

SERVED: February 29, 2012

NTSB Order No. EA-5619

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 27th day of February, 2012

|                                  |   |                 |
|----------------------------------|---|-----------------|
| _____                            | ) |                 |
| MICHAEL P. HUERTA,               | ) |                 |
| Acting Administrator,            | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) |                 |
| v.                               | ) | Docket SE-19067 |
|                                  | ) |                 |
| CRAIG S. MORRISON,               | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
|                                  | ) |                 |
| _____                            | ) |                 |

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Administrative Law Judge Patrick G. Geraghty issued on July 6, 2011.<sup>1</sup> By that decision, the law judge affirmed the Administrator’s 120-day suspension of respondent’s commercial pilot certificate, based on respondent’s alleged

<sup>1</sup> A copy of the oral initial decision is attached.

violation of 14 C.F.R. §§ 91.119(a) and (d)<sup>2</sup> and 91.13(a).<sup>3</sup> We deny respondent's appeal.

A. *Facts*

Respondent was employed as a helicopter pilot for Brim Aviation. Hellgate Jet Boat Excursions hired Brim Aviation to film a television commercial and take some photographs of one of Hellgate's tour boats on the Rogue River in the Grants Pass resource area near Medford, Oregon. Grants Pass is an area noted for canyons around the Rogue River. On June 30, 2010, Hellgate gathered 30 passengers to ride on a simulated boat tour down the Rogue River. Respondent and Shawn Adams, Brim Aviation's photographer, followed the tour boat down the river in a helicopter.

Tara Filer worked law enforcement support for the Bureau of Land Management in Grants Pass. On June 30, she was off-duty and driving home through Grants Pass with her husband. As she crossed the Hellgate Bridge, she noticed a helicopter flying low over the river. She and her husband stopped their car on a pull-off area next to the bridge and Ms. Filer took some photographs of the helicopter. Exhs. C-7 through C-10. She estimated the helicopter was about 20–25 feet above the water in a slow hover near a raft. As she was standing near the

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<sup>2</sup> Section 91.119 provides as follows:

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) *Anywhere*. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

...

(d) *Helicopters, powered parachutes, and weight-shift-control aircraft*. If the operation is conducted without hazard to persons or property on the surface.

<sup>3</sup> Section 91.13(a) prohibits careless or reckless aircraft operations so as to endanger the life or property of another.

bridge, which was 73 feet above the water according to Google Earth, she was looking down on the helicopter. Tr. at 34. She observed the helicopter travel downstream, go up over the bridge, and then go back down over the water.

Gary Daily was a passenger on the Hellgate tour boat on June 30, 2010, helping to shoot the commercial. The tour company instructed the passengers not to look at the helicopter so the photographs and video would appear more realistic. Mr. Daily stated the helicopter generally stayed off to the side or up in front of the boat waiting for the boat to come by on the river. He believed the helicopter was within 100 feet of the boat. At one point in time, the helicopter was close enough to the boat that he could feel the wind from its rotorblades. Tr. at 54.

Leigh Patterson, a retired professional river guide on the Rogue River for almost 30 years, lived in a house about 200 feet off the river in Grants Pass. He was on his porch on June 30, 2010, and heard motors from a boat and helicopter. He saw them approach from about 300 yards upstream from his house. The tour boat and helicopter were offset slightly with the helicopter about 75-100 feet above the water. While the tour boat waited in a pool area of the river, Mr. Patterson observed the helicopter come downstream, turn to face upstream, and hover about 25 feet above the water waiting for the tour boat. He could see the pilot and the photographer inside the helicopter. The boat then followed the helicopter downstream and passed underneath the helicopter. As the boat passed underneath, the helicopter lifted up, pivoted, and followed the boat downstream. Tr. at 43. About an hour and a half later, Mr. Patterson heard the boat and helicopter returning back up the river. He took pictures as they passed by his house and several kayakers on the river. Exhs. C-5 and C-6.

The river around Mr. Patterson's house was full of reef rock near the edge and became convoluted reef rock toward the middle of the river. Tr. at 39. It could be ankle deep in one area

and then drop off five or six feet in the next area. Across the river from Mr. Patterson's house, there was a slanted white rocky area. The rocky area had a 15–20 degree slant to it. Just behind the rocks was a slip of sand, also slanted by 5–15 degrees.

