
IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY OF LOS ANGELES,
Petitioner

v.

FEDERAL AVIATION ADMINISTRATION; STEPHEN M. DICKSON, in his
official capacity as Administrator, Federal Aviation Administration;
Respondents.

On petition for review of an action by the Federal Aviation Administration
pursuant to 49 U.S.C. § 46110

PETITION FOR REVIEW

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Counsel for the City of Los Angeles

Pursuant to 49 U.S.C. § 46110, Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15-1, the City of Los Angeles (City) petitions the United States Court of Appeals for the Ninth Circuit for review of final orders issued by the Federal Aviation Administration (FAA).

SUMMARY

FAA, whether by action or inaction, allowed changes to departure flight tracks at the Hollywood-Burbank Airport (BUR) without disclosing the changes to the City and public, without complying with agency procedures for issuing a final agency order, and without conducting the required environmental review of those changes. Tens of thousands of City residents and businesses have been adversely impacted by the departure track changes. The City files this petition to seek judicial review of FAA's conduct and an order obligating FAA to require its air traffic controllers to direct aircraft departing BUR to follow historic departure tracks.

In 2017, FAA promulgated two departure procedures at BUR as part of the Southern California Metroplex project. FAA's environmental assessment for the new procedures relied on the assumption that departing aircraft would follow historic flight tracks. Two years later, and after hundreds of thousands of noise complaints from frustrated City residents, FAA conceded that, in the past several years, departing aircraft have consistently deviated from the historic flight tracks by flying a more southerly path. When the City demanded that FAA require departing

aircraft adhere to historic departure flight tracks that were assumed by FAA in its Metroplex environmental review, FAA responded not by denying the planes were persistently intruding into new airspace, but, stunningly, by claiming FAA is not responsible for the planes flying south of the historic tracks. FAA seeks to avoid responsibility for the problem by pointing to everything but FAA action or inaction: weather, wind, plane volume, safety, aircraft and equipment capabilities, and even pilot “abilities.” FAA’s response is contrary to law, fact, and common sense. Moreover, FAA’s response concedes that it did not consider the impacts of the “southerly shift” as part of the environmental review conducted in 2017.

It is irrefutable that FAA directs all aircraft departing BUR, including the thousands of aircraft that are flying south of the historic tracks. As United States Supreme Court Justice Jackson stated seventy-five years ago, in *Northwest Airlines v. Minnesota*: “Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis onto a runway it is caught up in an elaborate and detailed system of controls. It takes off only by instruction from the control tower, it travels on prescribed beams, it may be diverted from its intended landing, and it obeys signals and orders.” 322 U.S. 292, 303 (1944) (Jackson, J., concurring).

The City petitions this Court to order FAA to take responsibility for its failure

