

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

2 GENERAL DIVISION

3  
4 GRAND CANYON DORRIES, INC.,  
MARTIN LYTON, and OARS, INC., :

5 Plaintiffs, :

6 -vs- :

7 Civil Action No. C-242-73

8 RONALD H. WALKER, Director, :  
National Park Service, PHILLIP R. :  
9 IVERSEN, Utah Director, National :  
Park Service, MERLE E. STITT, :  
10 Superintendent, Grand Canyon :  
National Park, GILBERT R. STAMM, :  
Commissioner, Bureau of Reclamation, :  
11 DAVID L. CRANDALL, Director of :  
Region Four, Bureau of Reclamation, :  
12 and ROGERS C. B. MORTON, Secretary :  
of the Interior, :

COMPLAINT

13 Defendants. :

14  
15 COMPLAINT FOR DECLARATORY

16 AND INJUNCTIVE RELIEF

17 AND MANDAMUS

18  
19 For cause of action plaintiffs allege:

20 I. JURISDICTION

21 1. The jurisdiction of this Court is based upon the Administrative  
22 Procedure Act, 5 U.S.C. §§ 701-706, which provides for judicial review  
23 of actions of federal agencies; 28 U.S.C. §§ 1331, which gives the  
24 district courts jurisdiction over cases involving federal questions  
25 in which the amount in controversy is over \$10,000; The Declaratory  
26 Judgment Act, 28 U.S.C. §§ 2201-02; and 28 U.S.C. § 1361, which gives  
27 the district courts jurisdiction over actions in the nature of mandamus.  
28 The matter in controversy exceeds \$10,000 exclusive of interests and  
29 costs.

30 II. PARTIES

31 Plaintiffs.

32 2. Plaintiff Grand Canyon Dorries, Inc. is a California corporation  
33 having its principal office at Box 5585, Stanford, California, which  
34 has since 1970 conducted commercial float trips on the Colorado River  
35 through the Grand Canyon downstream from the Glen Canyon Dam pursuant

1 to concession licenses granted by the National Parks Service. Grand  
2 Canyon Boats, Inc. will suffer serious economic injury-in-fact if  
3 river flows are not maintained that will allow river touring activities  
4 to be conducted with safety.

5 3. Plaintiff Martin W. ... is a California resident and since  
6 1955 has been actively engaged in running float trips on the Colorado  
7 River through the Grand Canyon downstream from Glen Canyon Dam. He is  
8 the president of plaintiff, Grand Canyon Boats, Inc. He will suffer  
9 economic injury-in-fact if river flows are not maintained that will  
10 allow river touring activities to be conducted with safety.

11 4. Plaintiff Cars, Inc. is a California corporation having its  
12 principal office at 4510 Lantieri Street, Costa Monica, California,  
13 and is engaged in conducting commercial float trips on the Colorado  
14 River through the Grand Canyon downstream from Glen Canyon Dam. Cars,  
15 Inc. will suffer serious economic injury-in-fact if river flows are  
16 not maintained that will allow river touring activities to be conducted  
17 with safety.

18 Defendants.

19 5. Defendant Ronald H. Walker is Director of the National Park  
20 Service of the United States Department of the Interior and has  
21 authority and responsibility under the law to manage the national park  
22 system, including the Glen Canyon Recreation Area and Grand Canyon  
23 National Park.

24 6. Defendant Phillip E. Twensen is Utah Director of the National  
25 Park Service. The Glen Canyon National Recreation Area within Utah  
26 and Arizona is under his supervision.

27 7. Defendant Berle E. Stott is Superintendent of Grand Canyon  
28 National Park and has direct responsibility within the National Park  
29 Service for the management of that park. His responsibilities include  
30 the issuance of concession licenses to float the Colorado River through  
31 the Park and to administer and control the activities of licensed  
32 concessionaires.

33 8. Defendant Gilbert R. Stearn is Commissioner of the Bureau of  
34 Reclamation of the United States Department of the Interior. He has  
35 authority and responsibility under the law to manage reclamation  
projects including the Glen Canyon Dam.

1           9. Defendant David L. Crandall is Director of Region Four of  
2 the United States Department of the Interior. The Glen Canyon Dam is  
3 located within Region Four and the immediate operation of the Dam comes  
4 within the authority of Mr. Crandall.

