The Grand Canyon National Park Enlargement Act: Perspectives on Protection of a National Resource

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Almost anything that can be written about the dimensions of the Grand Canyon tends to stagger the imagination. More than a billion years of geological time lie exposed in a mile-deep gash in the high plateaus of northern Arizona.[1] Shaped through eons of time by the Colorado River,[2] the Canyon reveals many resources of diverse value. The river itself supplies water and potential energy.[3] There are min-

1. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, GRAND CANYON NATIONAL PARK, FINAL ENVIRONMENTAL STATEMENT: PROPOSED MASTER PLAN, GRAND CANYON COMPLEX, ARIZONA 28 (1975) [hereinafter cited as FINAL ENVIRONMENTAL STATEMENT]. For a detailed discussion of the Canyon's geology, see C. DUTTON, TERTIARY HISTORY OF THE GRAND CANYON DISTRICT, WITH ATLAS (1882).

2. A primary element in the evolution of the Canyon is the corrosive force of silt pushed across the Canyon floor by the Colorado River's current. The process is a continuing one which is complemented by occasional land falls. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, DENVER SERVICE CENTER, DRAFT ENVIRONMENTAL STATEMENT: PROPOSED DEVELOPMENT CONCEPT PLAN, GRAND CANYON VILLAGE, GRAND CANYON NATIONAL PARK, ARIZONA 38 (1974) [hereinafter cited as DRAFT ENVIRONMENTAL STATEMENT]; FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 42. Interference with this ongoing process can have direct and indirect effects on the Canyon; dams on the Colorado which control the river's flow also impede the flow of silt. In turn, the silt clogs the dam and fills the reservoir. R. BERKMAN & K. VISCUSI, DAMMING THE WEST 36-53 (1971).

3. Divided geographically and economically into a Lower and Upper Colorado Basin at Lee's Ferry near the Arizona-Utah border, the Colorado River flows through or on the boundaries of seven states: Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. Report of the Special Master at 11, Arizona v. California, 373 U.S. 546 (1963). The importance of the river to the State of Arizona may be demonstrated by the fact that the state participated in five separate suits to determine its rights in the river's water. Arizona v. California, 373 U.S. 546 (1963) (seeking declaration of water rights under Boulder Canyon Project Act); Arizona v. California, 298 U.S. 558 (1936) (seeking equitable apportionment of Colorado River water); United States v. Arizona, 295 U.S. 174 (1935) (enjoining Arizona's interference with construction of Parker Dam); Arizona v. California, 292 U.S. 341 (1934) (preserving testimony of negotiators of Colorado River Compact); Arizona v. California, 283 U.S. 423 (1931) (challenging constitutionality of Boulder Canyon Project Act). Many communities depend upon the river's waters for their viability. Report of the Special Master at 16, Arizona v. California, 373 U.S. 546 (1962); Comment, *Arizona's Coming Dilemma: Water Supply and Population Growth*, 2 ECOLOGY L.Q. 357, 358-59 (1972).

eral and grazing resources.[4] Tourism also produces revenue.[5] Beyond tangible economic values, the Canyon possesses qualities of intrigue and awesome majesty. The ruggedness and desolation[6] of the Canyon area create a stark beauty and allow a unique experience of quiet solitude.[7] Modern transportation has eased access to developed areas on the Canyon rim, but the overwhelming aura persists. The power of the Grand Canyon is as much an idea as it is a physical presence. The silence, beauty, and scientific value are, nevertheless, products of the physical features of the Canyon. These intangible resources are reflections of the natural environment of the Canyon,[8] and therefore depend for their continued existence on the maintenance of an undisturbed environment.[9] In contrast, the Canyon's commercial resources possess potential economic value which is realized only through use or development. Such development, however, disrupts the natural environment and endangers the stillness and splendor which is the Canyon.

There was no conflict between policies of use or preservation when the Canyon was part of the public domain and not protected from development.[10] Public land laws encouraged the disposition of public

4. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 42-43, 70.

5. *See* OUTDOOR RECREATION RESOURCES REVIEW COMM'N, OUTDOOR RECREATION FOR AMERICA 164-66 (1962). Overnight accommodations, shops, and restaurants are provided by concessioners who operate under lease. 16 U.S.C. §§ 20, 222 (1970).

6. Father Francisco Tomás Garces, accompanying the Juan Batista de Anza expedition which sought an overland route to California in 1776, voiced the despair of explorers who encountered the vast chasm as an insurmountable obstacle. In his journal, the Jesuit missionary expressed something of the Canyon's impact when he described it as a prison of cliffs and canyons. F. GARCES, ON THE TRAIL OF A SPANISH PIONEER 408 (E. Coues transl. 1900).

7. J. KRUTCH, GRAND CANYON 6-8 (1958).

8. The expression "natural environment" in its strictest sense means the ecosystem of an area undisturbed by artificially introduced conditions such as nonnative species of animals or vegetation. The term implies the absence of people on permanent roads or in structures built for shelter and other purposes. 16 U.S.C. § 1131(c) (1970); W. DOUGLAS, A WILDERNESS BILL OF RIGHTS 28-29 (1965); R. NASH, WILDERNESS AND THE AMERICAN MIND 6 (rev. ed. 1973). In less restrictive terms, "natural environment" may accommodate the presence of some nonnative conditions which do not affect a large area for a long period of time, and the effects of which may be reversed with a minimum of time, effort, or expense. *See* R. NASH, *supra* at 5-6; DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 68; Martz, *Conservation of the Environment as a Public Resource*, 18 ROCKY MT. M.L. INST. 225, 243 (1973).

9. Wilderness is recognized as having value in its mere existence. "It is not simply in a personal acquaintance with pristine nature that wilderness has meaning and value. It has a larger social significance as well. It is the symbol of what modern civilization has lost." Robinson, *Wilderness*, 59 MINN. L. REV. 1, 2 (1974). *But see* Martz, *supra* note 8, at 244-45. When President Theodore Roosevelt visited the Canyon in 1903, he recognized the dependence of the Canyon's aura on its natural condition:

> [I] hope you will not have a building of any kind, not a summer cottage, a hotel or anything else, to mar the wonderful grandeur, the sublimity, the great loveliness and beauty of the Canyon. Leave it as it is. You cannot improve on it. The ages have been at work on it, and man can only mar it.

Speech by President Theodore Roosevelt in J. HUGHES, THE STORY OF MAN AT GRAND CANYON 102 (1967).

10. McBroom, *Mineral Exploitation and Recreation Development on the National Resource Lands—Compatible or Incompatible?*, 24 SYRACUSE L. REV. 1057, 1058-59

land by granting title to the land or rights in it in return for the establishment of a private productive use.[11] Disposition of land in the Grand Canyon area occurred until federal legislative and executive action slowed the process by withdrawing land from entry and settlement. Creation by presidential proclamation in 1893 of the Grand Canyon Forest Reserve was the first such withdrawal of Grand Canyon land.[12] Through the incremental imposition of additional types of reserved status, the land was eventually protected from disposition.[13] These withdrawals preserved title to the land in addition to preventing the establishment of unregulated private use. Because they permitted government regulation of use, establishment of reserves proved to be a seminal step toward protection of the Canyon's natural values.

In addition to the overt conflict between private use and government reservation of the land, however, the withdrawals themselves raised another kind of tension between development and protection. Although the reserves prevented most disposition of the land to private users, they did not prohibit all use or development. Besides incidental commercial uses, Congress instilled in each category of reserved status the intention to utilize the land for some appropriate public purpose. National park status preserved the land, but subjected it to recreational use.[14] Intensive demand extended even recreational uses to degrees

(1973). The public domain is land held by the federal government subject to use or disposition. *See* P. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 1-28 (1968). Reserves were created to permit the government to hold some lands intact. *Id.* at 28.

11. The Homestead Act of 1862 deeded 160 acres to any individual who settled and cultivated the land for 5 years. 43 U.S.C. § 161 (1970); P. GATES, *supra* note 10, at 394-95. Disposition was accomplished through the process of entry or settlement. Entry describes the methods by which an inceptive right to public domain land is established; this method includes application and filing with a registrar and final proof of presence and title. United States v. Morehead, 243 U.S. 607, 611 n.1 (1917); Chotard v. Pope, 25 U.S. (12 Wheat.) 586, 588 (1827); Hillstrand v. State, 395 P.2d 74, 76 (Alas. 1964). The aridity of land in the Canyon area made it unsuitable for homesteading. W. STEGNER, BEYOND THE HUNDREDTH MERIDIAN 219-21 (1954). Thus it was not homesteading, but the Mining Law of 1872, An Act to Promote the Development of the Mining Resources of the United States, 17 Stat. 91 (codified at 30 U.S.C. § 22 (1970)), which brought about the settlement of the Canyon rim. Prospectors were attracted to the Canyon by the government's offering of patent title to lands containing mineral deposits. 30 U.S.C. § 22 (1970). Claims could be located without charge and a patent title could be acquired with a minimum amount of assessment work. *Id.* § 28; U.S. GENERAL ACCOUNTING OFFICE, MODERNIZATION OF 1872 MINING LAW NEEDED TO ENCOURAGE DOMESTIC MINERAL PRODUCTION, PROTECT THE ENVIRONMENT AND IMPROVE PUBLIC LAND MANAGEMENT 1 (1974). Many such claims were located and perfected in the Grand Canyon area. M. Verkamp, History of Grand Canyon National Park 25-37, June 12, 1940 (unpublished thesis in University of Arizona Main Library). The precise number of such claims is impossible to determine because of inadequate registration procedures in the mining laws. U.S. GENERAL ACCOUNTING OFFICE, *supra* at 16-18. Whatever the number of prospectors, their impact was felt in the mines, shelters, and trails they constructed. M. Verkamp, *supra* at 25-26.

12. Presidential Proclamation No. 45, Feb. 20, 1893, 27 Stat. 1064.

13. Subsequent reserves included a game preserve, Act of June 29, 1906, ch. 3593, 34 Stat. 607; Presidential Proclamation, Nov. 28, 1906, 34 Stat. 3263, a national monument, Presidential Proclamation No. 794, Jan. 11, 1908, 35 Stat. 2175, and a national park. 16 U.S.C. § 221 (1970).

14. Recreational use can be distinguished from commercial use in that commercial

which were destructive of the environment. To settle the uncertain balance between development and protection which had been generated by a history of inadequate legislative and executive action, Congress was prompted to enact in 1975 the Grand Canyon National Park Enlargement Act [Enlargement Act].[15] Congress' action demonstrated its preference for protection in designating as the purpose of the 1975 legislation the preservation of "the outstanding scenic, natural, and scientific values of the Grand Canyon."[16] Three means were provided for accomplishing that purpose: Grand Canyon National Park was enlarged;[17] certain uses of park land were subjected to increased regulation;[18] and specific areas were recommended for study to determine the suitability of further action.[19]

This Note will analyze the effectiveness of the Enlargement Act in achieving its stated objectives. Conflicts within and among the policies by which different Canyon areas were administered—conflicts created in part because the Canyon was divided into several distinct administrative units—will be discussed.[20] With these conflicts as the background against which the Enlargement Act became operational, the effectiveness of the Act in expanding protection and restricting use will be examined. Finally, this Note will consider the possibility of a higher degree of protection through wilderness status.[21]

CONDITIONS PRECEDING THE ENLARGEMENT ACT

Prior to 1975 there was no comprehensive design in effect for the entire Canyon area.[22] Particular developments tended to localize

use or development generally anticipates financial or economic return. Recreational use instead contemplates some mental or physical return from the use. Comptroller of Treasury v. M.E. Rockhill, Inc., 205 Md. 226, 231, 107 A.2d 93, 96 (1953). The construction of recreational facilities may cause recreational uses to take on commercial aspects. *See* Carpenter v. Zoning Bd. of Appeals, 352 Mass. 54, 61, 223 N.E.2d 679, 684 (1967).

15. 16 U.S.C. § 228a (Supp. IV, 1974).

16. *Id.*

17. *Id.* § 228b.

18. *Id.* §§ 228f-228i.

19. *Id.* § 228i-1 (Supp. V, 1975). Provision for a wilderness study was inadvertently omitted from the Enlargement Act, H.R. REP. No. 94-148, 94th Cong., 1st Sess. (1975), but was added to the Act by amendment without further debate. Act of June 10, 1975, Pub. L. No. 94-31, 89 Stat. 172 (codified at 16 U.S.C. § 228i-1 (Supp. V, 1975)). For purposes of this discussion, the amendment will be referred to as part of the Act.

20. In discussing the Canyon, the focus will be on conditions as they exist on the South Rim. Because of its isolation, the opening of the North Rim to development was much slower and tended to follow that on the South Rim.

21. Wilderness status is a legislatively imposed category of protection from use. *See* 16 U.S.C. § 1136 (1970). Although legislated wilderness is ordinarily created from areas already reserved, it may be established in previously unprotected areas. See text accompanying note 216 *infra*.

22. The National Park Service was in the process of preparing a master plan for the development of Grand Canyon National Park at the time Congress was considering

around suitable sites, resulting in the concentration of uses in dispersed areas. Mining developed at the site of profitable ore deposits;[23] grazing developed where there were grasslands;[24] and recreational uses grew along established routes of access.[25] Each of these uses consumed natural resources; each detracted from the natural environment. Such diverse uses could be controlled and effective protection of the Canyon accomplished only through the application of a uniform standard of preservation. At the Grand Canyon, however, the articulation of uniform regulations governing use was not possible. Through a succession of congressional and executive withdrawals, the Canyon was fragmented into several administrative units. A single geographic entity had been carved into a national park,[26] two national monuments,[27] a national recreation area,[28] a national forest,[29] and parts of three Indian reservations.[30] Each division, managed in response to a discrete policy regarding commercial and recreational uses,[31] allowed different kinds and degrees of development of the land and its resources. This administrative fractionalization of the Canyon produced two results: although the land was all part of a single natural wonder, protection from use was not equal, and the imposition of greater restriction of use was hampered by the need to accommodate several management policies. The resulting patchwork administration of the Canyon detracted from effective preservation of the natural environment.

Grand Canyon National Park

Among the agencies responsible for portions of the Grand Can-

the Enlargement Act. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 1. The master plan included in its designs the length of the Grand Canyon, to which it referred as the Grand Canyon Complex. *Id.* The plan makes manifest administrative intent to protect the natural environment of the Canyon. To minimize the effects of development, the plan concentrates use in areas already developed or affected by use. *Id.* at 2.

23. *See* DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 24-25; M. Verkamp, *supra* note 11, at 28-30.

24. *See* FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 70-71.

25. When prospectors' claims faltered, some converted their shacks into hotels for tourists. J. HUGHES, *supra* note 9, at 76-77. Competition surrounding the location of the railhead on the Canyon rim suggested the importance of the railroad in bringing visitors to the Canyon. M. Verkamp, *supra* note 11, at 31-34, 39-42.

26. 16 U.S.C. § 221 (1970) (Grand Canyon National Park).

27. Presidential Proclamation No. 3889, Jan. 20, 1969, 83 Stat. 924 (Marble Canyon National Monument) (repealed by 16 U.S.C. § 228b(b) (Supp. IV, 1974)); Presidential Proclamation No. 2022, Dec. 22, 1932, 47 Stat. 2547 (Grand Canyon National Monument) (repealed by 16 U.S.C. § 228b(b) (Supp. IV, 1974)).

28. 16 U.S.C. § 460n (1970) (Lake Mead National Recreation Area) (modified by 16 U.S.C. § 228a-j (Supp. IV, 1974)).

29. Presidential proclamation No. 909, July 2, 1908, 35 Stat. 2196 (Coconino and Kaibab National Forests) (modified by 16 U.S.C. § 228a-j (Supp. IV, 1974)).

30. The Navajo, Havasupai, and Hualapai Indian Reservations each incorporate some part of the Grand Canyon. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 5. See text accompanying note 132 *infra.*

31. See discussion note 14 *supra.*

yon, the National Park Service within the Department of the Interior held authority over the largest share.[32] In addition to Grand Canyon National Park, the Park Service directed management of the national monuments which lay at either end of the park.[33] Although the three areas were administered by the same agency, in accordance with the same general policies, Grand Canyon National Park was the site of intensive use,[34] while Grand and Marble Canyon National Monuments remained remote and primitive.[35] The different purposes and policies which implemented the objectives of the reserves help to explain the divergence. They also serve to demonstrate the importance of such factors in determining the balance between use and preservation.

