

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

**PETITION FOR WRIT OF MANDAMUS
(AGENCY ACTION UNREASONABLY DELAYED)**

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES iii

Glossaryv

INTRODUCTION1

STATEMENT OF JURISDICTION3

RELIEF SOUGHT.....4

ISSUE PRESENTED5

STATEMENT OF FACTS5

REASONS WHY THE WRIT SHOULD ISSUE.....13

 Respondents Have Unreasonably Delayed Performing their Mandatory
Duty to Prepare Air Tour Management Plans or Voluntary Agreements with
Commercial Air Tour Operators over the Covered Parks13

STANDING19

 A. HICoP.....21

 B. PEER.....22

CONCLUSION.....24

ADDENDUM.....1

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES... i

 A. Parties and Amici i

 B. Rulings Under Review i

 C. Related Cases i

DISCLOSURE STATEMENT (PEER) iii

DISCLOSURE STATEMENT (HICoP)..... iv

CERTIFICATE OF COMPLIANCEv

CERTIFICATE OF SERVICE..... vi

TABLE OF AUTHORITIES

Cases

<i>George Kabeller, Inc. v. Busey</i> , 999 F.2d 1417, 1421(11th Cir. 1993).....	4
<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977)	20, 21
<i>In re Am. Rivers & Idaho Rivers United</i> , 372 F.3d 413, 418 (D.C. Cir. 2004)15, 16,	
17	
<i>In re Barr Laboratories, Inc.</i> , 930 F.2d 72, 75 (D. C. Cir. 1991)	18
<i>In re Bluewater Network</i> , 234 F.3d 1305, 1316 (D.C. Cir. 2000)	17
<i>In re Core Commc'ns</i> , 531 F.3d 849, 855 (D.C. Cir. 2008)	16
<i>In re People's Mojahedin Org. of Iran</i> , 680 F.3d 832, 837-38 (D.C. Cir. 2012).	17
<i>In re Public Employees for Environmental Responsibility and Hawaii Coalition</i>	
<i>Malama Pono</i> , No. 18-1044	2, 4
<i>MCI Telecommunications Corp. v. Federal Communications Com.</i> , 627 F.2d 322,	
340 (D.C. Cir. 1980)	16
<i>Midwest Gas Users Assoc. v. Federal Energy Regulatory Com.</i> , 833 F.2d 341, 359	
(D.C. Cir. 1987)	16
<i>Nader v. F.C.C.</i> , 520 F.2d 182, 206 (D.C. Cir. 1975)	17
<i>Pub. Citizen Health Research Grp. v. Auchter</i> , 702 F.2d 1150, 1157 (D.C. Cir.	
1983)	17

Telecommunications Research & Action Ctr. v. FCC, 750 F.2d 70, 76 (D.C. Cir.

1984)4, 16

Statutes

28 U.S.C. § 16514

49 U.S.C. § 40128 passim

49 U.S.C. § 461103

5 U.S.C. § 7064

Other Authorities

71 Fed. Reg. 36874, 36875 (June 28, 2006)6

72 Fed. Reg. 6802, 6803 (Feb. 13, 2007)10

82 Fed. Reg. 3093810

Advisory Circular, U.S. Dept. of Transportation, Federal Aviation Administration,
“COMMERCIAL AIR TOUR OPERATIONS CONDUCTED OVER
NATIONAL PARKS AND TRIBAL LANDS,” October 25, 2002, AC No. 136-1
.....6, 9

Regulations

14 C.F.R. § 136.365

14 C.F.R. § 136.375

14 C.F.R. § 136.419

Glossary

Air Tour Management Plan	ATMP
Federal Aviation Administration	FAA
Hawaii Island Coalition Malama Pono	HICoP
Hawaii Volcanoes National Park, Haleakalā National Park, Lake Mead National Recreation Area, Muir Woods National Monument, Glacier National Park, Great Smoky Mountains National Park, and Bryce Canyon National Park	Covered Parks
Interim Operating Authority	IOA
National Parks Air Tour Management Act of 2000	NPATMA
National Park Service	NPS
Public Employees for Environmental Responsibility	PEER

INTRODUCTION

Petitioners, Public Employees for Environmental Responsibility (PEER) and Hawaii Island Coalition Malama Pono (HICoP), seek a writ of mandamus to Respondents Federal Aviation Administration (FAA) and its Acting Administrator Dan Elwell, and the National Park Service (NPS) and its Deputy Director, P. Daniel Smith (exercising the authority of the Director), to meet their mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Hawaii Volcanoes National Park, Haleakalā National Park, Lake Mead National Recreation Area, Muir Woods National Monument, Glacier National Park, Great Smoky Mountains National Park, and Bryce Canyon National Park (hereinafter “covered parks”). Respondents have unreasonably delayed developing these plans for 17 years beyond the time directed in the National Parks Air Tour Management Act of 2000, as amended (NPATMA), 49 U.S.C. § 40128.

Over the last 19 years since the passage of the NPATMA, Respondents have failed to develop the ATMPs that would ensure environmental review, public participation, and mitigation or prevention of impacts on the natural and cultural resources and visitor experience in the covered parks, or to enter voluntary agreements that would afford similar protections. Instead, Respondents have allowed tens of thousands of annual flights over the covered parks to continue

under Interim Operating Authority (IOA). IOA does not provide the protections of ATMPs or voluntary agreements and was intended by Congress to be a temporary measure to avoid air tour operators having to go out of business while ATMPs were prepared over a two-year period.

Petitioner PEER is a public interest organization whose mission is to advocate for public employees, including those who are employed at covered parks, and whose members regularly use covered parks but find that the overflights disrupt their enjoyment of the parks. Petitioner HICoP is a public interest organization dedicated to reducing the impact of noise from helicopters on the State of Hawaii. HICoP members are impacted by overflights over Hawaii Volcanoes National Park both in their homes and when they recreate in the park.

This matter was previously before this court as *In re Public Employees for Environmental Responsibility and Hawaii Coalition Malama Pono*, No. 18-1044, with only the FAA as a respondent. That petition for mandamus was dismissed in a *per curiam* decision on the basis that petitioners lacked standing. Doc. 1759626 (Nov. 13, 2018). Specifically, the court found that the relief the petitioners sought against the FAA would not redress their injuries because NPS approval is required for the issuance of ATMPs and voluntary agreements, and the NPS was not then before the court. The court did not rule on any other issues in the case. This

petition cures the deficiency that occasioned the dismissal of the previous petition by including the NPS and its acting Director as respondents.

STATEMENT OF JURISDICTION

In accordance with 49 U.S.C. § 46110(a) and (c), appeals of orders of the Administrator of the FAA under *inter alia*, NPATMA, 49 U.S.C. § 40128, are subject to the exclusive jurisdiction of the United States Court of Appeals for the District of Columbia Circuit or the court of appeals for the circuit in which the appellant resides or has its principal place of business. ATMPs and voluntary agreements are orders of the Administrator of the FAA subject to 49 U.S.C. § 46110. The NPS is also subject to § 40128, which assigns it duties with regard to ATMPs and voluntary agreements. NPATMA requires FAA to develop ATMPs in cooperation with NPS, 49 U.S.C. § 40128(a)(2)(D); § 40128(b)(1)(A); requires environmental determinations for ATMPs to be signed by both the FAA Administrator and the NPS Director, § 40128(b)(2); directs procedures for establishing ATMPs to be conducted by the FAA Administrator and the NPS Director, § 40128(b)(4); requires voluntary agreements to be entered by both the FAA Administrator and the NPS Director, § 40128(b)(7)(A); and gives the NPS Director authority to terminate a voluntary agreement. § 40128(b)(7)(D)(i)(I). Therefore, this Court also has jurisdiction of the claim against NPS under 49 U.S.C. § 46110. In fact, this court ruled that the NPS is a necessary party to this

case. *In re Public Employees for Environmental Responsibility and Hawaii Coalition Malama Pono*, Case No. 18-1044, Doc. 1759626.

