

Transcription: Grand Canyon Historical Society

Interviewee: Dick Hingson (DH)

Interviewer: Tom Martin (TM)

Subject: Hingson discusses work on aircraft management/overflights at Grand Canyon in the early 2000s

Date of Interview: 11/02/2019 Part 9

Method of Interview: Tom Martin's house

Transcriber: Anonymous

Date of Transcription: 03/21/2020

Transcription Reviewers: Sue Priest

Keys: FAA, audibility standards, Zion National Park, train assault, Utah Wilderness Act, Southern Utah Wilderness Alliance, Sierra Club, Overflights Act, Earthjustice, Grand Canyon Trust, St. George replacement airport, air tour flights

TM: Today is Saturday, November 2nd, 2019. This is a Part 9 Grand Canyon oral history interview with Dickson "Dick" Hingson. My name is Tom Martin. This recording is being conducted at the dining room table at our house in Flagstaff. Good morning, Dick. How are you?

DH: Oh, I'm doing very great. Glad to be here.

TM: In our last interview, Part 8, we had talked about the Garland decision which allowed the FAA to implement a final rule based on 1998 decision. That final rule came out in 2000 and it didn't settle the high flying jets issue and it didn't settle the peak day issue, like how much was too much on any one day. And meanwhile, you took up a job working for the Southern Utah Wilderness Alliance. Your sister had a timeshare there just outside of Zion National Park.

DH: Right at the edge of what was now the new Escalante National Monument Clinton made.

TM: Okay. So pick the story up.

DH: All right. Well, that's right. First of all, right there at the tail end, right in that period, it should be just remembered that the decision of the DC Appeals Court was then appealed by the DC lawyers and to the US Supreme Court. I was enlisted in that effort because of course that meant a whole schedule of briefings, submissions to the court. But the end of it came when the court declined to hear the case. The Supreme Court of the United States decline to hear the case.

TM: And this is the Garland decision that was appealed.

DH: Well, the Garland court decision was appealed and it was not carried further cause the court wouldn't take it as they usually don't.

TM: So what did that leave you with?

DH: The implications were that 50% would be considered... Half of the canyon arguably impaired, half of the canyon moderately restored and it would be the game going forward unless something else was done. And that would be on an average day. Average day is not nearly as tour busy as is peak day. And we still did not have a finished rules on all of this so that also left us with all kinds of issues about decisions that the Park Service had made about noticeability versus audibility as a technical matter in scoring all this before we got to the endgame. And all right, we can talk about noticeability and audibility

because that was a handicap given to the FAA in a certain way. At least that's how we felt about it. The meaning of it was that canyon zones, as for the Park Service zones, would be the basis for a new dual division and which most of the park recommended for wilderness would be subject to an audibility base as the threshold at which the noise began to count. However, there were zones, developed zones, which at least on paper gave some basis for an attempt to work another compromise with the FAA. The argument, of course, being, well, people out there on Mather Point couldn't possibly be concerned about airplanes anyway. There's all this other noise and so forth from visitors and buses and train and cars and so forth. So the Park Service made a compromise, which I understand was controversial even within, that they would add 10 decibels to the audibility floor after which the flights would begin to count. Of course, that led to ridiculous things. When you looked at the map, you saw it was ridiculous. You had areas in the South Rim undeveloped zone which were far enough removed from any highway or any interference from people that they should have been left with the audibility standard. And the same on the North Rim where you had areas up there, for example, at many hours of the day where you had no motor noise. You had no interference and could have been left just as well in the audible... Then you get these tiny acreages [laugh] especially the North Rim, which just looked ridiculous in terms of the large picture of the Grand Canyon.

TM: Dick, you mentioned that even within the National Park Service itself, there were people that thought the audibility standards should not be compromised into a noticeability standard. Do you have any idea who was on either side of that argument?

DH: Not much except a hunch. I have a hunch that Wes Henry probably offered up that compromise just based on reading between the lines. We would have to research through maybe FOIA. Probably should be done how that was reached, but I think it was somewhere at that level in the Washington office.

TM: The reason why I was asking was he's passed away and I was just trying to think of who would be interesting to interview on both sides of that discussion to try to tease out what the arguments were.

DH: Fair enough. And many of those who are... More than one has passed away, oh sure. We had the people who were there then are not there now. I suspect that the acoustics coordinator that came in, McMullen, Ken McMullen, would be one person that would have insight into this. There was another who I did work with around the year 2000 a fair bit. The name may pop up as I go on. He took over the noise analysis at Grand Canyon right around 2000 and was in place for... I can't think of the name this minute, but he would have known where some of the bodies were buried and pretty clearly did because he was supportive of everything I was trying to do to move the ball. We had a deadline also in there which was implicit that we need to talk about right about that point. And the deadline is referenced to the Clinton executive order, which if you read the executive order it had two deadlines. They had not only the eight year deadline about when the substantial restoration was to be accomplished, but there was also to be an intermediate step called a Comprehensive Noise Management Plan for the park, which was to be in place at the five year mark counting from April 22 of 1996. That being the date of the executive order. So on that date we would have gotten a comprehensive noise management plan, which of course would have allowed the Park Service leeway to take up a number of matters about the overflights noise and maybe in conjunction with other noise. Nothing to stop it. And then maybe have an adaptive management plan triggered in there set up that would carry them beyond 2008. That all makes sense in terms of the scope of what that was supposed to be, and that was directed by the president.