The purpose of Grand Canyon National Park as stated in the act that created it in 1919 was to provide "a public park for the benefit and enjoyment of the people."[36] Alone, this language indicated that any protection of the environment was subject to a right of the people to use the land. The creation of the park would appear a means to provide a benefit and enjoyment for the people, not a preserve for the area's ecology.[37] However, Grand Canyon National Park was included in the system of national parks and so subject also to laws governing the system as a whole.[38] By the terms of the National Park Act, this system was created to:

> promote and regulate the use of federal areas . . . by such means and measures as conform to the fundamental purpose . . . to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for future generations.[39]

32. The national park and monuments, both of which are administered by the National Park Service, 16 U.S.C. § 3 (1970), covered almost 900,000 acres of the Grand Canyon Complex. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, WILDERNESS RECOMMENDATION, GRAND CANYON COMPLEX, ARIZONA 16 (1972) [hereinafter cited as WILDERNESS RECOMMENDATION]. The policy statements of the National Park Service treated both parks and monuments as natural areas to be administered under a single policy. U.S. DEP'T OF THE INTERIOR, COMPILATION OF THE ADMINISTRATIVE POLICIES FOR THE NATIONAL PARKS AND NATIONAL MONUMENTS OF SCIENTIFIC SIGNIFICANCE 9 (1970) [hereinafter cited as ADMINISTRATIVE POLICIES]. At the lower operations level, however, the distinction between park and monument lands was observed. *See* Grand Canyon National Park, Back-Country Use and Operations Plan, 1974 (unpublished material available from Grand Canyon National Park) [hereinafter cited as Back-Country Use and Operations Plan].

33. *See* discussion note 32 *supra*. These were Grand Canyon National Monument, Presidential Proclamation No. 2022, Dec. 22, 1932, 47 Stat. 2547, and Marble Canyon National Monument. Presidential Proclamation No. 3889, Jan. 20, 1969, 83 Stat. 924.

34. From 1968 to 1972, the South Rim area received 90.7 percent of the total park visitation. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 75.

35. *See* WILDERNESS RECOMMENDATION, *supra* note 32, at 21, 24.

36. 16 U.S.C. § 221 (1970).

37. *Id.*; *see* J. ISE, OUR NATIONAL PARK POLICY 5 (1961); R. NASH, *supra* note 8, at 108.

38. 16 U.S.C. § 222 (1970).

39. *Id.* § 1. In 1970 Congress elaborated on the statement of purpose for the

Such language indicates that the major concern of the park system should be the preservation of the natural environment. However, the terms of the Act, in referring to regulation of use and enjoyment of park areas, also seem to contemplate some measure of use. Even if the less expansive language of the Grand Canyon National Park Act [Park Act] were found to control as to that park, both the Park Act and the National Park Act recognized at least recreational use as well as preservation as purposes of the park. This duality necessitated a balance, since neither interest could be allowed to defeat the other without exceeding the terms of both laws.

The task of compromising the park's contradictory goals was complicated by the remaining provisions of the Park Act. Those provisions permitted, in addition to recreational development, certain forms of private development within the park. Following 56 years of growth, this combination of recreation and development would require reconsideration in the Enlargement Act.

Problems with Private Claims. The Park Act did not disturb holdings acquired prior to the creation of the park: valid existing claims were exempted from its provisions.[40] At the Grand Canyon, these were primarily claims and patent titles acquired under federal mining laws.[41] As a result of the Park Act's recognition of such claims, their holders could operate a mine or establish any use consistent with their rights in the land even though it be inconsistent with use restrictions in the park. Private holdings such as these presented a persistent problem for park management. Use of located and patented mining claims for the operation of mines detracted from the natural environment.[42] Furthermore, because of inadequacies in the mining laws, it was possible to use patented claims for development other than as mines.[43]

Elimination of these claims was accomplished only through a gradual and difficult process of acquisition.[44] The last extant mining opera-

national parks: "that, individually and collectively, these areas derive increased national dignity and recognition of their superb environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States . . . ." *Id.* § 1a-1. This language suggests that the nature of the benefit to be derived is linked inextricably to the natural environment of the parks, and would tend to negate an interpretation favoring financial benefit from the commercial use and development of resources.

40. 16 U.S.C. § 224 (1970).

41. *See* M. Verkamp, *supra* note 11, at 28-29, 34-36.

42. See text accompanying notes 48-49 *infra.*

43. There were at least four hotels and one campground operating from cabins built by prospectors on their claims on the South Rim. M. Verkamp, *supra* note 11, at 44-46; J. HUGHES, *supra* note 9, at 76-78. *See* U.S. GENERAL ACCOUNTING OFFICE, *supra* note 11, at 8-14.

44. An example is the struggle to acquire Bright Angel Trail. Congress directed the Secretary to negotiate its purchase from Coconino County, Arizona. 16 U.S.C.

tion in the park, the Little Orphan Claim, was not purchased until 1962.[45] Almost 50 years after the creation of the park, Congress legislated the acquisition of the claim by granting a permit to the mine to operate for 25 years in exchange for all rights to the claim and certain royalties on the production of the mine.[46] Unlike unregulated patent rights, this permit was a conditioned right. Congress limited the extent of the mine and surface construction incidental to it under the terms of the permit and thereby restricted the size and environmental impact of the mining operation.[47] The mine operated under the terms of this permit until 1969 when economic conditions made further extraction infeasible.[48] Yet even in its dormant state the mine poses a threat to the natural condition of the land: the open mine and deteriorating buildings are an eyesore, and without maintenance or security they are a safety hazard.[49] Further, until expiration of the permit in 1987, renewed operation of the mine remains possible should altered economic factors make extraction feasible.[50]

Mining claims were not the only kind of private holding receiving favored treatment in the Park Act. William Randolph Hearst pos-

§ 224 (1970). Coconino County had acquired the trail, which was a principal route into the Canyon, from the individuals who held the trail franchise and operated it as a toll road. M. Verkamp, *supra* note 11, at 50-57. Although Congress had ordered negotiations for its acquisition in the Grand Canyon National Park Act in 1919, purchase of the trail was not accomplished until 1928. Act of June 5, 1924, ch. 264, 43 Stat. 423; J. HUGHES, *supra* note 9, at 139-40.

A primary factor in the delayed acquisition was the opposition of Ralph Cameron, J. ISE, *supra* note 37, at 235-36; M. Verkamp, *supra* note 11, at 60, an Arizonan with sufficient political power to succeed in attaching a proviso to the park's appropriation which prohibited any spending on toll roads. J. ISE, *supra* note 37, at 236. The reasons for Cameron's concerted opposition are not clear. Cameron had personal holdings in the Canyon area which were being challenged at the same time as the toll road acquisition was in process. Litigation of title to mining patents claimed by Cameron reached the United States Supreme Court. In Cameron v. United States, 252 U.S. 450 (1920), the Court determined that the Canyon could validly be reserved as a national monument within the Antiquities Act. 16 U.S.C. §§ 431-433 (1970). The *Cameron* decision also established the principle that a determination by the Secretary of the Interior of the validity of a mining claim is conclusive in the absence of fraud. Cameron retained possession of the claims for 3 years in defiance of the Supreme Court's decision against him. In 1924, the National Park Service evicted him through legal proceedings. J. ISE, *supra* note 37, at 236. It has been suggested that Cameron's opposition to the trail purchase was an attempt to cause the federal government to offer Coconino County something more than the construction of an approach road to the Canyon in exchange for the trail. M. Verkamp, *supra* note 11, at 60.

45. Act of May 28, 1962, Pub. L. No. 87-457, 76 Stat. 79. Further prospecting had been prohibited in 1931. Act of Jan. 26, 1931, ch. 47, § 1, 46 Stat. 1043, *superseding* Act of Feb. 26, 1919, ch. 44, § 6, 40 Stat. 1178.

46. Act of May 28, 1962, Pub. L. No. 87-457, § 1, 76 Stat. 79.

47. *Id.*

48. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 43.

49. All park visitors using the West Rim Drive must pass by the mine site which is an intrusion into the canyon perspective. The mining area is unsightly and obtrusive, security fences are in poor repair, and the entire mine site is a safety hazard to curiosity seekers. Theft and acts of vandalism are not uncommon as the mine has been idle since December 1969.

Id.

50. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 24. The National Park Service has initiated negotiations with the holders of the permit to secure its release prior to 1987. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 43.

sessed a parcel of land extending to within 300 feet of the Canyon's rim.[51] Any structure between the boundary of the parcel and the rim would interfere with its view of the Canyon. The Park Act provided that "[w]here privately owned lands within the said park lie within three hundred feet of the rim of the Grand Canyon no building, tent, fence, or other structure shall be erected on the park lands lying between said privately owned lands and the rim."[52] Although the section described a general category of privately held land, the only parcels which fit the description were Hearst's;[53] the purpose of the provision clearly was to preserve the value of Hearst's lands. While elimination of mining from the park[54] directly protected the land's natural condition, this latter provision only incidentally preserved scenic and natural values by prohibiting construction within described areas. Thus, in preferring the interests of Hearst's private holdings by preserving their value, Congress had fortuitously added to the protection of the environment.

In still another instance, Congress exhibited a preference for private interests within the park by authorizing the Secretary of the Interior in his discretion to permit the members of the Havasupai Tribe to use park lands for agricultural purposes.[55] Prior to the Park Act, the Indians had been allowed to graze their livestock in the reserves; the grant of permission in the Park Act formalized existing practice. Thus, Havasupai interests were to a certain extent believed to outweigh the interest in preserving the land, but their right to use was dependent upon the Secretary's discretion in permitting its continuance.

Problems with Public Uses. In addition to perpetuating private holdings, Congress in the Park Act allowed certain nonrecreational public and quasi-public uses of park lands. Depending upon the determination of the Secretary of the Interior that such uses were consistent with the primary purpose of the park, reclamation projects and

51. J. ISE, *supra* note 37, at 234.
52. 16 U.S.C. § 228 (1970).
53. J. ISE, *supra* note 37, at 234. In 1926, 48 acres of the Hearst lands were exchanged for approximately 25 acres at the boundary of the park. Act of May 10, 1926, ch. 281, 44 Stat. 497.
54. In addition to the acquisition of existing claims, a statutory prohibition of any further introduction of mining operations worked to remove mining from the park. Act of May 28, 1962, Pub. L. No. 87-457, 76 Stat. 79; Act of Jan. 26, 1931, ch. 47, § 1, 46 Stat. 1043, *superseding* Act of Feb. 26, 1919, ch. 44, § 6, 40 Stat. 1178.
55. 16 U.S.C. § 223 (1970). The Havasupai were originally granted 34,240 acres in 1880. Exec. Order of June 8, 1880, 1 C. KAPPLER, INDIAN AFFAIRS—LAWS AND TREATIES 809 (2d ed. 1904). The reservation was reduced to 518 acres 2 years later. Exec. Order of Mar. 31, 1882, 1 C. KAPPLER, *supra*. In 1944 the tribe acquired another 2,560 acres approximately 30 miles south of the reservation. The park land which the tribe had a right to use for agricultural purposes consisted of 56,000 acres adjoining the reservation. 16 U.S.C. § 223 (1970); FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 82. The grant of rights to use reserved lands was made in recognition of the tribe's need for a grazing area larger than their small reservation.

easements for railroads and irrigation projects could exist within the reserve.[56] This power of the Secretary like his overall decisionmaking regarding the park, required a balancing of the interests of use and preservation. For example, the Secretary could place priority on satisfaction of public demand for energy with hydroelectric power and thus allow construction and operation of a dam in the park,[57] despite the detrimental ecological effect of reclamation projects.[58]

The Park Act generally referred to the Secretary of the Interior as the officer responsible for the resolution of confrontations between use and preservation.[59] Within the Interior Department, however, the National Park Service was charged with the administration of national parks.[60] In attempting to implement the indefinite legislative purposes

56. 16 U.S.C. §§ 225, 227 (1970). In other areas where the Secretary has a similar grant of power, his determinations have favored the regulation of use and have been upheld. *See* Udall v. Washington, Va. & Md. Coach Co., 398 F.2d 765 (D.C. Cir.), *cert. denied*, 393 U.S. 1017 (1968) (regulation of commuter bus traffic on George Washington Memorial Parkway for historical and aesthetic reasons upheld); Robbins v. United States, 284 F. 39 (8th Cir. 1922) (regulation of use of automobiles over public highways within Rocky Mountain National Park upheld); 36 OP. ATT'Y GEN. 527 (1932) (deciding that regulations promulgated by the Secretary of the Interior are controlling over state highway regulations as to highways in a national park). At the Grand Canyon, there had been legislation granting railroad easements through the earliest forest reserve to transport ore from mines at the Canyon. Act of May 17, 1898, ch. 343, 30 Stat. 418; Act of June 6, 1896, ch. 336, 29 Stat. 253; H.R. REP. No. 1149, 55th Cong., 2d Sess. (1898). These precedents may provide the Secretary grounds on which to permit further development of the land through easements.

57. The Secretary of the Interior at one time did support the construction of dams within the Grand Canyon, although his position was subsequently reversed. *See generally* Udall, *Shooting the Wild Colorado*, in GRAND CANYON OF THE LIVING COLORADO 83, 86-87 (Nash ed. 1970). When originally introduced in 1960, the Colorado River Basin Project Act contained plans for two dams within the Grand Canyon. H.R. 4671, 89th Cong., 1st Sess. (1965). The dams were considered necessary to finance the project, Meyer, *The Colorado River*, 19 STAN. L. REV. 1, 74 (1966), and were supported by the Department of the Interior on this basis. Clark, *Northwest-Southwest Water Diversion—Plans and Issues*, 3 WILLAMETTE L.J. 215, 231-32 (1965). After a concerted publicity campaign aroused public sentiment against the proposed dams, R. NASH, *supra* note 8, at 228-33; Meyer, *supra* at 74, the Secretary reversed his position and an alternative source of power was found. R. NASH, *supra* at 233. While the Secretary indicated later that he was personally moved by the grandeur of the Canyon, *id.* at 233-34; Udall, *supra* at 83-86, there were other economic arguments against the dams. Projections for the production of the dams were challenged. Clark, *supra* at 231; *see* A. CARLIN, THE GRAND CANYON CONTROVERSY: LESSONS FOR FEDERAL COST-BENEFIT PRACTICE 1 (1967).

58. In at least one instance, the critical need for a supply of water has overridden the concern for protection of the environment. In order to provide water for the South Rim, a utility corridor across the floor of the Canyon was created with the construction of a water pipeline. The pipeline was hailed as a temporary solution to the water supply problem. Arizona Daily Sun, July 22, 1970; Williams News, July 30, 1970 (clippings on file in the *Arizona Law Review* office). Unfortunately, the trans-canyon waterline lies exposed across the Canyon; its presence not only detracts from the natural condition of the land but also from the potential protection of that area as wilderness. WILDERNESS RECOMMENDATION, *supra* note 32, at 19-20.

The current state of the law regarding reclamation projects in the Grand Canyon is unclear. See text accompanying notes 169-73 *infra*.

59. 16 U.S.C. §§ 225-227 (1970). Congress has delegated to the Secretary the task of balancing competing uses and the Secretary's determination of the weight of those uses will generally be upheld. Udall v. Washington, Va. & Md. Coach Co., 398 F.2d 765, 769 (D.C. Cir.), *cert. denied*, 393 U.S. 1017 (1968).

60. 16 U.S.C. § 3 (1970).

of the parks, the Park Service generally interpreted the law to favor protection. It therefore resisted most attempts to introduce destructive commercial uses, public or private, into the national parks[61] and opposed plans to construct dams or reservoirs within the park system.[62] Where the National Park Service effected its policy of park inviolability, the interests of natural values in the parks were protected.