Because this court would have jurisdiction over any challenges to ATMPs or voluntary agreements, it also has jurisdiction to issue a writ of mandamus ordering Respondents, the FAA Administrator and the NPS Director, to issue ATMPs or voluntary agreements required by statute that have been unreasonably delayed. *Telecommunications Research & Action Ctr. v. FCC*, 750 F.2d 70, 76 (D.C. Cir. 1984)(“TRAC”)(“Because the statutory obligation of a Court of Appeals to review on the merits may be defeated by an agency that fails to resolve disputes, a Circuit Court may resolve claims of unreasonable delay in order to protect its future jurisdiction”); *George Kabeller, Inc. v. Busey*, 999 F.2d 1417, 1421(11th Cir. 1993)(review of FAA failure to act lies in the court of appeals); *see also* 28 U.S.C. § 1651(a) (All Writs Act); and 5 U.S.C. § 706 (1) (“The reviewing court shall compel agency action unlawfully withheld or unreasonably delayed”).

RELIEF SOUGHT

Petitioners seek a writ of mandamus to the FAA and its Administrator and the NPS and its Director to complete ATMPs for all of the covered parks in accordance with all statutory and regulatory requirements, within 24 months of the date of the issuance of the writ, unless by that time voluntary agreements,

compliant with all statutory and regulatory requirements, have been entered with all commercial air operators over those parks.

ISSUE PRESENTED

Whether the 17-year delay beyond the statutory directive in the NPATMA to complete ATMPs or voluntary agreements for the covered parks in 24 months constitutes unreasonable delay justifying mandamus relief ordering completion of these plans or agreements within 24 months, the time originally set by statute in 2000.

STATEMENT OF FACTS

NPATMA provides that commercial air tour operators may not conduct air tours over units of the national park system without applying to the FAA for operating authority. 49 U.S.C. § 40128(a)(2)(A). Receipt of such an application triggers the duty of the Administrator of the FAA, in cooperation with the Director of the NPS, to establish an ATMP for that park. 49 U.S.C. § 40128(b)(1)(A). The FAA may not grant operating authority to any applicant before completion and implementation of an ATMP. 49 U.S.C. § 40128(a)(2)(D); 14 C.F.R. § 136.37(d). The FAA is to “make every effort” to act on applications for operating authority and issue a decision not later than 24 months after the application is received. 49 U.S.C. § 40128(a)(2)(E) (“Time limit on response to ATMP applications”); 14 C.F.R. § 136.37(e). Thus, because the FAA is to act on applications for operating

authority within 24 months, and completing and implementing an ATMP is a prerequisite to the grant of operating authority, ATMPs must be developed and implemented *before* 24 months from the receipt of any application for operating authority.

As the FAA has acknowledged, “Once an application is filed, the FAA, in cooperation with Director of the National Park Service, *must* develop and implement an ATMP for the park or abutting tribal land.” “Proposed Opinion on the Transferability of Interim Operating Authority Under the National Parks Air Tour Management Act,” 71 Fed. Reg. 36874 (June 28, 2006)(emphasis added). *See also* Advisory Circular, U.S. Dept. of Transportation, Federal Aviation Administration, “COMMERCIAL AIR TOUR OPERATIONS CONDUCTED OVER NATIONAL PARKS AND TRIBAL LANDS,” October 25, 2002, AC No. 136-1, p 3. § 5.b (“The Act requires all persons operating or intending to operate a commercial air tour operation to apply to the FAA for authority to conduct such activity. The Act further requires the FAA and NPS to develop an Air Tour Management Plan (ATMP) for each unit of the National Park system or tribal land that does not have a plan in effect at the time a person applies for authority to conduct such an operation”).¹

¹ Available at https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/documents/advisory_circular.pdf

ATMPs are intended to mitigate or prevent any significant adverse impacts of commercial air tours on the natural and cultural resources and visitor experience at parks and adjacent tribal lands. 49 U.S.C. § 40128(b)(1)(B). To achieve this goal, ATMPs may prohibit commercial air tours over a national park in whole or in part; establish routes, allowed altitudes, time of day restrictions, restrictions for particular events, and maximum number of flights per unit of time; and provide for mitigation of noise, visual and other impacts. ATMPs are also required to include incentives for the use of quiet aircraft technology. 49 U.S.C. § 40128(b)(3). Preparation of an ATMP requires review under the National Environmental Policy Act, § 40128(b)(2), and is subject to public participation requirements including public meetings, notice and comment, and participation by affected Indian tribes. § 40128(b)(4). ATMPs are explicitly made subject to judicial review. § 40128(b)(5).

All of the covered parks had existing air tour operators at the time NPATMA was enacted in 2000. Those operators were then required by NPATMA to apply for operating authority, thus triggering the requirement for an ATMP within 24 months so that the operator applications could be acted upon. However, no ATMPs have ever been established in those parks or any others.

The only exceptions to NPATMA's requirement for ATMPs are if voluntary agreements are entered with all air tour operators over the park (any outstanding

applications for operating authority for operators without a voluntary agreement would still trigger the need for an ATMP), 49 U.S.C. § 40128(b)(7), or if the park has fewer than 50 overflights per year. § 40128(a)(5)(A). None of the covered parks has a voluntary agreement with any air tour operator or has fewer than 50 overflights per year.

Voluntary agreements with air tour operators as an alternative to ATMPs must address the management issues necessary to protect the resources and visitor use of the park, and may include provisions similar to those in ATMPs, except that they may not entirely prohibit air tour operations over a park. 49 U.S.C. § 40128(b)(7)(B). Proposed voluntary agreements are subject to public review and consultation with affected Indian tribes, and may not be implemented prior to such review and consultation. § 40128(b)(7)(C).

NPATMA also provides for the grant of interim operating authority (IOA) by the FAA Administrator to operators pending development of an ATMP and terminating 180 days after the establishment of an ATMP. 49 U.S.C. § 40128(c). All of the air tour operators over the covered parks operate based on IOA.

The FAA has outlined the process as it should work in an Advisory Circular. It states that no operator may conduct operations over national parks without applying for operating authority, and that the submission of such applications

triggers the FAA and NPS to initiate development of the ATMP.² The submission of an application for operating authority also leads the FAA to grant IOA to existing operators in the park, in order to allow them to continue operations while the ATMP is developed. *Id.*³ The FAA issues operating authority only after both the completion of the ATMP process and the implementation of the rules developed in the ATMP, which govern matters such as flight procedures, weather, altitudes, training, entry and exit locations, routes and sightseeing locations. *Id.*, p. 4-5, § 6.e.

The FAA has described Congress's creation of IOA for existing tour operators over national parks as intended solely to bridge the gap while ATMPs are being developed.

Congress set up the IOA process as a way of ensuring that those commercial air tour operators conducting commercial air tours over national parks at the time of Act's enactment would not be put out of business while the FAA, in cooperation with NPS, analyzed the environmental impact of the air tours on the national park unit and developed an ATMP. The IOA then ends 180 days after the ATMP is adopted.

....

IOA was designed as a temporary solution to allow operators already conducting air tours at the time of the enactment of the Act to continue to operate pending completion of the ATMP, or new entrants to begin operation to ensure competition.

² Advisory Circular, *supra* n. 1, p. 4, § 6.

³ The statute and the regulations provide for IOA to be granted upon application for operating authority by existing operators over a national park. 49 U.S.C. § 40128 (c)(1); 14 C.F.R. § 136.41 (a). IOA is to be terminated 180 days after establishment of an ATMP. 49 U.S.C. § 40128(c)(2)(E); 14 C.F.R. § 136.41(b)(5).

“Notice of Final Opinion on the Transferability of Interim Operating Authority under the National Parks Air Tour Management Act,” 72 Fed. Reg. 6802, 6803 (Feb. 13, 2007).