TM: That comprehensive noise plan had a five year timeline to be put in place. When did that five years expire?

DH: Well, the five years by our calculations then would have been April 22, 2001.

TM: 2001. Thank you. Okay.

DH: But it never appeared.

TM: Okay. Why?

DH: Blocked.

TM: By?

DH: Bureaucratic delay and stall in fights inside and outside the Park Service probably. That's just my speculation.

TM: Between the NPS and FAA?

DH: Oh, anything like that would be a major bone of contention with the FAA whose history is not to move on anything unless forced. And by that time, who was president? Bush. You didn't have Clinton or any successor to him to mind the store. You have a hostile Secretary of the Interior again, Gail Norton. Failure on all fronts, driven from office finally and replaced after a failed attempt to change the management policies of the Park Service. I think Tom Hale is the name of the NPS person. Tom Hale. And I have many emails from him.

TM: What was his role?

DH: I think he was sort of the staff overflights coordinator for the Park Service or for the region at that time. I can't remember exactly. I did meet with him. We also had Ken Weber onboard through those years who would also know where all these things went to. He now lives in Pueblo, Colorado.

TM: So moving this timeline along, April 2001 comes and goes. There is no comprehensive noise plan, no adaptive management plan.

DH: And the Supreme Court had rejected further appeals up that way. So they got a rule out. Finally you have a final rule that sets the path forward for the next several years on what's to be done. And then, of course, the quiet technology is still an outstanding issue because that was part of the whole original administrative scheme was that Senator McCain always had this idea that quiet technology would move the ball forward to ensure that they accomplish the SRNQ threshold. So there were still these two outstanding issues. One had to do with what the quiet technology rule would look like, and then there was the elephant in the bedroom which was the overhead jets and the noise of the jets. So obviously there's still a whole lots of room for... And average day versus peak day unsettled. I mean, those are the matters still going forward as we entered the 2000/2001 timeframe and no comprehensive noise management plan, which of course should've settled all those things. That's what it was for or would have been for. So you've got agency delinquencies and subterfuge all over the place. And you'd have nothing.

TM: Do you think that the National Park Service had actually pulled together a plan that was never released to the public?

DH: I don't know how far they got with it. I'm pretty sure Hale was working on some internal document and he was trying to push it, because I met with him and had interviews. He gave me all kinds of things, but not very specific about that. So we still have these. Even a dual zone was still...there are arguments going on about that at that point. So we had a nest of issues, about four of them, that were still bubbling all over the place as I started the work at Zion and they provided me a basis to keep linked to that work, therefore, because it was not settled. And, of course, I was beginning to make contacts with the Utah Chapter of the Sierra Club, which arguably should have been equally concerned with the Grand Canyon Chapter because the whole North Rim is basically their rim. It's far more accessible to their people than to the south and to California. So I began to meet people in the Utah Chapter as part of this.

In fact, I had one very... I think I'll just say it for the history so it's in this record. One of these first places where I met those Utah people was in 1999, late '99. In fact, it was August. Would have been in August of 1999, I was scheduled to give testimony for the Sierra Club at an FAA hearing in Salt Lake City. The personal side note to this...but it's powerful...is that I was in route to deliver that testimony riding an Amtrak overnight sleeper train. This is what happens to activists trying to do the activist thing. You're riding the overnight sleeper train on Amtrak from a friend, and a supportive friend on this in Tahoe area. I boarded the train at Tahoe City, Lake Tahoe north side, and after dinner falling asleep in the sleeper car of the coach, very comfortable, unaware of anything or anything going wrong, and out of the blackness of the night suddenly there was a looming shape there beside me and I was bludgeoned by a young male assailant with two beer bottles, which he'd gotten on the train. It led to a wound requiring emergency transport back to Elko. Stopped the train, whole train full of passengers, for an hour. I first made a citizen's arrest on the assailant cause they brought him to me at the back of the ambulance. One of the most dramatic incidents of my life actually. And yes, that was him. I knew. I saw enough of him. And they had him. They had pushed him down the stairs into the well of the passenger car and held him until we could make a citizen's arrest from the back of the ambulance. So he was transported to the Elko County jail and I was transported to the hospital for 25 stitches. I did not attend the court arraignment because I was scheduled to appear three days later in an FAA hearing in Salt Lake City. So I made the choice to go on even though still recovering. Meanwhile, as a side note, he failed to show. And of course, therefore a warrant issued for his arrest. He'd fled the state. There's a whole side story on what became of him and the failure of the Nevada authorities to capture him. The failure was that they set the bail at only \$600 for something that in Utah would have been a much higher level assault. Any state but Nevada. But you're dealing with a Wild West culture and barroom brawls, that kind of mentality. So Nevada's lax and he got away. He tried to board the train again, in fact, three days later I was told. They had the same conductor on the train who looked at him and said you're not getting on this train. You would think they could have apprehended him at that point but they weren't organized to do that. I could go on to what happened about that failed arrest.