Opposed to the concept of park inviolability, however, was the National Park Service's attempt to accommodate public demands for recreational utilization of the land. The Mission 66 Plan,[63] drafted in 1956, typified the latter policy. The project attempted to control the impact of a rapidly multiplying number of visitors,[64] but it did not eliminate excessive use. It projected demands for park use 10 years in advance and proposed means to meet those levels of use. Although the plan attempted to schedule the expansion of existing facilities at the Grand Canyon, Grand Canyon Village continued to grow almost randomly.[65] The village became a rambling, yet congested town, despite its location in the heart of a national park.[66] Beyond the village, other areas of the Canyon began to show the impacts of overuse. Unrestricted raft trips on the Colorado River resulted in a reduction of the quality of the river experience because of the crowding of campsites, pollution of beaches, and the ecological disturbances associated with

61. *See* J. ISE, *supra* note 37, at 433-36, 449-51.

62. One extended struggle against the construction of dams in reserved areas pitted the National Park Service against the Secretary of the Interior. Bureau of Reclamation plans for the development of the Upper Colorado River Basin included a dam at Echo Park in Dinosaur National Monument. E. RICHARDSON, DAMS, PARKS AND POLITICS 53 (1973). The Secretary of the Interior, over the opposition of the Director of the National Park Service, had approved construction of a dam in Dinosaur because of the economic and engineering advantages of the site within the monument. J. ISE, *supra* note 37, at 477-80; E. RICHARDSON, *supra* at 56-60. Public opposition to the plans was aroused on two grounds: the dangerous precedent of subjecting park lands to reclamation development, and political concerns over allocation of Colorado River water. J. ISE, *supra* at 558; E. RICHARDSON, *supra* at 134-40; 14 NATURAL RESOURCES J. 431, 433 (1974). In its final form, the Colorado River Storage Project Act, 43 U.S.C. §§ 620-620o (1970), did not include a dam in Dinosaur National Monument and incorporated provisions for the protection of another monument threatened by reservoir waters. *Id.* §§ 620, 620b. But see text accompanying notes 108-12 *infra*.

63. FRIENDS OF THE NATIONAL PARK SERVICE, OUR HERITAGE: A PLAN FOR ITS PROTECTION AND USE (1956); J. HUGHES, *supra* note 9, at 171.

64. J. HUGHES, *supra* note 9, at 171. Current visitation is approximately 15,000 to 18,000 persons each day depending on the season. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 89. The number of visitors is rising rapidly. Arizona Daily Star, Apr. 4, 1976, § D, at 8, col. 1. The visitation rate projected for 1980 is 40,000 per day. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, DENVER SERVICE CENTER, GRAND CANYON VILLAGE DEVELOPMENT PLAN 19 (1972) [hereinafter cited as GRAND CANYON VILLAGE DEVELOPMENT PLAN].

65. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 1. The Topsy-like growth of the village occurred despite attempts as early as 1918 to control it through planning. *See* F. WAUGH, A PLAN FOR THE DEVELOPMENT OF THE VILLAGE OF GRAND CANYON, ARIZONA (1918).

66. J. HUGHES, *supra* note 9, at 142-43. In addition to its visitors, the village must accommodate park and concession personnel who are residents. GRAND CANYON VILLAGE DEVELOPMENT PLAN, *supra* note 64, at 17.

the use of motorized river craft.[67] The drone of automobiles and aircraft reached destructive proportions.[68]

In response to the detrimental consequences of its prior policy of accepting all visitors, in the seventies the National Park Service began to restrict use of the national parks. This goal was partly accomplished through the power to implement closures. Park superintendents were granted authority to close portions of the parks in order to protect not only people, but the land itself.[69] At the Grand Canyon, this power was utilized to close the West Rim Drive to traffic.[70] A bus running at regular intervals was provided as a substitute for private transportation; it was expected to give a park experience essentially equivalent to that obtainable prior to the closure, while reducing traffic congestion and pollution.[71] Colorado River raft trip regulation demonstrated another kind of control; a permit system was instituted to regulate river trips.[72] These restrictions on recreational use in areas where the National Park Service formerly had not imposed any limitation on access indicated a reversal of the Park Service's policy of accommodating all visitors. A policy of controlled use helped to preserve the natural environment and thereby the quality of recreational visitors' experiences at the Canyon, but it did not sate public recreational demands.[73]

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67. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 15-16.

68. "The sound of motor vehicles and aircraft are the most disruptive noise sources in Grand Canyon Village and on Bright Angel Point, while aircraft and outboard motor noise are the most disruptive in backcountry areas and near the river." *Id.* at 48.

69. 36 C.F.R. § 2.2 (1975).

70. *See* Turner, *Restored Train Service Could Relieve Grand Canyon Traffic*, Arizona Daily Star, Aug. 31, 1975, § 1, at 1, col. 3.

71. *Id.*

72. The permit system regulated the number of trips in each of two types of categorizations: private and commercial, and motor and oar. Back-Country Use and Operations Plan, *supra* note 32, at appendix.

73. The National Park Service's emerging policy of controlled use was founded on the concept of carrying capacity. W. EVERHART, THE NATIONAL PARK SERVICE 226 (1972). By reference to this concept, an acceptable level of use could be estimated and then implemented through a system of permits or closures. Carrying capacity may be defined as the number of persons which may visit a park without irreparably straining its resources. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 68. The concepts of physical, biotic, and social carrying capacity reflect different bases from which that number is measured. *See* S. BRICKLER, D. LARSON, & R. JOHNSON, SOCIAL CARRYING CAPACITY OF GRAND CANYON COLORADO RIVER FLOAT TRIPS 5 (1974). To determine carrying capacity of any nature, research must be performed to measure the impact of a given level of use; then an acceptable degree of use is extrapolated from the research information by reference to a predetermined degree of impact defined as acceptable. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 15-16. Carrying capacity is a management tool which relies on reference to a fundamental conceptualization of what is acceptable in terms of the impacts of use. That basic definition can be provided specifically by administrative determination and generally by statutory indication. Interview with Stanley Brickler, Associate Professor, University of Arizona, College of Agriculture, Institute for Renewable Natural Resources, in Tucson, Ariz., July 20, 1976. Regulation of Colorado River raft trips demonstrates the nature of the process which is used to establish carrying capacity. The number of trips is controlled through a permit system. By gradually reducing the number of permits issued, the sum of trips is reduced to a designated amount. *Hearings on S. 1296 Before the Subcomm. on Parks and Recreation of the Senate Comm. on Interior and Insular Affairs*, 93d Cong., 1st

The concept of restricted use was complemented by the establishment of a system of zoning within the park.[74] The zone categories provided a fundamental policy which indicated an acceptable level of use. Areas of the park were classified as high density recreation, general outdoor recreation, historic and cultural, natural environment, or outstanding natural areas, based on definitions constructed in the recommendations of the Outdoor Recreation Resources Review Commission.[75] The titles describe in decreasing degree the kinds of use each zone accommodated. In each zone, a separate policy governs the amount of development to be permitted.[76] High density recreation areas could incorporate sports facilities and overnight accommodations, while outstanding natural or primitive areas could contain only minimal maintenance or recreational facilities. Often the zones reflected existing patterns of use; areas that were extensively developed, such as the South Rim of the Grand Canyon, were zoned for high density recreation. The value of the zones in protecting the environment was that they limited development to places which had already been affected by use[77] and prevented it from reaching into other areas as yet unaffected.[78]

Such a zoning system has the potential to increase protection of natural values if it is used as a basis for planning the development of park facilities. To solve the problems of Grand Canyon Village, the

Sess. 50 (1973) [hereinafter cited as *Hearings on S. 1296*]. When that degree of use is reached, it will be maintained in order to permit an accurate measure of the effects of that use on the environment. FINAL ENVIRONMENTAL STATEMENT, *supra* at 15-16; *Hearings on S. 1296, supra*; *see* M. Boster, Colorado River Trips Within the Grand Canyon National Park and Monument 6, Apr. 21, 1972 (unpublished thesis in University of Arizona Main Library); D. Larson, An Analysis of the Motor-Row Conversion Issue 13, Dec. 4, 1974 (unpublished thesis in University of Arizona Main Library). After consideration of the research data, a determination of permanent use regulations can be made. Thus, present permit regulations do not reflect a final determination. The restrictions and the protection they afford the river are temporary. However, the National Park Service has indicated that it intends to control river use carefully, S. BRICKLER, D. LARSON, & R. JOHNSON, *supra* at 3, and therefore the restrictions are likely to continue in some form.

74. *See* Back-Country Use and Operations Plan, *supra* note 32, at introduction.

75. OUTDOOR RECREATION RESOURCES REVIEW COMM'N, *supra* note 5, at 7, 96-120.

76. See discussion note 78 *infra*.

77. *See* FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 2.

78. The land was zoned according to the land use classifications, then was further subdivided into management units, and finally into management zones, the regulations of use becoming more detailed at lower levels. *See* Back-Country Use and Operations Plan, *supra* note 32, at introduction. For example, zone policies regarding natural and primitive class lands were explicit in the intent to proscribe anything detrimental to natural values: "Nothing in the way of human use should be permitted in outstanding natural areas that intrudes upon or may in any way damage or alter the scene. The sites and features are irreplaceable . . . . The protection and maintenance of natural conditions and a wilderness atmosphere are paramount management objectives." *Id.* part 2, chapter 1, at 1. Management zones and units, in light of topographical and other conditions of the locale, established regulations restricting particular uses. Recreational use of livestock, such as horseback riding, required the packing in of feed because no grazing was permitted. *Id.* at 2. Similarly, hikers were subject to trailhead limitations on overnight camping. *Id.* part 1-b, chapter 2, at 1.

Grand Canyon Village Development Concept Plan utilized the zoning system to conceive a reorientation of patterns of use in the village area.[79] The proposal's objective was to permit reclassification of land use zones in the village area by eliminating the complex of hotels and shops on the Canyon rim and restoring it to its natural condition.[80] Already developed areas of the park would receive maximum use, thereby minimizing the impact of use on areas still primitive.[81] In addition to restoring vegetation and relocating construction, the proposal ensured the continued protection of the reclaimed environment with appropriate zoning classifications. The zones would preclude any greater degree of commercial or recreational use than that established by the plan.

The land use classification zones and other restrictive regulations implemented the preservationist purpose of the park on an administrative level. Park legislation struck only an uncertain balance between policies of use and preservation. This uncertainty left room for a shift in administrative emphasis. Any and all operational determinations could be made to facilitate development of park lands without violating the terms of the Park Act. New uses could be introduced: plans to construct a tram into the Canyon would permit a form of recreation not previously available and would not violate high density recreation zoning.[82] Yet, the construction and operation of such a tram line would involve considerable development which would intrude on the experience of other park visitors. Further, existing restrictions on some uses could be removed administratively. Regulations limiting the number of Colorado River raft trips are temporary measures.[83] The possibility of the elimination of such controls by administrative action limited the effectiveness of land classifications and other similar administrative protections of the environment.[84] Notwithstanding the inher-

79. GRAND CANYON VILLAGE DEVELOPMENT PLAN, *supra* note 64.

80. DRAFT ENVIRONMENTAL STATEMENT, *supra* note 2, at 22-23. The plan also relocated other facilities, such as the residences of park personnel and park support structures, in areas away from the rim that were already affected by use. The plan shifted the burden of providing certain kinds of facilities, such as overnight accommodations, to public and private areas outside the park. *Id.*

81. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 1.

82. The feasibility of such a tram has been studied, and a private group has proposed its construction to the National Park Service. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at A-109 to -114.

83. See discussion note 73 *supra.*

84. Use of the zones themselves may be reversed or discontinued in the discretion of park administrators unless those determinations are subject to challenge. Judicial review of any reversal in policy will not be available unless a party aggrieved by the change has standing to raise a challenge. Administrative Procedure Act, 5 U.S.C. § 702 (1970); *see* United States v. S.C.R.A.P., 412 U.S. 669 (1973); Sierra Club v. Morton, 405 U.S. 727 (1972). A party must be able to "allege that he has been or will in fact be perceptibly harmed by the challenged agency action," 412 U.S. at 688, although that harm need not be economic. 405 U.S. at 734. Even if some person can demonstrate sufficient injury from a change in administrative policies of the park's manage-

ent weaknesses of administrative measures, National Park Service regulations increased protection of the Grand Canyon and its environment by controlling use in those areas most affected by use. The protection came, however, only after experience with policies of unrestricted use resulted in some detriment to the park.

Grand Canyon and Marble Canyon National Monuments

The monuments which flanked Grand Canyon National Park were administered under the same general policies as the park.[85] However, Grand Canyon and Marble Canyon National Monuments existed for a different purpose than the national park. National monuments are created pursuant to the Antiquities Act of 1906[86] in order to prevent the imminent loss of invaluable artifacts.[87] Because the purpose of the Antiquities Act was to proscribe the destruction of archeological sites,[88] the scope of the law did not specifically encompass the protection of scenic and natural values. Nevertheless, within the category of scientific and historic areas which were protected, there arose a class of monuments established on the basis of a single object of scenic or scientific interest.[89] Although there was no express mandate to maintain the natural environment, the preservation of natural conditions was consistent with the purpose of preserving an object of scientific value.[90] Particularly when the basis of the monument was an entire canyon, it was

ment, the administrative alteration may be precluded from judicial review. The director of the national parks may be able to assert sovereign immunity. Arthur v. Fry, 300 F. Supp. 622 (E.D. Tenn. 1969). Further, the matter may not be reviewable because it has been committed to agency discretion. Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 410 (1971); Administrative Procedure Act, 5 U.S.C. § 701 (1970); Saferstein, *Nonreviewability: A Functional Analysis of "Committed to Agency Discretion,"* 82 HARV. L. REV. 366 (1968). The decision in *Overton Park* suggested that review would be available only where external objective circumstances indicated the exercise of discretion was arbitrary. 401 U.S. at 413-16. Where a court has a standard of law to apply, review of agency action may be had. *See* United States v. S.C.R.A.P., *supra*; Parker v. United States, 448 F.2d 793 (10th Cir. 1971), *cert. denied*, 405 U.S. 989 (1972). Thus, a court could use the dictates of the National Park Act and the Grand Canyon National Park Act as a standard of law by which to evaluate a determination to discontinue use of the zones. Also, an agency's threshold determinations, such as the decision whether an environmental impact statement is required, is subject to review. Save Our Ten Acres v. Kreger, 472 F.2d 463 (5th Cir. 1973). Therefore, a person at least may have the opportunity to compel preparation of a statement, to which he may contribute at public hearings or in written comments. *See* 42 U.S.C. § 4332 (1970).

85. See discussion note 32 *supra*.

86. Act for the Preservation of American Antiquities, 16 U.S.C. §§ 431-433 (1970).

87. The Act was prompted by widespread vandalism at archeological sites. J. ISE, *supra* note 37, at 144-54; R. SHANKLAND, STEVE MATHER OF THE NATIONAL PARKS 50 (1951).

88. 16 U.S.C. § 433 (1970). The Act provides a punishment for the excavation or injury of designated areas of federal lands. *Id.*

89. ADMINISTRATIVE POLICIES, *supra* note 31, at 11.

90. The Act specifically authorizes setting aside such areas of land as necessary for the "proper care and management of the objects to be protected." 16 U.S.C. § 433 (1970).

necessary to maintain the undisturbed environment because the environment produced the conditions which gave the area scientific interest.