Nonetheless, FAA and NPS have permitted this “temporary solution” to last for nearly two decades, without ever establishing the ATMPs that would provide the full environmental review and protection required by statute. Nor have the FAA and NPS entered into voluntary agreements, with the protections that they provide, with any of the tour operators over the covered parks.⁴ Moreover, nothing in any public notice or planning document indicates any current ongoing effort to develop any ATMPs or voluntary agreements for the covered parks, indicating a complete abdication of Respondents’ statutory duties.⁵

⁴ In fact, the FAA has entered into voluntary agreements with all operators at only two parks in the entire country, Big Cypress National Preserve in December 2015, 82 Fed. Reg. 30938, 30939 (July 3, 2017), and Biscayne National Park in 2016. See <https://www.nps.gov/bisc/learn/news/air-tour-operators-biscayne-national-park.htm>. A draft voluntary agreement for both Glen Canyon National Recreation Area and Rainbow Bridge National Monument was made available for public review in December 2017, see <https://www.nps.gov/glca/learn/news/air-tour-management-agreement-now-available-for-public-review.htm>. Some but not all of the air tour operators over those parks have entered final voluntary agreements. No other voluntary agreements have been entered in any parks.

⁵ See https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/. This is an FAA webpage concerning ATMPs that updates their status as of September 5, 2018. It is the most recent update available. It notes a draft voluntary agreement for Glen Canyon National Recreation Area and Rainbow

Yet, despite the lack of activity on ATMPs or voluntary agreements, a massive number of overflights has been allowed to continue in the covered parks for the last 19 years since the passage of the NPATMA. The most recent figures for flights authorized by IOA are for 2017, and show 16,520 annual overflights at Hawai'i Volcanoes National Park, 4,839 at Haleakala National Park, 8,735 at Lake Mead National Recreation Area, 1,173 at Muir Woods National Monument, 838 at Great Smoky Mountain National Park, 109 at Glacier National Park (with at least one quarterly report missing), and 480 at Bryce Canyon National Park. National Park Service, Update No. 1 to Natural Resource Report, *Reporting Information for*

Bridge National Monument, but does not indicate that it was finalized. It does not reference any ATMPs, either completed or in process.

NPS's "Planning, Environment and Public Comment" site has links to all current planning and environmental review processes for each national park. *See* <https://parkplanning.nps.gov/parks.cfm>. None of the covered parks lists any project concerning air tour management, with the exception of Hawaii Volcanoes. In that case, the ATMP process was begun in 2004, *see* <https://parkplanning.nps.gov/projectHome.cfm?projectID=36002>, and never proceeded past development of preliminary alternatives for the ATMP. *See* "Newsletter for HAVO Air Tour Mgmt. Plan April 2011," available at <https://parkplanning.nps.gov/document.cfm?parkID=307&projectID=36002&documentID=40060>. The most recent activity in this process was in April 2011, when the FAA and NPS asked for public comments on the preliminary alternatives, and then received comments and held three public meetings between April and June 2011. *See* <https://parkplanning.nps.gov/document.cfm?parkID=307&projectID=36002&documentID=46821> Nothing has happened since then, indicating that after seven years since its commencement, the project was simply dropped.

Commercial Air Tour Operations Over Units of the National Park System: 2017 Annual Report (September 27, 2018), p. 6.⁶ The total number of overflights for all national parks in 2017 was 58,692. *Id.*, p. 9.

Petitioners' members suffer from noise and visual impacts of park overflights during their various activities in the covered parks. If there were fewer aircraft and less noise, the hikers, birdwatchers, ground tour operators, soundscape recorders, environmental educators, and nearby residents who belong to PEER would be able to enjoy the parks and their properties more. Moreover, the Hawaiian homeowners in HICoP would have less disruption to the quiet enjoyment of their properties and their recreational activities in Hawaii Volcanoes National Park. If the FAA and NPS were to develop an ATMP for each covered park, or voluntary agreements with all of the operators, Respondents NPS and FAA would have to consider and mitigate the impacts on Petitioners. Changes to altitudes, routes, number of flights per hour, time-of-day restrictions and other mitigation measures could significantly mitigate the harm to Petitioners from the status quo.

⁶ Available at https://home.nps.gov/subjects/sound/upload/2017_Report_Update_No_1_20180927_508COMP.pdf.

REASONS WHY THE WRIT SHOULD ISSUE

Respondents Have Unreasonably Delayed Performing their Mandatory Duty to Prepare Air Tour Management Plans or Voluntary Agreements with Commercial Air Tour Operators over the Covered Parks

The FAA and NPS have a statutory duty under NPATMA to prepare ATMPs or voluntary agreements with commercial air tour operators that fly over the covered parks. Nineteen years have passed since Congress directed the FAA and NPS to develop ATMPs within a 24-month time period. The FAA and NPS have failed to act within a reasonable time and the court should issue a writ of mandamus to the FAA and its Administrator and the NPS and its Director, directing that they complete ATMPs or voluntary agreements with all of the operators for all of the covered parks within 24 months.

As the preceding description of the statutory scheme demonstrates, there can be no doubt but that Respondents have a mandatory duty to produce ATMPs for every national park unit with more than 50 commercial air tour overflights per year, or voluntary agreements with all commercial air tour operators over each such park. 49 U.S.C. § 40128(b)(1); § 40128(b)(7). The statutory scheme and the FAA's own implementing materials indicate that once any air tour operator seeks operating authority over a park, the duty of the FAA and NPS to prepare an ATMP is triggered. Operating

authority cannot be granted until the ATMP is completed and implemented.

The statute indicates that the applications for operating authority should be acted upon in no more than 24 months, and a prerequisite to doing so is completion of the ATMP, or alternatively, voluntary agreements.

All of the covered parks had existing air tour operators at the time of the enactment of the NPATMA in 2000, and those operators were required by law to apply for operating authority, thus triggering Respondents' duty to prepare ATMPs within two years. Even assuming that the statutory language "make every effort" is not a hard deadline, it certainly indicates congressional intent that ATMPs be completed in that time-period. By no stretch of the imagination can 19 years be considered a reasonable time.

Moreover, Respondents' failure to produce ATMPs and allowance of large-scale operations under IOA has also resulted in there being very few of the voluntary agreements that the statute provides as an alternative to ATMPs. Air tour operators have little or no incentive to enter the more burdensome and restrictive voluntary agreements if they can simply continue to operate under IOA. As noted above, only two parks in the entire country have completed voluntary agreements with all operators. Only one additional voluntary agreement for two parks has been completed, but it has not been entered by all operators over those parks. There are none at the covered parks. Thus, the natural and cultural

resources of the parks and the experience of park visitors do not benefit from the public participation, environmental review, and restrictions to protect natural resources and visitor experience that NPATMA is intended to provide.

Respondents have in effect transformed IOA, which was intended as a temporary stopgap while ATMPs were developed, into a permanent substitute for the ATMPs and voluntary agreements required by statute.

Mandamus is the appropriate remedy to correct the failure of agencies to act within a reasonable time.

Mandamus is an extraordinary remedy reserved for extraordinary circumstances. . . . An administrative agency's unreasonable delay presents such a circumstance because it signals the breakdown of regulatory processes. . . . Accordingly, we will interfere with the normal progression of agency proceedings to correct transparent violations of a clear duty to act . . . because it is obvious that the benefits of agency expertise and creation of a record will not be realized if the agency never takes action.

In re Am. Rivers & Idaho Rivers United, 372 F.3d 413, 418 (D.C. Cir. 2004)

(internal quotation marks and citations omitted). That is exactly the situation here.

In making the determination of unreasonable delay, this court has articulated six factors to consider:

- (1) the time agencies take to make decisions must be governed by a “rule of reason” . . .
- (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason . . .

- (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake . . .
- (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority . . .
- (5) the court should also take into account the nature and extent of the interests prejudiced by delay . . . and
- (6) the court need not “find any impropriety lurking behind agency lassitude in order to hold that agency action is “unreasonably delayed.”