TM: What happened to him?

DH: That has consequences in the legal system and in the lives of other people, this administrative failure.

TM: Exactly.

DH: The administrative failure meant that, you see, his parents were able to post him the \$600 bail. That's all that was required to escape. He was lucky cause I otherwise would've shown up at his arraignment but didn't. So he's gotten money now to go back to home, which turned out to be Colorado, western Colorado in Telluride. I stayed with that case. It actually consumed a fair bit of my time through the 2000s because I thought no justice had been done. In fact, I was right because it turned out that somewhere in the middle 2000s, on routine yearly call to the Elko County district attorney's office, the clerk notified me a letter had come in from the defendant's mother. Now, they owed me restitution of \$2000 or so dollars for medical expenses. That was on the record so if he came back we would be dealing with that. But what had happened, meanwhile, and more like just in the year before she made that contact with that office, he had, in a city park in Montrose, Colorado, randomly gone after a married Hispanic couple walking in the park on a pleasant summer evening. He stabbed the husband and was chasing after the wife, but somehow with the help of bystanders or something they apprehended him. So he was then brought to justice. But first, because he was deemed mentally unfit to stand trial, was first incarcerated but then put on enough mental psychiatric drug treatment to restore him to a level at which he could stand trial. That took some months. And, of course, when he did stand trial, he was found guilty. But the time spent in the mental hospital, schizophrenia time spent in mental hospital, was credited to time served. Then there was some other time served in the jail. And then he was let go. The record that I've obtained subsequently is that there was a whole parade, then, of minor to moderate offenses. Threatening behavior, threats against people, trespassing, all kinds of just out of control stuff. We also uncovered that he had broken a warrant in California, a probation term from a drug arrest in California to even have been in Nevada to attack me from the years earlier. So it goes to show the weaknesses and problems with the criminal justice system in three western states right there.

TM: Where is he today?

DH: I just checked in the last week for any evidence of a record. The record for Colorado appears to have stopped in 2013 although I found new evidence he had gotten back into California. If they'd found him there, he could've been rearrested. He was busted for a broken headlight on a bike and then fled. A failure to appear. And a warrant is out, therefore, in California and in Nevada. Colorado, he's obviously on watch. That's what I know today. [laugh] So it's an interesting side. You know, this is life.

TM: Yeah. No, it's just what it is. So you were headed...

DH: To speak to the...

TM: ...to make testimony.

DH: I had this very elaborate testimony that I gave at the hearing.

TM: Showed up with your head in a big bandage.

DH: Well, there was something on the face there. I can't remember exactly what. Maybe it had come off by then. Or no, there had to have been a bandage and a black eye. I mean there was a black eye, although healing fast. But I remember that I'll never forget the FAA representative studying who I was because I gave my talk with the usual force and power that I would give any talk on the subject and they had to listen to it. [laugh] We could get her name. We could get the record if that was important because that's an August hearing. A late August hearing of 1999 in Salt Lake City.

TM: What were your main points at the hearing? Do you remember them? One or two.

DH: We'd have to look at what that hearing stated subject was. It was probably on the dual zone. The dual zone would have been up for review at that point and maybe the quiet technology.

TM: The audibility noticeability dualism?

DH: Audibility noticeability and perhaps the quiet technology, but this will have to be matched on the record.

TM: Okay. I was just asking.

DH: So then we're in 2000 in Utah. When I'm in Utah I got some interesting pair of assignments. One was volunteer and one was paid that kept the roof over my head and interests going. One was that the Utah Wilderness Act was being proposed and still surveyed under the direction of Jim Kaplan of the national Sierra Club. I think he's been a board member if I'm not mistaken. I was assigned to an area near Hilldale and La Verkin to do a boundary survey of where they proposed to draw the wilderness line. This is under a standard survey protocol. As part of that work, I discovered a gorgeous stunning alcove just inside the wilderness boundary and just west of Hilldale where there were gorgeous petroglyphs and a tribal winter solstice apparition site where a sun phenomenon coming through an opening in the rock appeared as a flaming torch on the back wall rising through the sunset.

TM: Nice.

DH: Beautiful thing. Later vandalized. But I documented it in pictures and got the BLM involved with it at the local BLM office. Then I got a job working... It was a census year so luckily... In fact I had finished up the Zion... I did the Zion summer and on leaving, I had Zion...what next?

TM: I've got a question for you about the 2000 census. Some of the census employee's, temporary in Flagstaff, took the census of Colorado City and found some interesting things there. Did you find any interesting things while you were working for the census as far as families or it was just normal?

