

SCHEDULED FOR ORAL ARGUMENT
AT 9:30 AM ON JUNE 5 IN PASADENA, CALIFORNIA

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

_____)	
)	
SPOKANE AIRPORT BOARD,)	
)	
Petitioner)	
)	
v.)	
)	No. 13-71172
MICHAEL P. HUERTA, Administrator, and)	
FEDERAL AVIATION ADMINISTRATION,)	
)	
Respondents.)	
_____)	

Consolidated with Nos.13-71133 (Flathead Municipal Airport Authority, *et al.*), **13-71175** (Renton Municipal Airport, *et al.*), **13-71177** (Bloomington-Normal Airport Authority), **13-71178** (City of Ormond Beach, *et al.*), **13-71179** (County of Cuyahoga), **13-71181** (The Ohio State University), **13-71187** (Port of Portland), **13-71202** (AAAE and USCTA), **13-71247** (Southern Illinois Airport Authority), **13-71248** (Susquehanna Area Regional Airport Authority), **13-71253** (Boca Raton Airport Authority), and **13-71259** (Martin County, Florida), **13-71348** (City of McKinney, Texas), **13-71351** (Wisconsin Airport Management Association), **13-71388** (County of Los Angeles), **13-71414** (Texas A&M University), **13-71423** (Mohave County Airport Authority), **13-71442** (City of San Diego), **13-71514** (Paskar, et al), and **13-71518** (County of Tompkins, *et al.*)

REVIEW OF FAA’S MARCH 22, 2013, DECISION
TO CLOSE 149 FEDERAL CONTRACT TOWERS

NOTICE OF ERRATA TO JOINT OPENING BRIEF

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- *Flathead Municipal Airport Authority and Friedman Memorial Airport Authority (No. 13-71133);*
- *City of Ormond Beach, Florida; City of Naples Airport Authority; and Charlotte County Airport Authority (No. 13-71178);*
- *The Ohio State University (No. 13-71181);*
- *Port of Portland (No. 13-71187);*
- *Southern Illinois Airport Authority (No. 13-71247);*
- *Martin County, Florida (No. 13-71259);*
- *City of McKinney, Texas (No. 13-71348);*
- *Wisconsin Airport Management Association (No. 13-71351); and*
- *Texas A&M University (No. 13-71414).*

TO THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take Notice that Plaintiffs hereby submit the following notice of errata concerning page 32 of the Joint Opening Brief filed in consolidated case no. 13-71172 on May 6, 2013. The initial Joint Opening Brief inadvertently omitted a citation at the end of the first paragraph. Petitioners hereby attach a corrected page 32 that replaces the text “[cite]” with the following citation: “*E.g.*, Case 13-7118, DktEntry 9-7 (FAA letter to Ormond Beach).” This change does not alter the pagination of the remainder of the Brief.

Dated: May 7, 2013

Respectfully submitted,

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towers currently operate during daytime hours *because that is when most operations occur and the greatest safety risk exists*. It is not proper safety management to just assume that pilots can perfectly self-coordinate arrivals, departures, and practice approaches during the far more complicated daytime traffic patterns without any attendant risk. *Cf. e.g.*, P.R.000589 (Stay Denial Letter at 8) (“Student pilots will use these existing [nighttime] procedures to safely practice landings at Ormond Beach.”). These assumptions openly disregard the role of human error, contradicting FAA’s SMS Manual. “People make errors, which have the potential to create hazards. For this reason, system designers must design safety-critical systems to . . . lessen the negative impact of . . . potential human errors.” Manual § 3.2.8 (A.000135). The towers were opened in the first place because they were justified on the basis of safety and passed benefit/cost analyses driven by safety benefits. *E.g.*, Case 13-7118, DktEntry 9-7 (FAA letter to Ormond Beach).

Agency action is arbitrary and capricious “if the agency has . . . entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983). FAA’s decision to close the FCTs without having first conducted SRM analysis, and instead relying on a specious “nighttime equals daytime” rule of thumb, is arbitrary and capricious. Further, FAA’s perceived need to start an SRM process