Mr. Patterson reported respondent to the Federal Aviation Administration's (FAA) telephone hotline. David Long, an aviation safety investigator at the Portland Flight Standards District Office (FSDO), was assigned to investigate the alleged violations. He spoke to respondent who admitted he was pilot-in-command on June 30 but respondent contended he could have landed on a sandbar in the event of a loss of power. Inspector Long went to Grants Pass to interview Mr. Patterson and view the terrain around the flight area. He was unable to locate the sandbar which respondent mentioned to him. Tr. at 26. He obtained the various photographs taken on June 30<sup>th</sup> by Mr. Patterson, Ms. Filer, and Mr. Adams.

After conducting witness interviews and reviewing the photographs, Inspector Long examined the FAA-approved Height Velocity (HV) Diagram for this particular helicopter.<sup>4</sup> He plotted the altitude and airspeed of the helicopter on the HV Diagram based upon information he obtained from five different witness interviews. See Exhs. C-17 through C-21. Each plot showed respondent operated well-within the cross-hatched area on the HV Diagram, indicating it would have been difficult for respondent to autorotate to a safe landing in the event of engine failure.

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<sup>4</sup> An HV Diagram provides the airspeed and altitude combinations which a helicopter pilot should avoid in the event of an engine failure during takeoff. The cross-hatched regions on the HV Diagram are cautionary areas representing airspeed/altitude combinations from which it would be difficult to perform a successful autorotational landing. For a helicopter, autorotation refers to the descending maneuver where the engine is disengaged from the main rotor system and the rotorblades are driven solely by the upward flow of air through the rotor. See Exh. C-15.

On March 14, 2011, the Administrator issued an order suspending respondent's commercial pilot certificate. The case proceeded to hearing before the law judge on July 6, 2011.

*B. Law Judge's Oral Initial Decision*

The law judge found respondent violated 14 C.F.R. §§ 91.119(a) and (d) and 91.13(a). As a result, the law judge suspended respondent's commercial pilot certificate for 120 days. After a detailed discussion of his factual findings based upon a review of the evidence, the law judge made credibility determinations adverse to respondent and his expert witnesses. Specific to respondent's credibility, the law judge noted,

with respect to [r]espondent's testimony as to where he would be able to autorotate to a safe landing other than in the river itself, his testimony was it was always some area that was not depicted in any of the photographs. He brought in no other evidence to establish where these areas were or how far away they would have been from where the aircraft was, in fact, depicted in the exhibits. So I take that testimony as being not entitled to substantial weight.

Initial Decision at 223. Additionally, the law judge attached more weight to the testimony offered by the Administrator's two FAA inspectors over respondent's expert witnesses. The law judge noted respondent's experts disagreed with each other as to whether the HV Diagram applied at times other than takeoff and considered that fact in "assessing the weight of their testimony."<sup>5</sup> *Id.* at 229. He concluded based upon a preponderance of the evidence "[r]espondent could not have executed an emergency landing without undue hazard to persons or property on the surface. And an undue hazard is a hazard which a reasonable, prudent pilot I think would have recognized." *Id.* at 232.

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<sup>5</sup> The Administrator's witnesses, Inspectors Long and John Judge (also from the Portland FSDO) as well as respondent's expert, Mark Friskel, testified the HV Diagram applied at times other than takeoff. Respondent and respondent's other expert witness, Joseph Rice, contended the HV Diagram only applied at takeoff.

### *C. Respondent's Issues on Appeal*

Respondent appealed the law judge's decision. Respondent contends the law judge's findings of fact and conclusions of law as to each of the violations are not supported by a preponderance of the evidence because: 1) he operated the helicopter without incident in an area in which he had flown many times, 2) the Administrator failed to present evidence of an actual hazard to people or property, and 3) respondent's actions were not reckless as to endanger life. Respondent also argues the law judge committed prejudicial error in precluding respondent from calling multiple lay witnesses and an expert witness in his case-in-chief.

## **2. Decision**

### *A. Violations Not Supported by a Preponderance of the Evidence*

Respondent contends the law judge erred in giving more credit to the Administrator's witnesses rather than to respondent and his expert witnesses. We defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious.<sup>6</sup> The law judge's resolution of the issues in this case required him to assess the credibility of respondent's testimony, and the law judge made credibility findings adverse to respondent and his witnesses.