DH: I would say working for the census didn't bring up any remarkable surprises except that they did assign me for a couple of days of census track work in Hilldale. So I was there. And I got in touch with... In fact, therefore, the geography around there and I learned where Colorado City was. As long as I mentioned it, I should say I got involved with a proposal to build an airport at Colorado City. So that was one of my ways that I continued my expertise in dealing with the FAA. Basically the things that I did led to us winning that fight. The FAA saw that they were trying to do a runaround and blocked the proposed airport at Colorado City. So that was one exciting thing. But the question was, after I left the tabling at Zion, of course, which has many stories about natural quiet and listening at night and pictures, all kinds of things, after leaving that work the question is what next? I came close to what might have been a big mistake in just leaving the area without a plan and heading on towards Colorado. However, in route—I think I had my first cell phone at that point—I got a call from the US Census Bureau based in St George and they were offering me a job as a census enumerator and could I be at a training session of three days in Hurricane, Utah. Well, I turned around right then and I stopped, very happy about that. Went to a SUWA wilderness gathering in route which had been planned. Had a three day grand adventure with the red rock wilderness that they were trying to protect and then started census track work. I had a Blazer which meant I could do that.

TM: I'm going to just jump in here. SUWA stands for stands for...

DH: Stands for Southern Utah Wilderness Alliance. Dave Pacheco was my supervisor. So then began a stretch of paid work with a Blazer. They gave me the most remote places because I had the Blazer. So I got remarkable assignments. One included interviewing the superintendent of Zion National Park in his own home. Don Falvey. And Falvey had been my... I had met him during the Wes Henry 1994 noise monitoring. So he knew me. It wasn't long before—and this is somewhere during the census years—that another controversy was blowing up. I got a call from I think it was Jeff Bradybaugh, who is now the superintendent of Zion. Jeff knew about my work, of course, with being head of the Resource Management Division at Zion. What they had got wind of... Well, they'd known it for some years, but they knew it was coming to push-was-coming-to-shove on building the St. George replacement airport which would be much bigger airport than the little thing they had up on the mesa in downtown St. George. So we had looming another fight between the FAA and the Park Service over NEPA and they could use my experience with that. So we had a big public hearing at which I presented/spoke for the Sierra Club. I still remember the comment that I heard about from one of the opposition side there that one of the airport... They called that the "speaker from hell" and that was me. [laugh] Well, it served notice this wasn't going to be easy. They didn't want to hear that.

TM: This was a public hearing put forward by the FAA or the National Park Service?

DH: FAA. There's the Park Service sitting in the front row. Never forgot them sitting silently taking in everything. So we had the beginning of a fight over the St. George replacement airport and then the whole NEPA process and an EIS which was going to take a couple years, or maybe only a year, before it would be back in the DC Court of Appeals just like Grand Canyon I and Grand Canyon II because the FAA and the Park Service is just another example that FAA resents the Park Service getting into NEPA and interfering with their NEPA standard setting.

TM: Remind me again about what Grand Canyon I and Grand Canyon II stand for. I know you've probably talked about it earlier.

DH: Grand Canyon I is the substantial restoration of natural quiet definition and also fighting off various challenges from the air tour operators. Grand Canyon II is about... That's coming and that's going to be over the issues, it's building, that didn't get heard in '02 or maybe...we'll have to look what date. I was at that hearing. I think it was maybe '01/'02, we can look when. But Grand Canyon II was about the dual zone. No, wait. No. It was about not the dual zone, it was about the peak day and the jets. So the jets were very much a part of the concern here. And that's a concern at Zion as I had learned from my sound monitoring because in the high altitude country where you have no other baseline noise, the jets are 99% of any potential noise disruption from mechanized motors. So it's a heavy issue and it's on the table. The implications to Zion are quite striking because over Zion, Zion's under a trunk airline route. Coast to coast, Chicago to LA, Chicago to Las Vegas, Denver to Las Vegas, Denver to LA.

TM: And there's a choke point, isn't it? There's restricted military areas that choke these jets, cross country jets, right over Zion or nearby?

DH: Well, they tend to choke them. Yes. The big area is actually in southwestern Nevada and southeastern California just east of Death Valley National Park. It's a huge restricted area that they have

to fly around. So this squeezes what is already a heavily dense trunk airline route even more and forces the planes over Zion and Grand Canyon and the acres in between.

TM: Dick, I've got a question for you. Which do you think came first? As aviation began going, certainly in the 50s, the big airlines wanted to fly over the canyon to see it, so their passengers could see it. But I assume by then the big military bases were already in place. Is that right? I'm going way back in time now into the 30s and 40s and 50s. Just thinking about China Lake and the...

DH: 30s.

TM: ...Nevada Test Site. These big military areas came up while this cross country flying was in its infancy I should say.

DH: It's true. So you had a coincidence. That's right. They coincided and the first military... There were military training flights, for example, over Death Valley as early as the mid-30s. They were building that empire, too, military. DOD was part of this mix every bit and I was still involved with issues with the military routes even from...and the first 10 years...all of the 2000s.

TM: From your Joshua Tree.

