



Chapter Twenty-Nine

*Parens Patria*¹: ISSUES RELATING TO THE COLORADO RIVER BOUNDARY BETWEEN GRAND CANYON NATIONAL PARK, THE HUALAPAI RESERVATION, AND THE NAVAJO NATION

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We were fortunate to have Andrew Majeske take time from his doctoral studies in Davis, California, to present his essay on Hualapai and Navajo boundary disputes “along” the Colorado River. As he points out in his afterword, the presentation led to lengthy discussion among participants, but as they say in both the legal and history professions, he is making an argument.

The critical question I address in this paper is whether the Navajo Nation and the Hualapai Tribe should have ownership, use and occupancy, and/or access rights to the Colorado River at the northern boundary of their reservations. The critical argument I make is that the Department of the Interior’s Office of the Solicitor has issued opinions indicating that, for *different* reasons, these tribes do not have ownership, use and occupancy, or access rights even though in the case of both it was once recognized that the Colorado River was their reservations’ northern boundary.²

Let me begin by drawing attention to the stretches of the Colorado River in the Grand Canyon relevant to this paper. The Navajo Nation boundary runs from the mouth of the Little Colorado River at River Mile 61 (measuring downstream from Lees Ferry, which is considered River Mile 0) to the Glen Canyon Dam at River Mile -15, a total of seventy-six miles of river frontage. The site for the proposed Marble Canyon Dam, a dormant project, is in the middle of this stretch at River Mile 39. The reservoir behind Marble Canyon Dam, if the dam were built, would extend all the way to Lees Ferry, leaving the Navajos

approximately twenty-two miles of frontage on the Colorado River between the mouth of the Little Colorado and the Marble Canyon Dam site that would be neither dam sites nor parts of reservoirs.

Except for a miniscule stretch of river between the proposed Hualapai Dam site and the spillway elevation of Lake Mead, the entire Hualapai Reservation’s northern boundary is either an existing reservoir or potential reservoir for a proposed, though dormant, dam project. The tribe’s river boundary begins at River Mile 165, just east of National Canyon, and extends downstream to Mile 273 in what is now Lake Mead. The site of the proposed Hualapai Dam (also known as the Bridge Canyon Dam) is at River Mile 235. The reservoir behind this dam would extend nearly to Kanab Creek (River Mile 144), well beyond the eastern edge of the reservation. The dam site

¹ A doctrine pursuant to which the United States makes critical decisions on behalf of American Indian tribes—literally the fatherland acts as parent. See Thomas 1994, at Section 57.07(a) (citing *Cherokee Nation v. Georgia*, 30 U.S. [5 Pet.] 1, 17 [1831]).

² It is beyond the scope of this paper to address how these tribes might want to use such access if their rights to it were recognized.

is at an elevation of 1,225 feet above sea level while the Hoover Dam spillway elevation is 1,221—a difference of only four feet.

THE NAVAJO BOUNDARY

These dams and reservoirs are relevant to the boundary issue because certain lands relating to the dams and reservoirs were carved out of these reservations: namely, “all lands designated by the Secretary of the Interior . . . as being valuable for water-power purposes and all lands withdrawn or classified as power-site lands” (Navajo Boundary Act [NBA])(73 Stat. L. 961). The Hualapai Dam site, the Marble Canyon Dam site, and the reservoirs they would create represent lands excluded from the reservations.³ The NBA goes on to say that “the Indians . . . [have] the exclusive right to occupy and use such designated and classified lands until they shall be *required* for power purposes *or other uses* under the authority of the United States” (emphasis added). This language means that “the Indians” have the right to use and occupy these lands *until* the lands are *required* for (1) power purposes or (2) “other uses.” The critical issue here is whether the “or other uses” language is limited by the reasons for which the land was excluded in the first place. That is, can the government do whatever it wants with the excluded lands, or is it restricted in any way to using the lands for the reasons it excluded the lands? These reasons were clearly set forth in the Arizona Enabling Act (61 Stat L. 575), which created the state of Arizona. This legislation is unambiguous; it describes the excluded lands as “actually or prospectively valuable for hydro-electric use or transmission.” Thus, the question is, should the United States have, and did it intend to have, *carte blanche* to use these lands however it pleased? Given the specific purposes for which the lands were taken, should the United States be able to terminate the Indians’ use and occupancy only for the specified reasons? I am inclined to think that if the matter were litigated, and if the arbiter of fact was a neutral party, the “or other uses” language would be limited to the stated reasons for the taking, particularly since, according to the Office of the

³ I assume for purposes of this presentation that (1) the exclusions were all performed correctly, and that (2) the exclusions apply to the Hualapai Reservation with equal force as they apply to the Navajo Reservation. If the exclusion language stopped here, so would this paper, at least with respect to the Navajo Boundary, but it does not.

