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15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Grand Canyon Skywalk Development,
19 LLC, a Nevada limited liability
20 company,

21 Plaintiff,

22 vs.

23 Charles Vaughn; Waylon Honga; Ruby
24 Steele; Candida Hunter-Yazzie; Wilfred
Whatoname, Sr.; Richard Walema;
25 Wynona Sinyella; Sheri Yellowhawk;
Barney Imus; Wanda Easter; and Jaci
26 Dugan,

27 Defendants.
28

No. 3:11-CV-08048-DGC

**MOTION FOR RECONSIDERATION
AND REQUEST FOR STAY**

(Oral Argument Requested)

**Expedited Hearing and Consideration
Requested**

1 Plaintiff Grand Canyon Skywalk Development, LLC (“GCSD” or “Plaintiff”) hereby
2 moves this Court, pursuant to LRCiv 7.2(g), to reconsider its Order dismissing this action,
3 dated June 23, 2011 (the “June 23 Order,” Dkt. No. 33), and to deny the tribal counsel
4 defendants’ (“Defendants”) Motion to Stay and Alternatively to Dismiss (the “Federal
5 Motion,” Dkt. No. 25). In the alternative, GCSD respectfully moves this Court to stay this
6 action in the interest of justice and efficiency. This Motion for Reconsideration and Request
7 for Stay (this “Motion”) is supported by the following Memorandum of Points and
8 Authorities, all accompanying Exhibits and attachments appended thereto, and the Court
9 record, all of which is incorporated herein by this reference.

10 MEMORANDUM OF POINTS AND AUTHORITIES

11 I. INTRODUCTION

12 On June 23, 2011, this Court ordered dismissal of this matter “to allow Plaintiff to
13 exhaust its remedies in the tribal court.” June 23 Order at 7:1-2. In so ordering, the Court
14 applied *Water Wheel Camp Recreational Area Inc. v. Larance*, --- F.3d ---, 2011 WL
15 2279188 (9th Cir. June 10, 2011)—a Ninth Circuit opinion that was issued after Defendants’
16 Federal Motion was fully briefed—to the facts in this action and concluded that “the
17 authority recognized in *Water Wheel* would . . . appear to extend to Plaintiff’s legal challenge
18 to an ordinance passed by the Hualapai Tribal Council, on tribal land, to authorize
19 condemnation of Plaintiff’s interests in the construction and operation of the [S]kywalk on
20 tribal land.” June 23 Order at 5:16-19.

21 Based on this interpretation of *Water Wheel*, this Court dismissed Plaintiff’s action,
22 without prejudice, “in the interest of requiring Plaintiff to exhaust tribal court remedies.”
23 June 23 Order 7:5-7. However as discussed in Section II, *infra*, *Water Wheel* does not apply
24 to the very different facts of this case. The Hualapai tribe had not “excluded” anyone from
25 federal trust lands by its actions, as that power has always been understood by the federal
26 courts, but rather claims the open-ended power to take away a non-Indian’s intangible
27 property rights wherever they reside – in this case, arising under a valid contract that was
28

1 solemnly executed between two corporations, off-reservation, according to the law of a
2 different sovereign. *Montana v. United States*, 450 U.S. 544 (1981) therefore applies to what
3 amounts to the tribe's purported exercise of extra-territorial jurisdiction over GCSD in
4 blatant defiance of federal law. Whereas the underlying issue in *Water Wheel* was the
5 Tribe's fundamental right to exclude and control *its lands*, the predominant issue here is
6 whether tribal council members may ever purport to seize *intangible contract rights*
7 belonging to a non-Indian. Accordingly, *Water Wheel* is distinguishable and does not
8 control under the facts of the present case.

9 Moreover, when it issued the June 23 Order, this Court was unaware¹ of the highly
10 material fact that, on June 14, 2011, the Defendant in the tribal court action, "Sa" Nyu Wa,
11 Inc. ("SNW") filed a Motion to Dismiss with Prejudice (the "Tribal Motion"), alleging that
12 "SNW has not waived its sovereign immunity from being sued in the Hualapai Tribe Court."
13 Tribal Motion, attached hereto as Exhibit A, at 1:22-23. Indeed, SNW expressly stated
14 during the June 14, 2011 status hearing (the "Status Conference") before the Hualapai Tribal
15 Court:

16 Our motion [the Tribal Motion] is based on, you know, the fact that the
17 clear language of the Contract at issue provides that the waiver of sovereign
18 immunity—of SNW's sovereign immunity from suit is limited to actions
19 and judicial remedies in a *federal court of competent jurisdiction*. That's
20 the quote—that's the quote from the contract. Therefore, . . . the legal
argument we're making . . . is that SNW has not waived its sovereign
immunity from suit in Tribal Court.

21 Status Conference Transcript (the "Transcript"), the relevant pages of which are attached
22 hereto as Exhibit B, at 24:18-25:5 (emphasis added).

23 Beyond arguing that SNW has not waived its sovereign immunity in Tribal Court,
24 SNW goes so far as to assert that "[a]s an economic arm of the Hualapai tribal government,
25 SNW is entitled to sovereign immunity, as is the *Hualapai Tribe generally*." Tribal Motion
26

27 ¹ Notably, Plaintiff was finalizing a Supplemental Status Report, which it planned to file with
28 this Court on June 23, 2011; however, the June 23 Order was issued that same date so we
now include this material supplemental information in this Motion for Reconsideration.

1 at 2:10-14 (emphasis added). Thus, in its Tribal Motion, SNW now ardently argues that
2 neither SNW, the Hualapai tribal government, nor the Hualapai Tribe has waived immunity
3 in the Tribal Court relative to *any* of GCSD's claims. *See id.* It naturally follows that,
4 should GCSD raise its immediate claims in Tribal Court, Defendants will attempt to assert
5 sovereign immunity and also seek dismissal of GCSD's claims in that forum—in direct
6 contravention to the legal arguments Defendants have advanced in the Federal Motion,
7 which precipitated this Court's June 23 Order. Similarly, it is highly probable that
8 Defendants would claim sovereign immunity in response to any action brought by GCSD in
9 Tribal Court; hence, Plaintiff respectfully requests that this Court reconsider whether
10 Defendants genuinely assert that concurrent jurisdiction exists and, therefore, whether its
11 reasoning based on *Crawford v. Genuine Parts Co.*, 947 F.2d 1405 (9th Cir. 1991) remains
12 applicable here.

13 Given the current status of both Actions, and the arguments advanced in the Tribal
14 Motion, there is the significant risk that Defendants will attempt to act on the eminent
15 domain issue without any impartial judicial oversight. Despite its best efforts to do so,
16 however, defendants in these Actions should not be able to deny GCSD a judicial forum and
17 remedy. Thus, in light of the distinguishing facts between *Water Wheel* and the present
18 action and the material new facts presented herein, and pursuant to LRCiv 7.2(g), GCSD
19 respectfully moves this Court to reconsider its June 23 Order and deny Defendants' Federal
20 Motion. In the alternative, GCSD respectfully moves this Court to stay this action to: (i)
21 ensure the preservation of GCSD's right to have its day in court, preferably before your
22 honor, as you are intimately familiar with the facts of this matter; (ii) advance judicial and
23 economic efficiency given the considerable knowledge this Court has already amassed
24 throughout the course of this action; and (iii) allow the parties to continue to update this
25 Court on any material developments that arise before the Hualapai Tribal Court.

1 **II. ARGUMENTS**

2 **A. The Applicable Legal Standard Supports Reconsideration By This Court**

3 Arizona LRCiv 7.2(g)(1) provides that a court should reconsider an Order upon a
 4 “showing of manifest error or a showing of new facts or legal authority that could not have
 5 been brought to its attention earlier with reasonable diligence.” This Motion demonstrates
 6 that: (i) the Court manifestly erred in its application of *Water Wheel* to this case due to the
 7 distinguishing facts; and/or (ii) significant new facts and developments have arisen about
 8 which this Court was unaware when it issued its June 23 Order. Indeed, given the quantity
 9 and significance of these new developments, Plaintiff diligently drafted and finalized a
 10 Supplemental Status Update, attached hereto as Exhibit C and the attachments appended
 11 thereto, which it intended to file with this Court on June 23, 2011. Before Plaintiff could so
 12 file, this Court issued its June 23 Order dismissing this case. In light of the arguments and
 13 new facts presented herein, GCSD has shown that this Court should reconsider its June 23
 14 Order and deny Defendants’ Federal Motion or, the in alternative, stay this action.

15 **B. Comity Concerns Are Immaterial In Light of the Arguments Raised By**
 16 **SNW in the Tribal Motion**

17 This Court dismissed GCSD’s arguments that comity concerns are irrelevant in this
 18 matter, stating that “comity concerns arise even where there is no case pending in tribal
 19 court.” June 23 Order at 3:9-10 (internal citation omitted). In advancing this position, the
 20 Court cited *Crawford v. Genuine Parts Co.*, 947 F.2d 1405, 1407 (9th Cir. 1991), to explain
 21 “that principles of comity required federal courts to . . . abstain from deciding cases in which
 22 concurrent jurisdiction in an Indian tribal court was asserted.” June 23 Order at 3:12-15.

23 In *Crawford*, as in these Actions prior to June 14, 2011, the tribal party asserted
 24 concurrent tribal jurisdiction. Unlike *Crawford*, however, SNW has now expressly stated
 25 that it—and the Hualapai Tribe generally—have sovereign immunity from Plaintiff’s claims
 26 raised in the Tribal Court. See Tribal Motion 2:9-14. Indeed, SNW actually asserts that
 27 GCSD cannot bring its claims against the Hualapai Tribe generally in *any* Court. See Tribal
 28 Motion, FN 2, at 4:24-26 (stating “[t]o be clear, SNW is *not* contending that this action

1 should (or could) be brought in any other court—only that there has been no express waiver
2 of its sovereign immunity from suit in Tribal Court”).

3 Based on the arguments advanced in the Tribal Motion, it naturally follows that
4 Defendants—as members of the tribal government and Hualapai Tribe generally—will also
5 attempt to assert sovereign immunity in Tribal Court and, therefore, argue that GCSD cannot
6 bring its claims in that forum. This argument is diametrically opposite to the ones raised in
7 Defendants’ Federal Motion, wherein Defendants have at least impliedly asserted that the
8 Tribal Court is the proper initial judicial forum. *See* June 23 Order at 2:9-12 (summarizing
9 that Defendants argue that this Court should “allow the Hualapai tribal court [*sic.*] in the first
10 instance to determine the scope of its jurisdiction *over Plaintiff* as well as the validity of the
11 tribal ordinance”) (emphasis added). Accordingly, any portion of the June 23 Order based
12 on *Crawford*, including its related analysis of the need to exhaust tribal remedies, warrants
13 reconsideration.

14 **C. Water Wheel Is Distinguishable to the Instant Case**

15 The June 23 Order largely rejects Plaintiff’s arguments “in light of recent Ninth
16 Circuit authority holding that a tribal court has jurisdiction over non-Indians conducting
17 business on tribal lands regardless of whether the *Montana* exceptions apply.” June 23
18 Order at 4:16-19. However, the facts underlying *Water Wheel Camp Recreational Area Inc.*
19 *v. Larance*, --- F.3d ---, 2011 WL 2279188 (9th Cir. June 10, 2011) are distinguishable to
20 those presented here. Fundamentally, this case is not about the Tribe’s inherent right to
21 exclude. In contrast, such right was the central controlling issue in *Water Wheel*.

22 In *Water Wheel*, a non-Indian lessee refused to vacate trust property after a thirty-two
23 year lease had expired. The non-Indian plaintiff over whom the tribe exercised civil
24 jurisdiction was trespassing on trust lands on the reservation because he inhabited an area of
25 tribal property no longer under lease. *Id.* at *2. The non-Indian had originally leased the
26 tribal land from the tribe in 1975, but the lease expired in July 2007, and after that period, the
27 non-Indian was a trespasser on the tribal land because he had no authority to occupy tribal
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1 land. *Id.* at *1. The Ninth Circuit upheld tribal court jurisdiction over the trespasser based
2 on U.S. Supreme Court authorities recognizing tribal rights to exclude and control their
3 lands.

4 Here, no Indian real property interests are implicated. Rather, the question presented
5 by this case is whether tribal council members may ever purport to seize intangible contract
6 rights that belong to a non-Indian. Moreover, controlling non-Indian contract rights has
7 never been recognized as a stick in the bundle of tribal rights to exclude. Instead, the right to
8 exclude is generally about controlling one's sovereign territory. Here, the United States
9 owns the lands upon which the Skywalk sits in trust for the Tribe. The Hualapai Tribe owns
10 the Skywalk and all of its fixtures. The only thing that Plaintiff owns for its substantial
11 investment in building and operating the Skywalk is its contract right to recoup monies from
12 the business of the Skywalk pursuant to the management agreement between it and SNW.
13 The disposition of these intangible contract rights has no bearing whatsoever on tribal land
14 ownership or control nor does it interfere with the Tribe's real property interests; thus, it
15 has no impact on the Tribe's right to exclude.

16 Here, GCSD has made the case that the Defendants, individual members of the Tribal
17 Council, lack the inherent regulatory authority to seize intangible contract rights belonging to
18 a non-Indian, and as such, those actions are *ultra vires* warranting an *Ex Parte Young* suit
19 against them to restrain them from exercising authority they do not have. Thus, the
20 intangible contract rights at issue in this case are wholly distinct from the real property rights
21 at issue in *Water Wheel*. Phrased differently, GCSD's intangible contract rights are non-
22 Indian contract rights not appurtenant to tribal land and therefore not subject to tribal
23 regulation or, by extension, tribal adjudication.²

24
25 ² Again, there is no comity concern here because, even if one could reasonably characterize
26 the attempted seizure of *contract* rights by eminent domain as a "regulatory" act (dubious
27 at best), the tribal right to exclude is not generally understood to include seizure of contract
28 rights—especially where those contracts involve non-Indians. *See* Cohen's Handbook of
Federal Indian Law, § 18.06 (2005) "Indian tribes have the right to exclude nonmembers
from trust land and other tribal land and to place conditions upon their entry."
Expropriation of contract rights simply does not constitute a condition on entry.

1 Thus, Plaintiff respectfully submits that the Court’s reliance on *Water Wheel* in the
2 June 23 Order warrants reconsideration, including but not limited to: (i) any conclusion that
3 the framework of *Montana* does not apply here (since *Water Wheel* may only exclude
4 *Montana’s* application in instances where a tribe is seeking to exercise its power to exclude
5 non-Indians from tribal *lands* as part of its inherent sovereign regulatory authority); (ii) any
6 extension of *Water Wheel’s* fact-specific determination that the tribal nature of the land
7 interests subject to regulation have made tribal jurisdiction appropriate to the instant case
8 (since the nature of the interests Defendants purport to regulate here is intangible contract
9 rights of a non-Indian); (iii) any finding that GCSD’s challenge to a “tribal ordinance
10 designed to condemn interests on reservation lands would appear directly to implicate the
11 Hualapai tribe’s power to manage its own lands” (June 23 Order at 6:22-24) (since the
12 contract rights at stake in this action not only do not constitute “interests on reservation
13 lands” but also primarily serve to allow GCSD to recoup monies owed it); and (iv) any
14 suggestion that rights to land are at issue here. *See* June 23 Order at 4:17-6:24.

15 Moreover, while it may differ from the state interest announced in *Nevada v. Hicks*,
16 533 U.S. 351 (2001), the state has a clear interest in this action. *Compare with* June 23
17 Order, FN2, at 5:24-26. At a minimum, the state has a substantial interest in preserving
18 tourism opportunities such as the Skywalk, which provide the bedrock for the Arizona
19 economy. *See, e.g.,* Arizona 2009 Tourism Facts Year-End Summary produced by the
20 Arizona Office of Tourism (the “Tourism Summary”), attached hereto as Exhibit D, at 8
21 (recognizing that “travel is an important contributor to the vitality of both [Arizona] state and
22 local economies”). Indeed, the Grand Canyon is Arizona’s number one tourist attraction
23 (natural or private) with over 11 million visitors per year. *See* Tourism Summary at 12 and
24 14.

