

No. 19-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

IN RE PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY
and HAWAII COALITION MALAMA PONO,
Petitioners.

On Petition for Writ of Mandamus

**PROGRESSS UPDATE OF THE
FEDERAL AVIATION ADMINISTRATION AND
THE NATIONAL PARK SERVICE**

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**PROGRESS UPDATE OF THE FEDERAL AVIATION
ADMINISTRATION AND THE NATIONAL PARK SERVICE**

The Court's order of November 20, 2020 approved a plan (Plan) submitted by the Federal Aviation Administration (FAA) and National Park Service (NPS) (collectively the agencies) for bringing twenty-three specific parks into compliance with the National Parks Air Tour Management Act of 2000 (NPATMA).¹ The order further directed the agencies to file a progress update on November 30, 2020 and to file subsequent updates at 90-day intervals thereafter.² Pursuant to that order, as modified by a March 8, 2021 clarification order and a February 10, 2022 order, the agencies submit the following:

The Plan details the agencies' intended approach to completing air tour management plans (ATMPs) for all covered parks, and it describes on a quarterly basis the actions that the agencies anticipate undertaking in furtherance of that approach. The table below identifies the actions included in the Plan for Year 2, Quarter 3 (March 1, 2022 to May 31, 2022) and provides a concise summary of the work activities accomplished during this quarter.

¹ As explained in previous progress updates, the NPS withdrew the exemption applicable to Muir Woods National Monument and the agencies proceeded with implementing ATMPs for 24 parks.

² On February 20, 2022, the Court granted the agencies' unopposed motion to adjust the progress reporting schedule and authorized filing on fixed dates of February 28, May 31, August 31, and November 30, rather than at 90-day intervals.

Actions in Proposed Plan for Second Year, Quarter 3	Work Activities Completed in Second Year, Quarter 3
Complete final draft Records of Decision and finalize ATMP/NEPA documents.	<ul style="list-style-type: none"> • The agencies continued consideration of public comments received on the draft ATMPs in further development of the Categorical Exclusions/Environmental Screening Forms/Adoption Documents, as appropriate. • The agencies continued development of the draft Records of Decision (RODs) for the ATMPs that were previously released for public comment and coordinated on the materials to be attached to the RODs.
Continue work on any appropriate park-specific incentives for quiet technology.	<ul style="list-style-type: none"> • The agencies completed this activity last quarter.
Document completion of Tribal and other agency consultations.	<ul style="list-style-type: none"> • The agencies sent Section 106 consultation letters to State Historic Preservation Officers/Tribal Historic Preservation Officers, tribes, operators, and other consulting parties regarding historic property identification for Glacier National Park, Death Valley National Park, and the four San Francisco Bay Area parks (Golden Gate National Recreation Area, Point Reyes National Seashore, Muir Woods National Monument, and San Francisco Maritime National Historical Park). • The agencies sent Section 106 consultation letters to State Historic Preservation Officers/Tribal Historic Preservation Officers, tribes, operators, and other consulting parties regarding findings of effects for Olympic National Park, Mount Rainier National Park, Great Smoky Mountains National Park, and Everglades National Park

Actions in Proposed Plan for Second Year, Quarter 3	Work Activities Completed in Second Year, Quarter 3
<p>Document completion of Tribal and other agency consultations. (continued)</p>	<ul style="list-style-type: none">• The agencies held a consultation meeting with Section 106 consulting parties at Hawai'i Volcanoes National Park on March 11, 2022, to discuss proposed alternatives.• The agencies continued outreach to the Oglala Sioux Tribe to initiate government-to-government consultation with the tribe for the ATMP at Badlands National Park.• The agencies held a Section 106 consultation meeting with 10 tribes regarding the ATMPs for Badlands National Park and Mount Rushmore National Memorial on May 12, 2022, to obtain tribal feedback on potential alternatives for the ATMPs.• The agencies responded to concerns expressed by the Timbisha Shoshone tribe in connection with Death Valley National Park.• The agencies continued efforts to consult with tribes associated with Bandelier National Monument and held two tribal consultation meetings with tribes.• The agencies held a tribal consultation meeting for the four San Francisco Bay Area parks.• The agencies continued to draft Section 7 of the Endangered Species Act compliance documentation. The agencies sent Section 7 informal consultation letters to the U.S. Fish and Wildlife Service for Everglades National Park, Great Smoky Mountains National Park, Arches National Park, and Natural Bridges National Monument.• The agencies drafted memoranda to file to document no effect determinations for some of the parks.

Actions in Proposed Plan for Second Year, Quarter 3	Work Activities Completed in Second Year, Quarter 3
Additional work done to facilitate implementation of ATMPs	<ul style="list-style-type: none"> • The agencies conducted and concluded public scoping in connection with the development of ATMPs for Haleakalā National Park and Hawai'i Volcanoes National Park. • The agencies prepared a draft Voluntary Agreement in connection with the National Parks of New York Harbor and held a meeting with the relevant operators regarding the draft. • The agencies responded to congressional and stakeholder inquiries.