We find the law judge's credibility determinations in this case were not arbitrary and capricious. The law judge specifically determined the Administrator's witnesses were more credible than respondent and his witnesses, as their corroborated testimony directly contradicted the majority of respondent's assertions. As the law judge pointed out in support of his credibility determinations, the evidence clearly showed respondent provided vague testimony about where he could have landed in the event of an engine failure. In response to every photograph but one,

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<sup>6</sup> Administrator v. Porco, NTSB Order No. EA-5591 at 20 (2011); see also Administrator v. Smith, 5 NTSB 1560, 1563 (1986).

respondent's testimony was he would autorotate to a spot not shown on the photograph. Tr. at 109, 113, 114, 115, and 117. Respondent contended he never hovered in the helicopter (tr. at 110), yet his own expert witness, in observing a photograph, testified the rotorwash shown in the water indicated respondent was hovering. Tr. at 164. Respondent and Mr. Rice both claimed the HV Diagram only applied during takeoff. But the Administrator's witnesses and Mr. Friskel agreed the HV Diagram also applied at times other than takeoff. Mr. Friskel stated, "[y]ou should apply [the HV Diagram] to everything you do." Tr. at 161. Based upon these conflicts in the testimony, the law judge gave more weight to the Administrator's witnesses. The law judge made these credibility findings tying them to specific findings of fact, as required by Porco. In reviewing all the evidence presented at the hearing, we find the law judge's credibility findings were not arbitrary and capricious.

1. *Violation of § 91.119(a)*

We carefully examined the record and find no basis for overturning the law judge's finding that in the event of an engine failure respondent could not have made an emergency landing without unreasonable risk or undue hazard to persons or property on the surface. To prove a violation of § 91.119(a), the Administrator must show an emergency landing presented an unreasonable risk of harm to persons or property from the altitude at which a pilot flew.<sup>7</sup> Inspectors Long and Judge provided persuasive testimony indicating the helicopter was too low to perform a successful autorotation in the event of an engine failure based upon respondent's combined low altitude and slow airspeed. Mr. Patterson and Inspector Long provided testimony

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<sup>7</sup> See Administrator v. Michelson, 3 NTSB 3111, 3114 (1980) (the Administrator need not show it was impossible for respondent to make an emergency landing without injury or damage to persons on the surface but rather that an emergency landing presented an unreasonable risk of such harm); Administrator v. Jablon, NTSB Order No. EA-5460 at 12 (2009) (elaborating on meaning of undue hazard in § 91.119(a)).

as to the terrain around the river and in the river itself. Their testimony described the terrain surrounding the river as too rugged to provide a safe landing area. Inspector Judge and Mr. Friskel both testified respondent most likely would have had to autorotate into the river. However since the testimony also indicated the river was rocky, very shallow in spots, and had a rapid current in other locations, a water landing would have been very hazardous as well. The photographs from the various witnesses clearly show the tour boat, a raft, and several kayakers in close vicinity to the helicopter indicating an undue hazard to people on the surface. Based on the eyewitness testimony, the photographs, and the testimony of Inspectors Long and Judge, we believe the Administrator fulfilled the standard of proof necessary under § 91.119(a).

## *2. Violation of § 91.119(d)*

In cases involving § 91.119(d) we look to whether the operation of a helicopter presented an actual hazard to persons or property on the surface.<sup>8</sup> As discussed above, the river canyon overflowed by respondent was uneven and included rocky terrain. At the time of the flight various people were in the tour boat, and there was a raft and several kayaks on the river in close proximity to respondent's flight path, as previously noted. Mr. Daily's testimony and Mr. Adams's photographs both indicate the tour boat was close enough to be in the helicopter's rotorwash. Considering these factors, along with respondent's altitude and airspeed which placed his operation well-within the caution region of the HV Diagram, we find a safe autorotational landing unlikely in the event of an engine failure, and persons or property on the surface were imperiled as a result.<sup>9</sup>

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<sup>8</sup> See Administrator v. Richard, NTSB Order No. EA-4223 (1994); Administrator v. Tur, NTSB Order No. EA-3490 (1992); Administrator v. Reynolds, 4 NTSB 240, 241 (1982).

<sup>9</sup> Respondent's reliance on the Board's finding of no violation in Richard, supra, is misplaced. In Richard, the respondent's helicopter was equipped with emergency floats that could deploy in

### 3. Violation of § 91.13(a)

Respondent also asserts a violation of § 91.13(a) cannot be supported in a helicopter case without proof of an unacceptably high likelihood of harm or clearly deficient judgment. While a higher measure of proof is required to establish an independent violation of § 91.13(a) by a helicopter pilot, in the case *sub judice* the Administrator charged a residual violation of § 91.13(a).<sup>10</sup> Our jurisprudence makes clear a residual violation of § 91.13(a) can stand without additional proof when an operational violation is found, even in helicopter cases where proof of an unacceptably high likelihood of potential harm or clearly deficient judgment would be necessary to establish an independent violation of the regulation.<sup>11</sup> Since we affirm the law judge's finding of the violations of § 91.119(a) and (d), and it is brought as residual violation, no additional proof is necessary to sustain the violation of § 91.13(a).