⁴ We should keep in mind that the Department of the Interior has a well-documented conflict of interest in relation to its fiduciary duty as trustee for American Indian interests and property. For example, see McCool 1987, 180–181; Thomas 1994, Sections 57.07 & 57.07(c). It is difficult to understand how the Department of the

Solicitor, “well founded doubt should be resolved in favor of the Indians” (1976 Hualapai Opinion).⁴ What I have just described is the critical issue with respect to the Navajo boundary, namely, whether the “or other uses” language must be read in light of the reasons for which the land was taken. However, this was not the basis upon which the solicitor decided in favor of Marble Canyon National Monument (MCNM) and against the Navajos on the boundary issue.

Before turning to the solicitor’s reasons for deciding the way he did, let me provide some background. The NBA was enacted in 1934 and was subject to the 1914 “water power” carve-outs. Nonetheless, Navajo occupation and use of these lands date to before 1900, when an Executive Order was issued that set aside the portion of the Navajo Reservation that borders on the Colorado River until at least 1969, when MCNM was formed.⁵ After 1934 they used and occupied the land pursuant to the express provisions of the NBA. In 1969 the solicitor issued his Opinion regarding the boundary. In this Opinion he determined that the boundary was located one-quarter mile south of the river (at the 3,150-foot contour line), which is the South Rim for all practical purposes. The solicitor relied upon the “or other uses” language from the NBA, indicating that the creation of MCNM was a legitimate reason for terminating the Navajos’ rights of use and occupancy. He ignored the uses for which the land was excluded that were clearly set forth in the Arizona Enabling Act.

The solicitor’s reasoning is a prime example of what gives the practice of law such a bad reputation. As I will show, his interpretation appears to be the result of either outright deception, at worst, or at best, gross incompetence. Superficially, his decision appears simply to interpret the words of the NBA. Upon only slightly closer examination, however, it is clear that the decision is fatally flawed and distorts the language of the statute completely away from its reasonable meaning. The key to unraveling his Opinion is his interpretation of the word “required” in the NBA.

The solicitor’s Opinion states “it is apparent that the President’s proclamation setting aside the land for Park Service purposes would be a *required use* under the authority of the United States” (Solicitor’s Opinion 1969,

Interior’s solicitor could possibly avoid violating this duty when deciding a dispute between the BIA and another Department of the Interior division. Most certainly the solicitor is not a neutral judging body.

⁵ While the solicitor’s 1969 Opinion seemed to terminate Navajo use and occupancy, it is clear that it did not. As late as 1979, the Navajos apparently continued to enjoy use and occupancy of these lands according to Grand Canyon National Park’s 1979 Colorado River Management Plan, as described in more detail below.

3) (emphasis added). The word “required” in the NBA, however, must be read in context: “until . . . *required* for power purposes or other uses” (emphasis added). The following is the relevant passage from the Navajo Boundary Act:

There are hereby reserved from the reservation . . . all lands heretofore designated by the Secretary of the Interior pursuant to section 28 of the Arizona Enabling Act . . . as being valuable for water-power purposes and all lands withdrawn or classified as power-site lands, saving to the Indians, nevertheless, the exclusive right to occupy and use such designated and classified lands until they shall be *required* for power purposes *or other uses* under the authority of the United States. . . . (emphasis added).

It is a mystery what the solicitor meant by a “required use.” No such term is used in the NBA. The word “required” appears in the NBA, but it is used in the sense of preventing the United States from taking away the Navajos’ “use and occupancy” rights *until* the excluded land is “required,” i.e., necessary, for “power purposes or other uses.” The issue is not whether taking the land to add to MCNM was a permissible “required use” (whatever the solicitor thought this might mean), but whether the “or other uses” language permitted the termination of the Navajos’ right of “use and occupancy.” If it did (highly unlikely, as argued above), the question becomes whether the land was necessary (“required”) for whatever this “other use” might be. So, assuming that the solicitor did not need to show that the land was needed for dam or reservoir purposes, he would still have to show the land was necessary (“required”) for the use for which it was taken.

