104697.

Defendants do not dispute this statement, except to note that the wait associated with obtaining a noncommercial permit under the old permit system applied to trip leaders, not trip participants. Individuals seeking to join noncommercial or commercial trips may join up to one trip per year, based on availability, by contacting other noncommercial boaters (via websites and other means) or commercial outfitters.

235. At the time of the FEIS, there were approximately 8,000 trip leaders on this list who were waiting to obtain a permit, and roughly 1000 new applicants each year. Id.; AR 1009609. Based on an average group size of 13, these 8,000 trip leaders represent approximately 104,000 members of the public who would go down the river on permits for noncommercial trips. SAR 009145.

Defendants do not dispute the statement in the first sentence. However, many people on the wait list were acquainted with others on the wait list with whom they might have shared a trip, so it is impossible to say how many members of the public were "represented" by the wait list. Under the wait list system many people were able to take repeated noncommercial trips down the Colorado River. See, e.g., AR 100644; see also SAR 015427 (1998 study finding that "80% of commercial passengers were on their first Colorado River trip, compared to 39% of private boaters. 27% of commercial oar and 38% of commercial motor passengers were on their first trip on any river; 94% of private boaters had been river-running before.").

236. Under the new system, the Park Service estimates that over half of the waitlist applicants will receive a launch date within ten years and in twenty years, the majority of the waitlist will have successfully obtained a launch date. AR 105732.

Defendants dispute this statement. Thirty-three percent (2,400) of the 7,000 people on the waitlist are anticipated to gain a launch within 6 months. Of the remaining 4,300, half are anticipated to have a launch within 10 years. Within 20 years, the Park anticipates that no more than 561 applicants transitioned from the wait list still will not have had an opportunity to lead a trip. AR 105732 (FEIS Vol. II at 695).

237. The FEIS finds that "noncommercial groups generally believe their proportion of the overall allocation is unfairly small," while "[c]ommercial users generally believe their allocation is either appropriate, somewhat below where it should be, or slightly higher than it needs to be." AR 105715.

Defendants do not dispute this statement, but it is taken out of context. The context of the first quote is actually:

On the other hand, noncommercial groups generally believe their proportion of the overall allocation is unfairly small and point to the waitlist as 'proof' of this. Based on the exponential growth of the waitlist, demand undeniably exceeds supply (see the 'Permit System Options Analysis' for information about the current waitlist). But, even if the noncommercial allocation in the 1989 Colorado River Management Plan had been doubled for the life of the plan, it is likely that the waitlist still would have grown and possibly even faster. Since there is no comparable system for people wanting to go on commercial trips, the waitlist does not give a clear indication of relative demand. Social scientists have speculated that it would cost Grand Canyon National Park around \$2.5 million to conduct a demand study to adequately determine demand and the results would still not be absolutely definitive (Shelby and Whittaker 2004).

AR 105715-16 (FEIS Vol. II at 678-79).

"Record of Decision"

238. On February 17, 2006 the Park Service signed its Record of Decision (ROD) for the CRMP adopting the preferred alternatives in the FEIS—Modified Alternative H for the Lees Ferry to Diamond Creek or "Upper Gorge" segment of the Colorado River corridor and Modified Alternative 4 for the Lower Gorge segment of the Colorado River corridor. AR 109592.

Defendants do not dispute this statement.

239. The ROD authorizes the use of motorboats, helicopter passenger exchanges, and generators in the Grand Canyon's Colorado River corridor, a potential wilderness area. AR 109592.

Defendants dispute this statement to the extent that is misleading. First, Congress

has not designated the Colorado River corridor in Grand Canyon as a potential

wilderness; NPS only has recommended it as potential wilderness. Second, the ROD's

authorization of motorized watercraft and generators is subject to the limitations set

forth in the document. Third, helicopter exchanges occur on Hualapai land and are

managed by the Tribe; NPS thus has no jurisdiction over these flights. AR 109592

(ROD at 2).

240. The ROD allows motorized use of the Colorado River corridor during the popular summer season (over 5 months), helicopter passenger exchanges, and an increase in the maximum number of annual users of the Colorado River. AR 109592.