DH: From the Joshua Tree. So we still had the Park Service preoccupied with that all through this time. So all of this stuff had bust out together, high and low and military. So the military... All this, of course, would have to be modeled into NEPA [laugh] if you're doing NEPA the way it's supposed to be done, which was a big headache for the FAA, of course. All of it. Noise. So anyway, for Zion... We can go back to what happened with Joshua Tree at the right time, but it didn't get settled. Let me see, we didn't settle that. Well, we settled that right around 2000. We could look at that record. That was formalized about the time I left the Sierra Club.

TM: That's Joshua Tree?

DH: Joshua Tree. And I will say, what helped enable this to be settled... And for the record we should note that the California Desert Protection Act—whose anniversary was this weekend, the 25th anniversary was Halloween two days ago—enlarged the southern part of Joshua Tree National Park substantially along with a large addition to Death Valley. By enlarging that southern strip of Joshua Tree National Park provided a bonanza option to reroute the jets away from the picnic areas and the campgrounds and the visitor center where they'd been flying to a route paralleling the southern border of Joshua Tree National Park. They couldn't do that without NEPA and public hearing because of the communities that had grown up close to the southern border of Joshua Tree. So I was involved with that until we completed that work. In 2000 sometime that was signed off on. But it was a success story in the end for that park which was written up by the Park Service and the FAA as an example of success story. However, you still have the ramifications of the concentration caused by the military restricted areas, which are then going to force the commercial flights over Zion. I learned from sound monitoring I did in '94 that when you're up in the high country of Zion, rocky country terrain, with decibel levels going down to 10 in the mornings...

TM: The ambient background noise.

DH: That's the natural ambient is 10 decibels, or 15 or 20. But those jets are peaking at 40 one after another all day long. So what does that mean? That just means constant motorized intrusions over prime Zion wilderness backcountry. It wasn't wilderness yet. That was made wilderness by law about 10 years later. That hasn't changed the jets though. But one thing that did change was that about 19-, I think '95, we were in a phase-out. We were phasing out Stage 2 jets. They're the noisier ones. I believe that by 2000 you had to be in Stage 3, which is the "quieter", quieter in quotes, so that you don't have quite the high Lmax's that you would've got from the Stage 2 jets. That's a move forward which would help modestly, but measurably.

TM: And what does L2 stand for?

DH: Well, what I was referring to was zoning of the engine technology of...what did I say it was? It stands for engine specifications for quietness. FAA has a scheme of 1, 2, 3 and 4. And they're phasing in 4 along some kind of timeline now I think. But then we were phasing in 3. So you have all this complication going on. And, of course, all these changes create all kinds of things.

TM: You know, it's interesting because I think about McCain saying we want to go to quiet technology, which for low flying tour flights was a disaster but for the high flying jets maybe it actually was a little better.

DH: It was more honestly based metric because it's based on the source noise.

TM: So I'm thinking all right, as we have a quieter engine we can allow more flights which is what FAA is all about. More flights. So there's a, you know...

DH: Well, there's still going to be a push-pull about that because obviously they were headed for more flights and the expansion of the national airspace system just continued unabated through all those years. But you're going to do it with planes that are certified quieter at the source. Never mind how many passengers. But then you get to this problem with the low level and the definition they worked out said it was going to solve the Grand Canyon problem. They went to this seat efficiency ratio, which does not have to do with the absolute noise power of that given engine. It's a ratio based on number of passengers against the engine.

TM: This is an interesting question of metrics. What metric are we going to use to measure this by? And there are some crazy metrics all across all kinds of agencies, many of which benefit commercial interest. So I would assume that a metric that one might want for any aircraft is actual noise levels, not based on the number of passengers.

DH: That's correct.

TM: So how did that metric of, hey, if it makes more noise but it carries more passengers it's quieter. How did that get in as a metric? Do you remember?

DH: Nobody really knows in terms of if you want names to bodies. But I suspect we think that we have to identify who was the lead on all of this for the FAA. That was Carl Burlison. So I would follow tracks towards Carl Burlison's desk. He's still their international affairs coordinator. Very resistant to our Park Service intrusion with their metrics. Would not work with the Park Service on NEPA. So he got around it that way with the... I believe it's probably Burlison, though I can't prove that. We don't know these

things without FOIA. But probably Burleson. I sat at a table with Burleson once at an Acoustic Society presentation and I criticized what he was doing.

DH: Oh yes, his involvement in this should be definitely ripe for historians to investigate. So we had this issue and we objected to it. The record can be checked for exactly when the quiet technology rule became official but it was in the early 2000s. But, it didn't stop us from taking two things into court because we still had the question of whether the jet noise wasn't supposed to be counted anyway. And the jet noise was so loud as to bring 99% of the park into noncompliance with the Overflights Act. 99% noncompliant no matter what they did. So the Park Service in those... It shows in the record we have online there, but they finally prevailed with enough power to get the jet noise taken out of the Overflights Act as something that would be used to measure substantial restoration by. I don't have more to say except that they did it.

TM: So I'm confused. Wait a minute.

DH: Congress passed that. Congress passed that.

TM: So Congress passed a law that said you will not count jet noise.