#### B. Law Judge's Alleged Preclusion of Witnesses

We do not find persuasive respondent's arguments concerning the law judge's rulings on his witnesses. Under our jurisprudence, law judges have significant discretion in overseeing testimony and evidence at hearings. The Board reviews a law judge's evidentiary rulings under an abuse of discretion standard, after a party has shown that such a ruling prejudiced him or her.<sup>12</sup>

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(.continued)

as little as 1.5–3 seconds; thus, the Board concluded it would have been possible for the respondent to safely autorotate to a landing. Richard is distinguishable from the case at hand.

<sup>10</sup> See Administrator v. Egger, NTSB Order No. EA-4319 (1995).

<sup>11</sup> See Administrator v. Tur, NTSB Order No. EA-3490 at n.12 (1992); Administrator v. Frost, NTSB Order No. EA-3856 at 8 (1993).

<sup>12</sup> See Administrator v. Ochionne, NTSB Order No. EA-5537 at 11 (2010); Administrator v. Giffin, NTSB Order No. EA-5390 at 12 (2008) (citing Administrator v. Bennett, NTSB Order No. EA-5258 (2006)) (we will not overturn a law judge's evidentiary ruling unless we determine

1. *Exclusion of Expert Witness*

The law judge did not preclude respondent's expert witness, John Scanlon, from testifying at the hearing. In fact, the record clearly shows the law judge issued no ruling excluding Mr. Scanlon's testimony, but rather that respondent's counsel voluntarily substituted Mr. Rice for Mr. Scanlon as respondent's second expert witness at the hearing.<sup>13</sup> Since the record is devoid of objection and respondent voluntarily substituted Mr. Rice as his expert witness, we find no prejudice to respondent.

To the extent respondent argues he believed the hearing would last two days and thus

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(.continued)

the ruling was an abuse of discretion). [See, e.g.,] Administrator v. Martz, NTSB Order No. EA-5352 (2008); Administrator v. Zink, NTSB Order No. EA-5262 (2006); Administrator v. Van Dyke, NTSB Order No. EA-4883 (2001). Cf. Administrator v. Ferguson, 352 Fed. Appx. 192, 2009 WL 3747426 (9<sup>th</sup> Cir. 2009) (holding law judge erred in curtailing the cross-examination of FAA witness because the witness was central to the Administrator's case and the ruling was therefore prejudicial).

<sup>13</sup> The following exchange occurred between respondent's counsel and the law judge about the expert witness:

Counsel: Your Honor, since you want to finish today—

LJ: Do what you want to do. We will see how it goes.

Counsel: We are going to cancel Mr. Scanlon and call Mr. Rice in his place.

...

LJ: Now we come to the other question which is, as I understood from our discussion this morning, I was going to allow you to call two experts. And they were identified as whom? Scanlon—

Counsel: Mark Friskel and John Scanlon.

LJ: Who do you want to substitute in now?

Counsel: Joseph Rice.

LJ: Mr. Rice?

Counsel: Yes.

Tr. at 153-54.

made arrangements to have Mr. Scanlon fly in on July 7, such argument lacks merit. The Administrator's letter accompanying the complaint, dated March 23, 2011, stated the Administrator anticipated the hearing would last one day. Respondent never submitted a letter to the contrary. On April 28, 2011, the law judge sent both parties the notice of hearing setting the hearing for one day. Respondent never objected to that notice. Furthermore, when respondent's counsel remarked on the record that the law judge wanted to wrap up the hearing in one day, the law judge stated, "We will see how it goes" suggesting the law judge may have allowed the hearing to proceed to a second day if necessary.

## *2. Exclusion of Lay Witnesses*

Likewise, we find the law judge did not error in excluding cumulative testimony from tour boat passengers. After Otto Miller testified in respondent's case-in-chief that he believed the helicopter was a couple hundred yards from the tour boat (tr. at 151), respondent sought to introduce testimony from more tour boat passengers. Prior to the hearing, the law judge had ruled he would not hear cumulative evidence from the tour boat passengers. On the record, the law judge asked respondent's counsel for an offer of proof as to the witnesses' testimony. Respondent's counsel asserted, "[t]he offer of proof would be they would testify similar to what Mr. Miller testified to." Tr. at 153. Based upon this proffer, the law judge excluded testimony from the other tour boat passengers as cumulative.