25 This Court’s jurisdiction should parallel the Indian/non-Indian land status distinction
26 the Ninth Circuit made in *Water Wheel*. 2011 WL 2279188 at *11 (recognizing “the tribe
27 has plenary jurisdiction over tribal land until or unless that land is converted to non-Indian
28

1 land”). In the instant action, no tribal land interests are at issue, therefore, the Hualapai
2 Tribe could, at most, purport to regulate contract rights to the extent only Indian contract
3 rights are involved. But GCSD’s contract rights are intangible, non-Indian rights. Thus,
4 *Water Wheel* has not impacted the application of the *Montana* framework here, since this
5 case involves assertions of tribal jurisdiction in which a tribal right to exclude from tribal
6 trust lands is not implicated. *Id.*

7 Indeed, the Ninth Circuit's exclusion jurisprudence in *Water Wheel* must have a
8 limiting point; otherwise it will swallow *Montana*. The logical limiting distinction centers
9 on the Indian versus non-Indian character of the rights at issue. *See Plains Commerce Bank*
10 *v. Long Family Land and Cattle Co.*, 554 U.S. 316, 328 (2008) (“Our cases have made clear
11 that once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it”);
12 *South Dakota v. Bourland*, 508 U.S. 679, 689 (1993) (recognizing that the change in land
13 status from Indian to non-Indian abrogates the tribe’s power to exclude and “implies the loss
14 of regulatory jurisdiction over the use of the land by others”). Here, the status of the contract
15 rights at issue as non-Indian rights abrogates the Tribe’s ‘power to exclude’ those contract
16 rights (to the extent the power to exclude is understood to include a right to seize contract
17 rights of private parties) and implies the loss of any regulatory jurisdiction over those
18 contract rights by the Tribe.

19 The key distinctions between the facts of this case and those of *Water Wheel* warrant
20 reconsideration of the June 23 Order and denial of the Federal Motion or, in the alternative,
21 staying of this action. Moreover, because the *Water Wheel* decision was issued after briefing
22 on Defendants’ Motion was complete, and later served as a key basis for the June 23 Order,
23 GCSD should be afforded the opportunity to further brief this Court, through oral argument,
24 as to why *Water Wheel* is not controlling here.

25 **D. At A Minimum, this Court Should Stay This Action**

26 Staying this action will preserve GCSD’s access to prompt judicial oversight in this
27 Court, which is already well-versed in the complex issues raised in this action. Moreover,
28

1 staying this action will allow the parties to keep this Court apprised of any material
2 developments that arise in Tribal Court, especially if Defendants, after seeking dismissal
3 from this Court to exhaust tribal remedies, next assert sovereign immunity in and seek
4 dismissal from Tribal Court. To quote from the June 23 Order, this Court should “*stay* its
5 hand in order to give the tribal court a full opportunity to determine its own jurisdiction.”
6 June 23 Order at 2:25-26 (citing *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987))
7 (emphasis added).

8 **III. CONCLUSION**

9 In sum, reconsideration of the June 23 Order is necessary in light of the distinguishing
10 facts between *Water Wheel* and the facts raised in this action, as well as the new facts
11 presented herein. Accordingly, pursuant to LRCiv 7.2(g), GCSD moves this Court to deny
12 Defendants’ Federal Motion or, in the alternative, to stay this action in the interest of justice
13 and efficiency.

14
15 Respectfully submitted this 27th day of June 2011.

16 **GREENBERG TRAUIG, LLP**

17 By: /s/ Pamela M. Overton

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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2011, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant.

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EXHIBIT A

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11 **IN THE HUALAPAI TRIBAL COURT**
12 **PEACH SPRINGS, ARIZONA**

13 GRAND CANYON SKYWALK
14 DEVELOPMENT, LLC, a Nevada limited
15 liability company,

16 Plaintiff,

17 v.

18 'SA' NYU WA, INC., a Hualapai Indian
19 tribally chartered corporation,

20 Defendant.

Case No. 2011-CV-006

**MOTION TO DISMISS WITH
PREJUDICE**

(Assigned to the Honorable Ida Wilber)

21 Pursuant to Article XVI, Section 1, of the Constitution of the Hualapai Indian
22 Tribe, Defendant 'Sa' Nyu Wa ("SNW"), through undersigned counsel, moves the Court
23 to dismiss Plaintiff's Complaint in the above-captioned matter with prejudice because
24 SNW has not waived its sovereign immunity from being sued in Hualapai Tribal Court.

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FACTS

On February 25, 2011, Plaintiff filed this lawsuit against SNW seeking an order from the Hualapai Tribal Court commanding SNW to participate in binding arbitration with Plaintiff. Plaintiff alleged that it is entitled to such an order under the authority of a 2003 Development and Management Agreement (the "2003 Agreement").

On April 1, 2011, SNW filed its Answer to Plaintiff's Complaint. In that Answer, SNW asserted that it is immune from suit under the doctrine of sovereign immunity, and that it had not expressly made itself amenable to suit in the Hualapai Tribal Court. As an economic arm of the Hualapai tribal government, SNW is entitled to sovereign immunity, as is the Hualapai Tribe generally. Furthermore, nothing in the 2003 Agreement cited by the Plaintiff allows for an action to be brought against SNW in the Hualapai Tribal Court. As a result, SNW cannot be sued in the Hualapai Tribal Court; accordingly, this Court should dismiss Plaintiff's Complaint in the above-captioned matter with prejudice.

LAW AND ARGUMENT

I. The Court Should Dismiss Plaintiff's Complaint With Prejudice Because SNW Is Immune From Suit in the Hualapai Tribal Court.

Article XVI, Section 1 of the Constitution of the Hualapai Indian Tribe guarantees that "the Tribe is immune from suit except to the extent that the Tribal Council expressly waives sovereign immunity." In matters related to tribal sovereignty, the Tribe's commercial activities are indistinguishable from other types of governmental activities. See *Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (declining to draw a

1 distinction between governmental and commercial activities for the purpose of
2 determining a tribe's immunity from suit). The Court's protection of the Tribe's
3 sovereign immunity is of utmost importance because the doctrine promotes the self-
4 sufficiency and economic development of the Tribe.
5

6 SNW is wholly-owned by the Hualapai Tribe and has been incorporated under the
7 laws of the Hualapai Tribe. Furthermore, while still maintaining ultimate control, the
8 Hualapai Tribal Council has delegated its authority to manage SNW to the SNW Board
9 of Directors.¹ As a result of this structure, SNW is a subordinate economic arm of the
10 tribal government and entitled to immunity from suit. *See, e.g., White Mountain Apache*
11 *Tribe v. Shelley*, 480 P.2d 654, 655-57 (Ariz. 1971) (concluding that a business created
12 for economic purposes as authorized by tribal law constitutes a subordinate economic
13 organization and is therefore entitled to immunity from suit); *Hwal'bay Ba:j Enterprises,*
14 *Inc. v. Beattie*, App. Div. Case No. 2008-AP-007, at 6 (Hualapai App. Div. 2008). The
15 Appellate Division of the Hualapai Nation has affirmed SNW's right to immunity from
16 suit. *Hwal'bay Ba:j Enterprises, Inc. v. Beattie*, App. Div. Case No. 2008-AP-007, at 6
17 (Hualapai App. Div. 2008), attached hereto as **Exhibit A**.
18
19
20

21 As a sovereign nation, the Hualapai Tribe is entitled to such immunity from suit to
22 the extent the Tribe has not clearly waived it. *See, e.g., Kiowa Tribe*, 523 U.S. at 754;
23 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). Any purported waiver of
24

25 _____
26 ¹ The Hualapai Tribal Council possesses the authority "to manage all tribal economic affairs and enterprises."
Hualapai Const. Art. V, Sect. m.

1 sovereign immunity must be construed strictly in favor of the sovereign and not enlarged
2 beyond what the language requires. See *United States v. Nordic Village, Inc.*, 503 U.S.
3 30, 34 (1992). Once a tribe's sovereign immunity has been established, the plaintiff has
4 the burden of establishing that its claim falls under an express waiver. *Hwal'bay Ba:j*
5 *Enterprises, Inc. v. Beattie*, App. Div. Case No. 2008-AP-007, at 5 (Hualapai App. Div.
6 2008) (citing *Colville Tribal Enterprises Corp. v. Orr*, 5 CCAR 1 (Colville Confederated
7 Tribes Ct. App. 1998)).
8
9

10 In this case, Plaintiff cannot establish an express waiver of SNW's sovereign
11 immunity to allow it to be sued in Hualapai Tribal Court.² The limited waiver of
12 sovereign immunity in the 2003 Agreement does not include an action in the Hualapai
13 Tribal Court. As a result, this Court must dismiss Plaintiff's Complaint with prejudice.
14

15 CONCLUSION

16 Because SNW possesses sovereign immunity and has not waived its immunity
17 with respect to Plaintiff's claims, this Court must dismiss Plaintiff's Complaint with
18 prejudice.
19

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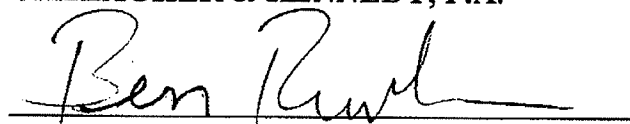
23
24
25 ² To be clear, SNW is *not* contending that this action should (or could) be brought in any other court – only that
26 there has been no express waiver of its sovereign immunity from suit in Tribal Court. And in any event, parties
cannot confer jurisdiction upon any court; courts independently determine whether they have jurisdiction over any
matter.

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Respectfully submitted this 14th day of June, 2011.

GALLAGHER & KENNEDY, P.A.

By:



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Attorneys for Defendant 'Sa' Nyu Wa, Inc.

1 ***ORIGINAL of the foregoing filed via facsimile this***
2 ***14th day of June, 2011 with:***

3 Clerk of the Court
4 HUALAPAI INDIAN TRIBE, TRIBAL COURT
5 Hualapai Indian Reservation (AZ)
6 P.O. Box 275 – 960 Rodeo Drive
7 Peach Springs, AZ 86434
8 Fax: 928-769-2736

9 ***Copy of the foregoing mailed this***
10 ***14th day of June, 2011 to:***

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EXHIBIT A

RECEIVED
NOV 27 2008

FILED
NOV 24 2008
TRIBAL COURT
PEORIA RESERVE, ARIZONA

BY: *Abel*

IN THE APPELLATE DIVISION OF THE HUALAPAI NATION
HUALAPAI RESERVATION, ARIZONA

HWAL'BAY BA:J ENTERPRISES,
INC. dba GRAND CANYON WEST
CORPORATION; 'SA NYU WA, INC.;
KATHRYN LANDRETH; BARRY
WELCH; LOLA WOOD; APRIL
TINHORN; and DERRICK
WHATONAME,

App. Div. Case No.: 2008-AP-007
Trial Court Case No.: 2008-PO-019

Appellants/Respondents,

DECISION AND ORDER

v.

STEVEN R. BEATTIE,

Appellee/Petitioner.

Opinion by Justice Wes Williams Jr.

This is an employment related case filed by Appellee Steven R. Beattie who was the Chief Financial Officer for Appellants Hwal'Bay Ba:J Enterprises, Inc. dba Grand Canyon West Corporation ("HBBE") and 'Sa Nyu Wa, Inc. ("SNW") (HBBE and SNW hereafter referred to as the "Tribal Corporations"). Appellants Kathryn Landreth, Barry Welch, Lola Wood, April Tinhorn and Derrick Whatoname are members of the Board of Directors of the Tribal Corporations.

PROCEDURAL HISTORY

Appellee filed his "Petition for Injunction Prohibiting Harassment" against Appellants on April 3, 2008. The petition asked the Tribal Court to issue an injunction prohibiting the Appellants from a number of actions, including disturbing, annoying or harassing Appellant, or taking other adverse employment actions against him. The Tribal Court entered an ex parte order granting a temporary injunction pending a scheduled evidentiary hearing. The Appellants filed a motion to dismiss the case on May 8, 2008. The Tribal Court held a hearing on May 14, 2008 at which the court denied the motion to dismiss. The Tribal Court entered a minute order on May 14, 2008 that, among other things, denied the motion to dismiss providing as the basis for the ruling the notation "Court ruled consistent with Case No. 2007 SA-023 Denying Motion to Dismiss." Case

1 No. 2007 SA-023 refers to a prior civil case in the Tribal Court titled *Cesspooch v.*
2 *Hwal'Bay: J Enterprises, Inc.* Following the ruling, Appellant filed numerous motions
3 for orders to show cause and the court conducted pre-trial activities. On July 22, 2008,
4 Appellants filed a motion for the Tribal Court to reconsider its order denying the motion
5 to dismiss, which the Tribal Court denied on July 24, 2008. Discovery and other pretrial
6 activities continued until this appeal was filed on July 31, 2008 and a stay was issued by
7 the Court of Appeals on August 12, 2008.

8 JURISDICTION

9 The Appellants' motion to dismiss was based on the sovereign immunity of the
10 Hualapai Tribe ("Tribe"). Appellants assert the Tribe's sovereign immunity applies to the
11 Tribal Corporations and their officials, directors and employees. The Tribal Court denied
12 the motion to dismiss, and denied a motion to reconsider that ruling. Appellants filed this
13 appeal asserting that the Tribal Court's action was a "final order" on the sovereign
14 immunity issue.

15 This Court has appellate jurisdiction over any appeal from a "final judgment or
16 order of the Tribal Court in any civil case." Hualapai Tribe Law and Order Code §
17 10.2.B. Appellee asserts that the Tribal Court's denial of the motion to dismiss does not
18 constitute a "final order" as a final order is only entered at the end of litigation when the
19 merits of a case have been decided. The parties have not referred to any provision in the
20 Hualapai Tribe's Law and Order Code that defines "final order."

21 In some court systems, a party may appeal only from a trial court's final decision
22 that ends the litigation on the merits. Others will allow an interlocutory appeal, which is
23 an appeal occurring before a final judgment on the entire case, if the appeal involves
24 legal issues necessary to the determination of the case or collateral orders that are wholly
25 separate from the merits of the action.

26 In this case, the parties completely briefed and argued the sovereign immunity
27 issue. The Tribal Court denied the motion, but the decision was not based on a need for
28 further factual development or other proceedings such as an evidentiary hearing on
whether sovereign immunity applied or was waived. The Tribal Court simply denied the
motion to dismiss precluding any further action on the sovereign immunity issue by the
Tribal Court. Therefore the Tribal Court's order was "final" on the sovereign immunity
issue.

A motion to dismiss based on sovereign immunity raises the issue of whether the
court has jurisdiction over the case and/or defendants. The Tribal Court must make a
determination on jurisdiction before addressing the merits of a case. In *Steel Co. v.*
Citizens for Better Environment, 523 U.S. 83 (1998), the United States Supreme Court
directed that a federal court generally may not rule on the merits of a case prior to
determining whether it has subject matter jurisdiction over the claims and personal

1 jurisdiction over the parties.

2 "Without jurisdiction the court cannot proceed at all in any cause.
3 Jurisdiction is power to declare the law, and when it ceases to exist, the only
4 function remaining to the court is that of announcing the fact and
5 dismissing the cause." *Ex parte McCardle*, 7 Wall. 506, 514, . . . (1868).
6 "On every writ of error or appeal, the first and fundamental question is that
7 of jurisdiction, first, of this court, and then of the court from which the
8 record comes. This question the court is bound to ask and answer for itself,
9 even when not otherwise suggested, and without respect to the relation of
10 the parties to it." *Great Southern Fire Proof Hotel Co. v. Jones, supra*, at
453, . . . The requirement that jurisdiction be established as a threshold
matter "spring[s] from the nature and limits of the judicial power of the
United States" and is "inflexible and without exception." *Mansfield, C. &*
L.M.R. Co. v. Swan, 111 U.S. 379, 382, . . . (1884).