DH: That's right. First it was administrative but we have to look at the chronology of when. It was first an administrative change which Congress ratified. Once Congress ratified, then it's done. This is all through the Bush years.

TM: Who was pushing that in Congress? Do you know?

DH: McCain and Don Young of Alaska. Young, he wrote letters. They got letters out of him. McCain basically said Congress never really contemplated to hide the jets. That's not true. It was very much a part of the record, but they found ways to tweak the import of the intent of Congress. After several tries finally they got the jets removed. Well, of course, if they didn't they never would have got to the SRNQ required level. They couldn't have.

TM: It's interesting because in the historic record back in the 1950s, the park recognized both low-level and transcontinental aircraft as causing noise.

DH: Yes, they did. They did. And you know, even the case of the sightseeing disaster in 1956 was alleged more than once, and in many places actually, in the reportage that the two planes collided because they were off course trying to show off the canyon and that led to the establishment of the FAA, over the Grand Canyon.

TM: So it's 2000/2001 and I'm looking at the substantial restoration of natural quiet. There were hearings going on for Zion.

DH: Yeah, St. George replacement airport. You had that and then an EIS. Well, they started with an EA. So we should say a little more then about...

TM: This was St. George airport started with an EA?

DH: Oh, yeah. I mean, that's hot while I'm there. That starting with an EA which was inadequate. We knew it was. Earthjustice got into it and their attorney was Robin Cooley. This is with support from the Grand Canyon Trust. The Grand Canyon Trust had an office in St. George with whom I worked. They understood what was at stake cause I made sure they did. They were basically supportive of all the work that we went to criticize this inadequate EA. You have to wait, though, till they come out with the inadequate final EA and a record of decision. Then at that point, we had to see whether we could find an attorney. We found Robin Cooley of Earthjustice based in Denver. Young woman, fairly early in her legal career. She worked with me and her other means to help us work through the hearings and development of... Well, following the record of decision of the EA with the appeal to the DC appeals court, everything with FAA has to go up into that Washington court. It's Merrick Garland's court now. So we got to a developed brief on this about the failure of the FAA to do proper cumulative impacts analysis, meaning from all kinds of aviation types and so forth. They just wanted to do part of it, you know, and ignore all the rest. The question was would the Grand Canyon Trust file a case or not? And the deadline was coming. We came to the weekend before the deadline and the Trust still had not given the green light. While the discussions were going on, I knew, Robin had told me, between them and her about what to do. And Tom... What's his name?

TM: Robinson?

DH: ...Robinson of the Trust was deeply involved with that. What he did, apparently without... He actually was behind the scenes there and actually without authorization by the usual Grand Canyon Trust committee, went ahead and gave Robin Cooley and Earthjustice permission to file the lawsuit. It was filed with moments to go. They had to hand carry the lawsuit through the streets of Washington at 11 o'clock at night on the final night with a deadline at midnight. It was placed at the deposit box on the outside of the Court of Appeals just in time so it could be date stamped when they empty the box that night. The people that carried it to the Court of Appeals, the courier was Michael Kidney our lead on the Grand Canyon case for all these years. He told me that on the phone. So I was thinking, my life had been in vain [laugh] so to speak when failure to fall on such an obvious situation, but at the last minute we got the reprieve that we needed and Robin Cooley's case was filed by Earthjustice in the Court of Appeals. That led to a hearing with that court some months later as one would expect because they took the case and I was present for oral argument. So I argued. The case was one of the two big cases that came down in the summer of 2002. One was Grand Canyon II and the other one was that one, the Zion case. Grand Canyon II and the Zion case were decided by the same court in the same summer. And they were seen by us as victories because they threw the FAA for a loop, both of them. So it was a good sense of possibility in getting that much.

TM: So the DC win then forced the FAA to go back and do an EIS...

DH: An EIS at the cost of millions of dollars for the St. George airport. They had to score not only the park, but all those wilderness areas around there according to the latest sophisticated noise technology far below the 65 decibel level they'd been hiding behind. They had to take it all the way down to a noise above 35, all that kind of thing.

TM: What came out of that EIS?

DH: The ultimate finding after all the modeling and the analysis of where the most likely air tracks with how many numbers and so forth... Oh yes, the airport would enable a certain amount of growth in numbers, that's true, but you also had the questions of like where the likely flight routes and so forth. It

came out awash. That is, with neither no net increase or decrease in noise was the FAA's judgment. Well, Merrick Garland had warned them, though, that if it was any noise increase at all, that that might be the straw that broke the proverbial camel's back and they knew that.

TM: So FAA would not push that. They'd come out and say then, well, there's going to be no net change.

DH: They came out with an analysis that said no net change after all of that. [laugh]

TM: Did they go ahead and impose route zones to keep flights away from Zion and wilderness areas then?

DH: Well, it's hard to say exactly what was done, but the volume of traffic contemplated here... They may have. We'd have to look exactly at what's in that EIS and how the sound was modeled. It's got to be related to the airport if it's going to count. You can't do it just on the basis of well we're increasing overall traffic across the whole system. Where are they actually likely to fly? The FAA could pretty easily say that this was going to be going maybe south of the park when went to Denver or go north when going to Salt Lake and not over the Kolob section. So you wound up...maybe there'd be one or two flights, but it wasn't enough to... They were moving from Stage 2 to 3. You know, it wound up awash.

