



January 22, 2007

Sent via UPS overnight delivery

Mary A. Bomar, Director
National Park Service
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Ms. Bomar:

The Alliance Defense Fund represents Mr. Tom Vail, author of Grand Canyon: A Different View, in respect to issues arising from the sale of his book at bookstores operated by the Grand Canyon Association (“GCA”), a private nonprofit corporation. We write today to encourage you and your agency to continue resisting the attacks launched on the National Park Service (NPS) by an activist group called “Public Employees for Environmental Responsibility” (“PEER”). In our view, PEER’s allegations not only lack legal merit, but in many instances they are simply false.

For some three years, PEER has mounted a media campaign to combat what it postures as “faith-based parks,” advancing the outlandish notion that the NPS is systematically establishing the Christian religion. Most recently, PEER’s executive director, Jeff Ruch, wrote to you on December 28, 2006, and accused your agency of imposing a “bureaucratic straightjacket” on NPS employees, purportedly preventing them from “communicating honestly with the public about the geologic age of the Grand Canyon.” PEER also broadcasted this allegation to the media through a press release the same day.

In a nutshell, PEER’s “straightjacket” story is false. First, the NPS Chief of Public Affairs, David Barna, ably rebutted PEER’s allegations on January 4, 2007. Moreover, several independent sources challenged PEER on its press release, concluded that the charge was false, and called upon PEER to retract the press release.¹

¹ For your convenience I have attached excerpts from various blog pages documenting PEER’s duplicity. See Tab A (*Without a Park to Range*, 1/3/2007); Tab B (*Skeptic: Extraordinary Claims, Revolutionary Ideas, and the Promotion of Science*, 1/17/2007); Tab C *The Smirking Chimpanzee: A PEER Review Gone Bad* (1/11/2007); Tab D, *Huffington Post: How Skeptic Magazine was Duped by an Environmental Activist Group* (detailing chronology of PEER’s press release and Mr. Ruch’s much-belated claim that he relied upon anonymous sources for his information). None of these sources would be seen as an apologist for the NPS or the current Administration; each found blatant falsehood evident in PEER’s December 28 press release.

PEER has not retracted its false statements, choosing instead to dodge the issue via yet another press release (dated January 16, 2007). This latest release claims that the NPS only recently publicly acknowledged that the Canyon was the “product of evolutionary geologic forces.” PEER thus insinuates that for the past several years, NPS officials have not been forthright about their evolutionary explanation for the Canyon. Bluntly put, PEER’s claim on this point is so much baloney, as documented in the attached exhibits and to which I can attest from my own visits to the Canyon.

We have little doubt that PEER will eventually run aground if it persists in publishing false statements. In fact, just last month the Arizona Court of Appeals upheld a \$600,000 claim for compensatory and punitive damages against a similar activist group. The damages resulted from a defamation action lodged against the group after it maliciously published false information regarding a rancher’s treatment of his grazing allotment. *See Chilton v. Center for Biological Diversity*, No. 2CA-ZCV 2005-0115 (Ariz. Ct. App. 2006), Slip Op. at 2-3.

Unfortunately, PEER has escalated its agency-bashing antics by attacking the sale of Mr. Vail’s book by the GCA, which is a wholly private entity that cooperates with the NPS to enhance the experience of Canyon visitors through a multitude of services, including operating several bookstores within the Park.

To put it mildly, PEER’s argument that the NPS is legally obligated to ban Mr. Vail’s book from GCA bookstores is in my opinion, constitutional nonsense. We briefly summarized the constitutional objections to such censorship in our January 9, 2004, letter to Secretary Norton. Rather than rehash that analysis, we have attached a copy for your reference at Tab E.²

Moreover, PEER’s current reliance on the 2005 NPS Director’s Order No. 6 on park interpretation is quite misguided. To be sure, the order directs that the NPS “refrain from appearing to endorse religious beliefs explaining natural processes.” However, the order binds only NPS employees—“[s]uperintendents, historians, scientists, and interpretive staff”—and not the activities of private cooperating organizations. Thus, GCA employees have no duty to avoid “endorsing” a religious view.

Nor is the NPS somehow “endorsing” the views in Mr. Vail’s book by refusing to ban its sale in the private GCA bookstores. As the Supreme Court has put it, the proposition that government officials “do not endorse everything they fail to censor is not complicated.” *Bd. of Educ. of Westside Comty. Schls. v. Mergens*, 496 U.S. 226, 250 (1990). Thus, the notion that there is NPS “endorsement” arising from the mere presence of one book in a private bookstore which sells dozens of other books expressing secular and religious views on the Canyon’s history, science, and culture strains credulity and falls far short of any legal standard for “endorsement.”

PEER has sporadically raised arguments that the sale of a book that does not conform to current scientific dogma is necessarily prohibited by various NPS regulations. That position

² In the spirit of veracity, I do note that since that letter was sent, we have a more clear understanding of the relationship between GCA, the park, and the book selection process. However, the legal analysis and the operative facts are unchanged and provide sound basis for the NPS to ignore PEER’s call to censorship.

raises a host of issues, not the least of which is that it behooves scientists to consider contrary evidence fairly and squarely, regardless of its source, lest they be embarrassed by defending an entrenched “scientific” hypothesis that is ultimately disproved. *See, e.g., The Great Scablands Debate* (Stephen Jay Gould, *Natural History*, August/September 1978) (discussing failure of “gradualist orthodoxy” to explain extensive erosion in eastern Washington). Moreover, I have reviewed not just PEER’s allegations but the positions put forth by such NPS employees as David B. Shaver (see Memorandum, Shaver to Chick Fagan, Jan. 25, 2004) and found that those who oppose the sale of the book read the regulations with remarkable selectivity (if not a blind eye to the plain meaning of the regulations). Acting on such interpretations would, in our view, readily lead the NPS afoul of well-established First Amendment law.

In short, we believe that your agency has acted with complete propriety by setting the record straight through Mr. Barna’s January 4 statement and by declining PEER’s invitation to become a blindly dogmatic book-banning censor. This is precisely the course we urged the NPS to follow three years ago, and it is the course of action we urge again today.

If we may be of any service to the NPS in this matter, please let me know. Until then I am,

Very truly yours,

Gary S. McCaleb
Senior Counsel

cc: Tom Vail
Joseph Alston, Grand Canyon NPS Superintendent
Kirk Kempthorne, Secretary of the Interior
Mr. David Barna, Chief of Public Affairs, NPS
Brad Wallace, Executive Director, GCA
Jeff Ruch, Executive Director, PEER