TRAC, 750 F.2d at 80 (citations omitted).

The first and most important *TRAC* factor is the “rule of reason.” *In re Core Commc'ns*, 531 F.3d 849, 855 (D.C. Cir. 2008). While “[t]here is no *per se* rule as to how long is too long to wait for agency action . . . a reasonable time for agency action is typically counted in weeks or months, not years.” *Am. Rivers*, 372 F.3d at 419 (internal quotation marks and citations omitted); *see also Midwest Gas Users Assoc. v. Federal Energy Regulatory Com.*, 833 F.2d 341, 359 (D.C. Cir. 1987) (“[T]his court has stated generally that a reasonable time for an agency decision could encompass ‘months, occasionally a year or two, but not several years or a decade.’” (quoting *MCI Telecommunications Corp. v. Federal Communications Com.*, 627 F.2d 322, 340 (D.C. Cir. 1980))).

This court’s decisions have been consistent with this statement, generally finding delays of several years to be unreasonable. In the *American Rivers* case, this court found that a delay of six years in responding to a rulemaking petition concerning endangered species consultations was unreasonable, and ordered the

agency to respond within 45 days. 372 F.3d. at 414. This court found a nine year delay in promulgating regulations mandated by statute unreasonable in *In re Bluewater Network*, 234 F.3d 1305, 1316 (D.C. Cir. 2000); *see also Nader v. F.C.C.*, 520 F.2d 182, 206 (D.C. Cir. 1975) (“nine years should be enough time for any agency to decide almost any issue”).

Where Congress has directed a specific timetable for a decision, even much shorter delays have been found unreasonable. This court held in *In re People's Mojahedin Org. of Iran*, that in the face of a 180 day statutory deadline, 20 months without a decision constituted unreasonable delay. 680 F.3d 832, 837-38 (D.C. Cir. 2012). The court noted, as the second *TRAC* factor directs, that a congressional timetable “may supply content for the rule of reason.” *Id.* at 836 (quoting *TRAC*, 750 F.2d at 80). Here, there is a significantly greater disparity between the 24-month congressional direction in the NPATMA and the 19 years that have elapsed.

The third *TRAC* factor directs that where human health and welfare are at stake, shorter delays than those for economic regulation are tolerated. *E.g., Pub. Citizen Health Research Grp. v. Auchter*, 702 F.2d 1150, 1157 (D.C. Cir. 1983) (holding three years from announced intent to regulate a toxic chemical to final rule is unreasonable delay). Here, human health and welfare are at stake, since the noise and disruption of overflights harms not only the enjoyment of visitors to our national parks, but the health and well-being of nearby residents such as the HICoP

members. However, in any case, because there has been a 17-year delay here, the stricter standard for harm to human health and welfare need not be employed to find the delay unreasonable.

Competing priorities, the fourth *TRAC* factor, is difficult to address without a response from the FAA and NPS that may or may not assert any competing priorities. However, none are evident, and it is difficult to imagine competing priorities that could have occasioned a 17-year delay. This also is not a case like *In re Barr Laboratories, Inc.*, 930 F.2d 72, 75 (D. C. Cir. 1991), where Petitioners' request to be put at the "head of a queue [would] simply move[] all others back one space and produce[] no net gain." Here, unfortunately, as far as can be ascertained from publicly available information, there is no queue, as there is no current effort to prepare *any* ATMPs for any national park units, and only one voluntary agreement for two parks is in process nationwide. The FAA's web page for Air Tour Management Plans as of September 5, 2018 announces the availability of a draft voluntary agreement for Glen Canyon National Recreation Area and Rainbow Bridge National Monument. The comment period on this agreement ended on January 26, 2018, but no action on them is noted. There are not any pending ATMPs noted.⁷

⁷https://www.faa.gov/about/office_org/headquarters_offices/arc/programs/air_tour_management_plan/ The draft voluntary agreement for Glen Canyon and Rainbow Bridge, dated December

As to the fifth *TRAC* factor, the nature and extent of the interests prejudiced by delay, the interests prejudiced here, the natural and cultural resources of national parks and the experience of national park visitors and nearby residents, are the very interests that were intended to be benefitted by the NPATMA. The Act directs that ATMPs and voluntary agreements are intended to mitigate or prevent significant adverse impacts on the natural and cultural resources and visitor experiences in national parks and tribal lands. 49 U.S.C. § 40128(b)(1)(B); § 40128(b)(7)(B). The 17-year unreasonable delay in developing these plans and agreements, in effect a total abdication of the statutory obligation to do so, frustrates the very purpose of the Act.

Thus, all of the *TRAC* factors favor a finding of unreasonable delay, and the most important factor, the rule of reason for time to complete agency mandates, is clearly violated by the delay of 17 years past the time directed by Congress.

STANDING

While it is not required to address standing in an initial petition for mandamus, *see* FRAP 21 and Circuit Rule 21, the FAA challenged standing in the prior proceeding and Petitioners responded with arguments and standing

13, 2017, is available at [GLCA-RABR_AirTourAgrmnt_PublicRev_508COMP_20171213\(1\).pdf](#)

declarations. These are also submitted here. The court dismissed on standing grounds, but only with regard to redressability because of the absence of the NPS from the case. It did not address any of the other requirements for standing for the petitioner organizations.

PEER and HICoP both have associational standing. The requirements are: “(a) [an organization’s] members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).

PEER is a national non-profit alliance of government environmental professionals, as well as citizens who support PEER’s mission of upholding environmental laws and values. Here, PEER seeks to do so by enforcing FAA’s statutory duty to prepare plans and agreements to protect the natural values and visitor experience in national parks with overflights. Thus, the suit is germane to PEER’s purpose. HICoP is a public interest organization dedicated to reducing the impact of noise from helicopters on the State of Hawaii. In this suit, HICoP is seeking to enforce a law (NPATMA) meant to protect its interests in less frequent and less noisy overflights over national parks in Hawaii.

Neither the claim asserted (the failure to produce ATMPs or voluntary

agreements) nor the relief requested (production of ATMPs or voluntary agreements) requires the participation of individual members of PEER or HICoP.

The claim here is not specific to the individual members, and the relief sought would address the members' injuries without the necessity of any individualized relief. *See Hunt*, 432 U.S. at 343 ("If ... the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured") (internal citation omitted).

Regarding the members' standing to sue in their own right, the attached Declarations – Exs. A -N -- demonstrate that both organizations have members who meet the requirements of individual standing with respect to all of the covered parks.

A. HICoP

Four members of HICoP have submitted declarations evidencing injury related to Hawai'i Volcanoes National Park that would be redressed by a favorable decision here. Bonnie Miller has been driven away from her previous activities of hiking and camping in the Park by overflights, which have disturbed the natural soundscape, solitude and quiet. Miller Decl., Ex. A hereto, ¶¶ 3, 5. She would return to those activities if air tours were well-regulated. *Id.*, ¶ 4. The air tours over the Park pass over her property five to fifteen times a day, disrupting her quiet

enjoyment, disturbing her sleep, and likely reducing the value of her home. *Id.*, ¶¶ 6, 7, 8 and 9.

Daryl Soares lives within five miles of the Park and suffers on average 40 flights daily over his property, severely disrupting his quiet enjoyment and likely diminishing the value of his property. Soares Decl., Ex. B, ¶¶ 3, 5. He also visits the Park monthly, and the constant noise from air tours makes it impossible for him to enjoy the natural environment. *Id.*, ¶ 7. ATMPs that would minimize impacts on visitors and wildlife would allow him to better plan his visits to the Park to avoid overflights and increase his enjoyment. *Id.*, ¶ 8. *See also* Ernst Decl., Ex. C; and Contreras Decl., Ex. D, attesting that these HiCoP members' enjoyment of the Park and their own properties has been diminished by air tours.

B. PEER

Ten PEER members have submitted declarations related to Bryce Canyon National Park, Glacier National Park, Haleakala National Park, Lake Mead National Recreation Area, Muir Woods National Monument, and Great Smoky Mountains National Park.