We find the law judge did not abuse his discretion in excluding this testimony and find no prejudice to respondent as a result of this ruling. Mr. Miller's testimony almost exclusively described the distance between the tour boat and the helicopter. The record was filled with ample evidence showing the distance between the boat and helicopter was well under 100 feet at times. Mr. Patterson witnessed the helicopter pass in close proximity to the boat as evidenced by

his photographs. Mr. Daily stated the helicopter was close enough to the boat at one point in time that he felt the rotorwash. This testimony was corroborated by the photographs Mr. Adams provided to Inspector Long. These photographs taken from the helicopter were from a close enough distance that the rotorwash clearly is visible in the water next to the boat. Exhs. 12 and 13. Finally, the photographs from the various witnesses speak for themselves—the helicopter was extremely close to the tour boat at various times. The law judge had more than sufficient evidence showing the distance between the tour boat and the helicopter. Therefore, he did not err in excluding this cumulative evidence.

### *C. Sanction*

Finally, with regard to sanction, the Administrator’s Sanction Guidance Table states the range for these violations is a 30- to 120-day suspension.<sup>14</sup> In a prehearing trial brief, the Administrator justified seeking the “high end of the standard range because of the frequency and severity of the acts at issue.” Trial Br. at 11. The Administrator fulfilled the standard under Administrator v. Peacon, entitling deference to the Administrator’s choice of sanction.<sup>15</sup> While we consider aggravating and mitigating factors in evaluating an imposed sanction, respondent did not articulate any mitigating factors that counseled in favor of reducing the sanction.<sup>16</sup>

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<sup>14</sup> FAA Order 2150.3B, Appendix B, Figure B-3-h(22). Since the § 91.13(a) violation was charged as a residual violation, the Administrator properly did not seek to compound the sanction.

<sup>15</sup> NTSB Order No. EA-4607 at 2 (1997) (stating, “where the Administrator establishes before the law judge the existence of validly adopted written policy guidelines, the law judge must impose a sanction that falls within the range of sanctions suggested therein, unless he finds that application of the guidelines by the Administrator was arbitrary, capricious, or otherwise not in accordance with law”).

<sup>16</sup> See Administrator v. Hackshaw, NTSB Order No. EA-5501 (2010) (recon. denied, NTSB Order No. EA-5522 (2010)).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied;
2. The law judge's oral initial decision is affirmed; and
3. The Administrator's 120-day suspension of respondent's commercial pilot certificate is affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
OFFICE OF ADMINISTRATIVE LAW JUDGES

\* \* \* \* \*

In the matter of: \*

J. RANDOLPH BABBITT, \*  
ADMINISTRATOR, \*  
Federal Aviation Administration, \*

Complainant, \*

v. \* Docket No.: SE-19067

JUDGE GERAGHTY

CRAIG S. MORRISON, \*

Respondent. \*

\* \* \* \* \*

Jackson County Justice Building  
100 South Oakdale  
Courtroom 302  
Medford, Oregon

Wednesday,  
July 6, 2011

The above-entitled matter came on for hearing, pursuant  
to Notice, at 9:00 a.m.

BEFORE: PATRICK G. GERAGHTY  
Administrative Law Judge

## APPEARANCES:

On behalf of the Administrator:

DAVID F. SHAYNE, ESQ.  
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Federal Aviation Administration  
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On behalf of the Respondent:

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## ORAL INITIAL DECISION AND ORDER

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ADMINISTRATIVE LAW JUDGE GERAGHTY: This has been a proceeding before the National Transportation Safety Board on the appeal of Craig S. Morrison, hereinafter the Respondent. We are on an Amended Order of Suspension which seeks to suspend his commercial pilot's certificate for a period of 120 days. The Amended Order of Suspension serves herein as the complaint and was filed on behalf the Administrator, Federal Aviation Administration, herein the Complainant.



1 days, which is predicated upon allegations that as a consequence  
2 of the Respondent's admitted operation of a helicopter on June 30,  
3 2010, in the vicinity of Merlin, Oregon with another person on  
4 board, he so operated the rotorcraft as to operate in regulatory  
5 violation of the provisions of Section 91.119(a) and (d) of the  
6 Federal Aviation Regulations.

7           Those sections of the Federal Aviation Regulation  
8 provide as follows: In subpart (a), that it is prohibited, and  
9 the Respondent did operate an aircraft below an altitude allowing,  
10 if the power unit fails, an emergency landing without undue hazard  
11 to persons or property on the surface; and in subpart (d) of that  
12 section, that the Respondent was prohibited but did operate a  
13 rotorcraft helicopter in an altitude and in a manner that was  
14 hazardous to persons or property on the surface.

15           It is further alleged that the Respondent, in the course  
16 of his operation on the date in question, did operate in  
17 regulatory violation of Section 91.13(a) in that he operated an  
18 aircraft in a reckless manner so as to endanger the life and  
19 property of another.

