



Magistrate Judge Rebukes the Navy Growler EIS

The Navy appears to have used certain statistics much like a drunk uses a lamppost: for support, not illumination.”

With these words, Chief United States Magistrate Judge J. Richard Creatura leveled a scathing rebuke of parts of the Navy’s Final Environmental Impact Statement (FEIS) on the expansion of EA-18G Growler aircraft operations at the Naval Air Station Whidbey Island.

The findings were issued on Friday, December 10th, in a summary report and recommendation to the US District Court at Tacoma in the case: State of Washington, et al., v. U.S. Dep’t of the Navy, et al.

The National Environmental Policy Act (NEPA) and the Administrative Procedure Act (APA) mandate procedures that an agency must follow before taking an action as significant as the Growler expansion at NASWI. Under NEPA and the APA, the Navy’s decision may be overturned if the Navy acted *arbitrarily and capriciously*” and failed to take a *hard look*” at the consequences of the proposed action.

The judge wrote that *despite a gargantuan administrative record, covering nearly 200,000 pages of studies, reports, comments, and the like, the Navy selected methods of evaluating the data that supported its goal of increasing Growler operations. The Navy did this at the expense of the public and the environment, turning a blind eye to data that would not support this intended result.”*

In particular, the judge found that the FEIS:

- failed to disclose that greenhouse gas emissions above 3,000 feet were omitted from its calculations (as if the CO₂ up there doesn’t matter in global warming) and pointed to vast discrepancies between fuel burn assumed in the FEIS versus real world data on Growler jet fuel consumption from NASWI’s own fuel depot;
- failed in its evaluation of the extent to which increased operations would harm children’s learning;
- concluded that certain bird species were not adversely affected and then extrapolated that all the other bird species would not be affected;
- and provided an *arbitrary and capricious*” dismissal of the alternative of moving Growler operations to El Centro, California.

The Navy cited high cost as the basis for a cursory rejection of moving operations instead of providing a detailed objective evaluation of alternative sites. The required alternatives analysis could lead to moving the Growler facility somewhere else.

The judge recommended that the District Court find that the FEIS violated NEPA. The District Court is scheduled to consider the case on December 31, 2021.

The Plaintiffs are Citizens of the Ebey's Reserve for a Healthy, Safe, and Peaceful Environment and Paula Spina (collectively "COER"); and the State of Washington.

The magistrate's recommendation is here:

<http://tiny.cc/GrowlerMagistrateRec>

<https://citizensofebeysreserve.com/2021/12/12/growler-expansion-violated-nepa/>

<https://olyopen.com/>

<https://www.whidbeynewstimes.com/news/federal-judge-rules-in-favor-of-ag-coer-on-several-issues-in-navy-growler-lawsuit/?fbclid=IwAR0v1uq-G3p7EmkWJQa1XQc0wTKjzVDcX8GQDZ891ur4W0fB8AfLg0hsMnY>