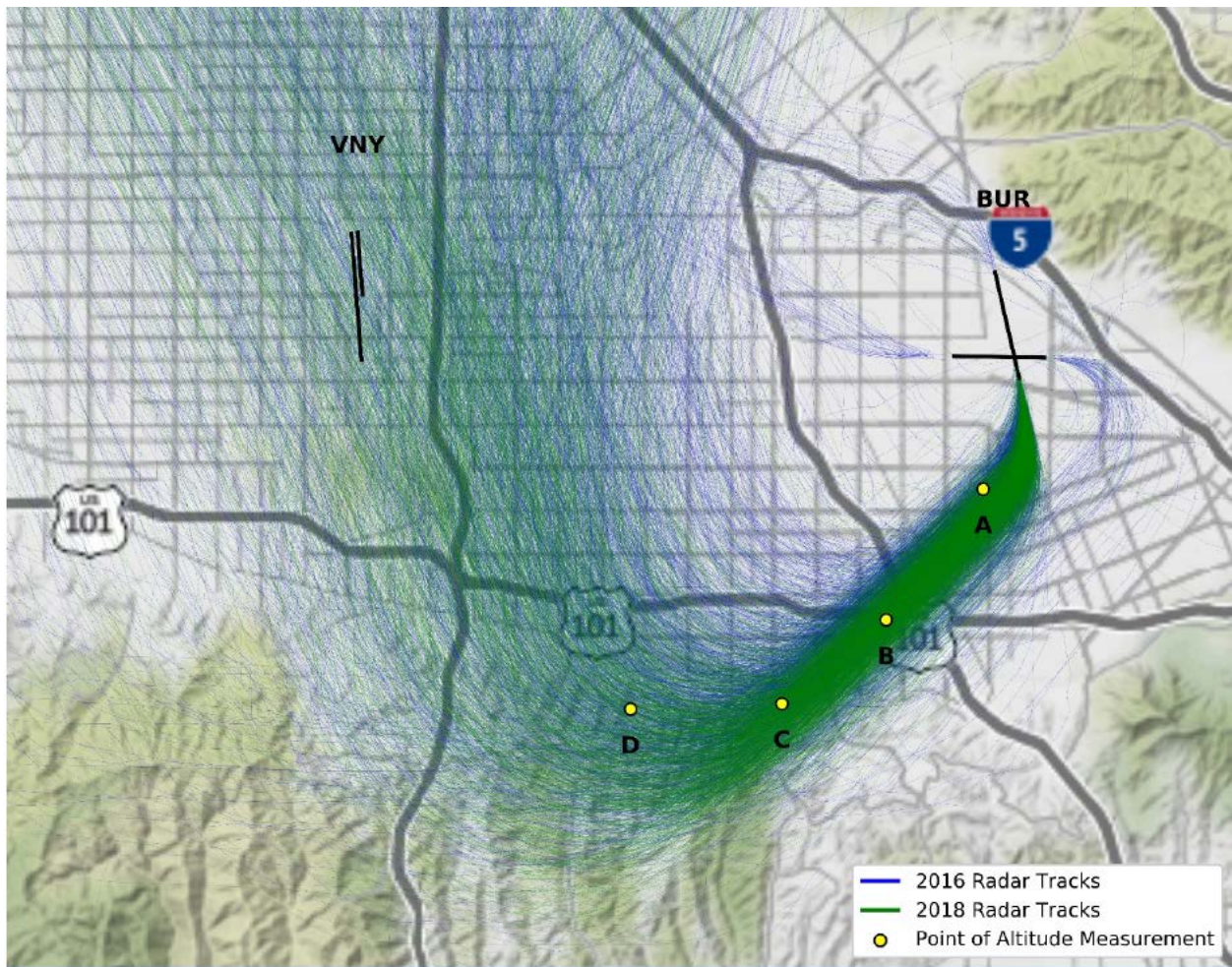
to correct the southern shift of historic flight tracks and require its air traffic controllers to keep planes on the historic flight tracks as they depart BUR.

BACKGROUND

In 2017, FAA promulgated two Standard Instrument Departure Procedures – SLAPP One and OROSZ Two – (Departure Procedures) at BUR as part of the Southern California Metroplex project. FAA assessed potential environmental effects of the Departure Procedures in an Environmental Assessment pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and thereafter issued a Finding of No Significant Impact and Record of Decision for the Metroplex project in August 2016. FAA’s environmental analysis of the Departure Procedures was based on the agency’s assumption that aircraft departing BUR Runway 15 to the south would follow existing and established departure flight tracks – *i.e.*, pre-Metroplex flight tracks – before turning north to join the new Departure Procedures.

Since implementing the Departure Procedures, FAA has determined and publicly acknowledged that for at least several years, aircraft departing Runway 15 are not adhering to pre-Metroplex flight tracks. Specifically, in a presentation, “Hollywood Burbank Airport Departures (*Past, Current and Proposed Procedures*),” FAA stated that “[i]t appears the Runway 15 departure tracks from 2018 have shifted slightly south compared to the tracks from 2016.” In an FAA Informational Briefing Executive Summary regarding the Departure Procedures,

FAA further elaborated that flight data “shows a southern shift for the southernmost BUR departure flight tracks that coincide[s] with the time Metroplex procedures were implemented” Below is an excerpt from FAA’s presentation regarding the BUR flight tracks depicting the pre-Metroplex flight tracks of aircraft departing Runway 15 in 2016 and the 2018 flight tracks that have shifted south.



The southern shift in flight tracks, acknowledged by FAA, has not been environmentally reviewed by FAA and is contrary to FAA’s previous underlying

premise in the environmental documentation for the Departure Procedures that the flight tracks would remain unchanged after implementation of the Departure Procedures.

The new flight tracks are causing ongoing and significant impacts to communities in Los Angeles. The environmental impacts of the southern shift of flight tracks have not been analyzed pursuant to NEPA, Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c), the National Historic Preservation Act, 54 U.S.C. § 300101 *et seq.*, and FAA's own regulations. There has been no public review of, or opportunity for comment on, the southern shift of flight tracks.