20           The Complainant's case is made through the testimony of  
21 several witnesses and exhibits received during the course of the  
22 proceeding. Majority of those exhibits were, of course,  
23 photographs or plots of operations within a Height-Velocity  
24 Diagram which I will discuss subsequently.

25           First witness was Mr. David Long. He is an aviation

1 safety inspector, operations, with the Federal Aviation  
2 Administration located in Hillsboro, Oregon. He was the  
3 investigator first on this case as a result of a hotline complaint  
4 apparently filed, it turns out, by a Mr. Patterson, which resulted  
5 in the FAA through Mr. Long conducting an investigation and the  
6 circumstances that brings us here for this case.

7           Mr. Long stated he spoke with the Respondent by phone.  
8 He asked if the Respondent was a pilot-in-command, and admitted  
9 that Respondent was in fact the pilot-in-command. As to the  
10 operation itself, during the conversation, according to Mr. Long,  
11 the Respondent indicated he had operated at least 500 feet and  
12 circling in a high recon before doing anything else; and that he,  
13 Respondent, never flew over the jetboat, which it turned out was  
14 to be filmed for a commercial endeavor, that is, to promote,  
15 entice people to take excursion or tours on a jetboat through the  
16 gorge area.

17           As to being able to autorotate in the event of an engine  
18 failure, Respondent stated that he was able to do so safely and  
19 that he could autorotate to a sand bar. Mr. Long indicated,  
20 however, in his view of the Hellgate area from the Hellgate Bridge  
21 up to Mr. Patterson's house, which is the section in front of me  
22 of this entire river, that Mr. Long was not able to identify or  
23 locate any sand bar that would be suitable for a landing.

24           On one of the photographs, as referred to by one of the  
25 Respondent's witnesses, Mr. Friskel, it does appear that there is

1 a mark that could be a sand bar, but there is really no other  
2 identification as to the composition or what other topography. It  
3 appears there are at least slits in the bar with bushes growing  
4 out of at least one end of it. So problematic as to the landing  
5 area as it appears in that exhibit, which, for the record, Exhibit  
6 10.

7           Mr. Long testified with reference to the Height-Velocity  
8 Diagram, which also appears as part of the exhibits offered by the  
9 Complainant. Mr. Long indicated that it is not a prohibit area  
10 and the Board has ruled that it is not an area which in and of  
11 itself substantiates any type of violation. It is cautionary.  
12 However, it is a factor that the Board takes into consideration in  
13 evaluating whether or not a safe emergency landing can be made  
14 without undue hazard to persons or property on the surface. It is  
15 not dispositive, but it is a consideration.

16           According to Mr. Long, the hatch marked area on the HV  
17 Diagram indicates what is potentially an unsafe area depending on  
18 density altitude, whether you have a level surface, whether you  
19 have standard atmospheric conditions. On his testimony, it can,  
20 of course, as a result of not having standard conditions, affect  
21 the Height-Velocity Diagram; that is, the higher density altitude,  
22 operating at a higher altitude, not having standard pressure, the  
23 crosshatch area of caution becomes enlarged.

24           Mr. Long testifies with respect to Exhibit C-17  
25 indicating that he took the statements of Mr. Patterson as to

1 Mr. Patterson's observations of the altitude and airspeeds of the  
2 aircraft in question and that he, Mr. Long, plotted those on the  
3 chart and concluded that the operation was, in fact, conducted by  
4 the Respondent within the crosshatch areas of the Height-Velocity  
5 Diagram. Similar testimony was offered by Mr. Long based upon his  
6 consideration of statements made by three other witnesses --  
7 Miller, Mr. McCumber, I believe, was one of the names -- but, in  
8 any event, plotting all of those, these are Exhibits 17 through  
9 C-21. And in each instance, according to Mr. Long, the aircraft  
10 was operating within the caution area, that is, the crosshatch  
11 areas on the Height-Velocity Diagram.

12           It was Mr. Long's conclusion that upon consideration of  
13 his investigation, statements, that the Respondent in fact had  
14 operated in regulatory violation of the provisions of Section  
15 91.119 and 91.13 of the Federal Aviation Regulations.

16           With respect to Exhibit C-5, Mr. Long testified that  
17 from his observations of the photograph, that it appeared that the  
18 aircraft, the rotorcraft, was being operated at about 40 to 50  
19 feet above the surface of the river either in a slow flight or  
20 hovering, and expressed in his opinion if the aircraft had  
21 sustained a loss of power that a safe emergency landing or  
22 autorotation could not be made, as the aircraft was over the  
23 water, was inside the crosshatch area of the Height-Velocity  
24 Diagram, and the terrain rounding on the edges of the river, on  
25 the river banks, would show that it would slope up, that -- and it

1 is rocky with large rocks in the water, also -- that a safe  
2 landing could not have been accomplished.

