

Whidbey News Times

Appeals dropped in Growler noise lawsuit

The Navy and a Whidbey anti-noise group will not battle it out in the Ninth Circuit Court of Appeals

By [Jessie Stensland](#) • January 3, 2025 1:30 am

The Navy and a Whidbey Island anti-noise group will not battle it out in the Ninth Circuit Court of Appeals after all.

The parties involved in a federal lawsuit over the environmental impact of the EA-18G Growler aircraft based on Naval Air Station Whidbey Island have voluntarily agreed to dismiss competing appeals of the federal judge's decision.

The Navy, which is represented by the Department of Justice, filed the appeal last year of a federal district court judge's ruling requiring a supplemental environmental analysis of the effects of an increase in the number of Growlers at the base and the resulting expansion of landing practice.

The Citizens of Ebey's Reserve, or COER, then filed a notice of cross-appeals of several of the judge's decisions.

Bob Wilbur of COER said the group hadn't originally planned to appeal until the Navy did so. When the Navy started taking steps to dismiss the appeal — for reasons unknown to the plaintiffs — COER also agreed to drop the matter. All the parties agreed to bear the costs of the appeal, excluding a possible fee award under the Equal Access to Justice Act.

The state Attorney's General Office, which first filed the lawsuit, and plaintiff Paula Spina did not seek to appeal the decision.

The litigation over Growler noise began in 2021, when the state Attorney General's Office and COER sued the Navy over perceived deficiencies in the Environmental Impact Statement prepared to consider the impacts of additional Growlers and additional training, particularly a fourfold increase at the small Outlying Field Coupeville.

U.S. District Court Judge Richard Jones found that the EIS failed to quantify the impact of Growler noise on classroom learning; failed to disclose the basis for greenhouse gas emissions calculations; failed to take a hard look at species-specific impacts on birds; and failed to give detailed consideration of the idea of moving Growlers to El Centro, California.

Subsequently, the judge ordered the Navy to redo the EIS but without vacatur. The judge agreed with the Navy that operations can continue at the current level while the study is being done in order to protect the electronic warfare mission deemed vital to national security.

In August, Jones ruled that the Navy must submit status updates every 90 days until the May 1, 2025 deadline, although the Navy can request extensions.

When the Navy started taking steps to dismiss the appeal — for reasons unknown to the plaintiffs — COER also agreed to drop the matter.

The first status report stated that the Navy is working with a contractor to do the supplemental work. Since November 2023, the contractor completed “an updated review of the available scientific literature, including journal articles, policies, guidance, surveys and data, and incorporated this information into an initial draft supplemental analysis.”

The Navy is planning a major public outreach effort in the next few months.

Once a draft is finalized, the Navy will publish a Notice of Availability in the Federal Register to let people know that the draft is available for public comment.