The next critical question in my analysis of this issue and critique of the solicitor’s Opinion is the question of whether the legislation establishing MCNM needed (“required”) the use of these excluded lands. Clearly, it did not. By its own admission in 1979, ten years after the solicitor’s 1969 Opinion, Grand Canyon National Park (GCNP) (into which MCNM was incorporated through the Grand Canyon National Park Enlargement Act of 1975) unequivocally stated in its Colorado River Management Plan both that it did not need (“require”) the land, and also that it did not even consider it was entitled to it:

The 12.5 million acre reservation of the Navajo Nation borders the east bank of the Colorado River in the Marble Canyon Section of the park from River Mile 0 at Lee’s [*sic*] Ferry to River Mile 61.8 at the confluence of the Little Colorado River. *The area from the river to and beyond the rim is undeveloped tribal park.* (National Park Service 1979, 34) (emphasis added).

We can conclude the following from the foregoing analysis: (1) regardless of what the solicitor said in his 1969 Opinion, the land was not necessary (“required”) for MCNM; and (2) in the view of GCNP, the Navajos continued their rights of use and occupancy at least through 1979.

In summary, I believe the “or other uses” language in the NBA needs to be interpreted in light of the purposes for which the land was excluded from the Navajo Reservation in the first place—for a dam or reservoir. And even if this interpretation is not adopted, the language of the NBA explicitly states that the excluded property must be “required” for the “other use” before the Navajos’ exclusive right to use and occupy the excluded lands can be terminated. That the lands carved out from the Navajo Reservation are not necessary is clear. Congress established that the land is not necessary for dam or reservoir purposes. The National Park Service admitted in 1979 that it did not need the land and did not even believe it was entitled to it. Therefore, the Navajo Nation at the very least should have the right to access the Colorado River from the mouth of the Little Colorado River to at least Lees Ferry and to use and occupy the land between the river and the 3,150-foot elevation contour along this stretch.

THE HUALAPAI BOUNDARY

We should first note that the solicitor addressed the Hualapai boundary differently from the Navajo boundary. His 1976 Opinion, issued in conjunction with the westward expansion of GCNP, while addressing the Hualapai Colorado River boundary issue, does not assert that the Hualapai are precluded from access by virtue of the 1914 legislation excluding hydropower lands. In fact, the 1976 Opinion does not even mention excluded hydropower lands. Instead, the deciding factor in the Opinion involves the language of the 1883 Executive Order creating the Hualapai Reservation.

The Executive Order describes the northern boundary as running “along” the Colorado River. The solicitor distinguishes the word “along” from other river-boundary descriptions using words such as “up” and “down” a river. “Up” and “down” a river, he explains (citing cases dealing with these precise words), intend a grant to the *center line* of the river (5).⁶ But since the Executive Order uses “along” rather than “up” and “down,” the solicitor asserts that the Hualapai were granted title only to

⁶ This point should be of great interest to the Navajo Nation, as their Colorado River boundary descriptions use “up” and “down.”

the line of the Colorado River's high-water mark.⁷

Remarkably, the solicitor cited no case law to support his interpretation of "along." This point is critical: if there is a generally accepted principle of law establishing how the word "along" is to be interpreted in a stream/river boundary situation, and if "along" is to be interpreted according to this principle in the same way "up" and "down" are interpreted, then the solicitor implicitly admits the Hualapai Reservation boundary is the center of the Colorado River.⁸ The convoluted analysis contained in both the 1976 and 1997 opinions dealing with the meaning of "along" is necessary, according to the solicitor, to determine what the legal meaning of "along" is in a boundary description. He asserts that no generally accepted legal rule exists, thereby justifying his interpretive analysis. The necessary corollary of this is that the analysis the solicitor undertakes is meaningless, or should be, if such a legal rule *does* exist.

Before addressing whether a legal rule in fact exists on this point, let us examine the analysis the solicitor did use. He determined that the Hualapai could not have been granted title to the center of the Colorado River because the Hualapai were required in 1881 to acknowledge that the reservation lands they were receiving were worthless wastelands. If these lands were indeed worthless, his reasoning continues, the word "along" cannot be interpreted as granting title to the center of the river since title extending to the center of the river would be of some value. Any value would mean that the Hualapai Reservation consisted of something more than worthless wasteland.