Even though the purpose of the monuments, directed toward the protection of historic and scientific objects, was somewhat more preservation oriented than that of the park, the National Park Service did not create distinct policies for recreation use of monument land. Yet significant differences in actual use persisted. Not readily accessible and without developed recreational facilities,[91] Grand Canyon and Marble Canyon National Monuments remained remote and primitive areas. Recreational overuse, a significant problem for park areas, was not a problem in the monuments. The natural environment in the monuments nevertheless was threatened by other uses. One minor but constant problem was the presence of grazing livestock. Although the competition of domestic livestock with native wild life for sparse grasses was minimal, the mere presence of domestic cattle created an artificial condition which detracted from the natural environment.[92]

Proposed construction of reclamation projects within the monument posed a more serious threat to the environment of protected areas. While there was no clear legislative dictate regarding reclamation and irrigation projects in the monuments, the National Park Service utilized its policy of park inviolability to oppose such efforts.[93] This policy resisted state and federal plans for development of Colorado River water and power supplies, several of which included dams within the Grand Canyon. The two most frequently selected sites within the length of the Grand Canyon were Bridge Canyon[94] and Marble Canyon.[95] Although neither location was actually within the boundaries of a reserved area,[96] the reservoirs created by impounded waters would back into protected areas.[97] The validity of constructing reclamation

91. *See* WILDERNESS RECOMMENDATION, *supra* note 32, at 21, 24.
92. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 70.
93. *See* J. ISE, *supra* note 37, at 477-78; E. RICHARDSON, *supra* note 62, at 56-60.
94. *See* S. 75, 81st Cong., 1st Sess. (1949); S. 1175, 80th Cong., 1st Sess. (1947); S. 2346, 79th Cong., 2d Sess. (1946).
95. The dam at Marble Canyon was proposed as an adjunct to the one at Bridge Canyon. *See* U.S. DEP'T OF THE INTERIOR, BUREAU OF RECLAMATION, THE COLORADO RIVER 168 (1946); U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, A SURVEY OF THE RECREATIONAL RESOURCES OF THE COLORADO RIVER BASIN 136-38 (1946).
96. Bridge Canyon lay to the west of the monument boundary. Marble Canyon was not part of a reserve until 1969, Presidential Proclamation No. 3889, Jan. 20, 1969, 83 Stat. 924, after the debate concerning the Colorado River Basin Project Act, see discussion note 57 *supra*; text accompanying notes 98-105 *infra*, was settled by its enactment without the proposed dams.
97. *See generally* Friends of the Earth v. Armstrong, 485 F.2d 1 (10th Cir.), *cert. denied*, 414 U.S. 1171 (1974). It was anticipated that the Bridge Canyon Dam, for instance, would back water 40 miles into Grand Canyon National Monument. R. NASH, *supra* note 8, at 228.

projects which would affect reserved areas was challenged in legislative debate concerning the Colorado River Basin Project Act [Project Act].[98] The Project Act as proposed[99] was a comprehensive plan for development of hydroelectric power in the Colorado River. The project included plans for dams both at Bridge and Marble Canyons within the Grand Canyon, the power from which was expected to help finance the project.[100] However, significant public opposition to the flooding of portions of the Grand Canyon overcame economic arguments in favor of the dams.[101] In fact, the extent of the outcry against the dams was such that the Project Act in its final form contained two separate proscriptions of such projects.[102] Congress wrote into the Project Act a clear expression of its intention to prohibit the construction of dams in any portion of the Grand Canyon.[103] What appeared to be an absolute proscription, however, was not as comprehensive as it seemed. The Project Act failed to consider the Park Act provision permitting the Secretary of the Interior in his discretion to allow the use of park lands for reclamation projects.[104] The prohibitions of the Project Act were expressed in terms of that project alone;[105] as a result, construction of dams outside of that project might be permitted.

Further, because of the operation of the doctrine of implied repeal, attempts to construct reclamation projects might be successful even within the Colorado River Basin Project itself. It is generally recognized that courts may construe inconsistent congressional action as an implied nullification of statutory prohibitions, though such an interpretation is not favored.[106] Such an interpretation has occurred

98. 43 U.S.C. §§ 1501-56 (1970).
99. H.R. 4671, 89th Cong., 1st Sess. (1965).
100. U.S. DEP'T OF THE INTERIOR, BUREAU OF RECLAMATION, *supra* note 95; Meyer, *supra* note 57; Clark, *supra* note 57, at 231.
101. R. NASH, *supra* note 8, at 228-33.
102. 43 U.S.C. §§ 1523, 1555 (1970). Additionally the City of Los Angeles and the State of Arizona stipulated they would not construct a power project on the Colorado River within the Grand Canyon under the terms of the Federal Power Act. 16 U.S.C. § 791a (1970); R. NASH, *supra* note 8, at 234.
103. The law stated "[t]hat nothing in this section or in this Act contained shall be construed to authorize the study or construction of any dams on the main stream of the Colorado River between Hoover Dam and Glen Canyon Dam." 43 U.S.C. § 1555 (1970).
104. 16 U.S.C. § 225 (1970).
105. Since the proscriptions were expressed only in terms of specific projects undertaken by specific entities, see discussion note 102 *supra*, the Federal Power Commission might license another project or another entity to construct dams in the canyon. There are, however, certain constraints on its power to do so. It has been held that the Commission has a duty to protect the commercial and recreational uses of waterways. Hudson River Fisherman's Ass'n v. Federal Power Comm'n, 498 F.2d 827 (2d Cir. 1974). This duty might constrain the granting of any license within the Grand Canyon if the dams could be found detrimental to recreational use of the river.
106. The United States Supreme Court has explained the doctrine as follows:
> The cardinal rule is that repeals by implication are not favored. Where there are two acts upon the same subject, effect should be given to both if possible. There are two well-settled categories of repeal by implication—(1) where pro-

even in the face of Congress' refusal to repeal the proscriptive language of a prior act. The decision in *Friends of the Earth v. Armstrong*[107] demonstrates how the doctrine was used to overcome emphatic prohibitions against intrusion of reclamation projects into reserved areas, even when Congress had failed to act on proposed repeals of those prohibitions. In *Friends of the Earth*, the Tenth Circuit determined that Congress had impliedly repealed statutory proscriptions analogous to those in the Project Act by inconsistent action.[108] The controversy arose when reservoir water impounded by Glen Canyon Dam backed into the Rainbow Bridge National Monument and threated to submerge part of the monument's central feature, Rainbow Bridge. Friends of the Earth, a conservation group, sued to enjoin impoundment of reservoir water to the extent it would submerge the bridge, and to limit the extent of the reservoir to the monument boundary. The action was based on two sections of the Colorado River Storage Project Act which declared that no water should intrude on national parks or monuments and that measures should be taken to protect the monument.[109] In order to avoid that language and allow the impounded water to back into the monument,[110] the court reasoned that the prohibition of water intruding on the monument depended upon the mandate to construct protective works.[111] The court then found that the failure of Congress to appropriate funds for planned incidental works, in conjunction with Congress' approval of construction of Glen Canyon Dam to a height sufficient to permit the impounding of water back to the monument, impliedly repealed the proscriptions of the Colorado River Storage Project Act.[112] The application of the decision and rationale of

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> visions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; and (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate similarly as a repeal of the earlier act. But, in either case, the intention of the legislature to repeal must be clear and manifest; otherwise, at least as a general thing, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue to speak, so far as the two acts are the same, from the time of the first enactment.

Posadas v. National City Bank, 296 U.S. 497, 503 (1936). The Court has refused to find a legislative intent to suspend one act with the provisions of another when Congress has refused to act expressly, Georgia v. Pennsylvania R.R., 324 U.S. 439 (1944), or its intent is not manifest. United States v. Dickerson, 310 U.S. 554 (1940).

107. 485 F.2d 1 (10th Cir.), *cert. denied*, 414 U.S. 1171 (1974).

108. *Id.* at 8.

109. 43 U.S.C. §§ 620, 620b (1970).

110. It has been suggested that one factor which may have influenced the court's determination was the substantial amount of money invested in the Glen Canyon Dam project to date and the great amount of money necessary to rectify the circumstances in accordance with the original provisions of the statute. 14 NATURAL RESOURCES J. 431, 437 (1974).

111. 485 F.2d at 7.

112. *Id.* at 8. The court so decided in the face of uncertain legislative intent and Congress' refusal to repeal the proscriptions itself. 14 NATURAL RESOURCES J. 431, 437-38 (1974); 13 UTAH L. REV. 808, 815-18 (1973).

Friends of the Earth to other instances of contradictory congressional acts is limited, however, because it did not take into account the requirement of the United States Supreme Court that a specific legislative intent to abrogate one act with the provisions of another be found.[113] According to the Supreme Court, that intent may not be found when Congress has refused to act expressly regarding the uncertainty.[114] Therefore, in a context which did not involve the extensive economic commitments present in *Friends of the Earth*, another court might be more willing to perceive and preserve the congressional intent to prevent any flooding of the Grand Canyon.

Implied repeal might yet be found, however. The pronouncements of Congress regarding the building of dams in the Grand Canyon in the Project Act are distinguishable from those in the Colorado River Storage Project Act. The former made no reference to protective measures on which its proscriptions might rely. Nevertheless, the interdiction of dams was expressed only in the context of the Colorado River Basin Project. By enacting another project with authority to construct dams in the Grand Canyon, Congress could allow the operation of the doctrine of implied repeal.[115] Such a possibility is restricted because considerable effort would be required to produce congressional action which in any event would be subject to public scrutiny. In contrast to administrative determinations, either factor contributes to the likelihood of careful consideration of any action regarding the Canyon and thereby lessens the probability of inconsistent action.

Lake Mead National Recreation Area

Unlike the park and monuments, which were created around naturally occurring conditions, Lake Mead National Recreation Area was

113. See discussion note 106 *supra.*

114. Georgia v. Pennsylvania R.R., 324 U.S. 439 (1944).

115. As recently as 1974, Representative Sam Steiger proposed an amendment to the Enlargement Act bill which if successful could have been construed as such inconsistent action. 120 CONG. REC. E6390 (daily ed. Oct. 9, 1974). The Steiger amendment would have authorized construction of a dam in the Grand Canyon as a joint project of the Hualapai Indian Tribe and the State of Arizona. A provision in the amendment authorizing the Federal Power Commission to license the project would have acted as an implied repeal. Such authorization was not required by the Federal Power Act, which required specific congressional authorization only for the licensing of dams within the boundaries of national parks or monuments as they were constituted as of Mar. 3, 1921. 16 U.S.C. § 797a (1970). The Grand Canyon National Park boundary did not include the proposed dam sites until passage of the Enlargement Act in 1975. The effect of this provision on Grand Canyon National Park is uncertain because the Federal Power Act had earlier been declared inapplicable to that park. *Id.* § 221b. However, the Steiger amendment could have had the effect of repealing section 221b even in the face of a statement that the provisions of the Colorado River Basin Project Act were not to be affected.

The dam was proposed because it offered revenue to the Hualapai, construction jobs, and a pollution-free source of power. H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 33, 35 (1974). The economic benefits of the dam were urged as an offset against its environmental costs.

created around an artificial condition.[116] Therefore, the administration of Lake Mead National Recreation Area, distinct from other reserves in the Grand Canyon area, has emphasized use and development of the land for public benefit.[117] Administrative countenancing of development is consistent with the statute which established the recreation area.[118] The statutory and administrative purpose of such areas is to foster recreational use of reclamation project areas. Thus, hunting is a use within the recreational purpose of the reserve[119] although it is not generally permitted in parks and monuments.[120] However, uses of the land beyond recreation, some of which are detrimental to the environment, are also permitted in the recreation area. Mining, a commercial use unrelated to recreation, is also possible in the recreation area.[121] The lake itself is created by a reclamation project, so further reclamation construction would not be an unprecedented intrusion.[122] The statutory purpose of the recreation area made reference to preservation of the land, but its emphasis and effect was to favor use of the land. The portion of the Canyon within the recreation area, thus, was not protected from the conflict between use and preservation.

Areas Adjacent to the Canyon

To the north and south of Grand Canyon National Park, large areas, including canyons tributary to the Grand Canyon, remained within the Kaibab National Forest. The Forest Service within the Department of Agriculture administered the national forest under the terms

116. Lake Mead is the reservoir created by the waters impounded by Hoover Dam.

117. The statute creating Lake Mead National Recreation Area stated three purposes: administration for "public recreation, benefit and use;" preservation, development and enhancement of recreational potential; and, finally, the preservation of scenic, historic, and scientific features. 16 U.S.C. § 460n (1970). This enumeration did not stress the preservation function; instead, the use and development of the land for recreation was emphasized.

118. Knibb, *National Recreation Areas: Evolving Legislative Answer to Land Use Conflicts*, 6 LINCOLN L. REV. 1, 16 (1970).

119. 16 U.S.C. § 460n-4 (1970).

120. *See* U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, DENVER SERVICE CENTER, DRAFT ENVIRONMENTAL STATEMENT: PROPOSED WILDERNESS CLASSIFICATION FOR GRAND CANYON NATIONAL PARK, ARIZONA II-36 (1976) [hereinafter cited as PROPOSED DRAFT ENVIRONMENTAL STATEMENT].

121. 16 U.S.C. § 460n-3 (1970); Knibb, *supra* note 118, at 17-18. The statute retains some control over the extent of mining development by allowing only mineral leases, as opposed to patents which are not restricted.

122. The Colorado River Basin Project Act banned the construction of dams in the Grand Canyon, but its proscriptions may be defeated by inconsistent congressional action. See text accompanying notes 106-15 *supra*. The act creating the recreation area does not expressly prohibit reclamation projects or a number of other potential uses. Knibb, *supra* note 118, at 20; *see* 16 U.S.C. §§ 460n to 460n-9 (1970). In the absence of a clear legislative prohibition, administrative policies would probably favor development of the land. Administrative policies of national recreation areas are more liberal than those for national parks. U.S. DEP'T OF THE INTERIOR, COMPILATION OF THE ADMINISTRATIVE POLICIES FOR THE NATIONAL RECREATIONAL AREAS 54 (1963).

of the Forest Reserve Act[123] and the presidential proclamation establishing the forest reserve.[124] Neither the statute nor the proclamation expressed a clear intention as to the purpose of the reserve except to the extent that both indicated that protection of timber was in the public interest.[125] Under the vague mandate of the law, the objective formulated by the Forest Service in regard to the timber was that of maximum sustained yield.[126] This active policy, which continues to guide Forest Service management policies, calls for scientific management of a forest to produce a continuous and consistent supply of timber.[127] This assertive plan is complemented by the philosophy of multiple use, which accommodates other commercial and recreational uses of the land to the extent that they are not detrimental to the most productive use of the forest.[128] Thus, uses such as grazing, mining, camping, and skiing could be permitted.[129] Because the Forest Service emphasized the active management of the land, their fundamental operating policies were not the same as those of the National Park Service in management of Grand Canyon lands. Notwithstanding their differences, both the Forest Service and the Park Service functioned to protect the land from unregulated private use, and the Forest Service cooperated with the Park Service in the administration of federal lands in the Grand Canyon area.[130] Nevertheless, the fact remained that the juxtaposition of park and forest lands presented a further conflict between management policies for reserved lands in the Canyon area.

The national park, monuments, and forest, although diverse in the degree of protection granted the natural environment of the Canyon, had one common facet. Each reserve had been established on the basis of a provision of law which reserved title to the land in the government.[131] There were other parts of the Canyon, however, that did not

123. 16 U.S.C. § 471 (1970). Originally, the Act stated:
> That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as national forests, and the President shall, by public proclamation, declare the establishment of such forests and the limits thereof.

Act of Mar. 3, 1891, ch. 561, § 24, 26 Stat. 1103 (now 16 U.S.C. § 471 (1970)).

124. Presidential Proclamation, No. 909, Jan. 11, 1908, 35 Stat. 2175.

125. The Forest Reserve Act simply stated that the President might declare timbered areas as public reserves. 16 U.S.C. § 471 (1970); *see Ex parte* Hyde, 194 F. 207, 213 (N.D. Cal. 1904).

126. 16 U.S.C. § 528 (1970); R. NASH, *supra* note 8, at 134; J. SHANKLIN, MULTIPLE USE OF LAND AND WATER AREAS 1-3 (Outdoor Recreation Resources Review Comm'n Study Report No. 17, 1962).

127. Because of this policy, the status of forest reserve did not preclude the use of the resources therein. M. FROME, THE FOREST SERVICE 14-15 (1971).

128. 16 U.S.C. § 528 (1970); 43 U.S.C. § 1411(b) (1970).

129. D. BARNEY, THE LAST STAND 7-16 (1974).

130. *See Hearings on S. 1296, supra* note 73, at 46.

131. *See* authorities cited notes 26-29 *supra*.

receive such protection because they were held by the United States only in its capacity as trustee for Indians. The Navajo, the Hualapai, and the Havasupai tribes, native to the Grand Canyon region, all had reservations adjacent to or within the reserved areas of the Canyon[132] which were expected to provide homes and livelihood for resident Indians. While development of reservation lands for the benefit of Indian people was consistent with the purpose of the reservations, it was not consonant with the preservation of a significant natural wonder. Further, because of their history of residence in the area and past unequal dealings with the government, the tribes claimed lands beyond the boundaries of their reservations. In particular, the Havasupai asserted that a substantial portion of northern Arizona belonged to the tribe.[133] The Indian Claims Commission had made an award to the tribe in 1969 in compensation for these claims,[134] but the question of whether that award—which was based in part on a quitclaim deed—was a full settlement of the tribe's claims was disputed.[135] These kinds of claims to Grand Canyon lands raised more than the issue of the priority of preservation over commercial development to benefit the tribe. They raised a challenge as to title to the land itself.