Dick Hingson hikes and camps in Bryce Canyon, where overflights have diminished his enjoyment by interfering with the wilderness and the natural sounds of wildlife. Hingson Decl., Ex. E, ¶¶ 5-7. Bill Hutchison, a former employee and current hiker and camper in Glacier National Park, has his park experience ruined

by flights over the Park every 15 minutes. Hutchison Decl., Ex. F, ¶¶ 3-6. Dennis Divoky, a retired Park Fire Ecologist and current hiker in Glacier, is disturbed by air tours even in the most remote areas of the Park. Divoky Decl., Ex. G, ¶¶ 3-6. His quiet enjoyment and the value of his property are also diminished by air tours over the Park. *Id.*, ¶ 7-9. Steve Gniadek is also a retired employee and current hiker and camper in Glacier whose experiences are diminished by air tours. Gniadek Decl., Ex. H, at ¶¶ 2-7.

Matt Wordeman is the president of the Friends of Haleakala National Park. Wordeman Decl., Ex. I, ¶ 2. Overflights have disrupted the wilderness service trip program of his organization as well as his own enjoyment of the Park. *Id.* at ¶¶ 3-7. Jim Boone, a retired ecologist and NPS employee, is now a public lands activist and has a business leading birding and hiking trips. Boone Decl., Ex. J, ¶¶ 3, 4. He is a hiker in Lake Mead, Bryce Canyon and Muir Woods. *Id.*, ¶ 5. All of his activities in these parks, including photographing wildlife, hiking, writing, and his trips with his business are disrupted by air tours. *Id.* at ¶¶ 6-11.

Tom Martell is the operator of a tour business in Muir Woods. Martell Decl., Ex. K, ¶ 2. Air tours that shatter the silence in the park negatively affect his business and his own enjoyment of the woods. *Id.*, ¶¶ 3-9. Dan Dugan is engaged in the business of nature and soundscape recording in Muir Woods, Bryce Canyon and Haleakala National Park, where air tours interrupt the soundscape and affect

the behavior of wildlife, ruining the aesthetics of the audio recordings and diminishing his enjoyment of the parks. Dugan Decl., Ex. L, ¶¶ 3, 5, 6. The overflights also disrupt his work identifying species and making other observations based on his recordings. *Id.*, ¶ 7. Gina Farr is an environmental educator whose own experience, and that of her students, in Muir Woods is diminished by overflights. Farr Decl., Ex. M, ¶¶ 4-8. Finally, Vesna Plakanis owns a guide service in Great Smoky Mountains National Park. Plakanis Decl., Ex. N, ¶ 3-4. Overflights diminish her ability to fulfill the mission of her business customers positive experiences with nature, and harm her own enjoyment of the Park. *Id.*, ¶¶ 6-10.

CONCLUSION

This court should issue a writ of mandamus to the FAA and its Administrator and the NPS and its Director directing that they complete ATMPs for all of the covered parks within 24 months, in compliance with all statutory and regulatory requirements for those plans, unless by that time, all of the commercial air tour operators over those parks have entered voluntary agreements that are compliant with all statutory and regulatory requirements.

Respectfully submitted,

_____/s/_____

Paula Dinerstein

D.C. Bar No. 333971

Public Employees for Environmental Responsibility (PEER)

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Attorneys for Petitioners

February 14, 2019

ADDENDUM

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel for Petitioners certifies as follows:

A. Parties and Amici

The Petitioners are Public Employees for Environmental Responsibility (PEER) and Hawaii Island Coalition Malama Pono (HICoP). The Respondants are the Federal Aviation Administration (FAA) and its Acting Administrator, Dan Elwell, and the National Park Service (NPS) and its Deputy Director, P. Daniel Smith (exercising the authority of the Director). No Amici are currently anticipated in this court.

B. Rulings Under Review

There are no rulings under review. Petitioners seek a writ of mandamus to order the Federal Aviation Administrator and National Park Service Director to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Hawaii Volcanoes National Park, Haleakalā National Park, Lake Mead National Recreation Area, Muir Woods National Monument, Glacier National Park, Great Smoky Mountains National Park, and Bryce Canyon National Park.

C. Related Cases

The petitioners previously filed a complaint in the United States District Court for the District of Columbia seeking similar relief to that sought here. *Public*

Employees for Environmental Responsibility and Hawaii Island Coalition Malama Pono v. Federal Aviation Administration, No. 17-cv-2045 (D.D.C.) The action was voluntarily dismissed by the petitioners on January 19, 2018.

The Petitioners also filed a writ of mandamus in this Court, No. 18-044. That petition was dismissed on November 13, 2018 on standing grounds because the court found that Petitioners injury was not redressable without the participation of the National Park Service as a party. Doc. 1759626.

/s/

Paula Dinerstein
Attorney for Petitioners PEER and HiCoP

—

DISCLOSURE STATEMENT (PEER)

As required by Circuit Rule 26.1 Petitioner, Public Employees for Environmental Responsibility (PEER), files this Disclosure Statement.

PEER is a non-profit, tax-exempt corporation incorporated in the District of Columbia. Its purposes include educating employees of resource management and environmental protection agencies nationwide, and the public, about environmental ethics and to assist those who speak out on behalf of environmental ethics. PEER has no parent companies and no publicly-owned company has a 10% or greater ownership interest in PEER.

_____/s/_____
Paula Dinerstein

Attorney for PEER

DISCLOSURE STATEMENT (HICoP)

As required by Circuit Rule 26.1 Petitioner, Hawaii Island Coalition Malama Pono (HICoP), files this Disclosure Statement. HICoP is a non-profit advocacy coalition of over 300 homeowners whose houses are impacted by air tours headed towards Hawaii Volcanoes National Park. HICoP has no parent companies and no publicly-owned company has a 10% or greater ownership interest in HICoP.

_____/s/_____
Paula Dinerstein
Attorney for HICoP

CERTIFICATE OF COMPLIANCE

With Type-Volume Limit, Typeface Requirements and Type-Style Requirements

1. This document complies with the type-volume limit of Fed. R. App. P. 21 (d)(1).

This document contains 5,679 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because

This document has been prepared in a proportionally spaced typeface using

Times New Roman, 14 point.

_____/s/_____

Paula Dinerstein

Attorney for Petitioners PEER and HICoP

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on this 14th day of February, she served by first class mail copies of this Petition for Mandamus, with exhibits, on counsel for Respondents listed below:

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/s/

Paula Dinerstein

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF BONNIE MILLER

1. I, Bonnie Miller, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. I am a member of HiCoP, and I have hiked and camped in Hawai'i Volcanoes National Park, and would continue to do so, but because of the presence of air tours, I now avoid the park and national parks more generally.
4. I do not have plans to return to Hawai'i Volcanoes National Park or other national parks in the future until the air tours/helicopter problem is resolved. I look forward to being able to return to hiking and camping in the parks when air tours are well regulated.
5. I value greatly the natural soundscape and solitude and quiet within Hawai'i Volcanoes National Park, but the current air tour conditions have had an extreme negative impact on my enjoyment.
6. I live approximately 25 miles away from Hawai'i Volcanoes National Park, and the presence of air tours extremely disrupts the quiet enjoyment of my property. Prior to the

present volcanic eruptions, there were between 5 and 15 air tour passes per day over my property.