We should now ask why the Hualapai made the 1881 statement that the reservation lands were valueless: they did it to obtain their reservation. They were required by the federal government to acknowledge that the land they were being given was economically worthless to "whites" (Solicitor's Opinion 1976, at 2). It is difficult to believe that in the relatively enlightened year of 1976, the solicitor could consider it conscionable to attempt to use such an obviously coerced statement against the Hualapai. And

even more unbelievable, in 1997, he approved this aspect of the reasoning of the 1976 Opinion. For clarification, the Hualapai's 1881 statement, in relevant part, states:

They urge that the following reservation be set aside for them while there is still time; that the land can never be of any great use to the whites; that there are no mineral deposits upon it, as it had been thoroughly prospected; *that there is little or no arable land; that the water is in such small quantities*, and the country is so rocky and void of grass, that it would not be available for stock raising (Walapai Papers, S. Doc. No. 273, 74th Cong. 2nd Sess. (1936) at 135-136) (emphasis added—this is the language the solicitor relied upon).

Legally, there are at least two critical difficulties with the solicitor's reliance on this statement. Courts do not enforce unconscionable provisions,⁹ nor do they give weight to statements that have been coerced. Presumably, if his opinions were to be published widely, the solicitor would not have dared to use such an unconscionable argument. Again we see a consequence of a judging body that is neither neutral nor accountable.

Let us return now to the question about the legal meaning of the word "along" in a stream/river boundary description, keeping in mind that if there is a generally accepted legal meaning, then we must conclude that the solicitor's analysis is moot. Contrary to what the 1976 Opinion suggests, there is in fact a generally accepted legal interpretation for the word "along" in a stream/river boundary situation. This was very easy to determine. Section 30 of the "Boundaries" entry in the widely used legal encyclopedia *Corpus Juris Secundum* specifically lists the words "with," "along," "by," "on," "up," and "down," and indicates that cases construe all of these words "to carry title to the center" of a nonnavigable stream/river.¹⁰ Apparently, the solicitor failed to perform even the most rudimentary legal research before he prepared his 1976 Opinion, and the

⁷ The high-water mark is the relevant point on a "navigable river"—the solicitor, according to his 1976 Opinion, believes that the Colorado is navigable. In the question-and-answer session following the presentation of this paper at the Grand Canyon History Symposium, Jan Balsom, who is in charge of Grand Canyon National Park's relations with American Indian tribes, confirmed that the park considers the high-water mark to be the "historical" high-water mark, that is, the high-water mark *before* the construction of Glen Canyon Dam, a height that will not be reached unless the dam fails or is decommissioned. Even if the high-water mark is the boundary, the solicitor neglects to address an additional problem: "A conveyance to [the] 'high water mark,' as a general rule, vests in the grantee the right to the soil between ordinary high and ordinary low water mark, as incident or appurtenant to adjacent lands" (Ephraim Creek Coal & Coke Co. v. Bragg, 83 S.E. 190, 191 [W.Va. 1914]). Thus, even if the Hualapai do not hold title to the land below the high-water mark, they appear to have the right to use and occupy it.

⁸ Assuming, of course, the Colorado River is considered nonnavigable in Grand Canyon—see the discussion of this issue below.

⁹ Consider the way courts have dealt with racial restrictions in contracts, deeds, and covenants.

¹⁰ Accord: 12 Am.Jur.2nd Boundaries Section 24. This rule pertains to the case of a "nonnavigable" stream. The legal significance for boundary purposes of what is and is not legally considered a "navigable" stream is discussed below. The generally accepted rule is that property that borders on a nonnavigable stream/river, unless an intention to the contrary is manifest, grants title to the center of the river. This has been the generally accepted legal principle since before the 1883 Executive Order establishing the Hualapai Reservation. See *Drake v. Russian Land Co.*, 103 P. 167, 169 (Ca Ct of Appeals 1909) "[this] common law rule . . . has been adopted generally throughout the United States." Cases following this rule include *Rowland v. Shoreline Boat & Ski Club*, 544 N.E.2d 5, 7 (Ill. App. 1989); *McDonald v. Alexander*, 388 S.W.2d 725, 727 (Tex. App. 1965); *Rollan v. Posey*, 126 S.2d 464, 466 (Ala. 1961); *Kelley v. King*, 36 S.E.2d 220, 223 (N.C. 1945); and *Conner v. Jarrett*, 200 S.E. 39, 45 (W.Va. 1938). Cases following this rule *and* interpreting the word "along" include *Westmoreland v. Buetell*, 266 S.E.2d 260, 261 (Ga. App. 1980) and *Rowe v. Cape Fear Lumber Co.*, 38 S.E. 896 (N.C. 1901).

