



U.S. Department of Transportation
Federal Aviation Administration

SEP 22 2005



U.S. Department of the Interior
National Park Service

The Honorable John McCain
Committee on Commerce, Science
and Transportation
United States Senate
Washington, DC 20510

Dear Senator McCain:

Thank you for your July 12 letter of support for the Grand Canyon Working Group. We are encouraged that we can resolve final issues necessary to the fulfillment of legislation governing Grand Canyon overflights through the efforts of this Working Group and with the assistance of the U.S. Institute for Environmental Conflict Resolution. The National Park Service (NPS) and the Federal Aviation Administration (FAA) are co-chairing the Working Group and have laid a solid foundation for future work through successful collaboration during this past year. It is in a continuing spirit of cooperation that we are jointly responding to your letter in a factual and objective way, without advocating a particular position.

We appreciate your insights into the legislative intent not to regulate commercial aircraft flying at or near cruising altitudes over national parks with either the National Parks Overflights Act (Overflights Act) or the National Parks Air Tour Management Act of 2000. As you further explained, the intent was to address air tour operators. To that end, our agencies are committed to the following mission statement which we jointly established "to work collaboratively to achieve the goal of substantially restoring natural quiet to the Grand Canyon while providing a reasonable opportunity for visitors to experience the Grand Canyon safely by air tours, without adversely affecting the national aviation system."

We agree that the statutory language of the National Parks Air Tour Management Act of 2000 is very clear in reflecting what you shared about congressional intent to regulate air tour operators only. However, the language in the Overflights Act governing the Grand Canyon, which refers to "aircraft" rather than specifically to air tour aircraft or air tour operators, is not explicit. Section 1 of the Overflights Act directs NPS to study the impacts caused by sightseeing aircraft, military aircraft, commercial aviation, general aviation, and other forms of aircraft affecting park units. In addition, our administrative discretion to interpret the Overflights Act to exclude certain categories of aircraft from

the noise analysis used to assess environmental impacts has been limited by a Federal Appeals Court decision. The FAA and the NPS have both concluded that without specific legislative authority, we do not have the ability to limit the application of the Overflights Act to air tour operators. We provide further information on the current situation below.

A U.S. Court of Appeals decision in 2002 (298 F.3d 997 at 1019 (D.C. Cir. 2002)) found that the Overflights Act does not provide a basis for ignoring the noise caused by non-tour aircraft because it addresses "aircraft" without specifying that only certain types of aircraft are to be considered for the purpose of substantially restoring natural quiet to the Grand Canyon. Accordingly, the FAA and the NPS are in the process of revising the noise analysis to include the noise contribution of all aircraft flying over the Grand Canyon—air tour, general aviation, military, and commercial aircraft at all altitudes.

The Court went on to find that FAA's regulations are not required to regulate all aircraft, and that the FAA can choose to achieve the substantial restoration of natural quiet by regulating air tours alone. In actuality, this would be a choice for the Secretary of the Interior who is directed by the Overflights Act to submit recommendations to the FAA Administrator that provide for the substantial restoration of the natural quiet and experience of Grand Canyon National Park and for the protection of public health and safety from adverse effects associated with aircraft overflights. The role of the FAA under the Overflights Act is to implement the recommendations of the Secretary without change unless the Administrator determines they would adversely affect aviation safety.

NPS and FAA are working to complete the analysis of the extent to which substantial restoration of natural quiet has been achieved or not achieved when all aircraft noise, rather than air tour noise only, is included in the analysis. We expect this to be concluded in the fall of 2005. Our research to date has indicated that commercial and general aviation aircraft in the enroute system are audible at ground level, given the extremely low natural ambient noise levels in the Grand Canyon. The standard established by the NPS for the substantial restoration of natural quiet is that there will be no audible aircraft noise in 50 percent or more of the Canyon for at least 75 to 100 percent of any given day. We respect your long history of support for aviation and national park interests, and we appreciate your clarifying your understanding of the congressional intent of the application of the Overflights Act to air tour operators in the Grand Canyon. Within the next 4 months, we expect the Grand Canyon Working Group to be at a point of considering alternatives for a final overflights plan. It would be advantageous for the Working Group to know by that time whether further congressional action will influence the scope of their consideration.

Please do not hesitate to contact us for further information. We would be pleased to brief you or your staff in more detail if that would be of help.

Sincerely,



Sharon L. Pinkerton
Assistant Administrator for Aviation Policy,
Planning, and Environment



Paul Hoffman
Deputy Assistant Secretary for Fish
and Wildlife and Parks