7. The passing of air tours over my property creates noise that make it unpleasant to work in my garden, and I often must crank up my TV volume to combat the sound intrusion caused by the air tours.
8. I value peace and quiet at my home, which is no longer present due to the horrendous helicopter noise.
9. At present, I am in poor health, and the constant noise of the air tours often wakes me up when I am resting or sleeping.
10. I believe that restrictions on the number, location, and timing of tours flown over national parks, and by extension, my property, would likely contribute to improving my health with better rest and an elimination of the stress resulting from this noise.
11. I have not tried to sell my home, but I believe that if prospective buyers were to witness what the helicopter noise is like, they would not buy.
12. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Hawai'i Volcanoes National Park has substantially harmed my personal health and wellbeing, the use and value of my property, and my enjoyment of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2018



Bonnie Miller

No. 18-1044

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

DECLARATION OF DARYL SOARES

1. I, Daryl Soares, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I am a member of HiCoP and a self-employed farmer and rancher who lives within five miles of Hawai'i Volcanoes National Park. The air tours have catastrophically disrupted the quiet enjoyment of my property; there are, on average, forty (40) flights daily over my property. I am forced to leave my property at times to escape the constant noise.
4. The air tours have no respect for those of us living in the communities surrounding the park; they insist on using our personal property as part of the tour package in their flyovers.
5. Hawai'i disclosure laws require that anyone selling a home disclose external noises that have a negative impact to potential buyers. I have not sought to sell my property, but I do believe that the constant noise produced by air tours would have a negative impact on the sale of my home.

6. In addition to my residence, I spend hours watching the native birds in Hawai'i Volcanoes National Park; the park contains numerous native species, some endangered, and is an amazing environment to explore.

7. I visit the national parks such as Hawai'i Volcanoes National Park monthly, and I notice air tours over the national parks every single time I visit. The constant noise of the air tours has a negative impact on the quiet solitude of the park; it destroys the natural sounds of the flora and fauna, making it impossible for me to enjoy the natural environment. I place a high value on preserving the natural soundscape of our national parks; visitors to the parks like me should be able to enjoy the natural sounds and sights, unplagued by air tours. As it stands now, I limit my national park visits to just once a month because of the constant loss of the natural soundscape within the park.

8. If the FAA were to develop an air tour management plan for the national parks such as Hawai'i Volcanoes National Park restricting the number of tours flying over them, and regulating times and locations to minimize impacts on visitors and wildlife, I would be able to better plan my visits to the park to avoid the noisy overflights and enjoy the solitude of the natural soundscape.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6/13/18.

Signature: 

Daryl Soares

No. 18-1044

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

DECLARATION OF BOB ERNST

1. I, Bob Ernst, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I live near Hawai'i Volcanoes National Park, and visit the park almost every week. I am a member of HiCoP, and also a member of Friends of Hawai'i Volcanoes Park. I frequently hike in Hawai'i Volcanoes National Park with Sierra Club as well as the Friends of Hawai'i Volcanoes Park group in addition to individual hikes.
4. I live on a cattle ranch about 15 miles from the entrance to Hawai'i Volcanoes National Park; the helicopter tours are so frequent that there is near-constant noise pollution from breakfast to evening, every day of the week. These tour helicopters have deprived me of the full use and enjoyment of my property. If I were to decide to sell my property, I would have to declare the tour helicopter noise pollution, potentially affecting the property value and my ability to sell.

5. Hawai'i Volcanoes National Park has on average over 85 tour helicopter overflights a day. This near constant noise destroys a park visit. One of my favorite hikes, the trail to the Pu'u O'o overlook, is constantly inundated with tour helicopters.

6. Air tours have destroyed hikes I have been on—when you hike miles to experience a quiet national park experience, the constant bombardment of air tour noise tends to destroy the quiet natural experience.

7. Any FAA air traffic management plan would have to carefully consider the environmental and holistic impact of the massive number of overflights on the parks and surrounding areas; the unchecked number of flights means that there is a lot of work to do to properly mitigate the damage being done.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 13, 2018

Signature: Bob Ernst

Bob Ernst

No. 18-1044

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

DECLARATION OF JULIA CONTRERAS

1. I, Julia Contreras, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I live about ten (10) miles from Hawai'i Volcanoes National Park, and visit the park weekly. I am a member of HiCoP.
4. Air tours pass over my property up to a hundred times a day. These air tours have completely disrupted the enjoyment of my property; sometimes I feel like I am being driven crazy by the constant noise, particularly from the frequently-too-low flights.
5. These air tours have affected my property value, specifically, because I would be obligated to disclose the constant noise to any potential buyer; this substantially lowers my property value and potentially makes it more difficult to sell if I were to do so.
6. In addition, I hike within Hawai'i Volcanoes National Park weekly. I put a high value on my ability to experience the natural soundscape within the park; I frequently write when I'm within the park, gaining inspiration from the quiet and wild beauty. I have noticed air tours flying

over the park every time I visit. The constant noise of tour aircraft over the hiking trails always disturbs my park experience whenever I am in Hawai'i Volcanoes National Park.

7. If the FAA were to develop an air tour management plan for national parks such as Hawai'i Volcanoes National Park restricting the number of tour overflights and regulating where and when such tours took place to minimize the impacts on visitors and wildlife, it would help me to better plan my visits to the park to avoid the noise and enjoy the natural soundscape. In addition, such a measure would help me cope at home by reducing the number of constant, noisy, disturbing flights low over my property.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 6/14/18 .

Signature: Julia Contreras

Julia Contreras

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF DICK HINGSON

1. I, Dick Hingson, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. I am a member of PEER, and my past employment has involved an area of specialty relevant to the national parks system. I have worked on issues concerning air noise tour impacts for Grand Canyon Trust and National Parks Conservation Association. As a result, I have expertise in noise pollution and national parks resource and visitor experience protection, particularly regarding overflights of national parks and the resulting external effects and/or impacts.
4. I have a long history of hiking and backpacking in national parks spanning from 1958 to the present. Also, from 1965 to present, I have enjoyed camping throughout a wide variety of national parks.
5. I have traveled to and hiked Bryce Canyon National Park extensively, particularly during my six consecutive summer employments beginning in 1958 with the Utah Parks

Company. I hike and/or camp in national parks at least every other month, and I intend to continue to hike in Bryce Canyon National Park in the future.

6. The sounds of air tours in Bryce Canyon National Park have significantly impacted these experiences for me personally as they provide an interference with the wilderness and the natural sounds of wildlife.
7. I have visited and participated in nature activities in over 10 national parks, and in my personal experience, Bryce Canyon National Park is one of the “worst offenders” for air tour noise pollution. I have observed as many as twenty events per hour, mostly post-1975, but to some extent prior to this time as well. Bryce is a relatively tiny park, so its yet-unchallenged helicopter “interim operating authority” of 3,500 flights annually is a clear and present danger/nuisance for any given future visit.
8. Additionally, based on my wide-ranging experience, it is my opinion that no motorized vehicle comes anywhere near the intrusion in terms of noise and intensity as do the tour helicopters. These tours are often in groups or repetitious in number, creating an extensive and inappropriate presence.
9. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Bryce Canyon National Park has substantially harmed my personal enjoyment and use of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2018

Dick Hingson
Dick Hingson

202 265-4192
Brianna

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF BILL HUTCHISON

1. I, Bill Hutchison, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. In addition to being a supporter of PEER, I am a retired, seasonal employee in Glacier National Park. I served as a back-country ranger and a water systems operator, and I worked in back-country trail maintenance.
4. I have traveled several thousand miles over the years hiking and camping in Glacier National Park as both an employee and as a visitor. I continue to visit the national park about two times a month, year-round.
5. During the summer months, I hear air tours passing over Glacier National Park about every 15 minutes. These overflights are very disruptive and greatly diminish the experience of visiting the national park.
6. As a hiker and a camper, the air tours in Glacier National Park create constant noise that ruins the park experience. The presence of helicopter flights has severely impacted the parks in a very negative way and has affected my pursuit of hiking and camping activities

within Glacier National Park. I believe that the number of flights should be restricted or eliminated in their entirety.

7. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Glacier National Park has substantially harmed my personal enjoyment of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 13, 2018

William L Hutchison

Bill Hutchison

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF DENNIS DIVOKY

1. I, Dennis Divoky, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. In addition to being a member of PEER, I am a retired Glacier National Park Fire Ecologist, and during my career, I supervised wildland fire monitoring and provided oversight for wildland and prescribed fire research.
4. My career with the National Park Service spanned 37 years and with approximately 25% of this time spent in the field in the Park. I was the Fire Ecologist at Glacier National Park from 2000 until my retirement in 2015.
5. While working as a Backcountry Ranger in Glacier National Park, I observed a tour helicopter nosing up to a cliff to show the patrons wildlife better. This observed disruption had potentially negative impacts on the wildland, and I believe that air tours are most definitely bothersome in national parks.
6. Since my retirement, I continue to hike in Glacier National Park on a regular basis. As a hiker within Glacier National Park, I find it almost impossible to hike or backpack

without hearing or seeing tour helicopters and airplanes. I have climbed peaks in the park and have been disturbed by tour helicopters after spending hours and/or days getting to the location.

7. I live within 1.5 miles of Glacier National Park. Air tours pass by my property very frequently, at least multiple times per week, with takeoff and landings heard constantly throughout the day and disturbing my enjoyment of my property.
8. The noise is consistently in the background from 7 AM /8 AM in the morning to 6 PM/7 PM in the evening. Visitors to my home often comment on how we can tolerate the noise.
9. While I have not tried to sell my house to date, I suspect that some prospective buyers would walk away from the purchase. Since purchasing the property, the amount of air tour operators has expanded from one operator to two operators with approximately 4 total ships in use. If I had known at the time of purchase that the air tour business would expand in this way, I may not have purchased my property due to the noise.
10. An air tour management plan that would restrict the number, timing, and locations of tours flown over national parks would benefit me especially because I live near Glacier National Park air tour operations. This type of restriction could very well increase my property value as well as my enjoyment of the Park when I am hiking.
11. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Glacier National Park has substantially affected my property value as well as my personal enjoyment of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/13/18.

A handwritten signature in blue ink that reads "Dennis Divoky". The signature is written in a cursive style and is positioned above a horizontal line.

Dennis Divoky

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF STEVE GNIADEK

1. I, Steve Gniadek, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. In addition to being a supporter of PEER, I am a retired Wildlife Biologist. From 1987 to 2009, I served as a Wildlife Biologist in Glacier National Park where I was responsible for wildlife and natural resource protection and management. After retiring, I have remained active in my profession, including conducting wildlife surveys in and around Glacier National Park.
4. During my professional work at Glacier National Park, I spent about 20% of my time in field work. As a result of my field work and familiarity with the scientific literature pertaining to wildlife, I was concerned, and continue to be concerned, about the cumulative impacts to wildlife from the many decades of helicopter air tours in Glacier National Park. For example, I am concerned that enough distance is not being maintained as buffer zones between air helicopter tours and wildlife. Based on my field knowledge, many Glacier National Park wildlife populations, like mountain goats, are situated at high

elevations within the mountains of the Park, making them very susceptible to low flying air tours.

5. I have frequently hiked, toured, and camped in Glacier National Park over the past 30 years. The last time I visited Glacier National Park was June 14, 2018, and I plan to return in the near future. I usually hike and/or camp in Glacier National Park several times per month.
6. Solitude and natural quiet are essential to my experience in Glacier National Park, and air tours in the Park have disrupted my hiking and camping activities, especially in backcountry areas. Even at some of the most remote areas of Glacier National Park, such as Helen Lake in the upper Belly River drainage, I have been disturbed by the noise of air tours. It is difficult to escape the noise of helicopter air tours anywhere in the Park's wilderness areas.
7. The presence of air tours in Glacier National Park has cause me to make less frequent use of the Park to avoid the disruption of the Park's natural soundscape. If the number of air tours flown over Glacier National Park were restricted, then I would likely spend more time in the Park, and I would feel much better about the natural behavior and status of wildlife.
8. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Glacier National Park has substantially affected my professional activities as well as my personal enjoyment of the Park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6-15-18.

Steve Gniadek

Steve Gniadek

No. 18-1044

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

DECLARATION OF MATT WORDEMAN

1. I, Matt Wordeman, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. In addition to being a member of PEER, I am the president of the Friends of Haleakalā National Park, a volunteer organization operating under agreement with the National Park Service for twenty years now with a mission to promote, protect, and improve Haleakalā National Park. I personally have been involved with the Friends for over fifteen years. The Friends of Haleakalā National Park is interested in protecting and improving the experiences available to visitors at the park, including those seeking to perform traditional cultural practices, by limiting the visual and audible disturbances caused by air tours.
4. The Haleakalā wilderness has been referred to as the ‘quietest place on Earth’ for good reason; the lack of running water, rustling leaves, limited wildlife, and its natural protection from nearby human activity make portions of the park a very quiet natural environment.

5. One of the Friends' most popular programs is our wilderness service trip program. Each month, we serve the park, educate the public, and foster stewardship of Haleakalā by leading groups of up to a dozen people on a three-day, two-night event backpacking in the park wilderness. We have numerous repeat volunteers, and several participants have cited their experience on our service trips as a contributing factor to pursuing and obtaining positions in the National Park system and other conservation organizations.

6. One of the critical aspects of such a transformative event is that it be intense, substantial, sustained, and different from one's day-to-day experience. The air tours "break the spell" and, in an instant, disturb the sense of experiencing true wilderness within the park that often takes hours to achieve. I can speak from firsthand experience how intrusive and disruptive the helicopter tours are to my own and my groups' attempts to enjoy the wilderness. The existing practice of flying outside but above the crater, while preferable to flying through the crater, is still highly disruptive to people within the park. The current frequency of flights over the Kipahulu district of the park is even more disruptive to my hikes in that region of the park.

7. The development of an FAA air tour management plan restricting the number of tours flown or otherwise limiting air tours as a result of careful consideration of the community, environmental, and cultural factors affected by the large number of overflights would be a great service to the Friends and all those who, like me, live around or visit the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 13, 2018.

Signature: 

Matt Wordeman

No. 18-1044

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

DECLARATION OF JIM BOONE

1. I, Jim Boone, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I am a member of PEER. In addition, am a retired ecologist, and have worked for 12 seasons as a National Park Service ranger, as well as having done field research and expert review work for the National Park Service.
4. I am now engaged as a public lands activist and public lands tour operator, leading custom birding and hiking trips. Simultaneously, I run the website birdandhike.com, providing information on hiking and birding in the Las Vegas area.
5. Most of the year, I hike at least one full day a week; I have hiked and currently hike in the Lake Mead National Recreation Area, Bryce Canyon National Park, Muir Woods National Monument, and numerous other federal lands.

6. I consider solitude to be one of the most important natural qualities when I hike; external sounds, such as from aircraft overflights, interrupt that solitude. Air tours over the Lake Mead region always disrupt my activities, whether it be camping, hiking, or birding.

7. As a public lands advocate, I photograph public lands and use the photos on my website as part of my advocacy efforts. I photograph in national parks almost every time I visit them.

8. I look to photograph all kinds of wildlife while birding; lizards, snakes, birds, and mammals. The noise negatively affects my ability to photograph wildlife and wildlife behavior.

9. Likewise, my advocacy work involves writing, and I often find inspiration while hiking when at quiet, scenic areas. The overflights interrupt the solitude I seek when I want to put my thoughts in writing.

10. Furthermore, the overflights interrupt my business—I lead custom hiking and birding tours on public lands, including NPS lands. While overflights do not seem to reduce the quantity of business, they affect the quality of my services provided, such as listening or searching for birds. Customers always complain about the noise.

11. The absence of any sort of air tour management plan for the national parks allows for this continued issue of constant air tours and overflights disrupting wildlife patterns, birding and wildlife tours, photography, and other activities commonly associated with the use of National Park lands by its visitors, such as my tour clients and myself.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 14, 2018 .

Signature: _____

A handwritten signature in black ink, appearing to read "J. Boone", written over a horizontal line.