Defendants do not dispute this statement, except to note that helicopter exchanges occur on Hualapai land and are managed by the Tribe, and thus NPS has no jurisdiction over these flights. AR 109592 (ROD at 2).

241. Pursuant to the ROD, commercial motorized use of the Colorado River corridor will increase. AR 109593.

Defendants dispute the statement to the extent that it is a misleading characterization. Although commercial motor user-days are expected to increase, commercial motor launches will decrease, and commercial motor passengers are expected to decrease. AR 104632, 104647 (FEIS Vol. I at 45, 60). One increases while the other two decrease because 1) under the old plan, there were two allocations—one for primary (summer) season and the other for the secondary season, whereas under the new plan the user-day cap applies to trips between April-October; and 2) the new plan establishes daily launch limits, thereby reducing the number of trips in the summer and increasing the number in the shoulders. The estimates are also based on the expectation that because the number of commercial motor launches decreases, there will be more larger trips and fewer smaller motor trips. AR 109593 (ROD at 3).

242. Pursuant to the ROD, commercial users will be able to take their river trips in the summer and shoulder seasons, but over one-quarter of the non-commercial users will be forced to take a winter trip in order to float the Colorado River in the Grand Canyon. AR 109592-93.

Defendants do not dispute this statement, except to note that noncommercial users will not be "forced" to take a winter trip. AR 109592-93 (ROD at 2-3).

243. The ROD allows motorized use of the Colorado River from April 1 until September 15 and creates a non-motorized window from September 16 until March 31. AR 109592.

Defendants do not dispute this statement, except to note that the ROD provides for a nonmotorized season for more than half of the year. AR 109592 (ROD at 2).

244. The ROD allows for an increase in the estimated yearly passengers on the Colorado River to totals of 24,657. AR 109593.

Defendants do not dispute this statement, except to note that increased use is offset by reductions in group size, trip length, people and trips in the canyon at one time, and other factors that indicate or contribute to crowding and congestion. Crowding and congestion are the primary concern when considering impacts to visitors and resources. Much of the additional uses is occurring from an increase in non-peak season use. AR 109611 (ROD at 21).

245. Before the 2006 ROD, an average of 18,891 commercial passengers took trips

down the river annually, while 3,570 noncommercial passengers took trips. AR 104632 (no action alternative). Commercial use was capped at 115,500 user-days and noncommercial use was capped at 54,450 user days annually. AR 104632. Of the commercial passengers, 14,487 took motorized trips, accounting for 74,260 user-days. AR 104632.

Defendants do not dispute this statement.

246. Pursuant to the ROD and CRMP, the public gains access to travel down the river by either: (1) applying for a non-commercial permit through the lottery system and coordinating a public river trip; or (2) paying a commercial concessioner, which already has guaranteed allocated use of the river, to take people on a commercial trip down the river via motorized or non-motorized raft. AR 109593.

Defendants dispute this statement to the extent that it implies that commercial trips are not "public" river trips. Also, only trip leaders apply for a noncommercial permit; a third category is people who are passengers on a noncommercial trip without applying for a permit.

247. Pursuant to the ROD, the number of total launches per day in the summer season would be decreased from nine to the current average of six. Commercial motor trip and oar trip group sizes would be decreased from the maximum of 42 to the current average of 32 people in the summer and 24 people during other times. Non-commercial trip group sizes would remain at 16 people for a standard trip and a new small group size of 8 was also added to reduce campsite competition along the river. AR 109592-93.

Defendants do not dispute this statement.

248. Pursuant to the ROD, even though the maximum number of river trips at one time would be reduced from 70 to 60 trips and the maximum number of people at one time would be reduced from 1,095 to 985, commercial motorized use is expected to increase to an estimated 76,913 user days. AR 109593.

Defendants do not dispute this statement, except to note that increased use is offset by reductions in group size, trip length, people, and trips in the canyon at one time, and other factors that indicate or contribute to crowding and congestion.

Crowding and congestion are the primary concern when considering impacts to visitors and resources. Much of the additional uses is occurring from an increase in non-peak season use. AR 109611 (ROD at 21). Also, commercial motorized use actually decreases in terms of launches and passengers. AR 104632, 104647 (FEIS Vol. I at 60 compared to 45).