11 *Steel Co.* at 94-95.

12 The Tribal Court ruled on the motion to dismiss, finding that the sovereign
13 immunity defense did not apply and therefore the court had jurisdiction over the
14 defendants. The issue then becomes whether the Tribal Court's decision can be appealed
15 as a "final order" on the sovereign immunity defense. The United States Supreme Court,
16 the Ninth Circuit Court of Appeals and other tribal courts have acknowledged that an
appeal of a decision denying a motion to dismiss based on sovereign immunity is
immediately appealable.

17 [T]he Supreme Court has held that orders denying dismissal of claims based
18 on various types of immunities are immediately appealable. *See, e.g., Nixon*
19 *v. Fitzgerald*, 457 U.S. 731 (1982)(President's absolute immunity from
20 damages suit based on official acts); *Mitchell v. Forsyth*, 472 U.S. 511
21 (1985)(Attorney General's qualified immunity from suit for violation of
22 constitutional rights); *Puerto Rico Aqueduct and Sewer Authority v. Metcalf*
23 *& Eddy*, 506 U.S. 139 (1993)(Eleventh Amendment immunity from suit on
24 contract claim against "state" instrumentality). In turn, based on the
25 Supreme Court's decisions, the Ninth Circuit has held that denials of
26 motions to dismiss federal-court actions by various entities claiming
27 sovereign immunity are immediately appealable under the collateral order
28 doctrine. *See, e.g., Adler v. Federal Republic of Nigeria*, 107 F.3d 720, 723
(9th Cir. 1997)(Nigerian sovereign immunity under the Foreign Sovereign
Immunities Act); *Marx v. Government of Guam*, 866 F.2d 294 (9th Cir.
1989)(action in admiralty barred by territory of Guam's inherent sovereign
immunity).

1 The logic behind appellate jurisdiction lying in these cases is that an
 2 "essential attribute" of the immunity is "an entitlement not to stand trial."
 3 *Mitchell v. Forsyth*, supra, 472 U.S. at 525. Requiring a sovereign to defend
 4 a case through trial, without allowing it to immediately appeal, would
 5 destroy this sovereign right "to be free from the 'crippling interference' of
 6 litigation." *Marx*, 866 F.2d at 296, cited in *In re Marriage of Redfox*, supra,
 7 2000 CROW 3, ¶ 5. Thus, a lower court's denial of a motion to dismiss is, in
 8 effect, a "final" order with respect to a sovereign's immunity against
 9 standing trial, and because the damage to the sovereign can never be
 10 undone, it is effectively unreviewable on appeal from a final judgment
 11 following trial.

12 *One Hundred Eight Employees of the Crow Tribe v. Crow Tribe of Indians*, 2001 Crow
 13 Ct. App., VersusLaw Version ¶¶ 50-51.

14 A sovereign has the right and power to state when and how it may be sued, and
 15 must be free from interference from unconsented to litigation. Therefore a final decision
 16 on a claimed defense of sovereign immunity must be considered a "final order"
 17 immediately appealable because the alternative of waiting until a final decision on the
 18 merits of a case will destroy Tribal sovereignty. The Tribal Council could not have meant
 19 such a result since the Tribal Council is responsible for exercising, enforcing and
 20 protecting the Tribe's sovereignty. The Tribal Court must address a sovereign immunity
 21 defense as soon as possible, otherwise the parties will spend their time and resources on a
 22 case over which the court may not have jurisdiction. Waiting until the end of the case for
 23 a decision on the merits completely undermines and may irreversibly harm the Tribe's
 24 interests and diminish its sovereignty.

25 Once the Tribal Court has a sufficient factual basis to address a sovereign
 26 immunity defense, its ruling on a motion to dismiss must be considered final for appeal
 27 purposes. Therefore the Tribal Court's denial of the Appellants' motion to dismiss based
 28 on sovereign immunity was a final order immediately appealable.

29 SOVEREIGN IMMUNITY

30 The United States Supreme Court has recognized numerous times that Indian tribes
 31 are immune from suit. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). The
 32 Supreme Court has stated, "Indian tribes are 'domestic dependent nations' that exercise
 33 inherent sovereign authority over their members and territories. Suits against Indian
 34 tribes are thus barred by sovereign immunity absent a clear waiver by the tribe or
 35 congressional abrogation." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian
 36 Tribe*, 498 U.S. 505, 509 (1991). Tribal immunity extends to claims for declaratory and
 37 injunctive relief, not merely damages, and it is not defeated by a claim that the tribe acted
 38 beyond its power. *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269
 (9th Cir. 1991). Sovereign immunity is not a discretionary doctrine. It is the sovereign's

1 right and an absolute bar to suit. *Chemehuevi Indian Tribe v. California State Bd. of*
2 *Equalization*, 757 F.2d 1047, 1052 n.6 (9th Cir.), rev'd in part on other grounds, 474 U.S.
3 9 (1985); *California v. Quechan Tribe*, 595 F.2d 1153, 1155 (9th Cir. 1979).

4 A tribe's sovereign immunity also precludes any action against any tribal official
5 when the official is acting within the scope of his authority. *Youvella v. Dallas*, 27 I.L.R.
6 6020, 6021 (App. Ct. Hopi Tribe 2000) ("The majority of federal, state, and tribal courts
7 have held that where an officer is acting within the scope of his or her valid authority, the
8 doctrine of sovereign immunity protects the officer from suit."); see also *Linneen v. Gila*
9 *River Indian Community*, 276 F.3d 489 (9th Cir. 2002); *Fletcher v. United States*, 116
10 F.3d 1315, 1324 (10th Cir. 1997); *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476,
11 479 (9th Cir. 1985); *Imperial Granite Co. v. Pala Tribe of Mission Indians*, 940 F.2d
12 1269, 1271 (9th Cir. 1991); *Davis v. Littell*, 398 F.2d 83, 84-85 (9th Cir. 1968). Tribal
sovereign immunity protects tribal officials because they need to be free from
intimidation, harassment and the threat of lawsuits when conducting tribal business.
Youvella v. Dallas, 27 I.L.R. at 6022. Tribal officials are protected by a tribe's sovereign
immunity even if the Tribe is not a party to the action. *Fletcher v. United States*, 116 F.3d
1315, 1324 (10th Cir. 1997).

13 Suits against Indian tribes are barred by Tribal sovereign immunity unless
14 sovereignty is waived by Congress or the tribe. *Kiowa Tribe v. Manufacturing*
15 *Technologies, Inc.*, 523 U.S. 751, 754 (1998); *Oklahoma Tax Comm'n v. Citizen Band of*
16 *Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991). Immunity from suit extends to tribal
contracts involving commercial or governmental activities and for contracts made both on
and off a reservation. *Kiowa Tribe*, 523 U.S. at 760.

17 The United States Supreme Court has repeatedly stated that any waiver of a tribe's
18 immunity must be unequivocally expressed and cannot be implied. "It is settled that a
19 waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed.'"
20 *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59 (1978)(citing *United States v. Testan*,
21 424 U.S. 392, 399 (1976) which quotes *United States v. King*, 395 U.S. 1, 4 (1969). Once
22 a Tribe's sovereign immunity is established, the burden is upon the plaintiff/petitioner to
23 prove it has been waived. "Once a sovereign has established its affirmative defense of
24 sovereign immunity, the claimant assumes the burden of establishing that the claim falls
25 within a legislative waiver of immunity." *Colville Tribal Enterprises Corp. v. Orr*, 5
26 CCAR 1 (Colville Confederated Tribes Ct. App. 1998). Indian tribes have patterned
27 their conduct and affairs based upon the knowledge that any waiver of their sovereign
28 immunity must be unequivocally expressed and cannot be implied.

Hualapai Tribe and the Tribal Corporations

29 The Hualapai Tribe is protected from suit by its inherent sovereignty that is
30 recognized in its Constitution. Constitution of the Hualapai Indian Tribe of the Hualapai
31 Indian Reservation, Arizona, Art. XVI. The Tribe's sovereign immunity may only be

1 waived by express Tribal Council action, or as stated in the Constitution. *Id.* In this case,
2 the Tribal Council took action to form subordinate entities (the Tribal Corporations) for
3 economic purposes as authorized by the Constitution. *See id.* at Art. V(x). The Plan of
4 Operation for both HBBE and SNW recognized that the Tribal Council created the Tribal
Corporations as Tribal entities possessing sovereign immunity.

5 The Corporation shall be entitled to all the privileges and immunities of the
6 Hualapai Indian Tribe. The Corporation and its directors, officers,
7 employees, and agents while acting in the official capacities are immune
8 from suit, and the assets and other property of the Corporation are exempt
from any levy or execution as provided in this Article.

9 HBBE's Amended and Restated Plan of Operation § 11.1 and SNW's Plan of Operation §
10 11.1.

11 The Tribal Council delegated to the Tribal Corporations the power to waive their
immunity.

12 The Corporation is authorized to waive immunity from suit of the
13 Corporation, the directors, officers, employees, or agents, for any particular
14 agreement, matter or transaction as may be entered into to further the
purposes of the Corporation.

15 HBBE's Amended and Restated Plan of Operation § 11.2 and SNW's Plan of Operation §
16 11.2.

17 Based on the foregoing, the Tribal Corporations and the members of their Boards
18 of Directors are protected from suit by the Tribe's sovereign immunity. The Appellants
19 established their affirmative defense of sovereign immunity. Appellee then had the
20 burden to establish his claim fell within a waiver of that immunity. Appellee provided no
21 evidence that any such express waiver existed to allow for this suit. He did not address a
22 waiver in his Petition, in his arguments to the Tribal Court, or in his response brief in this
23 appeal. At oral argument on the motion to dismiss, Appellee referred to violations of
federal employment laws, but did not address how any such law expressly waived the
Tribal Corporations' immunity from suit. Therefore Appellee has not met his burden to
prove the existence of a waiver of the Tribal Corporations' immunity from suit.

24 The Tribal Court order denying the motion to dismiss did not address any waiver,
25 but simply denied the motion to dismiss with a reference stating "Court ruled consistent
26 with Case No. 2007 SA-023 Denying Motion to Dismiss." Case No. 2007 SA-023 is a
27 Hualapai Tribal Court case titled *Cesspooch v. Hval'Bay: J Enterprises, Inc.* that denied
28 HBBE's motion to dismiss based on sovereign immunity. In *Cesspooch*, the Tribal Court
incorrectly concluded that HBBE did not possess sovereign immunity. The Tribal Court
in this case should not have relied upon the incorrect holding of *Cesspooch*.

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Many courts have recognized that dismissing a case based on a sovereign immunity defense effectively ends all recourse for a litigant as no other forum may be available to address asserted violations. However the lack of an available forum cannot be the basis for diminishing Tribal sovereignty. Any person or entity dealing with a Tribe or Tribal entity is responsible for designing their affairs to address such a contingency.

THEREFORE IT IS HEREBY ORDERED that the Tribal Court's ruling on the Appellants' motion to dismiss is reversed. This case is hereby dismissed.


WES WILLIAMS JR.
JUSTICE OF THE HUALAPAI COURT OF APPEALS

Dated: November 13, 2008

***IN THE TRIBAL COURT OF THE HUALAPAI NATION
PEACH SPRINGS, ARIZONA***

CERTIFICATION OF MAILING

I hereby certify that I, Muriel Uqualla have mailed a copy of a Decision and Order of 2008-AP-007 RE: 2008-PO-019 Steven R. Beattie vs. Hwal' Bay Ba:J Enterprise, To: Steven R. Beattie HC 35 BOX 111, Sheri Yellowhawk PO BOX 629 Peach Springs AZ, Grand Canyon Resort Corporation PO BOX 359 and Snell & Wilmer LLP Law Offices One Arizona Center, 400 E Van Buren Phoenix AZ 85004-2202.

DATED: 11/24/08



Muriel Uqualla

Chief Court Clerk of the Hualapai Nation Appeals Court

RH048726

EXHIBIT B

ORIGINAL

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IN THE HUALAPAI TRIBAL COURT

PEACH SPRINGS, ARIZONA

GRAND CANYON SKYWALK,)
DEVELOPMENT, LLC, a Nevada)
limited liability company,)
)
Plaintiff,)
)
vs.)
)
'SA' NYU WA, INC., a Hualapai)
Indian tribally chartered)
corporation,)
)
Defendant.)
_____)

STATUS CONFERENCE
Case No. 2011-CV-006

Before the Honorable Ida B. Wilber, Judge
Tuesday, June 14, 2011
3:36 p.m.
Peach Springs, Arizona
Reporter's Transcript of Proceedings

Reported by: John W. Boyd, CCR, RPR
Arizona CCR #50774 / Nevada CCR #877

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Appearances:

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(Telephonically)

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1 jurisdiction. I would simply respectfully ask that you
2 clarify that you have jurisdiction on this issue of
3 arbitration, can you enforce the arbitration clause,
4 because that's why we're here. We filed a Complaint
5 demanding arbitration.

6 My position is you do, and my client's
7 position is you do. You're a court of general
8 jurisdiction. You can hear it and you -- you can order
9 it, and -- and we're done. But I think you just need to
10 rule on that issue. I don't -- I don't see how we get
11 to anything else unless we get to that issue legally,
12 Your Honor.

13 THE COURT: Mm-hmm.

14 MR. EID: That's the gravamen of the
15 dispute.

16 THE COURT: Okay.

17 Mr. Hallman?

18 MR. HALLMAN: Your Honor, our motion is
19 not based on the absence of jurisdiction; the motion is
20 based on, you know, the fact that the clear language of
21 the Contract at issue provides that the waiver of
22 sovereign immunity -- of SNW's sovereign immunity from
23 suit is limited to actions and judicial remedies in a
24 federal court of competent jurisdiction. That's
25 the quote -- That's the quote from the Contract.

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CERTIFICATE OF REPORTER

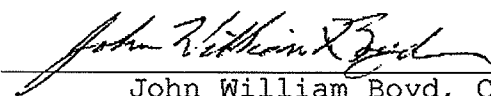
I, John William Boyd, Official Reporter in the Superior Court of the State of Arizona, do hereby certify that I made a shorthand record of the proceedings had at the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true, and accurate;

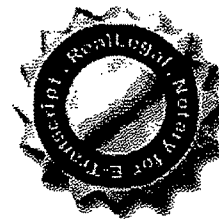
That the same was thereafter transcribed under my direction; and

That the foregoing 48 typewritten pages constitute a full, true, and accurate transcript of said record, all to the best of my knowledge and ability.

Dated at Lake Havasu City, Arizona, this 16th day of June, 2011.



John William Boyd, CCR, RPR
AZ CCR #50774 / NV CCR #877



ORIGINAL

EXHIBIT C

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 Attorneys for Plaintiff

15
 16 IN THE UNITED STATES DISTRICT COURT
 17 FOR THE DISTRICT OF ARIZONA

18 Grand Canyon Skywalk Development,
 19 LLC, a Nevada limited liability
 20 company,

21 Plaintiff,

22 vs.

23 Charles Vaughn; Waylon Honga; Ruby
 24 Steele; Candida Hunter-Yazzie; Wilfred
 Whatoname, Sr.; Richard Walema;
 25 Wynona Sinyella; Sheri Yellowhawk;
 26 Barney Imus; Wanda Easter; and Jaci
 Dugan,

27 Defendants.
 28

No. 3:11-CV-08048-DGC

SUPPLEMENTAL STATUS REPORT

1 Pursuant to this Court's May 31, 2011 Order (Dkt. No. 28), the parties submitted a
2 Joint Report Re: Proceedings in Tribal Court ("Status Report") on June 2, 2011 (Dkt. No.
3 29), which summarized what occurred before the Hualapai Tribal Court during the parties'
4 Initial Pre-Trial Hearing on May 27, 2011. Since submitting said Status Report, additional
5 material events have occurred. Accordingly, Plaintiff Grand Canyon Skywalk Development,
6 LLC ("Plaintiff" or "Grand Canyon Skywalk") now submits this Supplemental Status Report
7 to keep the Court apprised of these recent material developments.