3 His opinion, that it was a hazard to the vessels in the  
4 area, and there are both the powerboat, the tour boat, which  
5 appears to have come downriver from where the helicopter is, and  
6 there is at least two kayaks or rafts also in the vicinity. It  
7 was Mr. Long's opinion that based upon that, that the operation  
8 conducted was in fact a hazard to the vessels and persons in that  
9 immediate area.

10 Reference to Exhibit C-6, which is another photograph,  
11 Mr. Long opined that the aircraft appeared to be no more than 40  
12 to 50 feet above the surface of the river, appeared to be moving  
13 laterally, very slowly, and again would be operating within the  
14 crosshatched area of the velocity diagram, and that no safe  
15 landing could be made. There is a gravel area off behind the  
16 helicopter, but again, there is no definitive statement as to the  
17 composition of the topography other than Mr. Long stating, and it  
18 was not contradicted, that it was a gravel area and very sloped.  
19 And that behind the slope it goes almost to vertical.  
20 Mr. Patterson also goes on in his testimony, which I will review,  
21 and will refer to that area.

22 Without belaboring it, Mr. Long also testified with  
23 respect to Exhibits C-7, C-8 and C-9 and essentially gave all the  
24 same answers indicating heights varying from 25 to 30 feet,  
25 operations being within the caution area of the Height-Velocity

1 Diagram, and that if there were a loss of power that the aircraft  
2 probably would end up in the river, in the water. And  
3 particularly with respect to C-8, it was highly unlikely that a  
4 safe autorotation could be made into the water because of the  
5 current and in his observation there was rocks under the water,  
6 there was a bottom and it was not known how deep -- and nobody  
7 testified how deep sections of this river where the operation took  
8 place is -- and that the aircraft, if it was deep water, could  
9 sink, roll over on its side and be taken down by the current.

10 On cross-examination, he conceded that he had never  
11 flown an over-the-river route. And with respect to the crosshatch  
12 area of the Height-Velocity Diagram, that it is not impossible to  
13 do an autorotation if an aircraft is being operated within that  
14 section of the HV Diagram.

15 Mr. Judge was also called by the FAA. He is also an  
16 aviation safety operations inspector, has an impressive  
17 background; indicated that he has at least 4,000 hours in the  
18 Model D and E type helicopter at issue in this case, and over 5700  
19 hours of flight time in series E and D. He indicated he has also  
20 done autorotations in the Model D and E and has done, in fact, one  
21 emergency autorotation.

22 With respect to the HV Diagram, which is Exhibit C-15 in  
23 the exhibits, Mr. Judge testified that it was not exclusively used  
24 for purposes of computation for takeoffs, but if the aircraft is  
25 operated at higher power settings or in a hover, which is

1 essentially a vertical takeoff, if there is a loss of a rotor  
2 speed, one must use this as a diagram. And I would agree with  
3 that, that it is not simply for takeoff. If one is doing a hover,  
4 it is essentially a vertical takeoff so consideration needs to be  
5 given to the HV Diagram in that type of instance.

6           Mr. Judge also indicated that if an aircraft is hovering  
7 25 feet off the surface and at a high RPM, you get a rapid decay  
8 with a loss of thrust and it would all have a deleterious effect  
9 on the ability to execute a safe autorotation. Also, that  
10 hovering at 25 feet or up to 30 feet over a river, that a  
11 successful autorotation is not contemplated as being successful if  
12 one goes into the water with the aircraft.

13           With respect to Exhibit C-5, looking at the photograph,  
14 his opinion was the aircraft would not be able to operate without  
15 a violation of Section 91.119(a), and that the aircraft is  
16 hovering and the effect of the loss of rotation would be landing  
17 in the water. And if it was, in fact, a loss of the tail rotor,  
18 the aircraft, because of gyroscopic forces, would be spinning when  
19 it hit the water and therefore the hazard of disintegration of the  
20 aircraft itself, not just the rotor blades and the tail rotor  
21 blade also, one could not assure what would happen. There would  
22 be a definite increased hazard because of the spin with the debris  
23 thrown from the aircraft, and with the boat and kayaks in the area  
24 it would be an undue hazard to persons or property on the surface.

25           He expressed no opinion with respect to Exhibit C-6.

1   However, with respect to Exhibit C-7, in his opinion the aircraft  
2   was within the crosshatch area of the Height-Velocity Diagram, and  
3   indicated to him from the photograph that the aircraft was at a  
4   hover at about 40 feet, maybe moving at most 10 or 15 miles an  
5   hour, and that if there was a loss of power the aircraft would  
6   probably end up rotating into the river itself. It is the same as  
7   testimony with respect to C-10.