To correct the southern shift of flight tracks and provide relief for affected Los Angeles communities, on October 18, 2019, the City formally requested that FAA issue a Tower Order, Standard Operating Procedure, or other formal agency action mandating that air traffic controllers at BUR direct aircraft departing on Runway 15 comply with the pre-Metroplex flight tracks on which FAA based its environmental assessment of the Departure Procedures. Attached as Exhibit A is the City's October 18, 2019 letter to FAA.

On November 19, 2019, FAA denied the City's request to correct the deviation from pre-Metroplex flight tracks. Exhibit B is FAA's letter response to the City. In its response, FAA did not refute its finding that there has been a southern

shift in flight tracks but denied the City's assertion that air traffic controllers are directing aircraft south and off the pre-Metroplex tracks. FAA suggested that the southern shift of flight tracks over the past two years may be the result of "several variables such as safety considerations, air traffic volume and complexity, weather, winds, pilot abilities, aircraft and equipment capabilities, etc."

FAA's theory that the constant, systemic deviation of departing aircraft from the pre-Metroplex flight tracks is attributable only to the vagaries of weather and other causes – and unrelated to the directions of air traffic controllers – is factually and legally incorrect.

No aircraft can depart BUR without FAA instructions to the pilot. Any FAA decision to direct departing aircraft off the pre-Metroplex flight tracks has not been published or otherwise made available to the public. FAA has failed to timely and adequately provide records relating to the BUR flight tracks in response to the City's October 29, 2018 records request submitted pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Thus, the City intends to file today a separate lawsuit challenging FAA's failure to comply with FOIA in the United States District Court for the Central District of California. On December 11, 2019, the City submitted an additional FOIA request for records regarding the Departure Procedures and the southern shift of flight tracks. The City expects to receive records in response to its FOIA request within the statutory deadline of twenty business days, *id.* §

552(a)(6)(A)(i). Accordingly, the City reserves the right to amend this petition for review based on information provided by FAA in response to the City's FOIA requests.

Based on the foregoing, the City petitions for review of the following FAA final orders:

- (1) FAA's November 19, 2019, letter (a) denying the City's request for relief in the form of an order or other formal action mandating that air traffic controllers at BUR direct aircraft departing on Runway 15 to comply with the pre-Metroplex flight tracks, and (b) allowing the southern shift in flight tracks to continue before an environmental review is completed;
- (2) FAA's decision and any other formal action it may have taken relating to the subject of this petition for review – at this time unknown to the City and to be determined through FAA's compliance with the City's outstanding FOIA requests.

Alternatively, pursuant to 49 U.S.C. § 46110, 5 U.S.C. § 706(1), Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15-1, the City petitions this Court to review the FAA's failure to comply with NEPA and other federal environmental laws and refusal to require air traffic controllers at BUR to direct aircraft departing on Runway 15 to comply with pre-Metroplex flight tracks that

FAA concluded in its environmental review would remain in place.

Dated: December 12, 2019

Respectfully submitted,

/s/ Michael N. Feuer

MICHAEL N. FEUER

City Attorney

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Chief Assistant City Attorney

RUTH M. KWON

Deputy City Attorney

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Counsel for City of Los Angeles

RULE 26.1 DISCLOSURE STATEMENT

Petitioner City of Los Angeles is a municipal corporation, organized under the provisions of the Los Angeles City Charter, and not a “nongovernmental corporate entity.” Therefore, Petitioner is not required to file a corporate disclosure statement pursuant to Federal Rule of Appellate Procedure 26.1(a).

Dated: December 12, 2019

Respectfully submitted,

/s/ Michael N. Feuer

MICHAEL N. FEUER

CERTIFICATE OF SERVICE

I hereby certify, in accordance with Federal Rule of Appellate Procedure 15(c), that on December 12, 2019, a true and correct copy of the foregoing was served by certified U.S. mail on the following:

Steve Dickson
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, D.C. 20591

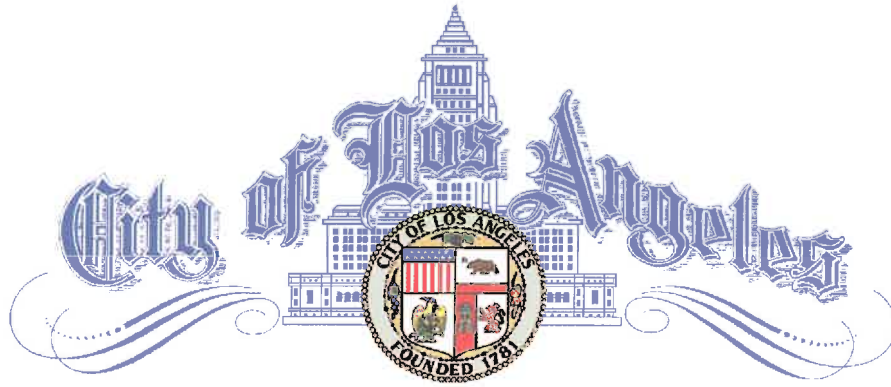
and was served by certified U.S. mail and electronic mail on the following