8 Pursuant to the Hualapai Tribal Court's May 27, 2011 Order, the parties were to
9 "exchange disclosure of documents no later than June 10, 2011 at 5:00pm" and a status
10 hearing was to take place on June 14, 2011 (the "Status Conference"). On Friday, June 10,
11 2011, Greenberg Traurig, on behalf of Mr. David Jin and Grand Canyon Skywalk, delivered
12 approximately 25,000 pages of documents to opposing counsel, which included documents
13 addressing each category of information expressly requested by Defendant "Sa" Nyu Wa,
14 Inc. ("Defendant" or "SNW"). *See* Declaration of Mark Tratos ("Tratos Decl."), attached
15 hereto as Exhibit 1, at ¶ 6. Defendant's counsel, in stark contrast, produced a scant 141
16 pages of documents, only three pages of which were remotely relevant to the categories of
17 information that Grand Canyon Skywalk expressly requested. *See* Tratos Decl. at ¶ 7. Thus,
18 SNW produced virtually no viable or valuable information for this matter by June 10, 2011,
19 in direct contravention to the Hualapai Tribal Court's May 27, 2011 Order. *See id.*

20 This gross discrepancy in document production, and other material matters, were
21 addressed at the June 14th Status Conference before the Tribal Court. Specifically, Grand
22 Canyon Skywalk raised the following material issues during the Status Conference: (i)
23 Defendant's woefully inadequate document production; (ii) Defendant's unwillingness to
24 meet anywhere outside of the Reservation for a proposed two-day meeting, despite
25 Plaintiff's offered compromise to meet on the Reservation one day and, given Mr. Jin's ill
26 health, in Kingman, Arizona the other so that he could be close to major medical facilities;
27 and (iii) Defendant's filing of a Motion to Dismiss in the Tribal Court the morning of June
28

1 14th while Plaintiff's counsel was in transit to the Status Conference. *See* Status Conference
 2 Transcript (the "Transcript"), the relevant pages of which are attached hereto as Exhibit 2, at
 3 6:2-8:20; *see also* Tratos Decl. at ¶¶ 8-10.

4 In response to the issues raised on behalf of Grand Canyon Skywalk, Defendant's
 5 counsel conceded the following: (i) "additional documentation—backup documentation
 6 needs to be produced"; and (ii) the two-day meeting between the parties did not occur
 7 because members of the Tribal Council were unwilling to travel off of the Reservation for
 8 even one of the meeting days, despite Mr. Jin's request to do so due to his ill health.
 9 Transcript at 14:2-20; *see also* Tratos Decl. at ¶ 8. As opposing counsel phrased its latter
 10 position, "[i]f Mr. Jin wishes to meet with Tribal Council's representatives, he can meet with
 11 the Tribal Council's representatives on Hualapai—on the Hualapai Reservation." Transcript
 12 at 21:11-14.

13 After counsel for the parties provided their respective positions regarding the issues
 14 raised, the Tribal Court ordered that:

- 15 • Disclosure of requested documents¹ must occur by June 22, 2011,
 16 recognizing that Defendant's production of "between 121 and 135 pages of
 17 summary, that's just inadequate to—for you all to have a meaningful
 18 discussion at this point." Transcript at 18:12-15;
- 19 • The parties will conduct their two-day settlement negotiations on June 27 and
 20 28, 2011—one day in the community of Hualapai and the other day in
 21 Kingman, Arizona, given the "reasonableness" of Plaintiff's request
 22 (Transcript at 35:22-36:3);
- 23 • A status conference will occur telephonically on June 30, 2011 at 10:00am
 24 (Transcript at 36:12-37:2);

25 _____
 26 ¹ Undersigned counsel sent another letter to opposing counsel on June 13, 2011 that
 27 identified the specific categories of documents it would like produced. The Tribal Court
 28 incorporated this letter into the record as a benchmark for what documents Defendant must
 produce. Transcript at 43:12-45:13. Defendant reserved the right to submit a similar letter
 to Plaintiff and the Tribal Court before the June 22nd production deadline. *Id.* at 45:15-
 46:18.

- The parties will reconvene in the Tribal Court at 11:00am on July 8, 2011 (Transcript 37:1-8); and
- Plaintiff's Response to Defendant's Motion to Dismiss is due on June 29, 2011, and Defendant's Reply is due on July 7, 2011 (Transcript at 38:24-39:12).

Plaintiff and undersigned counsel will continue to proceed in accordance with the Tribal Court's orders.

Respectfully submitted this 24th day of June, 2011.

GREENBERG TRAUERIG, LLP

By: /s/ Pamela M. Overton

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Attorneys for Plaintiff

EXHIBIT 1

1 Pamela M. Overton (AZ Bar No. 009062)
Tracy L. Weiss (AZ Bar No. 027289)
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E-mail: OvertonP@gtlaw.com; WeissT@gtlaw.com

6 Mark Tratos (NV Bar No. 1086) (Admitted *Pro Hac Vice*)
GREENBERG TRAUIG, LLP
7 3773 Howard Hughes Parkway
Ste. 400 North
8 Las Vegas, Nevada 89169
Telephone: (702) 792-3773
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Email: TratosM@gtlaw.com

10 Troy A. Eid (CO Bar No. 21164) (Admitted *Pro Hac Vice*)
11 **GREENBERG TRAUIG, LLP**
12 1200 17th St., Ste. 2400
Denver, Colorado 80202
13 Telephone: (303) 572-6500
Facsimile: (303) 572-6540
14 Email: EidT@gtlaw.com
Attorneys for Plaintiff

15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF ARIZONA

18 Grand Canyon Skywalk Development,
19 LLC, a Nevada limited liability
20 company,

21 Plaintiff,

22 vs.

23 Charles Vaughn; Waylon Honga; Ruby
24 Steele; Candida Hunter-Yazzie; Wilfred
25 Whatoname, Sr.; Richard Walema;
26 Wynona Sinyella; Sheri Yellowhawk;
Barney Imus; Wanda Easter; and Jaci
Dugan,

27 Defendants.
28

No. 3:11-CV-08048-DGC

DECLARATION OF MARK TRATOS

1 1. I am an attorney for Plaintiff Grand Canyon Skywalk Development, LLC
2 (“GCSD”) and its principal, Mr. David Jin, and I represent them in various matters related to
3 the Grand Canyon Skywalk.

4 2. I am an attorney duly licensed to practice law in the State of Nevada and
5 California and have been admitted before the State of Arizona Pro Hac Vice in this matter.

6 3. Further to the Court’s May 31, 2011 Order (Dkt. No. 28) to have the parties
7 provide supplemental information concerning the status of the Tribal Court litigation to
8 enforce arbitration, the parties submitted a Joint Statement on June 2, 2011 (Dkt. No. 29)
9 advising that the parties were going to exchange documents and attempt to arrange a face to
10 face meeting between the parties and then appear for a status conference before the Tribal
11 Court on Tuesday, June 14.

12 4. This declaration is to supplement the information previously submitted to the
13 Court, as significant developments have occurred since the Joint Statement was filed by the
14 parties on June 2, 2011.

15 5. First, the parties had agreed to exchange documents and each party had sent a
16 letter to the other outlining the type and nature of the documents that they wished to receive.
17 Attached to my declaration are true and correct copies of the letters between counsel that
18 outline the nature of the documents sought. (See Exhibits (a) and (b) attached hereto.)

19 6. On Friday, June 10, Greenberg Traurig, on behalf of David Jin and GCSD
20 delivered approximately 25,000 pages of documents including each category in which the
21 counsel for SNW had sought information, both on CD’s and in printed paper form. (See
22 Exhibit (c) attached hereto.)

23 7. Counsel for SNW, on the other hand, only provided approximately 130 pages,
24 only three of which were at all relevant to the categories of information sought by GCSD.
25 Those three pages were also lacking, as they were only one-page conclusory summaries of
26 the income and disbursements that SNW had received for 2007, 2008 and 2009. No details
27 or backup materials for any of those one page summary reports were provided. (See Exhibit
28

1 (d) attached hereto.) The remaining pages consisted of daily reports that reflected banking
2 deposits made by GCSD, of which GCSD was obviously already aware. Thus, the
3 Defendant in that matter, SNW, produced no viable or valuable information for either the
4 Tribal Court case or this separate case.

5 8. Also on June 10, Mr. Hallman advised me that the Tribe would not agree to
6 our proposed compromise location for a meeting between GCSD and SNW on Monday, June
7 13 in Kingman, Arizona to be followed by additional meeting on Tuesday, June 14 in Peach
8 Springs, Arizona. Mr. Hallman, as is evidenced by his email attached hereto as Exhibit (e),
9 claimed that tribal sovereignty precluded SNW from meeting outside Peach Springs.
10 Therefore, no meeting between GCSD and SNW occurred as contemplated in the Joint
11 Statement (Dkt. No. 29).

12 9. Since our submission of the Joint Statement, counsel for SNW has also filed a
13 Motion to Dismiss with Prejudice with the Tribal Court ("Tribal Motion"), a copy of which
14 is attached as Exhibit A to Plaintiff's Motion for Reconsideration and Renewed Request for
15 Stay.

16 10. At the June 14 Tribal Court hearing, Judge Wilber ordered that SNW produce
17 the documents requested by GCSD, meet with GCSD as proposed by GCSD, first in
18 Kingman and then in Peach Springs (on June 28 and 29, 2011) and scheduled two additional
19 Tribal Court status conferences, now set for June 30 and July 8. See relevant portions of
20 Transcript of June 14 proceedings before the Tribal Court, attached as Exhibit 2 to the
21 Supplemental Status Notice to which this declaration is appended.

22 11. At the June 14 Tribal Court hearing, upon my understanding and belief, Judge
23 Wilber indicated that she will hear arguments addressing SNW's Tribal Motion, Plaintiff's
24 Response thereto, and SNW's Reply on July 8, 2011.

25 12. The essence of the argument SNW raises in its Tribal Motion is that SNW
26 has not agreed to Tribal Court jurisdiction "because SNW has not waived its sovereign
27 immunity from being sued in the Hualapai Tribe Court." Tribal Motion at 1:22-23. The
28

1 Tribal Motion was filed even though the Defendants in this case have submitted a Motion to
2 Stay or Dismiss (Dkt. No. 25) arguing that this Court should stay or dismiss this case as a
3 matter of comity with the Tribal Court action. Thus, it appears that the defendants are trying
4 to get their Matters dismissed in each court in an attempt to improperly exercise eminent
5 domain over GCSD's contract rights without impartial judicial scrutiny.

6
7 I declare under the penalty of perjury under the law of the United States of America
8 that the foregoing is true and correct.

9
10 Executed this 24th day of June 2011 at Las Vegas, Nevada.

11
12
13 /s/ Mark G. Tratos
14 Mark G. Tratos
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EXHIBIT (a)

June 2, 2011

Page 2

Re: Glen Hallman, Esq./ Document Production Request

5. Any and all accounting or auditing workpapers relating to SNW, GCRC, GCSD or the Skywalk, including but not limited to any proposed adjustments, preliminary, interim or final reports; conclusions, or any internal control weaknesses at the above entities for the years of 2007, 2008, 2009 or 2010.
6. Complete copies of all bank statements from any bank account (including without limitation GCRC or SNW) in which funds from the sale of Skywalk tickets and/or meal tickets redeemable at Grand Canyon West were deposited, for the years of 2007, 2008, 2009 and 2010.
7. Copies of any cash register print outs, sales journals, accounting entries and/or summary statements concerning, relating to or evidencing any Skywalk ticket and/or meal ticket sales by SNW, GCRC or any other Hualapai Tribe related entity for the years 2007, 2008, 2009, 2010.
8. Complete copies of each and every payment, whether by check, wire transfer, ACH or other means, that has been paid to Grand Canyon Skywalk Development Corporation for the years 2007, 2008, 2009, 2010.
9. Complete copies of each and every grant application containing financial data including the Skywalk, tax returns and/or company tax statements that has been filed on behalf of SNW, GCRC, the Hualapai Tribe or Hualapai Tribe related entities for the years 2007, 2008, 2009 and 2010.
10. All documents and communications concerning or reflecting employee malfeasance, embezzlement, conversion, theft, issuance of duplicate Skywalk tickets, diverted and or stolen funds by employees, officers or directors at SNW, GCRC or any other tribal entity selling Skywalk tickets or receiving proceeds from such sales. Such documents and communications should include, but not be limited to police reports, investigative reports, personnel records (including suspensions and terminations) and insurance claims.
11. All documents and calculations concerning sales taxes due for Skywalk related sales, and all documents and communications relating to the sales taxes paid to the Hualapai Tribe for the years of 2007, 2008, 2009 and 2010.

June 2, 2011

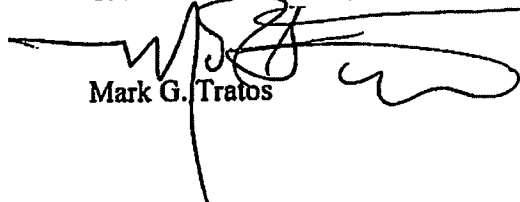
Page 3

Re: Glen Hallman, Esq./ Document Production Request

Thank you for your anticipated cooperation in delivering all of the foregoing by June 10, 2011, as the Hualapai Tribal Court has ordered.

Very truly yours,

GREENBERG TRAURIG, LLP



Mark G. Tratos

MGT/dr

EXHIBIT (b)

GALLAGHER & KENNEDY

P.A.
LAW OFFICES

GLEN HALLMAN
DIRECT DIAL: (602) 530-8471
E-MAIL: GH@GKNET.COM

2575 EAST CAMELBACK ROAD
PHOENIX, ARIZONA 85016-9225
PHONE: (602) 530-8000
FAX: (602) 530-8500
WWW.GKNET.COM

May 31, 2011

VIA EMAIL ONLY

Mark Tratos
GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, NV 89169

Troy A. Eid
GREENBERG TRAUIG, LLP
1200 17th Street, Suite 2400
Denver, CO 80202

Re: Tribal Dispute

Dear Messrs. Tratos and Eid:

The Hualapai Tribal Court ordered us to exchange information in order to facilitate a possible settlement of the issues between our clients. Pursuant to that Order, we request your clients make the following disclosures:

1. All documents and information demonstrating revenues generated by any and all operations related to the Skywalk between the time that the Skywalk became operational in 2007 through the opening of the Skywalk Trust Account in 2010.
2. All documents and information reflecting expenditures related to any and all operations of the Skywalk between the time that the Skywalk became operational in 2007 through the opening of the Skywalk Trust Account in 2010.
3. All documents and information demonstrating the construction costs associated with the Skywalk and its associated buildings, including but not limited to all invoices from contractors and subcontractors.
4. Since the goal is for the parties to reach a global settlement of issues, please also provide all documents and information pertaining to and supporting all amounts

Mark Tratos
Troy A. Eid
May 31, 2011
Page 2

owed by Oriental Travel & Tours, Inc. and its affiliates under all vendor and other agreements to tribally-owned businesses (including Grand Canyon Resort Corporation).

Your co-counsel, Mr. Theodore Parker, previously produced accounting documentation revealing that Skywalk operations had net income in the millions of dollars for the time period between January 1, 2008 and September 30, 2008; however, when the Skywalk Trust Account opened in 2010, Mr. Jin deposited only \$32,876.34, despite his having handled the money for nearly three years. Our request for documentation will help resolve the issue of how the other monies were expended – a necessary condition precedent to reaching a global resolution.

We do not believe that producing these documents will be onerous to your client. During a meeting with the Hualapai Tribal Council in early 2010, Mr. Jin brought dozens of boxes along with him, which he claimed represented a sample of the documents relating to the Skywalk and its operations. Please duplicate and produce those boxes of documents to us.

Of course, this letter represents our initial request for disclosures. We reserve the right to request additional information based on the information disclosed by your clients.

