

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
IN RE: PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY  
AND HAWAII COALITION MALAMA PONO,  
Petitioners

ON PETITION FOR WRIT OF MANDAMUS

**DECLARATION OF KEITH A. LUSK IN SUPPORT OF  
RESPONSE BY THE FEDERAL AVIATION ADMINISTRATION  
IN OPPOSITION TO THE PETITION**

**[EXCERPT: FULL DECLARATION AVAILABLE UPON REQUEST]**

I, Keith A. Lusk declare as follows:

1. I am a Program Manager for the Federal Aviation Administration's (FAA) Special Programs Office in the Western-Pacific Regional Office in Lawndale, California. I have been with the Special Programs Office for approximately 13 years, including 8 months as a contractor, and 12 years with the FAA. My primary responsibilities with the Special Programs Office have been in support of activities associated with the Air Tour Management Plan (ATMP) program.
2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I could and would testify competently thereto."

**Issues with Implementing ATMPs**

42. Despite the extensive efforts and steps taken by the FAA to implement ATMPs, there have been a number of challenges along the way. Most notably, the FAA's duty to comply with NPATMA is only a small part of its larger mission. In addition, the FAA has limited staff dedicated to NPATMA implementation. Finally, while the FAA and NPS has worked together on many aspects of NPATMA, it can be challenging due to differing missions, responsibilities, and procedures. The following paragraphs discuss the implementation issues further.

43. As noted above, NPATMA is a small component of the FAA's overall mission. Therefore, air tour planning efforts must compete for resources with all of the other agency's priorities and activities. As an agency whose primary mission is to provide the safest, most efficient aerospace system in the world, the FAA has a number of program priorities. Two of the most important are finding ways to safely integrate two fairly new users into the national airspace system (NAS) – namely unmanned aircraft systems (UAS, also called “drones”) and commercial space launches. The commercial uses and applications for UAS operations are growing rapidly; similarly, spaceports are being developed at numerous locations to support commercial space activities nationwide. The FAA needs to ensure safety is paramount in integrating these types of operations into the NAS. The FAA is also implementing the Next Generation Air Transportation System (NextGen) to modernize America's transportation system to make flying even safer, more efficient, and more predictable. One way it does this is through its Metroplex program in which the FAA seeks to safely improve the overall efficiency of the NAS by increasing efficiencies in metropolitan areas with multiple airports and complex air traffic flows.

44. Another issue with carrying out the obligations under the Act is the number of FAA staff available due to budgetary constraints. There is no viable scenario under which the agencies can work on ATMPs or Voluntary Agreements at all covered parks simultaneously.

45. Further, NPATMA requires the FAA and NPS to develop ATMPs at national park units cooperatively. There have been many challenges in developing ATMPs and their associated NEPA documentation, primarily resulting from differences between the FAA's and NPS' core missions, roles and responsibilities, and policies and procedures. For example:

- NPS had sought sole jurisdiction for making impact determinations on park resources when conducting the environmental review required under NEPA for an ATMP. The FAA does not agree with abdicating these environmental review determinations;
- Each agency wants to use its own method/metric for measuring baseline noise ambient levels for impact evaluation. NPS prefers using natural ambient levels and the FAA prefers using existing ambient levels without air tours;
- The agencies have different opinions on what constitutes an adequate range of alternatives;
- The agencies have different thresholds for determining significant impacts;
- NPS relies on the park superintendent's professional judgment to make impairment determinations;

- The agencies differ on how to incorporate quiet technology incentives (or disincentives).

The inability to resolve these issues can bring ATMP development work to a standstill. For example, the FAA and NPS began work on developing four national park ATMPs in 2003/2004 (Badlands, Haleakala, Hawaii Volcanoes, and Mt. Rushmore). After working on these for over seven years, the agencies were never able to resolve a number of the aforementioned issues. The agencies never issued a draft ATMP/NEPA document of these parks for public review and comment. In the run up to the FAA's reauthorization, the FAA and NPS worked to develop legislative changes to NPATMA that would allow the agencies more flexibility to develop air tour plans over national parks. Once the Act was amended, the agencies agreed to put ATMP work on hold and focus their activities on implementing the NPATMA amendment provisions contained in the FAA Modernization and Reform Act of 2012.

However, in March 2019, FAA and NPS met to evaluate whether there may be a new path forward in developing ATMPs given changes in respective agency environmental policies and procedures. Discussions on this topic are ongoing, and the agencies will continue to assess whether ATMP development may be a viable tool for selected national park units...

I declare under penalty of perjury that the foregoing is correct. Executed on June 20, 2019 at El Segundo, California.

Keith A. Lusk