Thus, prior to 1975, the Grand Canyon was divided among several administrative units. The fractionalized method of management produced the anomoly of ecologically interrelated areas being distinguished on the basis of artificial boundaries. The permissible uses of each segment of land depended upon unnatural administrative distinctions. No single policy controlled use in accordance with the efficient and effective protection of the natural environment of the entire Grand Canyon area.

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132. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at A-50 to -51 (statement of DNA-People's Legal Services, Inc.), 5 (Boundary Map, Grand Canyon National Park).

133. H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 8-9 (1974).

134. *Id.* at 9.

> In its litigation before the Indian Claims Commission—an independent judicial body created by the Congress to determine just compensation for lands taken by the United States from Indian tribes without compensation—the Havasupai Tribe successfully contended that it held aboriginal title to more than 2¼ million acres of land in the Grand Canyon region for which it was entitled to compensation. Based on a stipulated agreement between the tribal counsel (with the approval of the tribe) and representatives of the United States the tribe received a judgment totaling $1,240,000 for the lands taken.

Id.

135. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 82; H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 25 (1974); S. REP. No. 93-406, 93d Cong., 1st Sess. 15 (1973). The effect of the Indian Claims Commission award to the Havasupai could have been found to have been a waiver of the tribe's rights in the land. *See* H.R. REP. No. 93-1374, *supra* at 30. A condition of the award, which was to compensate the tribe for lands taken from them, was a quitclaim deed for those lands. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 82. This deed and the award could have been construed as final settlement of the claims of the Havasupai.

THE 1975 GRAND CANYON NATIONAL PARK ENLARGEMENT ACT

The problems presented by the patchwork administration of the Grand Canyon prompted Senator Barry Goldwater to introduce legislation to further protect the Canyon.[136] When enacted on January 3, 1975, the Grand Canyon National Park Enlargement Act contained three principal means by which to accomplish greater protection of the outstanding scenic, scientific, and natural values of the Canyon. First, the law expanded the park boundaries.[137] Additionally, it intensified the regulation of certain uses within the park.[138] Finally, the Act ordered that the enlarged park area be studied to determine its suitability for further protection.[139] In general, the Act was successful in implementing these means to accomplish its objective of increasing protection of the Canyon. However, specific provisions instituting or perpetuating conflicts between use and preservation of the land tended to detract from its achievements.[140] Thus, the Enlargement Act represents only a partial solution to the problems of protecting the Grand Canyon.

Enlargement of Park Boundaries

The Enlargement Act's most significant provision was the doubling in size of Grand Canyon National Park,[141] the whole of the new park being placed under the jurisdiction of the National Park Service.[142] Since the National Park Service provided a greater degree of protection from development than other agencies previously responsible for the administration of Canyon lands,[143] the congressional deci-

136. S. 1296, 93d Cong., 1st Sess. (1973). Representative Morris Udall introduced a similar measure in the House of Representatives. H.R. 5900, 93d Cong., 1st Sess. (1973).

137. 16 U.S.C. § 228b (Supp. IV, 1974). See text accompanying notes 141-53 *infra*.

138. 16 U.S.C. §§ 228f, 228g (Supp. IV, 1974). See text accompanying notes 159-63 *infra*.

139. 16 U.S.C. § 228i-1 (Supp. V, 1975). See text accompanying notes 197-206 *infra*.

140. See text accompanying notes 159-96 *infra*.

141. The park was increased from approximately 675,000 acres to 1,200,000 acres. *Hearings on S. 1296, supra* note 73, at 32.

142. 16 U.S.C. § 228 (Supp. IV, 1974). In addition, the Act conveyed jurisdiction of all federal lands within the park to the Secretary of the Interior for the purposes of the Act. *Id.* § 228c(b). This provision guaranteed the Secretary's authority over the entire park despite the multiplicity of government departments and agencies responsible for the land prior to the passage of the Act. The Secretary also was granted the authority to acquire land by donation, purchase, or exchange. *Id.* § 228c(a). Unfortunately this authority did not include a condemnation power, which would have assisted the Secretary in acquiring private lands within the park. *See Hearings on S. 1296, supra* note 73, at 91. The Secretary also was limited in his authority to acquire lands owned by the State of Arizona or held in trust for any Indian tribe. State lands could be acquired only by donation or exchange; Indian lands could be acquired only with the consent of the tribe's governing body. 16 U.S.C. § 228d (Supp. IV, 1974).

143. *See* text accompanying notes 22-135 *supra*. The Act empowered the Secretary to negotiate agreements with federal agencies and private interests holding land adjacent

sion to utilize park expansion as the means for protecting the Canyon increased the potential for preservation of natural values.

This provision's effect was somewhat paradoxical, however. The lands assimilated into the new park by the Enlargement Act were only to a small extent previously unprotected lands. The majority of the area absorbed was land which formerly had been within various other protective reserves. The Enlargement Act brought into the park the former Grand and Marble Canyon National Monuments[144] and portions of the Kaibab National Forest and Lake Mead National Recreation Area. Having eliminated the artificial boundaries of different protective reserves, Congress also removed the obstacle of divergent policies and philosophies of management which obstructed greater protection of the Canyon's environment.[145] The enlargement of the park unified the administration of these portions of the Canyon and thereby advanced the efficient and effective protection of its natural environment.

Although the Enlargement Act was successful in increasing the protection of the land it encompassed through unification of its administration, it did not contribute to protection of lands not incorporated into the expanded park. The entire Canyon had not been included in previous reserves, so that the incorporation of those reserves into the new park did not bring the whole of the Canyon into the park. The Act also left for later consideration proposals for the inclusion of certain specific tracts of land. To this extent, the Act was not completely successful in attaining its goal of maximizing the Canyon's protection.

As originally proposed, the park boundary would have excluded Slide Mountain, Jensen Tank, and Tuck-up Point,[146] three areas located in the northern portion of the former Grand Canyon National Monument. The deleted lands were to be used for exchange purposes or returned to public land status.[147] Had the statute been enacted as proposed, these lands would have been deprived of the protection they then enjoyed as part of the Grand Canyon National Monument.[148] The De-

to the park to cooperate in preparation and presentation of the Canyon experience. 16 U.S.C. § 228e (Supp. IV, 1974).

144. Grand Canyon and Marble Canyon National Monuments were abolished, 16 U.S.C. § 228b(c) (Supp. IV, 1974), and most of their area became part of Grand Canyon National Park. *Id.* § 228b(a).

145. *See* text accompanying notes 22-135 *supra.* Similar considerations prompted the first Grand Canyon National Park Act 60 years earlier: "The Grand Canyon cannot, as a section of two national forests, a game refuge, or a national monument, be properly developed for the public benefit, and it cannot be effectively administered or adequately protected." S. REP. No. 1082, 64th Cong., 2d Sess. 1-2 (1917).

146. *See* S. 1296, 93d Cong., 1st Sess. § 3(a) (1973).

147. *Id.* § 3(b).

148. The elimination of the lands from the park also would have been a denial that these Canyon lands were of sufficient stature to deserve protection, an assertion implicit

partment of the Interior opposed the exclusion of these areas from the park because they contain important archeological resources and views of the Canyon which foster a better understanding of its geology.[149] The National Park Service similarly opposed the exclusion on the ground that the land was necessary for the proper management and protection of the Canyon.[150] In contrast, Senator Barry Goldwater suggested that the land be returned to multiple use classification in order to utilize its value for grazing.[151] Congress, however, did not immediately resolve the question of whether grazing was a higher public purpose than the preservation of a portion of the Grand Canyon. Instead, a study of these lands to determine their suitability for permanent inclusion in the park was ordered.[152] Inclusion in the park pending the study permits the lands to be protected in the interim. Thus, Congress has temporarily contributed to the protection of the disputed areas, since the land will remain within and protected by the park until Congress acts on the study.[153]

Congress' purpose in the Enlargement Act was to increase protection of the Grand Canyon. Since Slide Mountain, Jensen Tank, and Tuck-up Point are part of the geographical entity of the Grand Canyon, they should be included in the park in order to provide uniform protection for the entire Canyon. These areas appear to be within the Act's description of "prime portions of the canyon area possessing unique natural, scientific, and scenic value"[154] because of the presence

in the inclusion of the lands in the former monument. The bill, however, did not propose to deny these lands all protection. It created from these tracts a zone of influence to be administered by the Secretary of the Interior in order to protect the park from the adverse effects of use of such land. *Id.* § 6. The precise nature of the Secretary's power under the provision for the zone was purposefully left vague as the zone was intended to be a flexible device. It was a codification of the existing practice of cooperation among federal land management agencies in the area. *Hearings on S. 1296, supra* note 73, at 34. The zone-of-influence concept became unnecessary and was never implemented because the decision on inclusion of Slide Mountain, Jensen Tank, and Tuck-up Point in the park was deferred until further study could be completed. *See id.* at 21.

149. *Hearings on S. 1296, supra* note 73, at 20-21; *see* S. REP. No. 93-406, 93d Cong., 1st Sess. 2 (1973).

150. *See Hearings on S. 1296, supra* note 73, at 44.

151. *Id.* at 33.

152. 16 U.S.C. § 228b(c) (Supp. IV, 1974). The study, completed early in 1976, recommends including these lands in the park. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, PRELIMINARY WILDERNESS PROPOSAL: GRAND CANYON NATIONAL PARK, ARIZONA 26 (1976) [hereinafter cited as WILDERNESS PROPOSAL].

153. This section of the Act is comparable in effect to the provision of the Grand Canyon National Park Act directing the Secretary to enter negotiations for the purchase of Bright Angel Trail. *Compare* 16 U.S.C. § 224 (1970) *with* 16 U.S.C. § 228b(c) (Supp. IV, 1974). Because the law directed action, the purchase of the trail was accomplished within 10 years of the enactment of the law. See discussion note 44 *supra*. Similarly, the Enlargement Act ordered a study to be reported to Congress within a definite period. The study when reported could serve to stimulate Congress to enact legislation defining the status of the disputed tracts. However, the study was completed in February, 1976, and Congress has not yet acted upon it. WILDERNESS PROPOSAL, *supra* note 152, at 26.

154. 16 U.S.C. § 228b(a) (Supp. IV, 1974).

of significant archeological sites identified by the Department of the Interior and the utility of the land for the interpretation and management of the Canyon area recognized by the National Park Service.[155] Unless they are permanently included in the park, therefore, unique portions of the Canyon will be subject to standards of administration different from those of the rest of the Canyon and the purpose of the Act will be defeated for these lands.

Other tributary canyons of the Grand Canyon did not receive even the temporary protection given to Slide Mountain, Jensen Tank, and Tuck-up Point. Two other areas ecologically related to the Grand Canyon, Parashaunt Canyon and Whitmore Wash, were not included in the enlarged park. Nor were they included within the Act's recommendations for study of other lands to determine their suitability for inclusion in the park. Instead, a conference committee report, in recognition of the potential park value of these lands, directed the Secretary of the Interior to study the qualifications of these tracts for park status and to report his findings to the Congress.[156] Unlike the study of Slide Mountain, Jensen Tank, and Tuck-up Point, the report required by the conference committee was not ordered by law, and so might not receive immediate action.[157] Additionally, these areas did not receive the benefit of temporary inclusion in the park, but remained under the jurisdiction of the Bureau of Land Management.

Parashaunt Canyon and Whitmore Wash can be distinguished from Slide Mountain, Jensen Tank, and Tuck-up Point because the canyon and wash were not previously part of reserves. While this distinction may explain the different treatment accorded these areas, it does not justify the absence of protection. The original intention of Congress to protect the entire Grand Canyon area could be defeated by the use or development of the land before a study is completed and Congress has acted thereon.[158] The introduction during this period of uses inconsistent with the natural condition of the land could sufficiently impair its quality for park purposes so as to defeat a subsequent imposition of park status and protection. Part of the Canyon thus may be irretrievably lost to protection.

Regulation of Uses

For those lands encompassed by the park, the Enlargement Act

155. *Hearings on S. 1296, supra* note 73, at 20-21, 44.

156. H. CONF. REP. No. 93-1611, 93d Cong., 2d Sess. 5 (1974). These areas had been included in the park when the Act was introduced. S. 1296, 93d Cong., 1st Sess., § 3(a) (1973).

157. Because the Enlargement Act did not specifically mandate action regarding these areas of the Canyon, the possibility of congressional action on any proposals developed by the Secretary seems less likely.

158. See text accompanying notes 232-37 *infra.*

provided a greater degree of protection than was available under the Canyon's fractionalized management. The Act unified the administration of the entire length of the Canyon under the National Park Service.[159] Placing the Canyon within the Park Service's jurisdiction allows the implementation of its protective polices for the entire Canyon. However, Congress did not leave the resolution of problems regarding uses within the park entirely to the recourse of existing National Park Service policies. The Enlargement Act specifically established a procedure for regulating use of Canyon airspace by motorized aircraft,[160] altered the status of existing law regarding reclamation projects,[161] and amplified the rights of the Havasupai Indians to use park lands.[162] Although Congress intended in the Act to further the protection of the Canyon,[163] these provisions instead perpetuated or initiated conflicts between development and protection of the park land.

Aircraft tours combine commercial and recreational aspects of use. In either case, they require regulation because aircraft contribute to noise pollution in the Canyon area.[164] In the past the National Park Service and pilot groups have entered into voluntary agreements which restrict flight tours.[165] Being voluntary, these agreements were not subject to administrative sanctions for violation of their terms. The Enlargement Act requires the Secretary of the Interior to transmit complaints, information, or recommendations for regulations to appropriate federal agencies

> [w]henever the Secretary has reason to believe that any aircraft or helicopter activity or operation may be occurring within the Grand Canyon National Park, . . . including the airspace below the rims of the canyon, which is likely to cause an injury to the health, welfare, or safety of visitors to the park or to cause a significant adverse effect on the natural quiet and experience of the park.[166]

Thereupon, the Federal Aviation Agency or Environmental Protection Agency is to consider the matter and take appropriate action.[167] Thus, the Act's language explicitly recognizes the stillness of the Canyon as a value to be protected and gives the Secretary express authority on which to proceed for the protection of this natural quality of the Canyon. Although the actual promulgation and enforcement of regulations

159. See text & note 142 *supra.*
160. 16 U.S.C. § 228g (Supp. IV, 1974).
161. *Id.* § 228h. See text accompanying notes 56, 103, 122 *supra.*
162. 16 U.S.C. § 228i (Supp. IV, 1974).
163. *Id.* § 228a.
164. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 48. Additionally, all commercial activity in the park is regulated, 16 U.S.C. §§ 1a-2(e), 3 (1970), and all flights are regulated for safety reasons.
165. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 48-50.
166. 16 U.S.C. § 228g (Supp. IV, 1974).
167. *Id.*

is left to the Federal Aviation Agency and the Environmental Protection Agency, the expertise and experience of these agencies should expedite action pursuant to the Secretary's recommendations.[168] Additionally, these agencies have familiar and established procedures for making the determinations necessary as a basis for regulations. Unfortunately, however, these advantages may be diminished by an inherent weakness within the procedure. Activation of the process seems to depend upon the Secretary's recognition of an impending or existing detriment to the environmental quality of the park or to the safety of park visitors. The law does not mandate that the outlined procedure be utilized; rather the entire process depends upon the determination of the Secretary that some danger is imminent. If the Secretary continues to rely on voluntary pilot agreements to lower noise pollution, he may not readily find a detriment to the Canyon's quiet. Nevertheless, this provision may afford the Secretary an alternative procedure in the event of failure of voluntary agreements.