We look forward to receiving all of the forgoing by June 10, 2011, as the Court ordered.

Sincerely yours,

GALLAGHER & KENNEDY, P.A.

By:



Glen Hallman

GH:kjp
2770727 / 14434-15

EXHIBIT (c)



Mark G. Tratos, Esq.
Tel: 702.792.3773
tratosm@gtlaw.com

June 10, 2011

Via Hand delivery

Glen Hallman
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, Arizona 85016
GH@GKnet.com

Re: Tribal Dispute

Dear Mr. Hallman:

Enclosed are CD's containing approximately 25,000 documents along with hard copies responsive to your requests of May 31, 2011. We do note that most of the information you requested has been previously provided to SNW. Due to time constraints, we have bates numbered the CD's instead of the individual documents on each CD.

To the extent that we have included summary documents in order to facilitate negotiating a mutually satisfactory conclusion to this case, such documents are for settlement purposes only and we reserve the option of updating these documents as this case proceeds to arbitration in the event we are unable to resolve our differences.

In response to the four items enumerated in your letter dated May 31, 2011:

1. Revenue backup related to the operation of the Skywalk is included on CD's numbered GCSD003952 and GCSD003962. Additionally, financial statements and bank statements included in item 2 below also contain documents which reflect revenue for the time periods indicated.
2. A/P documents related to operational expenditures are included on documents and CD's bates numbered GCSD000001 to GCSD000206 and GCSD000788 to GCSD003951.
3. Construction costs invoices are included with the operational expenditures in the CD's referenced in response 2 above, as the construction costs were from common A/P systems (although separately accounted for as construction costs and not operational costs). We have also included a summary document, bates numbered

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BERLIN
BOSTON
BRUSSELS
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAL SPRING
LONDON
LOS ANGELES
MIAMI
MILAN
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH GARDENS
PHILADELPHIA
PHOENIX
SAN ANTONIO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TIGARD
TYSONS CORNER
WASHINGTON, DC
WHITE PLAINS
ZURICH

Glen Hallman / GALLAGHER & KENNEDY
June 10, 2011
Page 2
Re: *Tribal Dispute*

GCSD003953 to GCSD003957, to be used for settlement discussion purposes which is attached.

4. In an effort to reach a global settlement, we have also included a summary, bates numbered GCSD003958 to GCSD003961, of amounts owed by tribally owned affiliates to OTTI. Again this summary is for settlement negotiations only and may be revised in the future.

It is unfortunate that your clients have chosen not to meet with us to try to resolve our differences. None-the-less, we look forward to receiving your documents.

Sincerely,

Sincerely,
GREENBERG TRAURIG, LLP

/s/ Mark G. Tratos
Mark G. Tratos

MGT:dv

EXHIBIT (d)

GALLAGHER & KENNEDY

P.A.
LAW OFFICES

GLEN HALLMAN
DIRECT DIAL: (602) 530-8471
E-MAIL: GH@GKNET.COM

June 10, 2011

2575 EAST CAMELBACK ROAD
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FAX: (602) 530-8500
WWW.GKNET.COM

VIA HAND-DELIVERY

Pamela M. Overton
Aaron C. Schepler
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Phoenix, AZ 85016

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Donald L. Prunty
GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, NV 89169

Troy A. Eid
Robert S. Thompson
GREENBERG TRAUIG, LLP
1200 17th Street, Suite 2400
Denver, CO 80202

Re: Hualapai Dispute

Dear Counsel:

Pursuant to the Tribal Court's direction, enclosed are:

- Schedules of Receipts and Disbursements for GCRC / SNW for the years 2007, 2008 and 2009. These schedules reflect that the "Excess Receipts Over Disbursements" from GCRC ticket sales were in fact transferred to your client.
- Backup documentation for deposits into the Skywalk trust account, since its initiation.

Pamela M. Overton
Aaron C. Schepler
Mark Tratos
Donald L. Prunty
Troy A. Eid
Robert S. Thompson
June 10, 2011
Page 2

GCRC and SNW are in the process of gathering backup documentation for the Schedules of Receipts and Disbursements, and we will forward those materials upon receipt.

Sincerely yours,

GALLAGHER & KENNEDY, P.A.

By: 
Glen Hallman

GH:kjp
Enclosures
2776560 / 14434-15

EXHIBIT (e)

REDACTED

From: Hallman, Glen [mailto:GH@gknet.com]
Sent: Friday, June 10, 2011 2:02 PM
To: Tratos, Mark (Shld-LV-Ent); Eid, Troy A. (Shld-Den-LT)
Cc: Thompson, Terence W.
Subject: FW: Meetings June 13-14, 2011

Our clients are not amenable to Mr. Jin's non-negotiable demand that, as Tribal members and elected representatives, that they travel out their jurisdiction in order to have any meeting with Mr. Jin. Again, as with any governmental entity, any meeting should be in the governmental entity's offices. Again, the Hualapai Tribe is entitled to the same level of respect as any sovereign entity.

So your statement that "the meeting will not take place" is accurate. You and Mr. Jin may cancel your travel plans.

The Tribal Council also notes with interest that Mr. Jin is not "comfortable" meeting on the Reservation, and presumes that means he is also not "comfortable" managing the Skywalk on the Reservation.

We are moving the Tribal Court to allow both parties to participate telephonically in the status hearing Tuesday, in the interests of convenience and efficiency for all, which would obviate the need for any travel next week.

Finally, we will be hand-delivering the information we have available to your Phoenix office this afternoon, including documentation of GCRC's ticket and meal voucher sales. Since your client solely handled all other receipts and expenses prior to the establishment of the Skywalk Trust Agreement, of course your client should have a more voluminous production. We hope your production provides the Tribe useful information regarding construction costs, receipts and disbursements prior to April 2010.

Thank you.

From: robertsde@gtlaw.com [mailto:robertsde@gtlaw.com] **On Behalf Of** TratosM@gtlaw.com
Sent: Thursday, June 09, 2011 2:41 PM
To: Hallman, Glen
Cc: ChavezR@gtlaw.com; eidt@gtlaw.com; mowent@gtlaw.com; nelsone@gtlaw.com; overtonp@gtlaw.com; PruntyD@gtlaw.com; robertsde@gtlaw.com; sanchezme@gtlaw.com; ScheplerA@gtlaw.com; thompsonro@gtlaw.com; TratosM@gtlaw.com; weddlej@gtlaw.com
Subject: Meetings June 13-14, 2011

6/21/2011

Dear Mr. Hallman:

I have not received a response from you regarding my email of Tuesday, June 7, 2011.

In one last effort to reach a reasonable compromise, Grand Canyon Skywalk Development, LLC proposes the following approach:

1. We will meet in Kingman, Arizona Monday afternoon beginning at 1:00 pm.
2. If meaningful progress is achieved Monday afternoon and we are successfully working through issues relevant to the parties and subject to arbitration, we will then reconvene the meeting at 10:00 a.m. in Peach Springs, Arizona.
3. We will report to the Tribal Judge our efforts to resolve these issues at 4:00 pm in Tribal Court.

Tomorrow, we plan on delivering to your offices, tens of thousands of pages of information regarding the financial information concerning the Skywalk. The vast majority of this information has been previously provided and produced as noted by you in your prior communications. Nevertheless, as a sign of respect and cooperation, we are again making this information available. Please advise by the close of business tomorrow whether we should anticipate proceeding in Kingman on Monday.

Best regards,

Mark

Mark G. Tratos
Managing Shareholder
Greenberg Traurig, LLP | Suite 400 North
3773 Howard Hughes Parkway | Las Vegas, Nevada 89169
Tel 702.938.6888
tratosm@gtlaw.com | www.gtlaw.com

GT GreenbergTraurig

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6/21/2011.

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EXHIBIT 2

ORIGINAL

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IN THE HUALAPAI TRIBAL COURT

PEACH SPRINGS, ARIZONA

GRAND CANYON SKYWALK,)
DEVELOPMENT, LLC, a Nevada)
limited liability company,)

Plaintiff,)

vs.)

'SA' NYU WA, INC., a Hualapai)
Indian tribally chartered)
corporation,)

Defendant.)

STATUS CONFERENCE
Case No. 2011-CV-006

Before the Honorable Ida B. Wilber, Judge

Tuesday, June 14, 2011

3:36 p.m.

Peach Springs, Arizona

Reporter's Transcript of Proceedings

Reported by: John W. Boyd, CCR, RPR
Arizona CCR #50774 / Nevada CCR #877

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Appearances:

For the Plaintiff:

Troy A. Eid, Esq.
Robert S. Thompson IV, Esq.
GREENBERG TRAUERIG, LLP
The Tabor Center
1200 17th Street, Suite 2400
Denver, Colorado 80202
303.572.6521

For the Defendant:
(Telephonically)

Glen Hallman, Esq.
GALLAGHER & KENNEDY, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016
602.530.8471

1 what the heck was going on; and you graciously granted
2 that. We exchanged more than 25,000 pages of documents,
3 and we did that in all good faith.

4 They fall in approximately four categories.
5 They are all primary source materials, Your Honor, and
6 it's very important to note that they are the actual
7 documents that the -- are needed to try to narrow and
8 sharpen the dispute.

9 Financial and bank statements is the first
10 category.

11 Accounts payable would be the second, so all
12 the accounts payable financial data that we had.

13 Third category was everything related to the
14 actual construction of the Skywalk itself, including
15 both the invoices and the actual work that was done.

16 And then finally, we have documents that
17 relate to the amounts that are owed by various tribal
18 entities to the entity that Mr. David Jin has. It's
19 called OTTI, or Oriental Tourism and
20 Transportation, Inc. This is the entity that is
21 responsible for things like bus travel and so on, so
22 it's every -- every time there was some sort of a
23 financial transaction involving food or buses or
24 whatever.

25 And these documents cover the entire period of

1 the dispute, going back to the very inception of the
2 project.

3 We had previously provided all of that
4 information, and I want to make it absolutely clear for
5 this record to the defendant in this matter. We --
6 We've provided all of it before, but we provided it all
7 again just to make sure there'd be no mistake and to
8 make sure we complied with the Court's order.

9 In it -- In return, we received 141 pages from
10 Mr. Hallman. 135 of those pages out of the 141 are
11 Daily Revenue Statements that we get already -- both
12 parties get already under the 2010 trust agreement, so
13 they have nothing whatsoever to do with the period in
14 question of the disputes, plus we get them already, as
15 I'm sure Mr. Hallman knows. There was also a cover
16 letter, so you got two pages there.

17 There are actually only three pages of
18 documents that we got from Mr. Hallman that were
19 relevant. They were financial summaries by fiscal year.
20 They have absolutely no supporting information
21 whatsoever, nothing --

22 THE COURT: Okay. Which --

23 MR. EID: -- no primary documentation.

24 THE COURT: Which fiscal years?

25 MR. EID: Fiscal years '07, '08,

1 and '09.

2 THE COURT: Okay. Thank you.

3 MR. EID: So summaries.

4 So that's the sum total of what we received.

5 It is the most asymmetrical kind of exchange I
6 can imagine.

7 We then had the usual arms-control negotiation
8 debate over the size of the table, as Henry Kissinger
9 used to say. We offered a two-day meeting, which is
10 what we thought would be most appropriate. Mr. Hallman
11 said, Well, we can have a one-day meeting. Eventually,
12 we settled on two days.

13 Our proposal was first day in Kingman, second
14 day Peach Springs. It ended up at the end of the day,
15 by the time we got Mr. Hallman's meager exchange of
16 documents, there was no reason to meet anyway. Would've
17 been happy to meet, but we would've just had the same
18 issue that I raised with you before, which is that we
19 have no information to reach any kind of an informed
20 sharpening of the issues.

21 Now, I'm really just here, again, Your Honor,
22 out of respect, because you were gracious to attempt
23 this exchange of information. I respectfully suggest
24 that we either find a way to do this that will actually
25 dislodge information in a way we can actually have a

1 this Court in any respect whatsoever.

2 We -- We agree with Mr. Eid that additional
3 documentation -- backup documentation needs to be
4 produced. The Tribe's accounting folks, which basically
5 consists of two people, are working on gathering that
6 documentation, and we intend to supplement the
7 production with further backup on the issues that they
8 have raised.

9 The reason the meeting didn't occur was that
10 they basically made a nonnegotiable demand that the
11 Tribe's representatives, the members of the Tribal
12 Council, travel off the Reservation to meet with them or
13 else, quote, the meeting will not take place. It was
14 basically presented as an ultimatum to us.

15 And, you know, the Hualapai Tribe's entitled
16 to the same level of respect as any sovereign, and to
17 demand nonnegotiablely that representatives of the Tribe
18 travel off the Reservation in order to have a meeting
19 with plaintiff's representatives, frankly, showed a
20 lack -- lack of respect for the Tribe.

21 The Motion to Dismiss was filed today. Of
22 course, we don't expect it to be heard today. I presume
23 that it would be completely appropriate for the Court to
24 set a briefing schedule on the Motion and to address it
25 in due course, that there's no intent to dump a motion

1 second part of number 2 indicated that, you know, we
2 were having the Status Hearing and that the parties
3 shall notice the Court of any issues arising through
4 appropriate motions as necessary.

5 So that's what the Court's -- that's the
6 Court's concern for today because it sounds like, well,
7 the parties aren't ready to really proceed because there
8 has not been full disclosure at this point; and,
9 secondly, hearing that one side disclosed -- I believe
10 it was 2500?

11 MR. EID: 25,000.

12 THE COURT: -- 25,000 documents, and we
13 have maybe 121 -- between 121 and 135 pages of summary,
14 that's just inadequate to -- for you all to have a
15 meaningful discussion at this point.

16 The Court did receive the Motion to Dismiss
17 and had no intention of addressing that today simply
18 because -- for reasons that have already been stated,
19 that there has to be adequate opportunity for opposing
20 counsel to respond to that.

21 In hearing -- And it's obvious that there's --
22 there's quite a bit of tension and -- and a lot of
23 different contentions regarding this matter 'cause this
24 does involve a lot of -- a lot of money and it's as
25 serious for both sides.

1 me suggest this, that we -- My -- Actually, the 30th --
2 that the July 1st does not work for me.

3 Why don't we just say the parties will meet on
4 or before the 30th, and if -- We'll work it out
5 together. I mean, I agree with counsel that we probably
6 should talk to each other more.

7 Maybe the 27th and 28th works. Neither of us
8 have talked to our clients yet, and our clients may
9 be -- may prefer the 27th, 28th.

10 MR. EID: Your Honor, could we just set
11 27th and 28th, and then if there's an issue, I mean,
12 obviously, we'll come back to you on this, but...

13 THE COURT: Okay. Given what both
14 parties have said, we will have the -- It'll be
15 June 27th and June 28th.

16 Do we need to decide on a time or can the
17 parties do that?

18 MR. EID: I think we can do that,
19 Your Honor.

20 MR. HALLMAN: We're good with that, Your
21 Honor.

22 THE COURT: Okay. So June 27th and 28th,
23 the expectation is that the parties will meet.

24 We've already said that one day will be within
25 the community and the other day will be in Kingman, and

1 then if you need another day, you guys still have the
2 30th, because we know the 29th the plaintiff's counsel
3 is not available.

4 And then in regards to... I guess we would
5 need at least one other status.

6 MR. EID: Your Honor, will you be
7 available on the 28th? Is that possible?

8 THE COURT: No. I'm -- I'm gonna be out
9 of state.

10 MR. EID: May we brief you
11 telephonically?

12 THE COURT: Let's see. We -- Let me see.
13 27th, 28th.

14 It would probably -- It is possible that we
15 could do it telephonically. I'm trying to
16 think which -- I'm trying to think of the time zones.

17 Oh, I'll tell you what. The 30th, you all can
18 brief me telephonically because then I know I'll be --
19 I'll...

20 MR. EID: All right.

21 THE COURT: And that would be... How --
22 Let's say 10 a.m., will that work, on the 30th?

23 MR. EID: Yes, Your Honor.

24 THE COURT: And then just so the parties
25 know -- Okay. We'll get -- I'll get briefed on the 30th

1 at 10 a.m. Arizona time, and I will be back in the
2 community on July 8th.