5           10. Defendant Rogers C. B. Morton is Secretary of the Interior  
6 of the United States and has ultimate statutory responsibility for the  
7 administration of reclamation projects including the Glen Canyon Dam  
8 and also the National Park and National Monument System including Grand  
9 Canyon National Park. The defendant Morton is ultimately responsible  
10 for all the actions of the National Park Service and the Bureau of  
11 Reclamation.

12 III. FACTS

13           11. The Glen Canyon Dam, located on the Colorado River upstream  
14 from Grand Canyon National Park, is a 710 foot structure built for the  
15 dual purpose of providing electric power and water storage in the Upper  
16 Colorado River Basin. The Dam was completed and began operation in 1963.

17           12. Prior to the construction of the Glen Canyon Dam, river float  
18 trips were conducted through the Grand Canyon of the Colorado both by  
19 private individuals and commercial outfitters and the experience offered  
20 was among the most exciting recreational experiences available anywhere  
21 within the national park system. River touring continued after the  
22 Glen Canyon Dam was completed, but under generally less desirable  
23 conditions. Nevertheless river flows were maintained that made river  
24 touring possible with reasonable safety.

25           13. The Bureau of Reclamation has not prepared an environmental  
26 impact statement in compliance with the National Environmental Policy  
27 Act dealing with its continuing regulation of the flow of the Colorado  
28 River through the mechanism of the Glen Canyon Dam or in connection with  
29 the preparation and implementation of the operating criteria for the  
30 Dam and related water regulation facilities. In particular, the Bureau  
31 of Reclamation has not prepared an environmental impact statement in  
32 compliance with the National Environmental Policy Act dealing with the  
33 environmental consequences of the drastic reduction of releases from  
34 Glen Canyon Dam on the environment of Grand Canyon National Park and  
35 the conduct of river tours through Grand Canyon National Park.

1 Pursuant to concession licenses granted by the National Park  
2 Service, the plaintiffs and others are annually authorized to conduct  
3 tours on the Colorado River through Grand Canyon for an allotted number  
4 of passenger days. The concession licenses prohibit concessionaires  
5 from using more than twenty-five percent of their allotted passenger  
6 days during any particular calendar month of the five month running  
7 season which begins in May and continues through September. At the  
8 time of filing this Complaint, the plaintiffs have yet to run approxi-  
9 mately two-fifths of their allotted passenger days for the 1973 river  
10 running season.

11 15. In order to float the river through Grand Canyon with reasonable  
12 safety, the flow of water available cannot at any time be less than  
13 4,500 cubic feet per second through the outlets of the Glen Canyon Dam  
14 and there must be average releases of 8,500 cubic feet per second from  
15 the Glen Canyon Dam.

16 16. On July 27, 1973, the Bureau of Reclamation issued an announce-  
17 ment advising that for the balance of the river touring season, the  
18 Bureau intends to make average releases from the Glen Canyon Dam ranging  
19 from 6,000 to 8,000 cubic feet per second during weekdays and that  
20 night and weekend releases will be reduced to 1,000 cubic feet per  
21 second. A copy of this announcement is attached as Exhibit A hereto.  
22 Releases at the levels indicated will make river float trip operations  
23 impossible or extremely hazardous to the health and safety of those  
24 who participate in the trips.

#### 25 IV. CLAIMS

##### 26 First Claim.

27 17. The Bureau of Reclamation's purposeful regulation of the Glen  
28 Canyon Dam to reduce river flows below the minimums necessary to allow  
29 float trips to be conducted through the Grand Canyon with reasonable  
30 safety destroys the purpose of concession licenses granted by the  
31 National Park Service and violates implied provisions of the concession  
32 licenses by making impossible plaintiffs' realization of the benefits  
33 of the contracts and agreements embodied in those licenses. Further,  
34 defendants' action deprives patrons of plaintiffs of the opportunity  
35 to take float trips that have already been scheduled and for which, in

1 some cases, payment has already been made. Unless defendants are  
2 enjoined, plaintiffs will suffer immediate and irreparable injury from  
3 the actions of defendants in making the conduct of float trips through  
4 the Grand Canyon impossible or unsafe. Plaintiffs have no adequate  
5 remedy at law.