Provisions of the Enlargement Act regarding reclamation projects raise concerns similar to those of the section dealing with aircraft regulation. The Act amended the provisions of the Grand Canyon National Park Act of 1919 to permit reclamation projects, but only in that area of the park formerly within Lake Mead National Recreation Area.[169] Congress emphasized that the Enlargement Act did not alter the proscriptive provisions of the Project Act.[170] Although it did not do so explicitly, the Enlargement Act can be read as having proscribed construction of reclamation projects in all areas of the park except that formerly within Lake Mead National Recreation Area. The Act's affirmation of the proscriptions of the Project Act supports this interpretation of the Enlargement Act's terms.[171]

Nevertheless, the Enlargement Act expressly permits construction of dams and reclamation works in that portion of the park which was formerly the easternmost part of Lake Mead National Recreation Area.[172] This provision of the Enlargement Act was in furtherance of the statute's intent to leave unaltered the state of the law regarding rec-

168. Congress had impliedly acknowledged this expertise, for instance, by committing noise pollution control to the Environmental Protection Agency. 42 U.S.C. § 4901 (Supp. IV, 1974). The Federal Aviation Agency also has attempted to regulate noise levels. 34 Fed. Reg. 453-58 (1969).

169. 16 U.S.C. § 227 (Supp. IV, 1974).

170. *Id.* § 228h.

171. H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 11 (1974); S. REP. No. 93-406, 93d Cong., 1st Sess. 4 (1973). As noted previously, the Colorado River Basin Project Act denied the Federal Power Commission authority to license the construction of dams on the Colorado River between Hoover and Glen Canyon Dams. 43 U.S.C. § 1523 (1970). See discussion note 103 *supra.*

172. The headwaters of Lake Mead are not included in the enlarged park.

lamation projects within the recreation area.[173] To except from proscription as it did land now included in the park simply because it formerly was not under such a proscription, however, seems to defeat the protective purpose of park status. The need to facilitate management of the recreation area by preserving equal administrative standards for the whole reservoir cannot justify the exception. While the requirement of uniform management of the reservoir within the recreation area may require different administrative standards from those of the park, that requirement has no application to the land transformed to park land by Congress' action.

The Enlargement Act also left unchanged the provision of the Park Act which permitted the Secretary of the Interior to grant easements across the park for irrigation works.[174] The earlier law still permits the introduction of utility easements and stands unaffected by the Enlargement Act. It seems inconsistent for the law to proscribe use of the land for reclamation projects while allowing irrigation works. Although an easement for an irrigation project might be less disruptive than an extensive reclamation project, the presence of canals and other such construction would nevertheless be detrimental to the natural condition of the land.

A similar inconsistency was raised by the Act's compromise of the Havasupai Indians' claims regarding the title to and use of park lands. Prior to 1975, the Havasupai Reservation had consisted of a small area of land principally in Havasu Canyon.[175] The Indians had been granted the right to use park lands for agricultural purposes in the Park Act.[176] However, the Havasupai asserted a right to a larger portion of their ancestral lands.[177] Considerable public attention was directed toward the position of the Havasupai during congressional consideration of the Enlargement Act.[178] Several proposals were presented to Congress in an attempt to satisfy the claims of the Havasupai Tribe fairly. The Enlargement Act balanced the interests of the Havasupai with the interests of the public in the Grand Canyon in a compromise measure.

Under the enacted compromise the tribe received as its reservation approximately 86,000 acres in trust subject to detailed restrictions on use. The enumeration of permissible uses begins with traditional

173. *Hearings on S. 1296, supra* note 73, at 37.
174. 16 U.S.C. § 225 (1970).
175. See discussion note *55 supra.*
176. 16 U.S.C. § 223 (1970).
177. H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 28 (1974). See text & notes 133-34 *supra.*
178. *See* Arizona Daily Star, Sept. 22, 1974, § H, at 4, col. 4.

activities, such as those connected with the tribe's religious beliefs.[179] Next, the Act states that the land may be used for grazing, but only "subject to the ability of such lands to sustain such use as determined by the Secretary."[180] Conditioning the right to utilize the land in this manner is desirable because it bases the determination of whether and to what extent grazing will be permitted on ecological considerations. Finally, the Act orders that a land use study be prepared by the Secretary in consultation with the Havasupai Tribal Council.[181] This plan, subject to public hearings and review by the Committees on Interior and Insular Affairs of the Congress, is to designate areas for educational, residential, and other community uses. The Act restricts the extent of development even for these purposes, however; such uses may not be "inconsistent with, or detract from, park uses and values."[182]

The Secretary does have the authority to permit small tribal enterprises in accordance with the land use plan described above,[183] even though commercial timber production, commercial mining, and commercial industrial development are not permitted on the trust lands.[184] Despite the restrictions, some detriment to the environment could be entailed even under these minimal possibilities for economic advancement. The Act anticipates such problems by limiting the Secretary's discretion to grant the few uses detailed in the Act: the statute commands that the land be maintained "forever wild."[185]

This compromise between the demands of the Havasupai Tribe and the need to protect the Canyon was an unsatisfactory solution for both. Restraints on development protect the environment of the Canyon area, but they do so at the expense of the Havasupai. If the

179. 16 U.S.C. §§ 228i(b)(1), (3) (Supp. IV, 1974).
180. *Id.* § 228i(b)(2).
181. *Id.* § 228i(b)(4).
182. *Id.* The zone-of-influence concept proposed by Senator Goldwater could have been utilized to protect the Havasupai trust lands from excessive development inconsistent with the protection of the park, while still excluding the land from the park. *See* S. 1296, 93d Cong., 1st Sess. § 6 (1973); *Hearings on S. 1296, supra* note 73, at 34. See discussion note 148 *supra*. Although the zone was intended as a means to protect Slide Mountain, Jensen Tank, and Tuck-up Point, *Hearings on S. 1296, supra* at 34, the Secretary's power to regulate use of lands within the zone could have been extended to reservation lands adjacent to the park under the same general concept. Regulation of potentially detrimental uses within the zone would then have been possible. Such a procedure would have provided protection for the park and adjacent lands while avoiding uses inconsistent with park status in the reserve. Utilization of the zone of influence would have permitted Congress to grant title to the land to the Havasupai and still retain some control over its development.
183. 16 U.S.C. § 228i(b)(5) (Supp. IV, 1974). The Havasupai have not indicated their intention regarding any extensive development. FINAL ENVIRONMENTAL STATEMENT, *supra* note 1, at 83. However, housing, intensive grazing, road development, or irrigation could affect the status of adjacent lands. PROPOSED DRAFT ENVIRONMENTAL STATEMENT, *supra* note 120, at I-16.
184. 16 U.S.C. § 228i (Supp. IV, 1974).
185. *Id.* § 228i(b)(7).

aboriginal title and economic condition of the Havasupai were sufficient grounds to justify an extensive award of Grand Canyon land to the tribe, then those human needs should have been granted at least equal weight to the interest of preserving the Canyon. In its present form, the Act is considerate of the tribe's social and cultural needs, but it does more to confine the tribe's economic condition to its present state than it does to advance the Havasupai position. Nor does the compromise satisfactorily serve the goal of preserving Grand Canyon lands. The land granted in trust to the Havasupai lay in an area that had previously been protected as part of Grand Canyon National Park, Grand Canyon National Monument, and Kaibab National Forest.[186] In general, the statutory restrictions on the trust lands are as stringent as those applicable were the lands part of the park. However, the purpose of granting trust lands to the tribe was the improvement of the "social, cultural, and economic life of its members,"[187] an objective not entirely consistent with the overall purpose of the Enlargement Act. Uses which promote the social, cultural, and economic life of the tribe will not always coincide with the Act's central purpose of increasing protection of the Canyon.

In addition to the trust lands, the Enlargement Act granted to the Havasupai approximately 95,000 acres of use land within the park for grazing and other traditional purposes.[188] This provision is comparable to the grant of trust lands in that it permits otherwise proscribed uses of previously protected lands. Paradoxically, another section orders the systematic elimination of grazing leases within the park through the nonrenewal of any such rights after a defined period.[189] While this proscription does not control the Indian grazing rights on use lands,[190] the sections are clearly contradictory in intent. The Secretary is commanded by law to permit grazing in one portion of the park[191] while

186. *Hearings on S. 1296, supra* note 73, at 18.
187. 16 U.S.C. § 228i(a) (Supp. IV, 1974).
188. *Id.* § 228i(e).
189. *Id.* § 228f. This section specifies that it applies to federal lands "legally occupied or utilized on the effective date of this Act for grazing purposes . . . ." *Id.*

> [T]he Secretary shall permit the persons holding such grazing privileges to continue in the exercise thereof during the term of the lease, permit, or license, and periods of renewal thereafter: *Provided*, That no such renewals shall be extended beyond the period ending ten years from January 3, 1975, except that any present lease, permit, or license within the boundaries of the Grand Canyon National Monument as abolished by section 228b(b) of this title may be renewed during the life of the present holder which renewals shall terminate upon the death of the present holder.

Id.
190. The Havasupai rights were effective with the Act and not before. Additionally, the Act's specific grant of such rights to the tribe governs over the general invalidation of grazing rights contained elsewhere in the Act. *Cf.* FTC v. Manager, Retail Credit Co., 515 F.2d 988 (D.C. Cir. 1975); Fire Fighters Union Local 1974, AFL-CIO v. City of Pleasanton, 56 Cal. App. 3d 959, 129 Cal. Rptr. 68 (Dist. Ct. 1976).
191. While the language of the Act grants the Secretary the authority to regulate

he is also ordered to exclude grazing from the park.[192] Because this method was chosen to compromise the claims of the Havasupai, contradictory provisions of law cause adjacent areas to be managed according to differing standards of permissible use. The potential degree of preservation of the Canyon's natural condition is thus reduced by defeating the imposition of a uniform standard of administration. The attempt by Congress to balance the interests in the Grand Canyon of the Havasupai[193] against those of the American people in general has resulted in the establishment of a dangerous precedent regarding the national parks. Without clear benefit either to the public or the Havasupai, the public interest in a national park is subjected to private interest in use of the land.[194]

Although there is no entirely satisfactory resolution of this conflict, this unfortunate precedent could have been avoided by granting to the Havasupai a portion of the Canyon without simultaneously attempting to retain it within the park.[195] If Congress wished to recognize the special circumstances of the Havasupai as meriting an award of Grand Canyon land, it could have made a clear choice in favor of the tribe. An absolute grant of the land to the Havasupai would have afforded an opportunity for the tribe to advance economically as well as socially and culturally. The land could have received some protection, but the restrictions need not have approximated those of the park. By the simple device of excluding the Havasupai lands from the park, Congress could have preserved uniform standards of environmental protection within the park and afforded the Havasupai a genuine op-

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the leases, it commands the Secretary to issue the leases: "The Secretary, subject to such reasonable regulations as he may prescribe to protect the scenic, natural, and wildlife values thereof, shall permit the tribe to use land within the Grand Canyon National Park . . . for grazing and other traditional purposes." 16 U.S.C. § 228i(e) (Supp. IV, 1974).

192. *See id.* § 228f.

193. If the 1969 Indian Claims Commission award had been determined either a waiver or final settlement of the Havasupai claims, no further recognition of their interests need have been made. See discussion note 135 *supra.*

194. Those who view the 1969 Indian Claims Commission award as a final determination of the rights of the Havasupai, see text & notes 134-35 *supra,* contend that the subsequent grant of park lands is a precedent which could subject all other Commission settlements to being reopened. H.R. REP. No. 93-1374, 93d Cong., 2d Sess. 30-31 (1974).

195. Congress could have satisfied the claims of the Havasupai with land other than that in the park. At one time the Havasupai territory extended over most of northern Arizona. *Id.* at 8. Satisfaction of the Havasupai claims might have been made from other areas in which they had held an aboriginal title. Public domain lands in an area south of the Canyon could have been granted without restrictions, thereby permitting the economic advancement of the tribe on ancestral lands which could have been developed commercially and had greater grazing potential. *Hearings on S. 1296, supra* note 73, at 89 (statement of John McComb, Southwest Representative of the Sierra Club, Tucson, Ariz.). It may have been felt that this method for compromising the claims was not the most desirable for two reasons: it would have involved the dislocation of the Havasupai, and preservation of the religious and cultural interests of the tribe in the Grand Canyon required statutory rights of access to protected sites on park lands.

portunity for advancement. Although this alternative would have sacrificed the pristine preservation of part of the Canyon, it would have had the advantage of maintaining consistency within the remaining park area and would have avoided the precedent set by the compromise. Instead, the effort to accomplish at one time the protection of the land and the protection of the rights and interests of the Havasupai defeated the achievement of either goal.

The Enlargement Act, in regulating uses within the park, established inconsistent standards which serve only to perpetuate or create conflicts between use and preservation. The Act created different standards of permissible use for areas within the new park. Prior to passage of the Enlargement Act, protection of scenic and natural values of the Grand Canyon was hampered by its divison into several distinct administrative units which were operated according to variant legislated standards.[196] The Act took a major step toward eliminating this problem by unifying the area administratively through expansion of the park. As a park, the Canyon could be classified within the existing National Park Service system of land use zones to confine development and its impacts to areas already affected. Similarly, under one administration the Canyon could be effectively protected from overuse with a single set of comprehensive regulations. However, in those situations in which the Enlargement Act failed to resolve or intensified problems regarding regulation of use within the park, statutory inconsistencies will continue to limit the effectiveness of administrative protection of the Canyon.

Study for Further Protection

The Act's third method of attempting greater protection for Canyon lands was its provision for a study to ascertain the extent to which wilderness status should be conferred upon the land.[197] Inclusion in the National Wilderness Preservation System[198] would subject not only commercial uses, but also recreational uses of the land, to intensive restrictions. By statute, wilderness is defined as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain."[199] Other requisites of wilderness

196. See text accompanying notes 22-129 *supra.*
197. 16 U.S.C. § 228i-1 (Supp. V, 1975).
198. *Id.* § 1131 (1970). The first national parks were not intended to be wilderness preserves. R. NASH, *supra* note 8, at 108. The concept of wilderness areas emerged from Forest Service classifications of roadless and wild areas. McCloskey, *The Wilderness Act of 1964: Its Background and Meaning*, 45 ORE. L. REV. 288, 296-29 (1966); Robinson, *supra* note 9, at 6-10. The Wilderness Act itself deals primarily with national forest wilderness. *See id.* at 14-15. National park wilderness was left to be administered by distinct policies for national park wilderness. 16 U.S.C. §§ 1132(c), 1133(b) (1970).
199. 16 U.S.C. § 1131(c) (1970).

are that the land "generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable," "has outstanding opportunities for solitude or a primitive and unconfined type of recreation," and "has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition."[200] These standards permit only the most unobtrusive recreational use and do not tolerate private or public development of the land.[201]

As originally proposed, the Enlargement Act contained recommendations to apply wilderness status to specific portions of the park.[202] Because the Enlargement Act not only modified the boundaries of the park, but also altered the degree of permissible use within different areas, it affected the eligibility of the lands for wilderness status.[203] Consequently, rather than making any specific wilderness recommendations, Congress ordered a study of the newly enlarged park to determine its suitability for wilderness status.[204] In the interim, the Canyon lands have the benefit of administratively imposed primitive and wilderness classifications.[205] Wilderness status would give such administrative determinations legislative force.[206]

In 1964 the Wilderness Act had ordered the report of a wilderness recommendation by the National Park Service for the Grand Canyon and all parks and monuments containing roadless areas of 5,000 or more acres.[207] A wilderness recommendation for the Grand Canyon accordingly was published in 1972;[208] it found that six areas of the Grand Canyon met the size and suitability criterion of the Wilderness Act.[209] The units consisted of land administratively categorized as nat-

200. *Id.* The area "may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value." *Id.*

201. The application of these prerequisites has been a source of dispute in the administrative process of selecting areas for wilderness review. Parker v. United States, 309 F. Supp. 593 (D. Colo. 1970), *aff'd*, 448 F.2d 793 (10th Cir. 1971), *cert. denied*, 405 U.S. 989 (1972); Robinson, *supra* note 9, at 29. The Forest Service has required that the land never have been visibly affected by man, *id.* at 30-32, but the National Park Service has accepted the suitability of lands which could be restored to a wilderness state. *Id.* at 31 n.76.

202. S. 1296, 93d Cong., 1st Sess. § 13 (1973).

203. See text accompanying notes 225-31 *infra*.

204. 16 U.S.C. § 228i-1 (Supp. V, 1975).

205. Certain park lands are zoned as natural environment and outstanding natural areas. See text accompanying notes 74-78 *supra*.