3 Do we... Is that calendar full?

4 THE CLERK: There's an 11 o'clock time.

5 THE COURT: So we -- And I'll just
6 tentatively put an 11 o'clock time in case we need it.
7 If we don't, we don't. And we can determine that on the
8 30th when we talk.

9 Anything else?

10 MR. EID: Your Honor, I would just ask --
11 Just a question that I have about the -- in view of the
12 filing of the Motion to Dismiss.

13 THE COURT: Mm-hmm.

14 MR. EID: What -- What is -- What is the
15 operative deadline for -- What do you expect in terms of
16 exchange of briefs or do you expect to hold that in
17 abeyance? What -- What is your pleasure with respect --

18 THE COURT: Okay.

19 MR. EID: -- to that issue?

20 THE COURT: In regards to the Motion to
21 Dismiss -- Mr. Hallman, did you hear the question?

22 MR. HALLMAN: Yes, Your Honor.

23 Whatever the Court's standard practice is or
24 whatever time plaintiff's counsel believes he needs.
25 I -- I have no firm position.

1 THE COURT: Okay. 'Cause usually we give
2 the -- the ten days to respond with the five days to --

3 MR. EID: Right.

4 THE COURT: -- five to reply.

5 If the parties will agree so that we don't
6 have any extra -- we don't want to create any extra
7 work, we could suspend that time until after we have the
8 status because if you all -- I mean, until after we talk
9 on the 30th. Because if, for some reason, you're coming
10 towards an agreement, then there wouldn't be any need
11 for the Motion, but I'll leave it up to you -- I'll
12 leave it up to the parties.

13 Did you want to go ahead and respond?

14 Or you wanted to wait until the -- because I
15 will give you the time you need to respond.

16 MR. EID: Your Honor, we're prepared to
17 respond on whatever basis is convenient to the Court.

18 I -- I really just wanted to make sure I
19 understood, given the nature of these proceedings, how
20 it related to what I have to do to respond --

21 THE COURT: Okay.

22 MR. EID: -- with what he did.

23 I'm fine with the timeline that we have.

24 THE COURT: Okay. Then let's just go
25 ahead and say -- Go ahead and submit within the

1 ten-day -- ten working days.

2 We received the Motion today, I believe?

3 MR. HALLMAN: Correct, Your Honor.

4 THE COURT: Okay. So let's see.

5 Today's the 14th. So that would be the
6 29th -- would be the ten working days.

7 And then, Mr. Hallman, if you're going to
8 reply to this, July 6th would be the date.

9 MR. HALLMAN: Wouldn't it be the 7th,
10 Your Honor, 'cause we -- we have the intervening
11 weekend, July 4th?

12 THE COURT: You're correct. The 7th.

13 MR. HALLMAN: And -- And we served
14 plaintiff's counsel via fax, and we would ask them to
15 serve their response also via fax or E-mail.

16 MR. EID: Yeah, that's fine. That's fine
17 Your Honor.

18 THE COURT: Okay. Are there any other
19 issues that we haven't touched upon?

20 MR. EID: Your Honor, just the last issue
21 I have would be the issue of non-disparagement.

22 THE COURT: Mm-hmm.

23 MR. EID: And in -- in that regard, I
24 appeal to the wall (sic) -- the law of the Hualapai
25 Nation. I -- I think that there is definitely -- would

1 generally agree with what Mr. Hallman has just said, but
2 one of the matters is -- that is in dispute between us
3 is whether there were some amendments that -- It may be
4 that his client thinks took place, but we don't have any
5 records, and we never signed them. There were drafts
6 that we didn't sign or execute, so that's -- that's a
7 material dispute, but that's the kind of issue that
8 would go into an arbitration.

9 I had one other point, Your Honor, if I may --

10 THE COURT: Okay.

11 MR. EID: -- please.

12 I simply wanted to just -- to just, again, to
13 guide the document production.

14 We provided a letter to Mr. Hallman on
15 June 13th --

16 THE COURT: Mm-hmm.

17 MR. EID: -- and it -- it's -- it goes
18 through the specific documents that we requested, and it
19 summarizes our -- our take in terms of how he's complied
20 with that.

21 I think it is relevant to the Court. I'd like
22 to provide it to the Court because I want to be able to
23 use it as the benchmark.

24 If, for some reason, I'm not entitled to audit
25 and unaudited financial statements, I want to understand

1 why, but I think we need to go through this; and with
2 your permission, Your Honor, I'd like to give this to
3 the Court --

4 THE COURT: Okay. And it's already --

5 MR. EID: -- because this summarizes --

6 THE COURT: -- been disclosed. Okay.

7 MR. EID: It summarizes our -- our
8 position.

9 May I approach the Bench?

10 (Mr. Eid tendered document to the Court.)

11 MR. EID: Thank you.

12 THE COURT: Okay. And this had been --
13 So did you want -- You wanted it read into the record
14 or just --

15 MR. EID: I don't know how --

16 THE COURT: -- wanted it to become part
17 of the record?

18 MR. EID: -- you do that, Your Honor.
19 It's up to you. I just want it to be part of the
20 record.

21 THE COURT: Okay. Mr. Hallman, you do
22 have a copy of -- Do you have a copy of the June 13th
23 letter regarding document production of June 10th, 2011?

24 MR. HALLMAN: Yeah -- Yes, I do, Your
25 Honor.

1 THE COURT: Okay. So what the Court will
2 do is -- Make a copy of that.

3 (The Court tendered a document to
4 the Clerk.)

5 THE COURT: What the Court will do is
6 incorporate that into the record as a benchmark for
7 what's being asked for because I do recall that at our
8 last hearing, Mr. Hallman, you did indicate that your
9 client wanted to know what was -- what documents were
10 being asked for, so I believe this will satisfy -- will
11 answer that particular question and help guide the
12 production of the -- of -- of your supplemental
13 disclosure.

14 MR. HALLMAN: Understand, Your Honor.

15 And we may be submitting a letter to -- that
16 we would send to plaintiffs regarding their production
17 as we attempt to digest the mountain of information they
18 produced.

19 We -- At first blush, it does not appear to.
20 provide the summary financial information that is needed
21 for the Tribe to understand what happened to the
22 millions of dollars that was handled solely by
23 plaintiffs prior to the institution of the trust
24 agreement in March of 2010.

25 THE COURT: Okay. And that's something

1 that you will be submitting?

2 MR. HALLMAN: I'd like to reserve the
3 right to submit that if necessary.

4 MR. EID: And, if I may, Your Honor,
5 that's -- that's fine. I respect that. But we need to
6 have it before June 22nd for it to have any kind of an
7 effect, given the timeline you've laid out.

8 THE COURT: Okay. So Mr. Hallman, did
9 you hear that?

10 MR. HALLMAN: Yes, Your Honor.

11 THE COURT: Okay. So you can -- you can
12 get that to -- the information to the plaintiff's
13 attorney so that there can be a full understanding
14 and -- of what's needed to be -- of what's needed to be
15 disclosed from your perspective?

16 MR. HALLMAN: Yes, Your Honor. That's
17 reasonable.

18 THE COURT: Okay.

19 Muriel, can you stamp this?

20 (The Court conferred with the Clerk.)

21 THE COURT: Okay. We'll stamp this.

22 Okay. So we're going to include this
23 document; and when you send in yours, we'll include your
24 document, Mr. Hallman.

25 MR. HALLMAN: Thank you, Your Honor.

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CERTIFICATE OF REPORTER

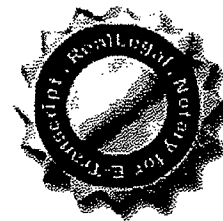
I, John William Boyd, Official Reporter in the Superior Court of the State of Arizona, do hereby certify that I made a shorthand record of the proceedings had at the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true, and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing 48 typewritten pages constitute a full, true, and accurate transcript of said record, all to the best of my knowledge and ability.

Dated at Lake Havasu City, Arizona, this 16th day of June, 2011.



John William Boyd

John William Boyd, CCR, RPR
AZ CCR #50774 / NV CCR #877

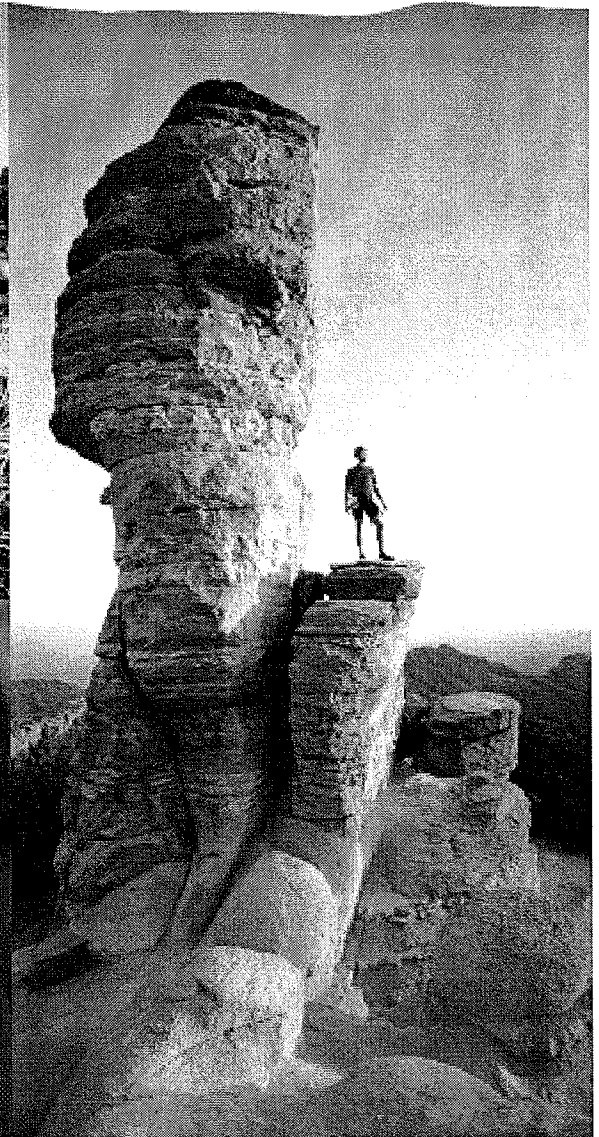
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EXHIBIT D



Arizona 2009 Tourism Facts

Year-end Summary



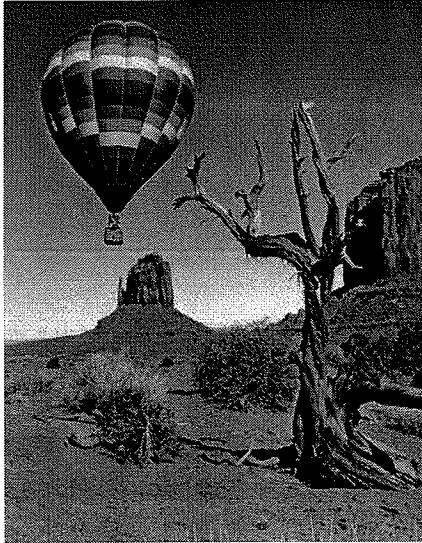


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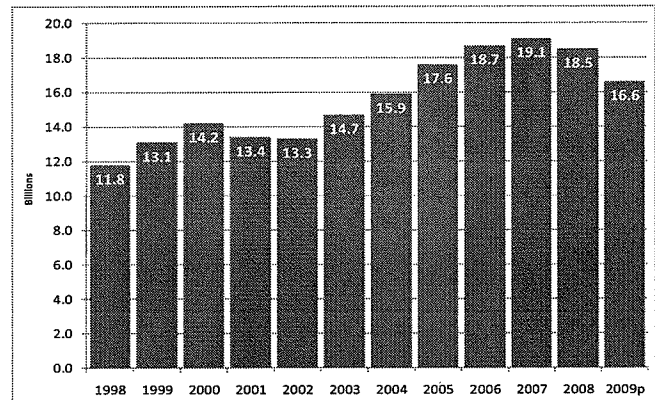
Arizona 2009 Tourism Facts

This report summarizes the performance of the Arizona tourism industry in 2009. Areas highlighted are: economic impact, visitation volume and profile data, lodging performance, National and State Park visitation volume, airport passenger traffic and top attractions in Arizona.

2009 Overnight Visitation Summary

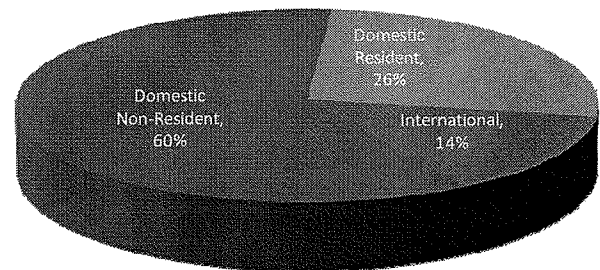
- Direct travel expenditures by all visitors to Arizona decreased -10.2 percent to \$16.6 billion in 2009.
- Direct travel spending in Arizona generated \$1.3 billion in local and state tax revenues and \$1.1 billion in federal tax revenues during 2009.
- Travel spending in Arizona generated a direct impact of 157,200 jobs with earnings of \$4.7 billion in 2009.
- Arizona hosted 35.3 million domestic and international overnight visitors, equal to roughly 97,000 visitors per day in 2009.
- Domestic non-residents made up the largest share of overnight visitors (60 percent) to Arizona with 21.2 million visitors in 2009. The second largest visitor segment was Arizona residents with 9.3 million overnight visitors, representing 26 percent of the market.
- 14 percent of Arizona's overnight visitation was made up of the nearly 5 million international overnight visitors in 2009.