TM: And Zion didn't have the overflights/the tour flights that Grand Canyon did.

DH: Well, yeah. At that time it wasn't at all clear because there was an IOA that had been granted for hundreds of flights over Zion.

TM: What's an IOA?

DH: Interim Operating Authority. The Interim Operating Authority, you see this is the time where you had the new air tour management law coming into effect. It had been signed by President Clinton on April 5th of 2000. And so where am I then? Starting my Zion years. So the first place I'm looking at is Zion and what implications here? Well, of course, it took a while till they could even claim their IOA, you know. We didn't know what they were going to say. It was based on alleged figures from '97 and '98. All of the Interim Operating Authority that's still out there everywhere is based on figures from 25 years ago. And they were alleged and not audited. There was no auditing of your claim when you brought it in, like claiming a gold mine. You say, I got all this gold in this mine and there's no audit. So Zion operators claimed almost a thousand flights and Bryce, for example, claimed 3,500.

TM: Wow.

DH: It was gross misrepresentation and fraud. Gross in the light of the record. In fact, there'd been partial admission of it by the FAA that it allowed the fraud, on the record. They understand how... They just let the easy ride/the easy claim go through and then once through, how do you get it out? And that's the situation today. So we still have hundreds of flights over Zion. And, of course, I was looking for them all the time I was in the park, all the time. You saw low flying planes and what is that? But we had no way because there was no reporting. Congress didn't require reporting for 10 years. There was no reporting from the individual operators. They were not required to report the number of flights. So black box for a decade. Fast forwarding to right now, it appears there are no tour flights over Zion but that's because they've chosen to do their marketing elsewhere.

TM: Like Grand Canyon or Grand Canyon West.

DH: Well, like around the Lake Mead area and Grand Canyon West and Lake Mead. I mean, that market... Alan Stevens is the main holder IOA there. He may have made a little bit of a strategic retreat there, too, cause he was making money by just moving them. I think he's just hiding all his under another bush. We're not dealing with air tours over the park. We're dealing with a new outfit around the park but not over it.

TM: Around the park would be Bureau of Land Management or US Forest Service land?

DH: Yeah. Well, around it would have to do with other jurisdictions that don't care much. You can see some stuff because it's only a half mile perimeter buffer that is required. You can see a lot of stuff around Zion. That means, of course, you can fly over the Kanan Mountain Wilderness. We can fly right over that low as you want to as often as you like.

TM: Thinking about Grand Canyon then, with the loss of being able to include the high flyers, how did that impact you and the others who were working on the issue? It would seem as though the rug was basically pulled out from under the fight because those planes do make noise and they make a lot of noise day and night.

DH: Yes, it pulled the rug. It pulled an important rug out. No question about that. So now you're left with one last thing. Well, maybe two or three. I mean, there's still things. The main one, though, that we went after in Grand Canyon II lawsuit was peak day instead of average day. Peak day became the argument. Even then you saw the way the two agencies interplayed with each other. The Park Service squirreled their peak day argument to a [laugh] very obscure part of their brief on their report about it that led to the court decision. But the court found it. And, of course, our lawyers would point to anything that they could find. So even though it had been sort of sequestered off into a corner...

TM: How do you mean? I'm not following here.

DH: Well, I'm just saying that the fact that the Park Service believed that peak day should be the standard was in the brief. It was in their brief and it was in their reportage, but they had kind of squirreled it into a corner maybe hoping not to have the FAA charge after them like a raging bull.

TM: So this was under the Gail Norton administration?

DH: Yeah, that's right.

TM: Okay. So this goes back to politics impacting on the ground management.

DH: That's right. So what can you do under the radar? It's kind of like operating under the radar.

TM: And so your team, the legal team brought together by Grand Canyon Trust and Sierra Club...

DH: That's right. That team found that and used it effectively to win on peak day.

TM: Okay. And that win on peak day said that the day of the year that has the loudest noise...

DH: It will be the one that is scored for the purposes of determining whether substantial restoration of natural quiet has been achieved.

TM: Versus the average day.

DH: Versus the average day.

TM: And an average day is much quieter.

DH: That's correct.

TM: So was the concept...so I understand this...that the average day would be a better metric to use because that would be where you'd want to hold the noise, or am I missing how this...

DH: Well, you want to get them at whatever the most sensitive point is. We could go the other way a lot better with the peak day standard.

TM: Can you explain that to me cause I don't quite get it.

DH: In other words, if you find that the canyon is... Let's just say that you find that on April the 1st, the canyon is 58% restored under the math. And then you find on August 8, which is peak day that it's not 58% restored but is only 39% restored, then you're out of compliance with the law. For all of those days like that. All of August, July days you are out of compliance.

TM: So the idea here is that anything above that 50% line would be out of compliance.