1997 Opinion was no better researched. Now that their shortcomings have been pointed out, these decisions should not be allowed to stand.

The final point I will address with respect to the Hualapai boundary dispute is whether the Colorado River should be considered navigable or nonnavigable for title purposes. This distinction is important because if it is considered navigable, the *entire* riverbed belongs to the State of Arizona to the extent it was not excluded for hydropower purposes; and if Arizona owns it, the Hualapai have no claim to the center of the river, regardless of how their title documents may read.¹¹ If the river is considered nonnavigable, however, the Hualapai boundary is the center of the Colorado River, assuming, of course, that the accepted legal method of determining navigability is used. I noted earlier that the solicitor stated in his 1976 Opinion that the Colorado River was navigable; however, he cited no support for this assertion. In 1997 the solicitor issued an updated Opinion on the Hualapai boundary issue. In this updated Opinion, he acknowledges that he had no basis for the determination and explicitly takes back the 1976 assertion of navigability. He goes on to say that he refuses to opine one way or the other as to the Colorado River's navigability.¹² Remarkably, the 1997 Opinion completely fails to address perhaps the most critical consequence of taking back the Opinion as to navigability: that the "high-water mark" is considered the boundary only if the river is navigable (see Solicitor's Opinion 1976, at 7-8). The 1976 and 1997 opinions, therefore, provide no legal basis for GCNP to assert that the high-water mark is the appropriate boundary for the Hualapai Reservation.

Let us examine the issue of navigability. For title purposes, the determination of whether the Colorado River in the Grand Canyon is navigable depends on whether the river was navigable in 1912, when Arizona became a state. The test of navigability, according to a leading boundary law treatise of the time, was whether the Colorado River was "susceptible of being used in [its] ordinary condition as [a] highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water" (Taylor 1876, 46-47).¹³ Needless to say, in 1912 river runners could barely run the river; trade or travel in "the customary mode" was unimaginable. To reiterate,

the significance of the Colorado River being nonnavigable for title purposes is that, if it is, the Hualapai boundary extends to the center of the Colorado River (assuming that the accepted legal interpretation of "along" is employed).

I argue one additional point. Even assuming that the Colorado River was navigable in the Grand Canyon in 1912, the Hualapai people would still have a clear right to access the river since "the [property] owner has . . . a property right of access from the front of [the] land to the navigable part of the stream" (Skelton 1876, 322). Unfortunately, neither the 1976 nor 1997 Solicitor's Opinion addresses this access issue.

In summary, the portion of the Hualapai Reservation that is not subject to hydropower exclusion should extend to the middle of the Colorado River if the clear legal standards relating to the interpretation of "along" and "navigability" are used. Even if the Colorado River in the Grand Canyon is considered navigable, the Hualapai have a clear right of access to the navigable part of the river from their land. The 1976 and 1997 solicitor's opinions must be reviewed by a neutral and accountable judging body, preferably one that can thoroughly and competently perform the necessary legal research.

CONCLUSION

On a commercial paddle trip on the Colorado River in the Grand Canyon in the summer of 2000, our trip leader told us that the National Park Service was taking hard-line positions with the neighboring American Indian tribes with respect to the Colorado River boundary. The trip leader indicated that the park service's objective was to gain full control of Colorado River access in the Grand Canyon. To accomplish this, at least with respect to the Hualapai, the park service had taken the position that the boundary was the historic high-water mark (pre-Glen Canyon Dam). Effectively, this position eliminated the Hualapais' access to the river without the park's consent since, barring a catastrophic failure of Glen Canyon Dam or its decommissioning, the pre-dam high-water mark will never again be reached by the river. I continue to wonder how the right-to-access issue was handled (or avoided) by the park service in their dealings with the Hualapai.¹⁴ Meanwhile, I have learned

¹¹ This is based on the assumption that the 1912 Act of Congress establishing Arizona overrides the 1883 Executive Order establishing the Hualapai Reservation, at least to this extent.