Direct Travel Expenditures - 1998-2009



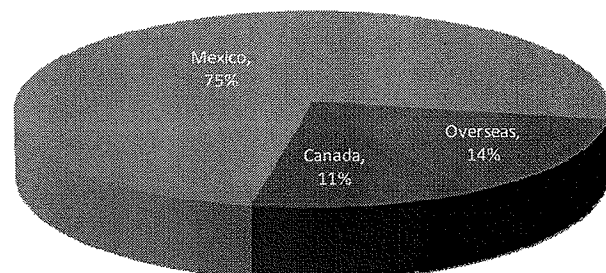
Source: Arizona Travel Impacts, Dean Runyan Associates

2009 Arizona Overnight Visitation



Source: Tourism Economics.; US Dept. of Commerce; Stats Canada; U of Arizona

2009 Arizona Overnight International Visitation



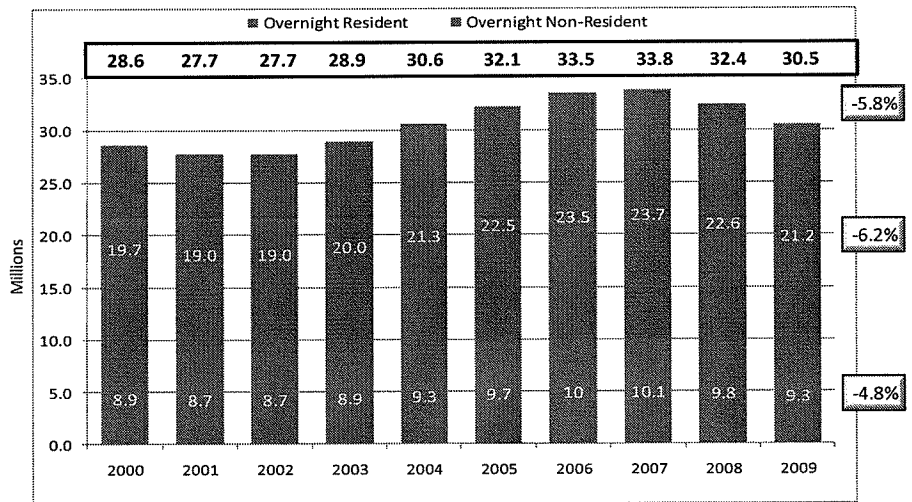
Source: US Department of Commerce; Stats Canada; U of Arizona

Arizona 2009 Tourism Facts

2009 Arizona Domestic Overnight Travel

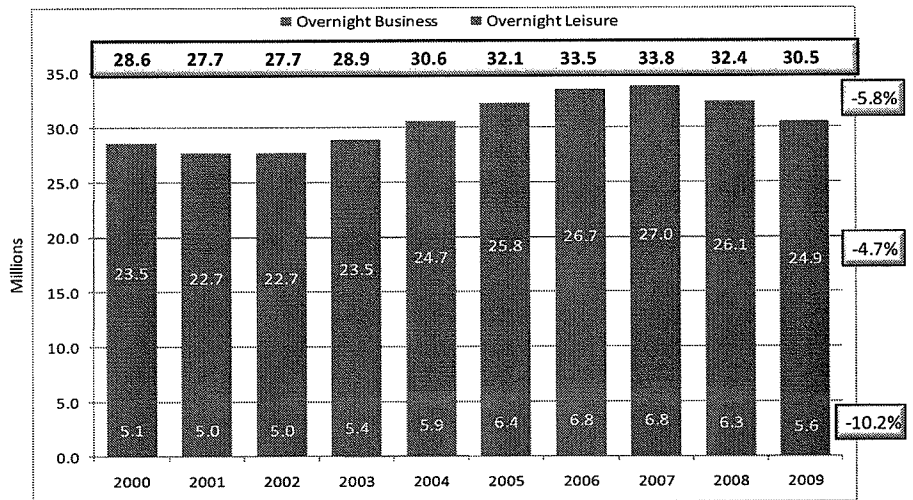
- In 2009, there were 30.5 million Arizona domestic overnight visitors, which is a decline of -5.8 percent.
- The decline in total domestic overnight travel to Arizona was mostly due to a -6.2 percent decrease in non-resident visitors. These 21.2 million visitors represented 70 percent of all domestic overnight visitation to Arizona in 2009. The smaller decline in resident visitation is consistent with closer-to-home and shorter trip travel patterns.
- There was a substantial decline of -10.2 percent in overnight domestic business travel to Arizona in 2009, reflecting the hard-hit meetings and conventions segment.
- 31 percent of Arizona’s 2009 domestic overnight visitors reside here in Arizona, while another 35 percent are from the neighboring states of California, Texas, New Mexico, Washington and Colorado.

Arizona Domestic Overnight - Non-Resident vs. Residents



Source: Tourism Economics

Arizona Domestic Overnight - Business vs. Leisure



Source: Tourism Economics

Arizona 2009 Tourism Facts

2009 Arizona Domestic Overnight Visitors - Non-Residents vs. Residents

- Non-resident visitors to Arizona stay longer on average (4.4 nights) compared to the average 2.1 nights of our resident visitors.
- Non-resident visitors are slightly older (46.9 years) than our resident visitors, who average 46.6 years of age.
- Non-resident visitors have a higher average household income compared to resident visitors, at \$81,400 compared to \$66,900.
- 27 percent of non-resident visitors travel by air, while 38 percent travel by auto. In contrast, 80 percent of resident visitors travel by auto. More non-residents rent cars in Arizona (18 percent) compared to the 5 percent of residents who travel in rental cars.
- Non-residents visitors primarily come to Arizona during Q1 & Q2 (January - June) while resident visitors travel within Arizona more often during Q2 & Q3 (April - September).

	Total Overnight	Overnight Non-Residents	Overnight Residents
Visitors	30.5 million	21.2 million	9.3 million
Average Length of Stay	3.5 nights	4.4 nights	2.1 nights
Average Travel Party Size	2.6 persons	2.5 persons	2.6 persons
Purpose of Stay	39% VFR, 15% Touring & 8% Outdoors	41% VFR, 15% Touring, 8% Special Events & 6% Outdoors	36% VFR, 14% Touring & 13% Outdoors
Average Age	46.8 years	46.9 years	46.6 years
Average Household Income	\$76,000	\$81,400	\$66,900
Mode of Transportation	51% Auto, 20% Air, 14% Rented Auto	38% Auto, 27% Air, 18% Rented Auto	80% Auto, 5% Rented Auto
Accommodations	68% Paid, 32% Non-Paid	65% Paid, 35% Non-Paid	70% Paid, 30% Non-Paid
Trip Quarter	27% Q1, 25% Q2	29% Q1, 24% Q2, 24% Q4	28% Q3, 26% Q2

Source: Tourism Economics, Longwoods International

Arizona 2009 Tourism Facts

2009 Arizona Domestic Overnight Visitors - Leisure vs. Business

- Leisure visitors tend to stay longer when they visit Arizona (3.5 nights) compared to business visitors, who stay an average of 3.1 nights.
- Leisure visitors have an average travel party size of 2.7 persons compared to business visitors with 1.7 persons in their travel party.
- Business visitors have an average age of 47.7 years which is older than leisure visitors, who have an average age of 46.2 years.
- 54 percent of leisure visitors travel by auto compared to 34 percent of business visitors. Air travel also plays an important role with 32 percent of business visitors and 18 percent of leisure visitors traveling by air.

	Total Overnight	Overnight Leisure	Overnight Business
Visitors	30.5 million	24.9 million	5.6 million
Average Length of Stay	3.5 nights	3.5 nights	3.1 nights
Average Travel Party Size	2.6 persons	2.7 persons	1.7 persons
Purpose of Stay	39% VFR, 15% Touring & 8% Outdoors	48% VFR, 18% Touring, 10% Outdoors & 10% Special Event	71% General Business & 29% Conference/ Convention
Average Age	46.8 years	46.2 years	47.7 years
Average Household Income	\$76,000	\$72,200	\$93,100
Mode of Transportation	51% Auto, 20% Air, 14% Rented Auto	54% Auto, 18% Air, 12% Rented Auto	34% Auto, 32% Air, 20% Rented Auto
Accommodations	68% Paid, 32% Non-Paid	66% Paid, 34% Non-Paid	86% Paid, 14% Non-Paid
Trip Quarter	27% Q1, 25% Q2	26% Q1, 25% Q2	31% Q1, 26% Q3

Source: Tourism Economics, Longwoods International

Arizona 2009 Tourism Facts

2009 Arizona Domestic Overnight Visitors by Region

- Domestic Overnight visitation to Arizona's regions varies in terms of visitor demographics, trip timing and origin region. The data shown in the table below provides an analysis of Arizona Domestic Overnight travelers by Arizona Region.
- The map to the right depicts Arizona's five regions, the dark orange area represents Northern Arizona, the green area North Central Arizona, the purple area Phoenix & Central, the blue area Tucson & Southern and the light orange area the West Coast.



	Total Overnight	North Central Overnight	Northern Overnight	Phoenix & Central Overnight	Tucson & Southern Overnight	West Coast Overnight
Visitors	30.5 million	4.0 million	6.1 million	14.0 million	6.7 million	3.0 million
Average Length of Stay	3.5 nights	2.6 nights	2.6 nights	3.5 nights	3.4 nights	2.8 nights
Average Travel Party Size	2.6 persons	2.8 persons	2.9 persons	2.8 persons	2.2 persons	2.7 persons
Purpose of Stay	39% VFR, 15% Touring, 8% Outdoors	32% Touring, 30% VFR, 16% Outdoors	30% VFR, 28% Touring, 16% Outdoors	47% VFR, 10% Touring, 10% Special Event	45% VFR, 11% Business, 11% Touring	33% VFR, 17% Touring, 14% Outdoors
Average Age	46.8 years	49.2 years	45.3 years	47.7 years	48.8 years	43.1 years
Average HH Income	\$76,000	\$77,020	\$69,650	\$81,700	\$80,110	\$79,860
Mode of Transportation	51% Auto, 20% Air, 14% Rented Auto	60% Auto, 15% Rented Auto, 13% Air	62% Auto, 13% Air, 12% Rented Auto	43% Auto, 29% Air, 17% Rented Auto	53% Auto, 22% Air, 15% Rented Auto	63% Auto, 12% Rented Auto, 10% Air
Accommodations	68% Paid, 32% Non-Paid	71% Paid, 29% Non-Paid	72% Paid, 28% Non-Paid	63% Paid, 37% Non-Paid	61% Paid, 39% Non-Paid	72% Paid, 28% Non-Paid
Trip Quarter	27% Q1, 25% Q2	28% Q2, 26% Q1	28% Q2, 27% Q3	31% Q1, 26% Q4	31% Q1, 27% Q4	32% Q1, 26% Q3
Top Origin DMAs	Phoenix, Los Angeles, Tucson, New York, Albuquerque	Phoenix, Los Angeles, Tucson, Sacramento, San Diego	Phoenix, Los Angeles, Tucson, Albuquerque, San Francisco	Los Angeles, Tucson, New York, San Francisco, Seattle	Phoenix, Los Angeles, San Diego, Sacramento, Chicago	Los Angeles, Phoenix, San Diego, Las Vegas, Seattle

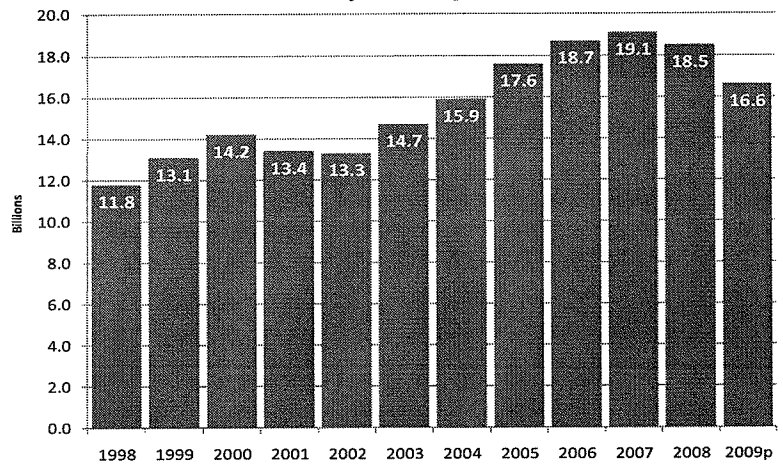
Source: Tourism Economics & Longwoods International

Arizona 2009 Tourism Facts

The Economic Impact of Travel in Arizona

- Travel is an important contributor to the vitality of both the state and local economies. In 2009, total direct travel spending in Arizona was \$16.6 billion, which generated 157,200 direct jobs paying \$4.7 billion in earnings.
- Arizona visitors staying overnight in paid lodging accounted for 41 percent of all visitor spending in 2009.
- Taxes generated by the travel industry are primarily paid by visitors rather than residents. In 2009, 79 percent of the visitor spending in Arizona was by non-Arizona residents. This new money imported into the state economy means the tax revenue generated by travel spending is a net benefit to Arizona residents.

Direct Travel Spending 1998-2009



Source: Arizona Travel Impacts, Dean Runyan Associates

Travel Employment - 2009

EMPLOYMENT	
Direct	157,200
Secondary	135,000
TOTAL	292,200

DIRECT EMPLOYMENT BY SECTOR

1. Accommodation & Food Services	83,300
2. Arts, Entertainment & Recreation	39,800
3. Retail Trade	18,700
4. Transportation	15,400

DIRECT PAYROLL \$4.7 B

TOTAL PAYROLL \$9.6 B

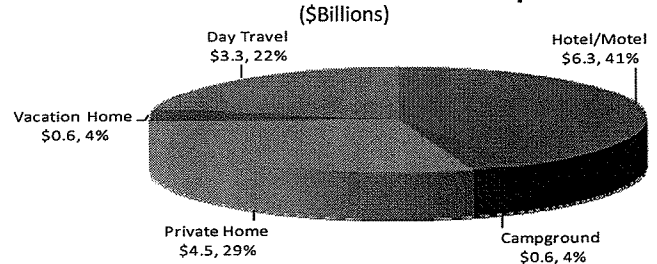
Source: Arizona Travel Impacts, Dean Runyan Associates

Direct Travel Expenditures - 2009

EXPENDITURES	\$16.6 B
TAX REVENUE	
FEDERAL	\$2.391 B
STATE/LOCAL	\$1.085 B
	\$1.306 B

Source: Arizona Travel Impacts, Dean Runyan Associates

Visitor Spending by Type of Traveler Accommodation 2009p



Source: Arizona Travel Impacts, Dean Runyan Associates

Arizona 2009 Tourism Facts

Arizona Travel Impacts - 1998-2009p

Year	Spending		Earnings		Employment		Tax Revenues (\$Mln)		
	(\$Bln)	(\$Bln)	(\$Bln)	(\$Bln)	(Thousand)	(Thousand)	Local/State	Federal	Total
1998	11.8	3.2	148.8	148.8	941	630	1,571		
1999	13.1	3.5	158.1	158.1	1,043	702	1,746		
2000	14.2	3.8	163.3	163.3	1,138	744	1,882		
2001	13.4	3.7	153.3	153.3	1,082	777	1,859		
2002	13.3	3.6	148.2	148.2	1,101	825	1,926		
2003	14.7	4.0	158.2	158.2	1,211	912	2,122		
2004	15.9	4.3	163.0	163.0	1,287	988	2,275		
2005	17.6	4.5	168.8	168.8	1,399	1,081	2,479		
2006	18.7	4.9	172.0	172.0	1,464	1,176	2,640		
2007	19.1	5.0	170.0	170.0	1,501	1,213	2,713		
2008	18.5	4.9	166.8	166.8	1,421	1,154	2,575		
2009p	16.6	4.7	157.2	157.2	1,306	1,085	2,391		
<i>Annual Percentage Change</i>									
08-09p	-10.2%	-5.8%	-5.7%	-5.7%	-8.1%	-6.0%	-7.1%		
98-09p	3.1%	3.5%	0.5%	0.5%	3.0%	5.1%	3.9%		

Source: Arizona Travel Impacts, Dean Runyan Associates

Arizona County Travel Impacts - 2009p

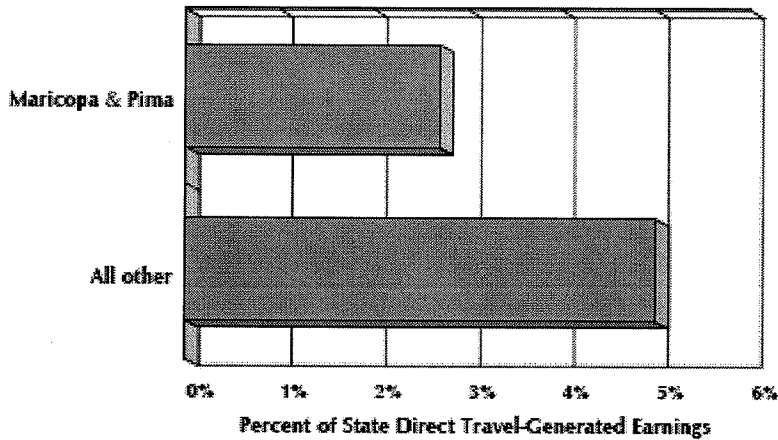
County	Travel			Related Travel-Generated Impacts		
	Spending (\$Mln)	Earnings (\$Mln)	Employment (jobs)	Local Taxes (\$Mln)	State Taxes (\$Mln)	Total Taxes (\$Mln)
Apache	125	30	1,700	3.0	5.0	8.1
Cochise	331	82	4,340	11.5	12.2	23.6
Coconino	891	269	11,130	26.9	35.0	61.9
Gila	217	57	2,560	2.6	6.0	8.6
Graham/Greenlee	36	10	930	0.9	1.6	2.5
La Paz	180	30	1,290	2.1	7.7	9.8
Maricopa	10,308	2,996	84,200	282.4	336.4	618.8
Mohave	406	104	4,780	8.7	16.9	25.6
Navajo	256	65	3,010	5.7	9.9	15.7
Pima	1,950	524	22,290	40.5	76.3	116.8
Pinal	422	113	4,670	8.2	16.1	24.3
Santa Cruz	270	50	1,960	5.3	8.6	13.9
Yavapai	624	180	8,410	14.0	21.2	35.1
Yuma	577	144	5,940	14.4	21.8	36.2
Arizona	16,594	4,654	157,210	426.2	574.8	1,000.9*

Source: Arizona Travel Impacts, Dean Runyan Associates

* Property taxes and sales taxes paid by travel industry employees not included.