Arjun Garg
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James A. Lofton
Assistant Chief Counsel
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james.lofton@faa.gov

/s/ Michael N. Feuer
MICHAEL N. FEUER

EXHIBIT A



MICHAEL N. FEUER
CITY ATTORNEY

October 18, 2019

Raquel Girvin
Western-Pacific Region Regional Administrator
FAA Western-Pacific Region
777 S. Aviation Blvd., Suite 150
El Segundo, CA 90245

Re: Request for Formal Action Mandating Compliance with Burbank Airport Standard Instrument Departure Procedures

Dear Ms. Girvin:

FAA recently conceded that air traffic controllers are directing pilots departing Burbank Airport to turn south of the tracks that were established and followed by departing planes prior to the Southern California Metroplex project. This southerly shift has never been subject to public notice, comment, or environmental review. It conflicts with FAA's 2017 publication of Burbank Airport departure procedures, which expressly relied on the continued use of the pre-Metroplex departure flight paths.¹

FAA may not legally allow this systematic deviation from the pre-Metroplex departure tracks. Although FAA has embarked on an environmental review of *potential* changes to departures at Burbank Airport, until that lengthy process is completed, FAA must ensure its air traffic controllers do not deviate from the pre-Metroplex departure tracks, other than for occasional and temporary safety and extraordinary operational needs. FAA is also cooperating with an informal regional task force but, like the environmental assessment process, that effort is examining *potential changes* to flight paths. Therefore, the work of the task force, which the City supports, is unrelated to the FAA's obligation to use pre-Metroplex departure flight paths until future changes are properly vetted and approved.

Accordingly, within 30 days of this letter, the City requests that FAA issue a Tower Order, Standard Operating Procedure, or other formal action mandating that air traffic controllers direct departing aircraft to follow the flight tracks that were modeled in the Environmental Assessment for the 2017 Departure Procedures, and thus correct the erroneous "southern shift" of the Runway 15 departure tracks.

¹ FAA promulgated the SLAPP ONE and OROSZ TWO RNAV Standard Instrument Departure Procedures ("2017 Departure Procedures"), as part of the implementation of the Metroplex project.

Background

FAA promulgated the 2017 Departure Procedures after completion of an Environmental Assessment and issuance of a Finding of No Significant Impact and Record of Decision (“ROD”) for the Metroplex project. The Environmental Assessment analyzed the environmental impacts of numerous Metroplex procedures. As to the SLAPP ONE and OROSZ TWO procedures in the 2017 Departure Procedures, the FAA analysis was based upon a conclusion that aircraft departing Runway 15 at Burbank Airport would follow the existing departure flight paths until joining the new RNAV procedures after a northbound turn.

Notwithstanding that conclusion in the Environmental Assessment, when the new RNAV procedures were implemented, the public almost immediately noticed a change in Burbank Airport flight paths. The FAA for months denied that any changes had occurred.

FAA recently informed the public of its acknowledgement of what the public has long known: that aircraft departing Burbank Airport are not adhering to the pre-Metroplex flight tracks evaluated by FAA when it issued the Departure Procedures. Specifically, in a July 2019 presentation, “Hollywood Burbank Airport Departures (*Past, Current and Proposed Procedures*),” FAA stated that “it appears the Runway 15 departure tracks from 2018 have shifted slightly south compared to the tracks from 2016.” In FAA’s Informational Briefing Executive Summary on July 30, 2019, it further elaborated that flight data “shows a southern shift for the southernmost BUR [Burbank Airport] departure flight tracks that coincide with the time Metroplex procedures were implemented.” Therefore, FAA air traffic controllers are directing aircraft away from the pre-Metroplex flight tracks that FAA previously determined would remain unchanged after implementation of the RNAV procedures.

FAA’s concession that departure flight tracks are deviating from pre-Metroplex flight tracks is precisely what elected officials and residents from affected communities have been telling FAA for many months – that real-world experience shows that aircraft departing Burbank Airport are deviating from the flight tracks that were existing when FAA implemented the 2017 Departure Procedures.