Jim Boone

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF TOM MARTELL

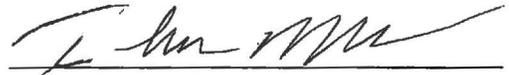
1. I, Tom Martell, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. In addition to being a supporter of PEER, I am the owner and operator of Tom's Tours, an outdoor recreation business that takes visitors on walks through the woods within Muir Woods National Monument.
4. I am an experienced hiker, and I hike on average within Muir Woods about 2 to 3 times per week.
5. Previously, I led Sierra Club, Alpine Club, and Wednesday hike group tours through Muir Woods. I observed that most people go on these types of walk to enjoy the serenity of the forest.
6. My business is contingent on observing the silence in a redwood forest. The presence of air tours shatters the silence, and the low flying airplanes and helicopters not only disturb the silence of the woods, but also disturb the lives of animals. These planes also often fly low over toasty, dry brush, creating a risk of fire.

7. Overflights horribly prevent those who wish to understand redwood ecology and learn about the woods from doing so in a silent environment. My customers frequently complain about the noise caused by air tours, and business is affected as a result. I have likely lost business due to the intrusion of air tours.
8. Most recently, I observed a seaplane that roared overhead while I was in Muir Woods. It created a noticeable disruption to my enjoyment of the woods. I am greatly concerned about the impact that these flights have on the quality of the experience for visitors to the woods in addition to the safety of animals and their habitats.
9. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Muir Woods National Monument has substantially harmed my business and my personal enjoyment of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

6/15/18.



Tom Martell

No. 18-1044

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

DECLARATION OF DAN DUGAN

1. I, Dan Dugan, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I am a member of PEER, as well as the Chief Executive Officer (CEO) of Dan Dugan Sound Design, which, in addition to the manufacturing and licensing of Dugan automatic microphone mixing devices, is engaged in the business of nature and soundscape recordings.
4. I both volunteer and have been contracted by the National Park Service (NPS) to record, study, and interpret soundscapes within the national parks.
5. I hike to recording locations within the national parks and camp at the site, several times per year. Of the locations in this lawsuit, I hike and/or camp in Muir Woods National Monument, California; Bryce Canyon National Park, Utah; and Haleakalā National Park, Hawai'i.
6. Due to the nature of my work and recreational activities in the parks, that is to say, enjoying, observing, and recording the soundscape, I place a high value on the natural soundscape; air tour overflights always interrupt the soundscape, masking the natural ambiance

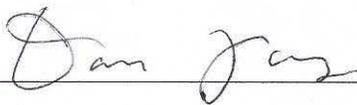
and affecting the behavior of wildlife within the park. This ruins the aesthetics of the audio recordings and diminishes my enjoyment of the parks.

7. Part of what I do when creating soundscape recordings within the national parks involves identifying the various species within the recordings; research for the parks involves recording the soundscapes with a repeatable protocol and calibrated equipment, identifying species if possible, and then reporting observations and submitting raw recordings to the parks. The noise generated by frequent overflights not only distracts from the aesthetics of the park experience, it affects wildlife behavior, making this more difficult to accomplish and disrupting my work.

8. If the FAA developed an air tour management plan for national parks restricting the number of tours flown over said parks, as well as the timing and locations of the flights, it would greatly reduce the interruptions of the natural soundscape that diminish my experience of the parks and my ability to perform my work recording national park soundscapes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 13, 2018

Signature: 
Dan Dugan

No. 18-1044

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

DECLARATION OF GINA FARR

1. I, Gina Farr, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted pursuant to 28 U.S.C. § 1746.
3. I am an environmental educator and communications director in Fairfax, California, and a member of PEER
4. The national parks are a place I go to escape from the constant sound of overflights at my home, about 45 minutes from the nearest park, Muir Woods National Monument. Muir Woods is akin to a church to many people who love it dearly; the natural quiet zones provide a chance for peaceful listening and reflection. I hike daily and camp approximately four times a year; I frequently take both family and students to national parks for day and backcountry hiking and/or camping. Flights over my home and business are more than annoying; they are damaging. The noise of flights is steadily

increasing, and has been affecting my personal and professional life. National parks are where I go in an attempt to escape the elevated level of unnatural noise.

5. The natural soundscape is my primary reason for visiting and enjoying parks like Muir Woods. I get up before sunrise and wait for the dawn “chorus” of nature. I follow wildlife behavior by sound, and I encourage my students to do the same, to listen to the solitude and sounds of nature.
6. The sounds of air tours extensively disrupt all of our activities in Muir Woods and other parks; they spook the wildlife we go to listen for and watch. Animals strain to be heard over the air tours, it disrupts the natural patterns we are trying to observe. At times I wonder if I would get the same results from just simply camping at the nearest airport. It disturbs the entire area.
7. In addition to the aforementioned activities, I also am an amateur wildlife photographer, photographing in national parks weekly. The unlimited overflights make the animals more skittish, or drives them away altogether, making them harder to photograph.
8. I lead group excursions as well as taking solitary trips into the parks weekly, to both encourage others to listen for animals as well as recording the dawn “chorus” when I am on my own in the mornings. I have noticed air tours over national parks at least hourly, and it frankly seems as if I cannot listen for more than a few minutes in most national parks, including Muir Woods, without an overhead flight interrupting my activities.
9. Our parks belong to all people and the wildlife; they are a place to live for the animals, and “a place to play in a place to pray in” for people—air tours obliterate the natural quiet

of such an area. Natural quiet, it seems, is an endangered critical resource for all of us these days.

10. FAA development of an air tour management plan for national parks such as Muir Woods that restricted the number of tours flown over them, and regulated times and locations of flights to mitigate disturbances to park visitors and wildlife would allow me to relax in a national park instead of being on edge; I could finally photograph wildlife, and experience the parks in the natural state they were meant to be experienced in. Currently, there is no escape from the pain of unnatural noise generated by these overflights, and for our health and creativity, I believe we need one.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 13, 2018 .

Signature: 

Gina Farr

No. 18-1044

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

In Re PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY and
HAWAII COALITION MALAMA PONO,

Petitioners

DECLARATION OF VESNA PLAKANIS

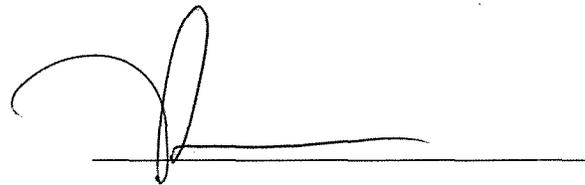
1. I, Vesna Plakanis, declare the following based upon personal knowledge to which I am competent to testify:
2. This Declaration is being submitted subject to 28 U.S.C. § 1746.
3. In addition to being a member of PEER, I am the owner and a guide at A Walk in the Woods, a nature guide service that has provided guided tours within Great Smoky Mountains National Park since 1998.
4. To date, my hiking company, which I own and operate with my husband, has taken over 100,000 people into Great Smoky Mountains National Park for a variety of activities ranging from short family walks to multiple-night backpacking trips.
5. My business operates almost exclusively within Great Smoky Mountains National Park, and I directly observe overflights on a frequent basis.
6. As a result of frequent overflights, I have experienced a serious interruption in my work and personal life. The mission of my business is to raise environmental awareness through direct, positive experiences with nature. The intrusion caused by overflights

directly impacts my ability to fulfill this mission, specifically “positive experiences with nature”.

7. The noise caused by overflights impacts the enjoyment of the trails within Great Smoky Mountains National Park for me and my guide service customers.
8. The frequency of overflight noise is so significant that my customers most often do not comment on the noise of the overflights, but instead take note of the few moments of complete silence that may be experienced between these interruptions.
9. I believe that the ability to market a truly immersive experience in the natural world, absent the unnatural sounds created by overflights, would absolutely increase business for my recreation company.
10. The failure of the Federal Aviation Administration (FAA) to meet its mandatory statutory obligation to develop Air Tour Management Plans (ATMPs) or voluntary agreements for Smoky Mountains National Park has substantially harmed my business as well as my personal enjoyment of the park.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 2/10/18



Vesna Plakanis