Everglades National Park. On April 13, 2022, the sole operator with interim operating authority for Everglades National Park surrendered its Part 135 certificate. This certificate is required by the FAA for an operator that provides air transportation of persons or property for compensation or hire. Upon surrender of a Part 135 certificate all authorizations given to an operator through their Operations Specifications (OpSpecs) are cancelled, including interim operating authority in the operator's B057 OpSpec. As a result, there are now no operators with interim operating authority for Everglades National Park and NPATMA does not require that an ATMP or voluntary agreement be prepared for the park. 49 U.S.C. § 40128(b)(1)(A). Further, on review, the agencies found that the operator did not conduct any commercial air tours over Everglades National Park in 2020 and 2021 and has not conducted any commercial air tours over that park in 2022. Therefore, the park is also exempt from NPATMA's requirement to prepare an ATMP or

voluntary agreement. 49 U.S.C. § 40128(a)(5)(A). Accordingly, the agencies intend to terminate the ATMP process for this park as it is already in compliance with NPATMA.

The agencies remain on schedule to bring as many as nine additional National Park System units into compliance with NPATMA by August 31, 2022, or shortly thereafter. However, the consultation process under Section 106 of the National Historic Preservation Act and/or tribal consultation for certain parks may push the completion date beyond the end of August for those parks. The agencies are actively working through these issues and aim to complete the ATMPs for as many parks as possible by August 31, 2022, or as soon thereafter as is possible.

Northern California Parks. As noted previously, and explained in the May 9, 2022 Declaration of Raymond Sauvajot (Second Sauvajot Declaration), attached as Exhibit 3 to the agencies' Opposition to Petitioners' Second Motion to Enforce Order Granting Petition of Mandamus, and incorporated herein by reference, the ATMP for Golden Gate National Recreation Area, Point Reyes National Seashore, Muir Woods National Monument, and San Francisco Maritime National Historical Park is particularly complicated and may not be completed by August 31, 2022, but it remains the agencies' goal to do so. If that goal cannot be met, the ATMP will be completed shortly thereafter.

Bryce Canyon National Park. In addition, the ATMP for Bryce Canyon National Park has been delayed due to aviation safety concerns raised in the public comment period. Resolution of the aviation safety issues raised, while maintaining the necessary mitigations for threatened and endangered species, has required additional consultation with the FAA's Flight Standards District Office and the U.S. Fish and Wildlife Service. While the agencies are not currently on track to complete the ATMP for Bryce Canyon National Park by August 31, 2022, they anticipate completing this ATMP shortly thereafter.

As the agencies have previously reported, completing ATMPs for the following eight parks will take longer than the two-year timeframe set forth in the Court-approved Plan. The specific and concrete reasons that it will take longer to complete ATMPs for the below parks are explained in the Second Sauvajot Declaration and the May 9, 2022, Declaration of Kevin Welsh (the Second Welsh Declaration), attached as Exhibit 4 to the agencies' Opposition to Petitioners' Second Motion to Enforce and incorporated herein by reference:

- **Badlands National Park.** The agencies anticipate that the ATMP will be complete by August 2023.
- **Bandelier National Monument.** The agencies currently anticipate that the ATMP will be complete by March 2023. Park staff's work on the ATMP and tribal consultation for the ATMP have been delayed due to

the Cerro Pelado Fire on NPS and tribal lands. Depending on the disruption and damage caused by the fire, and the outcome of tribal consultation when it is resumed, completion of the ATMP may be delayed past March 2023.

- **Canyon de Chelly National Monument.** The agencies anticipate that the ATMP will be complete by December 2023.
- **Glen Canyon National Recreation Area/Rainbow Bridge National Monument.** The agencies anticipate that the ATMP will be complete by February 2024.
- **Haleakala National Park.** The agencies anticipate that the ATMP will be complete by August 2023.
- **Hawai'i Volcanoes National Park.** The agencies anticipate that the ATMP will be complete by August 2023.
- **Lake Mead National Recreation Area.** The agencies anticipate that the ATMP will be complete by August 2023.
- **Mount Rushmore National Monument.** The agencies anticipate that the ATMP will be complete by August 2023.

As previously explained, circumstances beyond the agencies control could delay completion of any of the ATMPs beyond the timeframes identified above.

And it is still possible that the agencies may be able to bring some or all of the

parks into compliance with NPATMA prior to the anticipated completion dates identified above. The agencies will continue to update the Court regarding their progress bringing all parks identified above into completion with NPATMA and will provide any additional schedule updates in future progress updates, with an accompanying explanation, as such information becomes available.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document is not a brief or motion and therefore is not subject to the type-volume limits of Federal Rules of Appellate Procedure 27(d)(1)(E)(2) and 32(a)(7)(B). Excluding the cover, signature block, and certificate this document contains 1,559 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font.

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