The southern shift of flight tracks following FAA’s implementation of the 2017 Departure Procedures was not an action that was analyzed when FAA issued the Departure Procedures. Consequently, the environmental impacts of the southern shift in flight tracks were not evaluated by FAA as part of its environmental review of the 2017 Departure Procedures, as required under the National Environmental Policy Act, 42 U.S.C. § 4321, the National Historic Preservation Act, 54 U.S.C. § 300101, Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303(c) and FAA Order 1050.1F. Therefore, the change has occurred without legally necessary environmental clearances or public review.

The Request for Formal Action

We are *not* seeking another lengthy environmental review, nor is such a review required here. We are simply seeking compliance with FAA conclusions in its 2017 ROD. Formal rulemaking is not required to eliminate the southern shift of departing flights and to return to the flight tracks established before the Metroplex project and that were included in the Environmental Assessment and incorporated in the ROD. The City’s requested actions are a feasible and direct measure to ensure FAA complies with the flight tracks that were presented to the public and analyzed and relied on by FAA in issuing the ROD. Since the southerly shift was implemented informally without formal rulemaking, the elimination of this

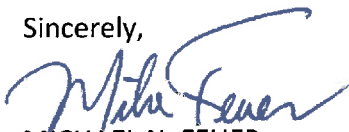
erroneous change can similarly be implemented administratively through a Tower Order, Standard Operating Procedure, or similar internal agency directive. If FAA believes that a petition for rulemaking pursuant to 14 C.F.R. § 11.61 is required to ensure immediate compliance with the ROD, the City requests that FAA notify us immediately and explain the basis for the agency's position.

The City recognizes that FAA is considering modifications to the 2017 Departure Procedures and has promised to evaluate the potential environmental impacts of, and alternatives to, potential changes to those procedures. FAA has not published any proposed implementation date for any changes, but it will be years away since the agency has just initiated the environmental documentation for any such changes in the last few weeks. Certainly, FAA may decide to consider adopting a southern shift as a possible action, among a number of alternatives the FAA might consider to the 2017 Departure Procedures. But that consideration must include proper evaluation of the potential environmental impacts of a southern shift and any other alternative departure procedure.

Similarly, the task force in which FAA is participating may consider changes in flight paths but such changes will require new environmental review, a process that is not required for restoration of flight tracks upon which the FAA relied in its earlier environmental review of the 2017 Departure Procedures. Today, we have separately submitted comments on the appropriate scope of the environmental review for potential changes to the 2017 Departure Procedures but this letter is independent of, and unrelated to, those comments.

In the interim, FAA must comply with the pre-Metroplex flight tracks analyzed in connection with the 2017 Departure Procedures. The City requests that FAA secure compliance through the issuance of a Tower Order, Standard Operating Procedure, or other administrative action that instructs air traffic controllers that they are required to direct pilots to follow the flight tracks that were established prior to the Metroplex project and that were modeled in the Environmental Assessment for the 2017 Departure Procedures. Immediate action is necessary to address non-compliance with the pre-Metroplex flight tracks and, therefore, the City requests that FAA take formal action within 30 days of this letter.

Sincerely,



MICHAEL N. FEUER
Los Angeles City Attorney

EXHIBIT B



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

Airports & Environmental Law Division
Environmental Law Branch - West
777 S. Aviation Blvd., Ste. 150
El Segundo, CA 90245

November 19, 2019

Michael N. Feuer
City Attorney
City Hall East
200 N. Main Street, Room 800
Los Angeles, CA 90012

**RE: City's Request for Formal Action Mandating Compliance with Hollywood
Burbank Airport Standard Instrument Departure Procedures**

Dear City Attorney Feuer:


The Federal Aviation Administration (FAA) received your letter dated October 18, 2019, in which you allege that the FAA recently conceded that its air traffic controllers are intentionally directing aircraft departing the Hollywood Burbank Airport (BUR) south of the route the FAA established as part of its Southern California Metroplex project in 2017. The FAA does not confirm your allegation.

In support of your contention, you point out that FAA representatives made statements during July 2019 informational briefings that some BUR Runway 15 departures have shifted slightly south from 2016 to 2018. Your interpretation of this statement to mean that FAA air traffic control is directing aircraft farther south is incorrect. As you are aware, aircraft on a particular route might be affected by several variables such as safety considerations, air traffic volume and complexity, weather, winds, pilot abilities, aircraft and equipment capabilities, etc.

We appreciate your interest in this matter.

Sincerely,

By:



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Environmental Law Field Branch – West
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cc: AJV-W2
AWP-1