DH: Out of compliance. Any 12 hour day is out of compliance. You can push them back. And then we thought they had more. We thought, then, we had lots of days like that. The figures we'd been seeing suggested this was happening a whole lot.

TM: And so, again, I'm still struggling with the... I'm not real bright. The peak day versus the average day. Okay, so the argument being an average day might be closer to the 50%. If you averaged around the year, especially in the winter when there were greatly reduced flights, you would be under the 50%. So you could have a peak day way over where it's in the 30's and that would be okay.

DH: Well, yes. The implication is that you could have just the one day you had to take care of.

TM: Well, you could have a number of...

DH: Or five days.

TM: ...days that were over, but if in the winter you had number of days that were under, that was okay because you would average it out over the year.

DH: Yeah. Each and every day became the rule. Each and every day...

TM: Okay. So in that point, if you had a...

DH: ...had to be compliant.

TM: ...50% limit each and every day, you can't go above that 50%.

DH: That's correct.

TM: Great. That makes sense as just simply a metric. What's a metric you're going to have...

DH: Yeah, easy enough to score it.

TM: ...instead of saying we're going to have some really loud days and we're going to have some really quiet days and that's going to get us to 50%.

DH: No, they wouldn't compute it that way.

TM: Did they try to do that?

DH: There could have been arguments about that and I'm not sure whether we did argue it or not, but it came down to...

TM: Well, no, you wouldn't want to because you would be out of compliance for a bunch of days and in compliance for a bunch, which is basically moving the goalposts. So it makes sense to say we have a 50% we can't cross that.

DH: Can't across the 50%.

TM: And how do we stay...

DH: And you also need a buffer in the park. Everybody agreed. Park service and FAA understood you're going to need a buffer here because that's modeling and that would be verified by other means. And there's still a margin of error even so. So you would have to clear it. You know, 52% is pretty dicey. If you're at 52 on any day, 52 is questionable, or 54.

TM: When did this decision come out?

DH: The peak day decision was handed down I believe in August of '02 by the DC Court of Appeals.

TM: Is that what you call Grand Canyon II?

DH: Two. Grand Canyon II. The Zion case was the same summer so possibly I got the reverse. One came in May and one came in August. But anyway, I think it's August of '02. We had that, but you see, we still didn't have enough comprehensive really sophisticated noise modeling to know exactly where we were left at that point. I mean, this was going to be...and it hadn't been done. And we're moving further into the 2000s-and-so years. You've got a very unsettled situation, even so, with the argument that there might be quite a lot of noncompliance. This is setting the framework for McCain getting frustrated and saying, well, let's get this thing into alternative dispute resolution. You see, obviously you've got McCain behind the scenes. And it's his institute. He founded the whatever, this Tucson based institute, and they had done some work and was a serious outfit. So they were beginning to percolate that idea as a result

of Grand Canyon II decision. Otherwise you'll have to complete the rule making through the NEPA based formal public process.

TM: Let's talk about this a little bit. Alternative dispute resolution would be to sort of take all the stakeholders and put them in a room and see if they could come up with something.

DH: That's right.

TM: But you have NEPA.

DH: That's what you call a voluntary plan in a way. Yes, that's right. In fact, the ground rules for that turned out it had to be unanimous. It would have to be a unanimous vote by that committee, otherwise no go. Everybody understood this was a tough road to hoe. What it was doing, though, was buying time in a way, too, and forcing technology. I mean, you're forcing a complicated bunch of stuff to go forward. You're going to force the technical.

TM: But it bypasses the NEPA directive.

DH: Well, it bypasses NEPA.

TM: And that never sounds like a good idea.

DH: And the Clinton deadline as well. The Clinton deadline, remember, of August 22, '08 is looming all the time. The court took the FAA at its word that it would be done in the park by April 22, 2008. So here's going to be then an excuse to carry on beyond April 22, 2008. That laid the groundwork for delay.

TM: Maybe now is a good time to wrap up this interview because next interview we will talk about this alternative dispute resolution journey, how that worked or didn't work, and get to the 2006 and 2008 deadlines that came and went.

DH: 2002 obviously came and went.

TM: Right. I'm sorry. I thought there was a...

DH: There was a 2001 deadline. That's the five-year comprehensive noise plan. That's just an executive administrative deadline. It didn't have the force of Congress as Clinton's deadline and Clinton's not in power anymore. Then you had the 2008 deadline, but they promised that to the court that they would meet that one. They had a declaration to the court, we're going to meet the 2008 deadline. And that's still there at the point we stopped.

TM: Okay, so does that make sense that now's a good time to...

DH: Yes, I think we've laid the groundwork to look at the beginning of the ADR process.

TM: And what's ADR stand for?

DH: Alternative dispute resolution. And I think for both of us, just to look again at what I emailed you today will be very helpful with that because the whole record is in there.

TM: With that then this will conclude Part 9 of a Grand Canyon oral history with Dick Hingson. Today is November 2nd, 2019. My name is Tom Martin. And Dick, thank you very much.

DH: Thank you for the interview.