249. The ROD eliminates the waiting list for non-commercial permits and replaces it with a weighted lottery system. AR 109610-11. Under the new system, trip leaders on the old waitlist would obtain launch dates within 10 to 20 years. Id.

Defendants dispute this statement. The new system implements a transition from the waiting list to a weighted lottery. Under the transition process, "[a]bout one-third of the trip leaders on the waitlist would receive launch dates immediately; most of the remaining trip leaders would obtain launch dates within 10 years." AR 109611 (ROD at 21).

250. The CRMP allows all recreational passengers to take one trip per year. The hybrid weighted lottery system for noncommercial use gives preference to those who havenot taken a river trip in the last four years. AR 109595; AR 109599.

Defendants do not dispute this statement. The new lottery system also gives chances/points to those that transitioned from the old system based on how long they had been on the waiting list. The "preference" to those that have not taken a trip in the last four years is the number of chance/points. For example, an individual would get 1 chance for the 2008 lottery if he or she took a trip in 2007, but 5 chances if he or she last took a trip in 2003 or never took a trip. An individual who never took a trip but had been on the waiting list could enter into the lottery with up to 20 points depending on the year he or she got on the list. AR 105728-29 (FEIS Vol. II. at 691-92); AR 109609-11 (ROD at 19-21).

251. The ROD contends that the CRMP FEIS analyzed the types and level of commercial services that are necessary and appropriate for the Colorado River through the Park. AR 109596.

Defendants do not dispute this statement.

252. In the ROD, the Park Service claims that non-commercial use will increase under the revised CRMP, but that claim is based primarily on the Park Service's assumption that non-commercial river users will want to float the Colorado River in the winter season in greater numbers than they do today. AR 109593.

Defendants dispute this statement. The number of noncommercial launches was increased for all seasons (56 more in summer, 102 more in shoulder, 92 more in winter). AR 109593 (ROD at 3).

253. The ROD allocates roughly 60% of the user days for summer and shoulder river trip seasons to commercial concessionaires. This means that during the preferred summer and shoulder river trip seasons, roughly 77% of recreational river users will be paying, commercial users and roughly 23% of recreational river users will be non-commercial. During the winter, no commercial users will be on the river, but according to the Park Service, 1,855 non-commercial river runners may take a winter trip each year, even though in the past only approximately 318 people have done so. If any user wants to float the Grand Canyon without the noise and distraction of motorboats, they will be forced to do so in the winter season. AR 109592-93.

Defendants do not dispute the statement of the first and second sentences, except for the characterization of the summer season as "preferred," which is a subjective opinion based on each individual user's preferences. Defendants do not dispute the statement of the third sentence, except to the extent that it implies that exclusive nonmotorized use is limited to winter months, which it is not. Defendants also do not dispute the statement of the fourth sentence, except to note that whether motorboats are a source of "noise and distraction" is a highly subjective judgment, e.g., AR 105386 (FEIS Vol. II at 349), and no one will be "forced" to float the Grand Canyon in the winter.

254. The ROD and FEIS do not base its allocation between commercial and noncommercial users on the best available information regarding river use and demand. The CRMP and ROD's apportionment of use is inequitable in terms of overall use, group size and timing of use. AR 109592-53 [sic-should be "93"].

Defendants dispute this statement, and object to it as argument, not a statement

of fact. The ROD shows that user-days are almost equal for commercial and non

commercial users (115,500 vs. 113,486), as are trips launching (598 vs. 503). For

passengers, however, because the noncommercial trips are smaller, the numbers are

quite different (17,606 vs. 7,051). NPS determined that there is no way to get all the numbers equal without running all the same trips:

Equal access depends upon the measure of use. While some believe that passengers per year should be the primary measure for allocation, others believe that user-days or launches per year should be the primary measure. The NPS believes it has considered a full range of alternatives as required by NEPA. Alternative B included equal allocations of trips launching in the summer and Alternative C included near-equal launches and user-days in the summer season. Additionally, the Modified Preferred Alternative H includes increases in annual and summer season noncommercial launches, passengers and user-days.

AR 104951 (FEIS Vol. III at 111).