6 Second Claim.

7 18. Section 101(b) of the National Environmental Policy Act,  
8 42 U.S.C. § 4331(b), requires the federal government "to use all  
9 practicable means" so as to "fulfill the responsibilities of each  
10 generation as trustee of the environment for succeeding generations,"  
11 "attain the widest range of beneficial uses of the environment without  
12 degradation," and "preserve important . . . natural aspects of our  
13 national heritage." To effectuate these policies, Section 102(2)(C) of  
14 the Act, 42 U.S.C. § 4332(2)(C), requires the preparation of environ-  
15 mental impact statements. Mandated is that all agencies of the federal  
16 government:

17 Include in every recommendation or report on  
18 proposals for legislation and other major  
19 Federal actions significantly affecting the  
20 quality of the human environment, a detailed  
21 statement by the responsible official on  
22 (i) The environmental impact of the  
23 proposed action,  
24 (ii) Any adverse environmental effects  
25 which cannot be avoided should the proposal  
26 be implemented,  
27 (iii) Alternatives to the proposed action,  
28 (iv) The relationship between local  
29 short-term uses of man's environment and the  
30 maintenance and enhancement of long-term  
31 productivity, and  
32 (v) Any irreversible and irretrievable  
33 commitments of resources which would be  
34 involved in the proposed action should it be  
35 implemented.

36 19. The Council on Environmental Quality, which was created  
37 pursuant to the National Environmental Policy Act, 42 U.S.C. § 4334,  
38 35 Fed. Reg. 7724, has issued Guidelines entitled "Statement on Proposed  
39 Federal Actions Affecting the Environment: Guidelines" which provide  
40 that the environmental assessment must come "as early as possible  
41 and in all cases prior to agency decision concerning major action or  
42 recommendation." (Section 2.) The Guidelines further state that  
43 environmental statements are required in the case of "projects and  
44 continuing activities: directly undertaken by federal agencies"

1 (Section 5(a)(ii)) and that "to the maximum extent practicable the  
2 Section 101(2)(C) procedure should be applied to further major Federal  
3 actions having a significant effect on the environment even though  
4 they arise from projects or programs initiated prior to enactment"  
5 of the National Environmental Policy Act. (Section 11). Even when  
6 it is not practicable to reassess the basic course of action, "it is  
7 still important that further incremental major actions be shaped so  
8 as to minimize adverse environmental consequences" and take account  
9 of "environmental consequences not fully evaluated at the outset of  
10 the project or program." (Section 11.)

11 20. The failure of the Bureau of Reclamation to prepare and  
12 consider an environmental impact statement in connection with its  
13 continuing operation of the Glen Canyon Dam violates the National  
14 Environmental Policy Act and the Guidelines of the Council on  
15 Environmental Quality. A particularly flagrant violation is presented  
16 by the drastic reduction in releases announced on July 27, 1973.

17 V. RELIEF

18 WHEREFORE, plaintiffs pray that this Court:

19 1. Enter a declaratory judgment that the action of defendants  
20 in reducing releases through Glen Canyon Dam to the point where river  
21 float trips cannot be safely conducted through the Grand Canyon  
22 violates implied terms of plaintiffs' concession licenses from the  
23 National Park Service.

24 2. Enter a declaratory judgment that the action of defendants  
25 in failing to prepare an environmental impact statement with respect  
26 to the operation of the Glen Canyon Dam violates the National Environ-  
27 mental Policy Act and the Guidelines of the Council on Environmental  
28 Quality.

29 3. Issue its mandate requiring the defendants to commence  
30 forthwith to prepare and consider the environmental impact of the  
31 operation of the Glen Canyon Dam in accordance with the provisions of  
32 the National Environmental Policy Act.

33 4. Until environmental consequences are considered and an  
34 environmental impact statement is prepared, enjoin the defendants during  
35 the river touring season beginning with May and ending with September

1 of each year from reducing releases from Glen Canyon Dam below 4,500  
2 cubic feet per second at any time and requiring average releases of  
3 at least 8,500 cubic feet per second.

4 5. Determine that plaintiffs are entitled to the costs of this  
5 action.

6 6. Provide such other relief to plaintiffs as the Court may  
7 consider just and equitable.

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