Arizona 2009 Tourism Facts

State Transaction Privilege Taxes Generated By Direct Travel Spending, 2009p



The impact of traveler spending is relatively more important to Arizona's rural counties than urban counties.

Source: Dean Runyan Associates and Arizona Department of Revenue

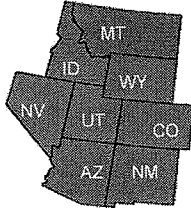
Arizona County Total Direct Spending, 1998-2009p (millions)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	08-09p
Apache	80	94	109	101	100	107	113	129	138	143	148	125	-15.9
Cochise	207	234	258	253	271	279	302	320	328	352	351	331	-5.6
Coconino	675	715	741	694	691	741	788	843	870	920	955	891	-6.7
Gila	179	189	206	204	204	213	221	233	242	247	237	217	-8.1
Graham/Greenlee	23	26	31	28	28	30	32	36	45	48	48	36	-25.4
La Paz	126	146	162	160	158	175	186	208	210	216	216	180	-16.9
Maricopa	7,327	7,989	8,779	8,176	7,979	9,069	9,888	11,069	11,910	12,198	11,642	10,308	-11.5
Mohave	249	291	322	315	315	361	397	435	483	469	456	406	-10.9
Navajo	179	213	240	220	221	229	238	260	283	290	306	256	-16.4
Pima	1,552	1,725	1,876	1,738	1,788	1,885	2,019	2,197	2,263	2,237	2,101	1,950	-7.2
Pinal	206	236	263	257	257	291	323	365	408	450	461	422	-8.6
Santa Cruz	206	226	237	237	298	262	272	274	254	255	257	270	4.9
Yavapai	426	579	558	543	540	581	590	642	685	717	703	624	-11.1
Yuma	371	407	444	434	485	501	533	567	587	590	599	577	-3.6
Arizona	11,806	13,071	14,225	13,361	13,333	14,725	15,903	17,578	18,704	19,132	18,480	16,594	-10.2

Source: Arizona Travel Impacts, Dean Runyan Associates

Arizona 2009 Tourism Facts

Mountain Region States

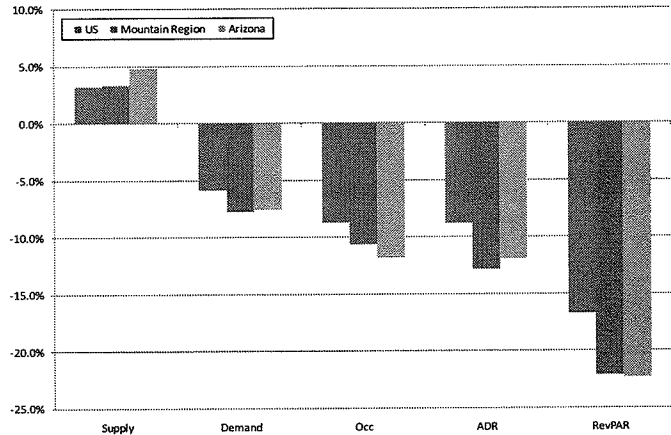


Source: U.S. Census Bureau

2009 Arizona Lodging

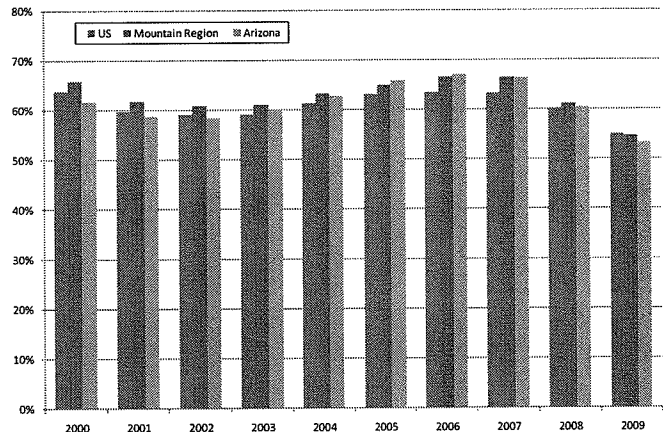
- The performance of the lodging industry in 2009 was a reflection of the current recession which started late 2007.
- Demand for lodging in Arizona decreased -7.5 percent over 2008 compared to the US decrease of -5.8 percent and the Mountain region decrease of -7.7 percent.
- Despite the decline in room demand, Arizona's room supply increased 4.8 percent in 2009. The US and Mountain Region also witnessed increases of 3.2 percent and 3.3 percent respectively.
- Decreased room demand and increased room supply in 2009 drove decreases in occupancy rates in Arizona lodging. Statewide occupancy decreased an average of -11.8 percent for the year to a rate of 53.3 percent. The occupancy rate for both the U.S. and Mountain region declined to -8.7 percent and -10.6 percent.
- Due to the decline in demand, the Average Daily Rate (ADR) for Arizona in 2009 decreased -11.9 percent over 2008 to \$95.01. The U.S. and Mountain region ADR also declined -8.8 percent and -12.8 percent.
- The average RevPAR decreased -22.3 percent to a rate of \$50.63 for Arizona. For the U.S. and Mountain region, RevPAR declined -16.7 percent and -22.1 percent.

Arizona Lodging Performance 2009 (% Change)



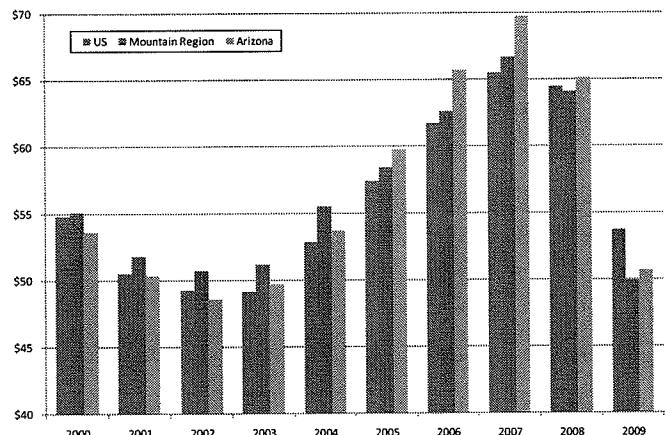
Source: Smith Travel Research

Arizona Occupancy Rates - 2000-2009



Source: Smith Travel Research

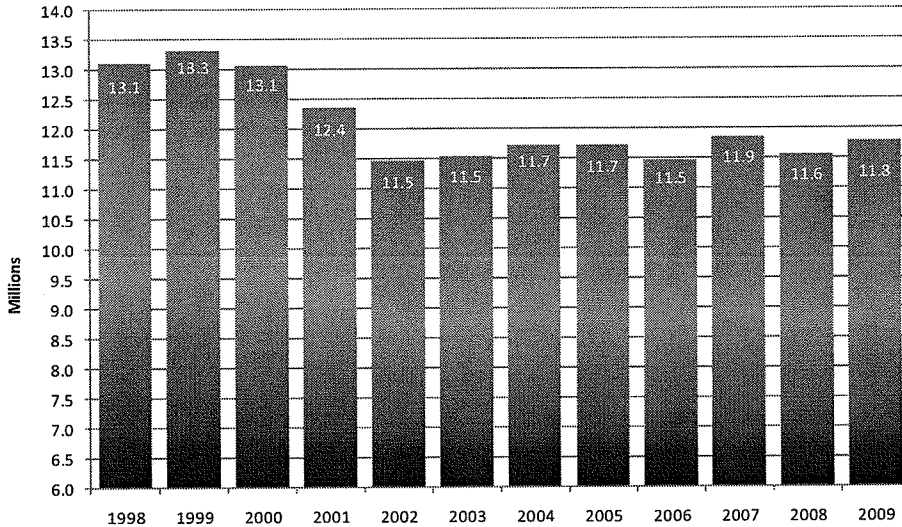
Arizona RevPAR - 2000-2009



Source: Smith Travel Research

Arizona 2009 Tourism Facts

Arizona National Park Visitation - 1998-2009



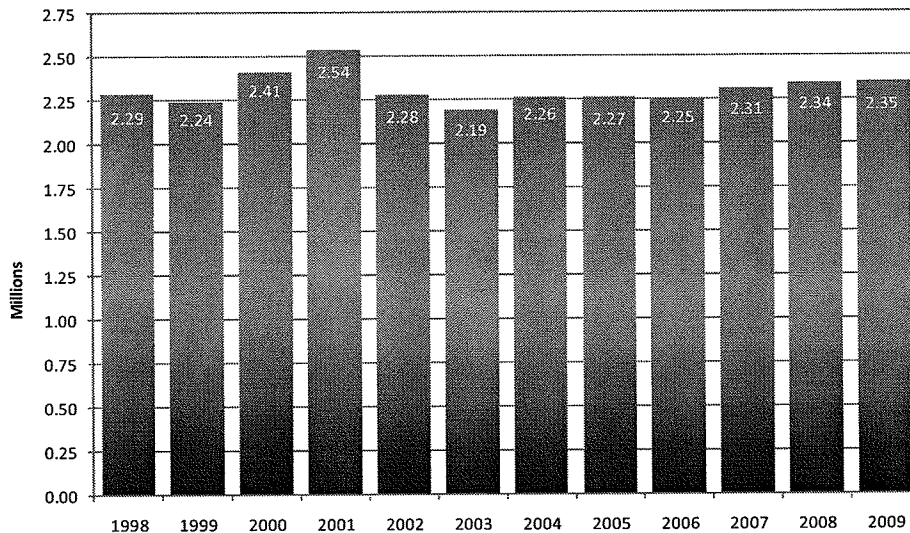
Source: National Park Service

Arizona's National Parks welcomed 11,785,054 visitors in 2009, an increase of 1.9 percent from 2008.

Top Visited National Parks 2009:

1. Grand Canyon NP
2. Glen Canyon NRA
3. Lake Mead NRA
4. Canyon de Chelly NM
5. Saguaro NP

Arizona State Park Visitation - 1998-2009



Source: Arizona State Parks

There were 2,348,958 visitors to Arizona's State Parks in 2009 with an increase of 0.3 percent from 2008.

Top Visited Arizona State Parks 2009:

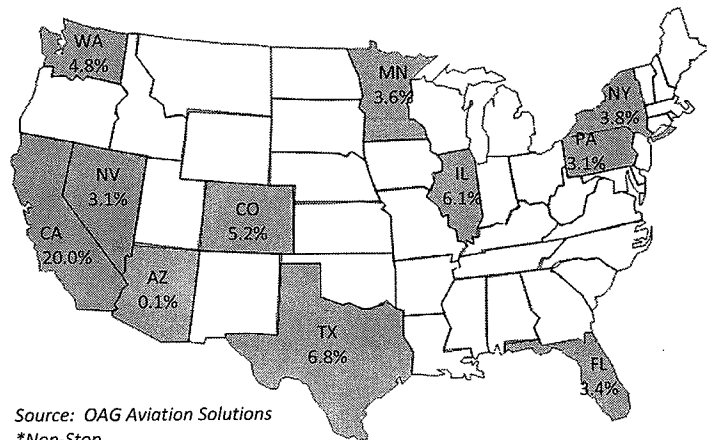
1. Slide Rock SP
2. Lake Havasu SP
3. Patagonia Lake SP
4. Catalina SP
5. Kartchner Caverns SP

Arizona 2009 Tourism Facts

2009 Air Visitors to Arizona

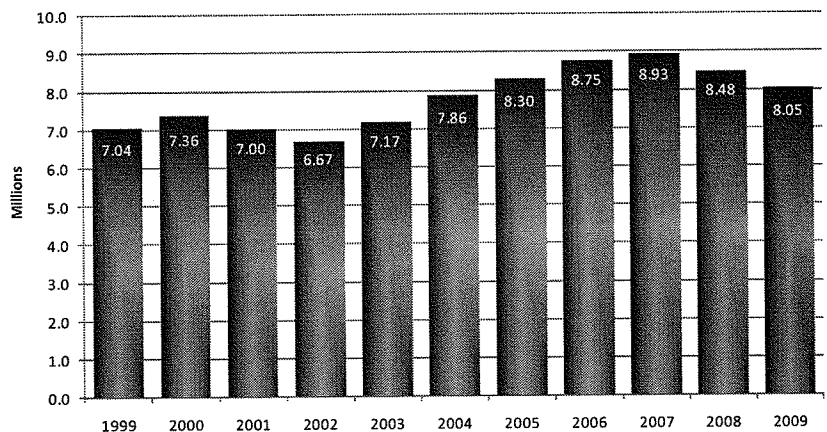
- According to Dean Runyan Associates, Arizona is above average in terms of the importance of passenger air travel to the state's visitor industry. Over one-half of all travel spending by visitors to Arizona is attributable to visitors that traveled by air.
- Nearly 60 percent of Arizona's domestic air visitors come from the top ten origin states. 20 percent of air visitors come from California, 7 percent from Texas and 6 percent from Illinois. Air visitors traveling within Arizona only make up 0.1 percent of the total air volume to Arizona.
- Reflecting the current state of the airline industry, in 2009, there were 8.1 million out-of-state visitors to Arizona arriving by air. This number excludes Arizona residents returning home and anyone simply making a connection at an Arizona airport. This was a decline of -5 percent from 2008.

2009 Air Visitors to AZ - Market Share of Top Origin States*



Source: OAG Aviation Solutions
*Non-Stop

Out of State Air Visitors to Arizona - 1999-2009*



Source: OAG Aviation Solutions *Non-Stop

Arizona 2009 Tourism Facts

Top Arizona Attractions by Visitation - 2009

Top 25 Private Attractions	
Attraction	Visitation
Tempe Town Lake	2.8 million
London Bridge	2.5 million
Chase Field	2.1 million
The Phoenix Zoo	1.4 million
Jobing.com Arena	1.2 million
U of Phoenix Stadium	1.2 million
U.S. Airways Center	1.1 million
Desert Botanical Garden	640,000
WestWorld of Scottsdale	600,000
Reid Park Zoo	536,000
Tombstone	500,000
ASU Sun Devil Stadium	430,000
Rawhide Western Town	428,000
Wildlife World Zoo & Aquarium	410,000
Arizona Science Center	364,000
Grand Canyon Railway	289,000
Arizona Temple and Visitors' Center	271,000
Scottsdale Center for the Performing Arts	236,000
Phoenix Art Museum	201,000
Arizona Snowbowl	180,000
Heard Museum	180,000
Tucson Museum of Art & Historic Block	176,000
Pima Air & Space Museum	145,000
Verde Canyon Railroad	89,000
Lowell Observatory	80,000

Top 25 Natural Attractions	
Attraction	Visitation
Grand Canyon NP	4.3 million
South Mountain Park	2.0 million
Glen Canyon NRA	1.6 million
Lake Mead NRA	1.6 million
Canyon de Chelly	826,000
Saguaro NP	664,000
Petrified Forest NP	632,000
Montezuma Castle NM	580,000
Lake Pleasant RP	436,000
Lake Havasu SP	368,000
Organ Pipe Cactus NM	326,000
Grand Canyon West Skywalk	292,000
Slide Rock SP	259,000
Wupatki NM	233,000
Patagonia Lake SP	214,000
Sunset Crater Volcano NM	177,000
Catalina SP	175,000
Dead Horse Ranch SP	171,000
Tohono Chul Park	156,000
Kartchner Caverns SP	144,000
Walnut Canyon NM	128,000
Tuzigoot NM	106,000
Hubbell Trading Post NHS	102,000
Buckskin Mountain SP	100,000
Coronado National Forest	97,000

Source: Reporting Entities