206. The restrictions of certain zones under the Canyon's existing zoning system are equally stringent to those of wilderness status. See text accompanying notes 210-11 *infra*. One of the purposes of the Wilderness Act was to reinforce administrative classifications of forest or park land. Haight, *The Wilderness Act: Ten Years After*, 3 ENVIRONMENTAL AFFAIRS 275, 279 (1974); Robinson, *supra* note 9, at 11. Thereafter, the repeal or diminution of such protective classification would require consideration of Congress.

207. 16 U.S.C. § 1132(c) (1970).

208. WILDERNESS RECOMMENDATION, *supra* note 32.

209. *Id.* at Exhibit B.

ural or primitive areas by the Park Service's land use classification zones.[210] The administrative classifications of the Park Service approximate the legislated wilderness policies.[211] Designating these areas as wilderness would only have granted statutory reinforcement to stringent administrative policies.[212]

Areas not included in the wilderness recommendation were primarily those accessible by roads or developed for use, such as the Grand Canyon Village, sites of grazing leases, and the utility corridor where water, telephone, and power lines cross the floor of the Canyon.[213] As long as such uses were present, the land showed the impact of the presence of people. Until such effects could be eliminated, the land could not meet the criteria for wilderness status. For these reasons, the Colorado River could not be incorporated into the plan because of the use of motorized river craft,[214] and sites on the North Rim otherwise suitable had to be excluded because of fire hazard which necessitated the maintenance of management roads and the use of motorized equipment.[215] Congress has the power to modify the requirements of the Wilderness Act when creating a wilderness area, and it may establish a wilderness area completely outside the terms of the Wilderness Act.[216] The 1972 Grand Canyon wilderness recommendation, prepared in response to the Wilderness Act mandate, did not consider the utilization of congressional powers to advance protection of areas not presently suitable for wilderness status.[217] The recommenda-

210. *See id.* at 11. These undeveloped areas were already protected by limitations on fishing, hunting, commercial services, management facilities, roads, and utilities which matched wilderness use and management policies. *See* ADMINISTRATIVE POLICIES, *supra* note 32, at 54-59; Back-Country Use and Operations Plan, *supra* note 32, part 2, chapter 1, at 1.

211. *See* PROPOSED DRAFT ENVIRONMENTAL STATEMENT, *supra* note 120, at I-3; U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, MANAGEMENT POLICIES VI-2 (1975).

212. See text accompanying notes 69-84 *supra.*

213. WILDERNESS RECOMMENDATION, *supra* note 32, at 19.

214. ADMINISTRATIVE POLICIES, *supra* note 32, at 58; WILDERNESS RECOMMENDATION, *supra* note 32, at 19.

215. WILDERNESS RECOMMENDATION, *supra* note 32, at 11. The fire hazard itself was not a natural condition. Meticulous control of fires in the past had prevented natural elimination of flammable undergrowth. *Id.* at 14.

216. *See* Haight, *supra* note 206, at 284-86; McCloskey, *supra* note 198, at 305-07. Examples of such instances include the Scapegoat and Washakie Wilderness areas. Act of Aug. 20, 1972, Pub. L. 92-395, 86 Stat. 578; Act of Oct. 9, 1972, Pub. L. 92-476, 86 Stat. 792; *see* 2 U.S. CODE CONG. & ADMIN. NEWS, 92d Cong., 2d Sess. 2997-3002, 3544-57 (1972). In the former instance, Congress' action independent of the Wilderness Act permitted creation of a wilderness area without following the Act's procedures for review of the area's suitability. *Id.* at 3001.

217. The proposal did recommend that such areas be included in the wilderness area once they were returned to their natural condition. WILDERNESS RECOMMENDATION, *supra* note 32, at 14. The Tenth Circuit has suggested that development, if reversible, is not an insurmountable bar to wilderness classification. Parker v. United States, 448 F.2d 793 (10th Cir. 1971), *cert. denied*, 405 U.S. 989 (1972), affirmed the decision of the District Court of Colorado, 309 F. Supp. 593 (D. Colo. 1970), that the Forest Service was required to make a wilderness study of areas described by the Wilderness Act as contiguous to wilderness areas. The area in dispute was crossed by two unpaved roads. 309 F. Supp. at 595. The district court characterized these roads as "substan-

tion could have, but did not, suggest the imposition of wilderness status with exceptions for areas of greater use or development.[218] Nor did it propose the intensification of the regulation of use to bring all areas up to current standards for wilderness status.[219] Instead, the recommendation limited itself to presently suitable wilderness areas,[220] thereby neglecting an opportunity to increase protection of certain fragile Canyon areas by utilizing Congress' power to shape wilderness legislation to the particular circumstances.

In considering the enlarged Grand Canyon National Park, the National Park Service has drafted a wilderness recommendation which improves upon its earlier effort.[221] In the 1976 proposal, proportionately more Canyon land is recommended for wilderness status than was recommended in 1972.[222] The 1976 proposal omits developed areas on the North and South Rims and the utility corridor on the Canyon floor because those areas show the impact of man's presence.[223] Restoration of these areas to their natural condition is not recommended because developed recreational facilities are necessary to provide a Canyon experience for the majority of park visitors.[224]

In addition to expanding the amount of acreage recommended for wilderness, however, the 1976 proposal considers the problems of areas subject to uses which conflict with wilderness status. The proposal recommends that Canyon lands being studied for their suitability for permanent inclusion in the park become wilderness areas if they are made part of the park.[225] By anticipating a decision by Congress to include the studied areas in the park, the proposal eliminates the possibility of further delay in extending wilderness protection to suitable park areas.

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tially unnoticeable." *Id.* at 596. Their presence in the area was not treated as a factor which would defeat the availability of the area for wilderness status. Robinson, *supra* note 9, at 30.

218. Congress has the power to create wilderness areas independently of the procedures and standards of the Wilderness Act. See text & note 216 *supra.*

219. For example, the plan could have included the Colorado River in the wilderness recommendation with the proviso that motorized raft trips regulated by a permit system would be acceptable. Another alternative would have been to include the Colorado with the stipulation that henceforth no motorized craft could be used for the extent of the wilderness. *See* WILDERNESS RECOMMENDATION, *supra* note 32, at 11. The use of motorized craft for periodic waste collection would not violate such a ban because its presence and effects can be classified as temporary, in contrast to the visible and lasting presence of fire maintenance roads.

220. *Id.*

221. WILDERNESS PROPOSAL, *supra* note 152. This proposal is subject to revision in public hearings before it is sent to Congress for consideration. *See* Arizona Daily Star, Aug. 15, 1976, § B, at 8, col. 1.

222. The proposal includes 992,046 acres of the total 1,120,965 in the enlarged park. WILDERNESS PROPOSAL, *supra* note 152, at 1. The earlier recommendation included 512,870 acres of 897,935 acres studied. WILDERNESS RECOMMENDATION, *supra* note 32, at 1.

223. WILDERNESS PROPOSAL, *supra* note 152, at 9-10.

224. *Id.*

225. *Id.* at 26.

Further, the 1976 proposal deals with the effects of motorized river craft and reclamation projects on the possibility of achieving wilderness status for the Canyon. The Colorado River is included in the wilderness proposal as a potential wilderness area.[226] Because motorized boat use is inconsistent with wilderness standards,[227] the proposal acknowledges that the river cannot be included in a designated wilderness until such use is eliminated.[228] In a similar fashion, reclamation projects are not consonant with wilderness. Thus, the proposal recommends the repeal of the provision of the Enlargement Act which permits reclamation projects in a portion of the park.[229] Because these uses cannot be reconciled with wilderness status, the 1976 recommendation proposes their elimination or proscription to allow the imposition of wilderness status and thereby increase protection of the Canyon's environment.

Additionally, uses which may affect park areas are considered by the 1976 proposal. Intensive grazing or development of Havasupai use lands or reservation lands adjacent to the park could detract sufficiently from the natural quality of the area to defeat the possibility of wilderness for park lands. Access roads or maintenance structures would leave a visible effect on the land.[230] When the Havasupai indicate the extent to which they expect to develop the land, the question of the impact of such development on park land may be resolved. In the interim, the proposal recommends the Havasupai use lands as potential wilderness areas.[231]

The eventual imposition of wilderness status in parts of the park will add further inconsistencies in regulation of land uses in the park to those created by the Enlargement Act: protection will be graded from wilderness to park to park use lands, in declining order. Although administration of the Canyon will not be divided among agencies as it once was, it will remain fractionalized among different policies. Concededly, this result may in part be mandated by the dual purposes of the park itself. To protect the land, yet provide benefit and enjoyment to the people, preservation and development interests must be compromised. Wilderness status would substantially facilitate a balance by excluding development from the areas it encompasses. More intensive uses would then be concentrated in the remaining portions of the park in order to afford the less vigorous with access to the Canyon expe-

226. *Id.* at 23.
227. *Id.*
228. *Id.*
229. *Id.* at 24.
230. PROPOSED DRAFT ENVIRONMENTAL STATEMENT, *supra* note 120, at I-16.
231. WILDERNESS PROPOSAL, *supra* note 152, at 1.

rience. The contradictions in the Enlargement Act itself are less defensible. By allowing commercial uses of some lands, the Act has undermined effective protection of the Canyon. Not only does the Act limit the extent of potential wilderness status for the Canyon and contribute to its development in some areas, but its terms establish precedents which could support the introduction of further development.

Like the lands within the park which require legislative action to be eligible for wilderness status, lands tentatively scheduled for addition to the park[232] require legislative action to ensure their suitability for inclusion in the park and eventually in a national wilderness. Administrative action taken in the interim between study and congressional determination of whether or not to add the lands to the park may destroy their eligibility for wilderness status if not for park status. For example, the Bureau of Land Management granted mineral leases on land under study for addition to the park.[233] Although these leases have since been suspended,[234] they demonstrate the potential for impairment of the quality of the lands. Because mineral exploration is not permitted in national park wilderness,[235] the existence of the leases would defeat any wilderness recommendation which included those areas. Further, there is a proscription of mining and prospecting in the park.[236] Other mining claims which have operated in the park were established before the creation of the park and before the proscription of mining. Thus, the introduction of mining development at this time may prevent even park status. The result of the Bureau's action may be to defeat congressional intent to decide the fate of the area following study.

Inclusion in the National Wilderness Preservation System would provide those areas of the Canyon so classified with a high degree of

232. Parashaunt Canyon and Whitmore Wash are areas ordered studied by the House Conference Committee. H.R. REP. No. 93-1611, 93d Cong., 2d Sess. 5 (1974). See text & notes 156-57 *supra.*

233. Tucson Daily Citizen, Apr. 26, 1976, at 1, col. 1; Sierra Club Legal Defense Fund, Inc. Press Release (Dec. 9, 1975).

234. Arizona Daily Star, May 29, 1976, § A, at 8, col. 1.

235. Wilderness created from national park land is governed by park policies which do not permit prospecting. ADMINISTRATIVE POLICIES, *supra* note 32, at 55; WILDERNESS PROPOSAL, *supra* note 152, at 8. The Wilderness Act permits prospecting until 1984 on wilderness land created from national forest lands. 16 U.S.C. § 1133(d)(3) (1970); ADMINISTRATIVE POLICIES, at 15, 55. However, a federal district court has found that the congressional intent to preserve wilderness controls the mining rights provisions of the Act. Izaak Walton League of America v. St. Clair, 353 F. Supp. 698, 714-16 (D. Minn.), *rev'd on procedural grounds*, 497 F.2d 849 (8th Cir. 1973), *cert. denied*, 419 U.S. 1009 (1974). Consequently, the permissibility of mining in national forest wilderness is not clear. However, Park Service policies, combined with the rationale of *Izaak Walton League*, serve as an effective ban on prospecting in park service wilderness.

236. Act of Jan. 26, 1931, ch. 47, § 1, 46 Stat. 1043, *superseding* Act of Feb. 26, 1919, ch. 44, § 6, 40 Stat. 1178. See text & note 45 *supra.*

protection from use. Yet, even wilderness status is not an absolute safeguard for the Canyon's natural environment.[237] Further, wilderness designation will not protect those areas which already show the impact of use or development. Nevertheless, the Wilderness Act recognizes an interest in preserving the environment. In so doing, it strikes a balance between development and preservation in favor of preservation. To the extent that it may apply, the shelter of wilderness provides the greatest assurance of preserving the untamed beauty of the Grand Canyon to the extent presently existing.