¹² Citing the United States Supreme Court Opinion *Arizona v. California*, 283 U.S. 423, 452-53, the Solicitor's Office in 1997 indicates that the Colorado River was navigable upstream as far as the Virgin River at Black Canyon, well short of the Hualapai Reservation. No legal determination appears ever to have been made with respect to the navigability of the Colorado River in Grand Canyon.

¹³ See *Hanes v. State*, 973 P.2d 330, 334 (Ok. App. 1998) for a discussion of the navigability test. See also *United States v. Cress*, 243 U.S. 316, 323 (1916).

¹⁴ The highest officials of Grand Canyon National Park appear to have believed in good faith, and without any reservation, in the validity of the solicitor's opinions, and have acted accordingly. See Burnham 2000, 292-293.

that upriver, the National Park Service has in recent years taken a rather hard-line position with the Navajos. They now contend that the South Rim is the Navajo Nation's northern boundary. Again, it is difficult to understand how the park service can justify this position in light of their 1979 Colorado River Management Plan in which they say the Navajos continue to use and occupy the hydropower carve-out lands.¹⁵

AFTERWORD

I am no longer a practicing attorney and nothing I say in this paper can be considered a "legal opinion." If anyone wishes to take a legal position based on what I say in this paper, be sure to consult first with a practicing attorney. This paper has already generated controversy. I shared my research and conclusions with Stanley Pollock in the Navajo Nation's Attorney General's Office, and Clay Bravo and Cisney Havetone in the Hualapai Tribal Offices in Peach Springs, as early as June 2001 (prior to presenting an earlier version of this paper at the Association for the Study of Literature and the Environment Conference at Northern Arizona University in late June 2001). At that time, the Hualapai were not represented by counsel. My relations with the representatives of both tribes were pleasant, if not very productive. When I submitted a revised paper for the Grand Canyon History Symposium, personnel at GCNP also became aware of my research and conclusions. In November 2001 I sent a revised version of the paper to Stanley Pollock and to Louise Benson, Hualapai chairwoman. After she misplaced the paper, I sent her another copy in early January 2002. She gave the paper to the attorneys hired by the tribe (the Hualapai Tribe had hired new counsel in the intervening months). I then proceeded to trade numerous phone and e-mail messages with one of the tribe's attorneys—we never did speak directly. The attorney suggested that I might want to consider not presenting the paper at the conference—that it was full of problems, and that I might not be aware of the sensitive nature of the political arena. The attorney's final message, which I received after the beginning of the conference, even suggested that the Hualapai Tribe would need to send a delegation to present an opposing point of view. No such delegation materialized, and I have not heard from the tribe's attorney since.

My presentation at the conference went smoothly, but

the question-and-answer session was unique in my experience. Jan Balsom, the park's liaison with neighboring tribes, introduced the panel and remained as an audience member. During the question-and-answer session, a number of questions arose as to the relationship of the park with the Hualapais that I could not answer. Jan was as qualified as anyone to answer these questions, however, given her job and experience. There proceeded a lively discussion between the audience and Jan—an exchange that consumed virtually all of the remaining time. Never before have I experienced such a lively Q & A session following a talk—a session in which audience members talked almost exclusively among themselves.

Several weeks after the conference I received an e-mail from Jeffrey Ingram, the Sierra Club's Southwest representative during the late 1960s and a man who was instrumental in the crafting and passing of the Grand Canyon National Park Enlargement Act of 1975, asking if he could read my paper. I sent him a copy and asked if he had any comments. I soon received an e-mail with his comments, which were longer than my paper. It was very useful to get the benefit of his firsthand experience with many of the issues I dealt with in the paper. I end this presentation by quoting the final paragraph from Ingram's letter:

Andy, I have no idea if anyone other than you has tried to grapple with these river boundary issues. As I hope you can tell, I think they are worthwhile because they can point the way toward fruitful cooperation between NPS and the Navajo & Hualapai. Put in the context of enhancing the wilderness & natural qualities of the Canyon while avoiding the degrading activities, your work can be extremely valuable. GCNP has been ordered to proceed with a [Colorado] River Management Plan ([C]RMP) over the next couple of years. The subject we have been discussing here could be a vital and positive contribution to a soundly-based, Canyon-friendly, [C]RMP.

¹⁵ One final note: What should happen to the lands excluded for hydropower, if, as seems likely, these dams are not built? I have not specifically researched this issue from a legal standpoint, but general principles of fairness suggest that some sort of reversion theory should apply—that is, the land eventually should revert to the reservations from which it was taken.