255. The ROD allows helicopter exchanges at Whitmore to accommodate commercial river trips. An estimated 3,635 commercial passengers will be transported by helicopter to Whitmore to begin their river trips. An estimated 5,715 commercial passengers will be transported by helicopter at the end of their river trips at Whitmore. AR 109592-54.

Defendants do not dispute this statement, except to note that NPS does not regulate transportation outside the park boundary and, therefore, "[i]t is assumed that all passengers exiting their trips at Whitmore will continue to be transported by

helicopter." AR 109594 (ROD at 4).

256. The ROD authorizes the use of generators in the Colorado River corridor for "emergency situation and inflating rafts" and "other purposes." AR 109597.

Defendants do not dispute this statement, except to note that the full quotation is:

"Generator use will be limited to emergency situations and inflating rafts. The use of generators for other purposes will be evaluated through the minimum requirements process." AR 109597 (ROD at 7).

257. In the ROD, the Park Service states that "[i]mpacts to the natural conditions (except soundscape) and undeveloped character will be of minor intensity." AR 109612.

Defendants do not dispute this statement.

258. In the ROD, the Park Service states that "[f]or visitors seeking outstanding opportunities for solitude or a primitive and unconfined type of experience, the impacts will be adverse and of moderate intensity during the peak-use motorized periods, with beneficial and negligible impacts during the longer nonmotorized use period with smaller group size." AR 109612-13.

Defendants do not dispute this statement.

259. In the ROD, the Park Service states that no impairment or derogation to the Grand Canyon's resources or values is allowed. AR 109611; AR 003247.

Defendants do not dispute this statement, but note that in this section, titled

"Findings on Impairment of Park Resources and Values," the document states more

fully:

The National Park Service may not allow the impairment of park resources and values unless directly and specifically provided for by legislation or proclamation establishing the park. Impairment that is prohibited by the NPS Organic Act and the General Authorities Act is an impact that, in the professional judgment of the responsible NPS manager, would harm the integrity of park resources or values, including the opportunities that otherwise would be present for the enjoyment of those resources or values. In determining whether impairment would occur, park managers examine the duration, severity, and magnitude of the impact; the resources and values affected; and direct, indirect, and cumulative effects of the action. According to NPS policy, "an impact would be more likely to constitute an impairment to the extent that it affects a resource or value whose conservation is: a) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; b) Key to the natural or cultural integrity of the park or opportunities for enjoyment of the park; or c) Identified as a goal in the park's general management plan or other relevant NPS planning documents." This policy does not prohibit all impacts to park resources and values. The National Park Service has discretion to allow impacts to park resources and values when necessary and appropriate to fulfill the purposes of a park, so long as the impacts do not constitute impairment. Moreover, an impact is less likely to constitute impairment if it is an unavoidable result, which cannot be further mitigated, of an action necessary to conserve or restore the integrity of park resources or values. After analyzing the environmental impacts described in the Final Environmental Impact Statement/Colorado River Management Plan and public comments received, the National Park Service has determined that implementation of the preferred alternatives will not constitute an impairment to Grand Canyon National Park's resources and values. The actions comprising the selected alternative are intended to protect and enhance the park's natural and cultural resources, and provide for high-quality visitor experiences.

AR 109611 (ROD at 21). NPS Director's Order 12 states, "In managing units of the national park system, the Service may undertake actions that have both beneficial and adverse impacts on park resources and values. However, by the provisions of the laws governing the NPS, the Service is prohibited from taking or authorizing an action that would, or is likely to, impair park resources or values." AR 003247.

260. The Park Service did not make a finding in the FEIS or ROD that commercial motorized use of the Colorado River corridor is necessary or appropriate for the public to realize the recreational and other wilderness purposes of the river. AR 109590; AR 104555.

Defendants dispute this statement. As discussed in the responses to paragraphs 213 and 226 above, embedded in the FEIS are various discussions of the necessity and propriety of commercial motorized use of the Colorado River corridor. The ROD states: "Determination of the types and levels of commercial services that are necessary and appropriate for the Colorado River through Grand Canyon were determined through these analyses [in the FEIS]." AR 109596 (ROD at 6); see also AR 09479-81.