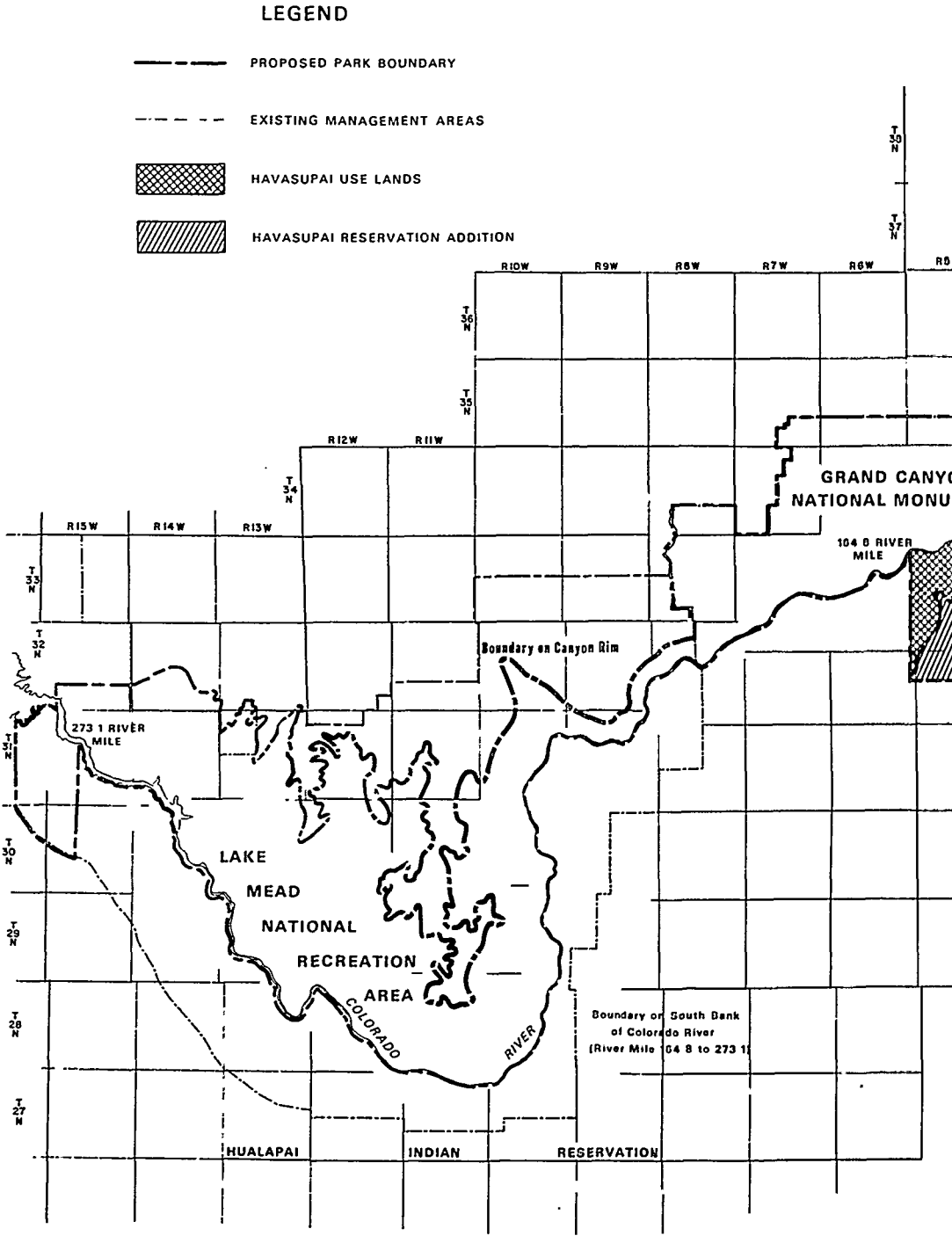
CONCLUSION

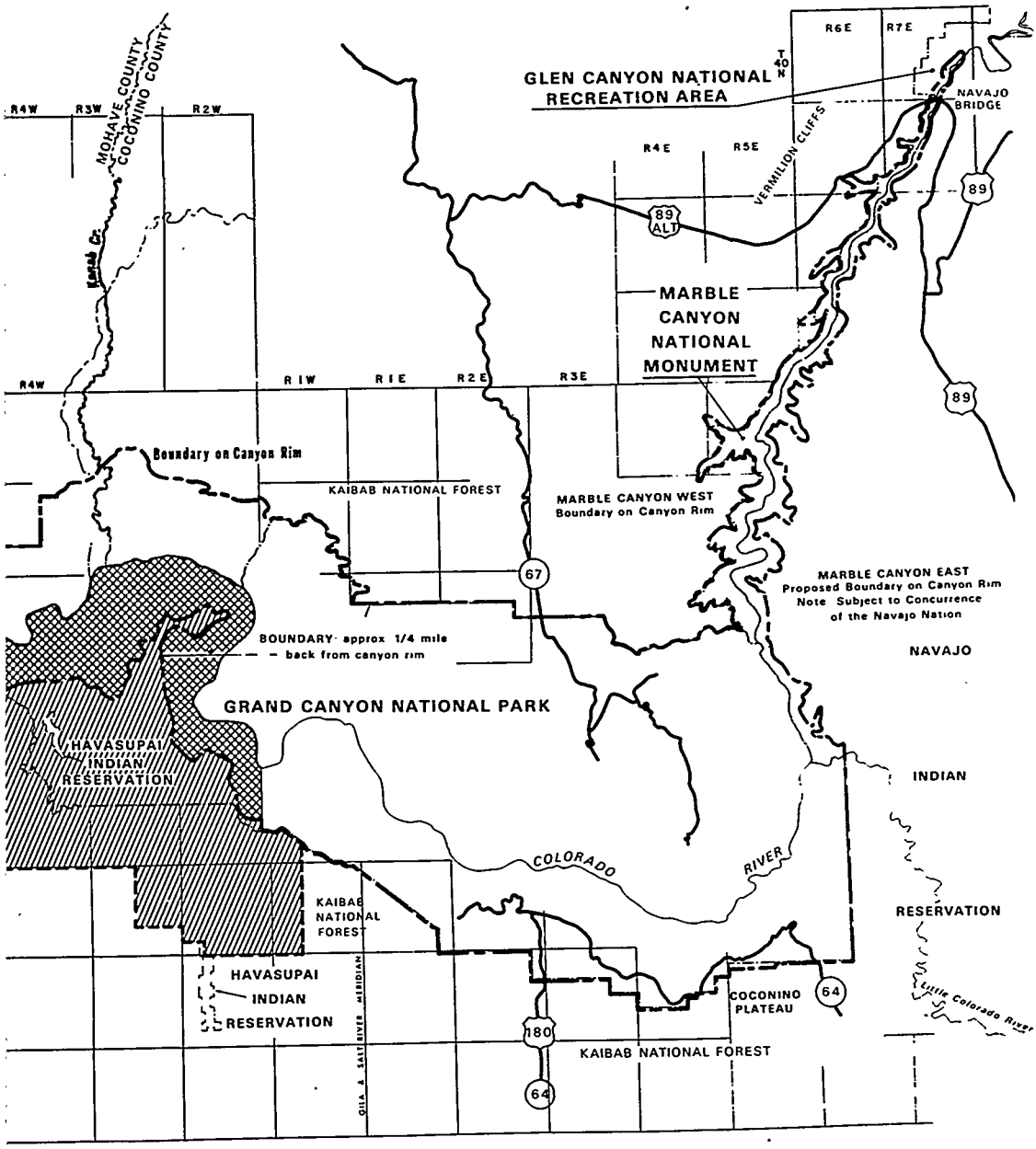
Since 1893 Congress and the Executive have applied many different kinds of protective classifications to the Grand Canyon. Each such category has carried with it limitations and exceptions permitting uses which were detrimental to the apparent intent to protect the environment. Because it is precisely the primitive and wild quality of its environment that gives the Grand Canyon value as a natural wonder of international significance, that environment must receive protection from development. The Enlargement Act took the seminal step toward that end by unifying the administration of the Canyon. In its wake, however, the Act left inconsistencies regarding destructive uses of the land which detracted from the protection afforded the Canyon. Without further congressional action, these inconsistencies not only lessen the extent of protection provided by park status, but also threaten the possibility of wilderness status. The National Park Service wilderness proposal demonstrates the manner in which wilderness could be shaped to afford the highest degree of protection for land presently eligible and areas which can be restored to a wild state. Congress has the opportunity in its consideration of the wilderness recommendation for the Grand Canyon to rectify the conflicts of use and preservation present in the Enlargement Act. If the intent to preserve a natural wonder of international significance is not to be defeated through neglect, Congress must make an explicit choice between development and protection.

237. Even wilderness areas may be subject to the intrusion of some kinds of development. 14 NATURAL RESOURCES J. 431, 438-40 (1974). *Contra,* Izaak Walton League of America v. St. Clair, 353 F. Supp. 698 (D. Minn.), *rev'd on procedural grounds,* 497 F.2d 849 (8th Cir. 1973), *cert. denied,* 419 U.S. 1009 (1974).

APPENDIX

The following maps illustrate the division of the Canyon prior to the Enlargement Act and the extent of the park subsequent to the Act. The map entitled Boundary Map Grand Canyon National Park shows the major administrative units of the Canyon as of December, 1974. Superimposed on those boundaries is the enlarged park boundary as it was proposed. Shading indicating the extent of the Havasupai Reservation and use lands is based upon changes which were to be effected by the Enlargment Act. The Wilderness Planning Work Map reveals the extent of the enlarged park as of September, 1975. Although this map does not reveal the location of those areas the inclusion of which was disputed, it indicates the nature and extent of private and public landholdings in the Grand Canyon area.


LEGEND
PROPOSED PARK BOUNDARY
EXISTING MANAGEMENT AREAS
HAVASUPAI USE LANDS
HAVASUPAI RESERVATION ADDITION
R10W
R9W
R8W
R7W
R6W
T 36 N
T 35 N
R12W
R11W
T 34 N
R15W
R14W
R13W
T 33 N
T 32 N
T 31 N
T 30 N
T 29 N
T 28 N
T 27 N
T 30 N
T 37 N
GRAND CANYO
NATIONAL MONU
104 8 RIVER MILE
Boundary on Canyon Rim
273 1 RIVER MILE
LAKE MEAD NATIONAL RECREATION AREA
COLORADO RIVER
Boundary on South Bank of Colorado River (River Mile 104 8 to 273 1
HUALAPAI INDIAN RESERVATION



BOUNDARY MAP

GRAND CANYON NATIONAL PARK

Mohave And Coconino Counties

ARIZONA

HAVASUPAI INDIAN LANDS

5 0 5 10 15 MILES

5 0 5 10 15 20 KILOMETERS

8045 KILOMETERS = 5 MILES

GILA AND SALT RIVER MERIDIAN

N

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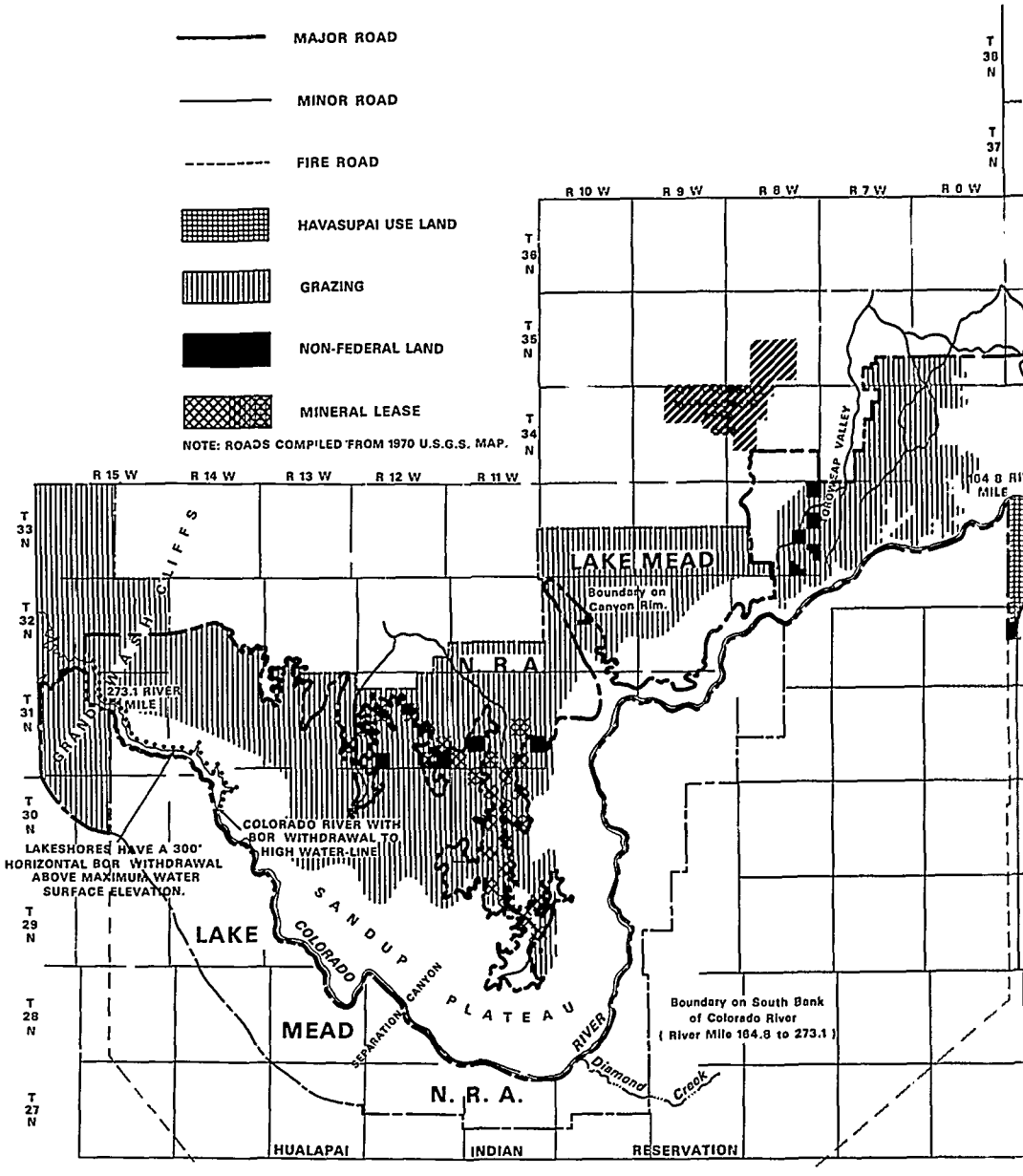
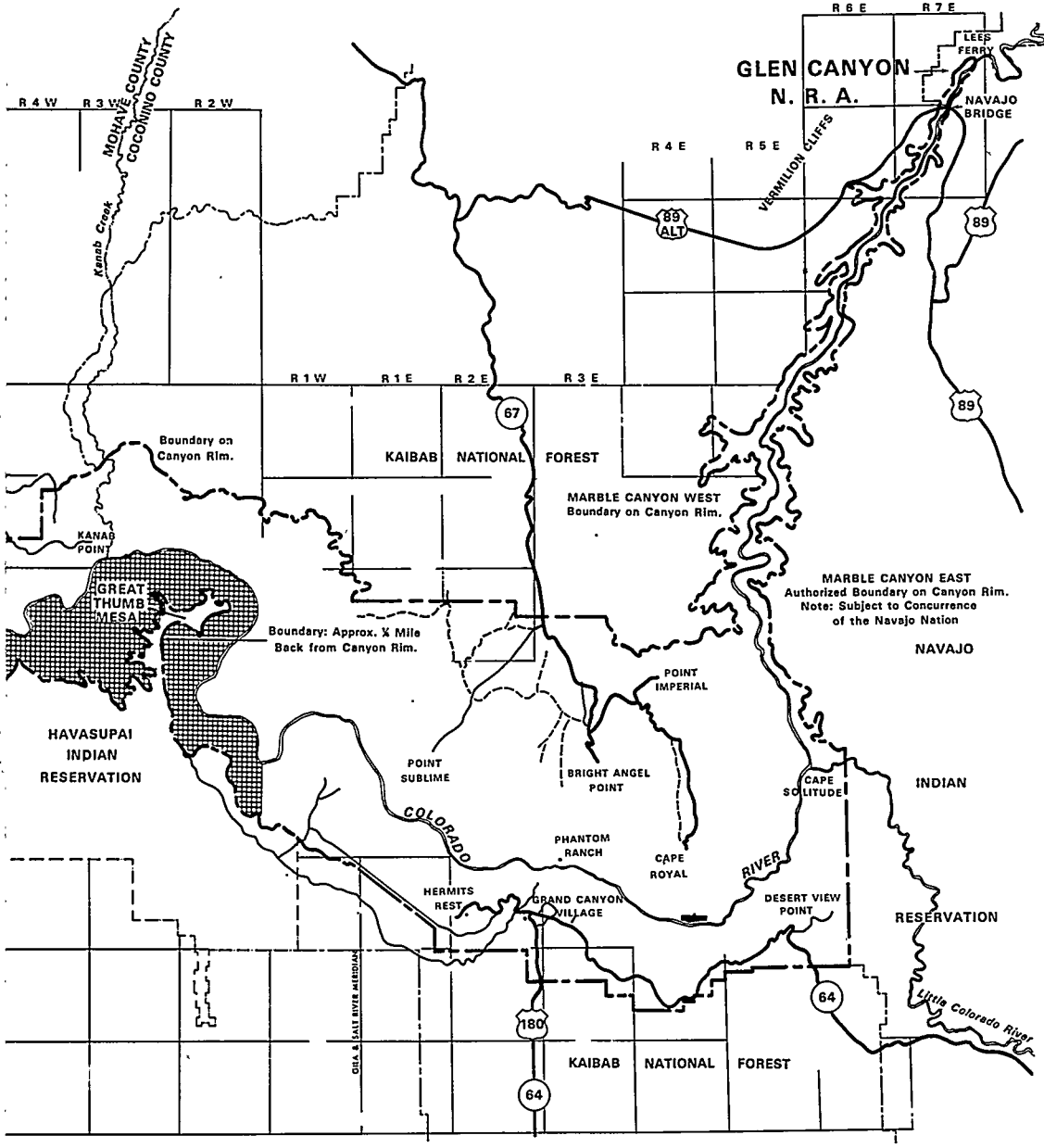

LEGEND
NATIONAL PARK BOUNDARY
EXISTING MANAGEMENT AREA (N.R.A.)
MAJOR ROAD
MINOR ROAD
FIRE ROAD
HAVASUPAI USE LAND
GRAZING
NON-FEDERAL LAND
MINERAL LEASE
NOTE: ROADS COMPILED FROM 1970 U.S.G.S. MAP.
R 15 W
R 14 W
R 13 W
R 12 W
R 11 W
R 10 W
R 9 W
R 8 W
R 7 W
R 6 W
T 38 N
T 37 N
T 36 N
T 35 N
T 34 N
T 33 N
T 32 N
T 31 N
T 30 N
T 29 N
T 28 N
T 27 N
GRAND WASH CLIFFS
273.1 RIVER MILE
LAKE MEAD
Boundary on Canyon Rim.
N R A
COLORADO RIVER WITH BOR WITHDRAWAL TO HIGH WATER-LINE
LAKESHORES HAVE A 300' HORIZONTAL BOR WITHDRAWAL ABOVE MAXIMUM WATER SURFACE ELEVATION.
LAKE MEAD
SANDUP PLATEAU
COLORADO RIVER
SEPARATION CANYON
Diamond Creek
Boundary on South Bank of Colorado River (River Mile 164.8 to 273.1)
N. R. A.
HUALAPAI INDIAN RESERVATION
GRAND CANYON VALLEY



N

5 10 MILES
5 10 15 KILOMETERS
KILOMETERS = 5 MILES
SALT RIVER MERIDIAN

WILDERNESS PLANNING WORK MAP

GRAND CANYON NATIONAL PARK

Mohave And Coconino Counties
ARIZONA

113 | 20,022
SEP 75 | DSC