8           On cross-examination, he indicated his opinion was in  
9   fact simply based on photos, the testimony from Mr. Patterson, and  
10   discussions he had with the aviation inspector, Mr. Long,  
11   indicating, however, that he has done filming activities with  
12   rotorcraft, has done bird count missions and fire missions.

13           Mrs. Filer was an employee with the Bureau of Land  
14   Management. She is in law enforcement support. She and her  
15   husband were off duty that day and apparently driving over the  
16   Hellgate Bridge. On her testimony, she has a camera with her.  
17   Even when she's off duty she pays attention to observe whether  
18   there are any untoward events taking place on the river and that  
19   on this occasion she came over the bridge, pulled into the kiosk  
20   or graveled area, and she did observe the aircraft being operated  
21   by the Respondent. And she took the photograph that was received  
22   as Exhibit C-11.

23           According to her testimony she observed the aircraft  
24   operated by Respondent to be flying low over the river and  
25   therefore she stopped to watch. She said the aircraft was

1 operating very slowly, was in fact hovering and was about 25 feet  
2 over the water, with a person filming in the aircraft in addition  
3 to the pilot.

4 She stated, to her observation, the aircraft appeared to  
5 be following a raft that had two people paddling, that the  
6 aircraft flew up over the bridge and then descended on the other  
7 side and continued down the river. She indicated that the area  
8 from which she was making her observations was 70 to 75 feet over  
9 the water giving exactly, according to a Google search, 73 feet to  
10 the water surface and stated, uncontradictedly, from her  
11 observation she was looking down on the aircraft; of course,  
12 meaning the aircraft was below 73 feet. And there was no cross-  
13 examination.

14 Mr. Patterson lives in a residence alongside the river.  
15 He sponsored exhibits beginning with C-2, which shows photographs  
16 taken of the Rocky Riffle taken from a porch on his house that  
17 faces the river, going through C-3. C-4, again, a picture taken  
18 from his porch area.

19 With respect to distances from his porch, he stated that  
20 his porch edge is about 200 feet from the river edge, and that the  
21 terrain itself slopes down with gravel in that area with reef  
22 rocks into the river itself, with the center of the river being  
23 about 350 feet from the edge of his porch and the far bank of the  
24 river being about 450 to 500 feet. He stated that along the edge  
25 of the river, there are willows, small beach area of sand, and

1 that the terrain then slopes up very sharply with a very narrow  
2 area of sand.

3 He apparently heard the noise of the tour boat itself  
4 and the helicopter coming down towards his residence. According  
5 to his testimony, he observed the aircraft to be offset from the  
6 boat by about 75 to 100 feet. He could tell it was offside, you  
7 know, to one side of the boat. He gave that estimation. He also  
8 testified that he observed that the boat itself had stopped in  
9 what he described as a pool area above the area where the  
10 helicopter ended up. Helicopter apparently proceeded downstream  
11 from the pool area, and then made a turn to face in the direction  
12 of the boat that was awaiting in the pool area. And then this was  
13 directly in front of his house, according to his testimony.

14 The aircraft stopped and the aircraft was in fact  
15 hovering. He saw two people in the aircraft, one which had a  
16 camera. The aircraft, according to Mr. Patterson, was hovering at  
17 about 25 feet over the surface of the water. While the aircraft  
18 was hovering, the boat then departed from the pool area, proceeded  
19 down towards the aircraft, which was facing the direction from  
20 which the boat was coming, and that the aircraft, as the boat  
21 approached, lifted and the boat went directly under the aircraft,  
22 after which the aircraft turned 180 degrees and followed the boat  
23 downstream towards what would be indicated as the Lower Rocky  
24 Riffle.

25 About an hour to an hour and a half later, Mr. Patterson

1 indicated he observed the aircraft to come back up the river. He  
2 took the photographs that are received as C-5 and C-6, stated that  
3 he observed the aircraft to be operating alongside the jetboat at  
4 about 20 miles an hour. And in the photograph C-6, he indicates  
5 that the photo is with the aircraft more towards his house and was  
6 not directly over the boat but is to one side, the distance that  
7 he had already testified.

8           With respect to other objects or wildlife in the area,  
9 he indicated based upon his having lived in this area and also  
10 acted as a river guide for, you know, 20 years in this area, he's  
11 aware of the fact that there are large birds nesting in the area,  
12 ospreys, herons, apparently even eagles are to be expected to be  
13 found in that area. On cross-examination, however, he concedes he  
14 did not observe any ospreys or herons on the day in question to be  
15 close to the aircraft in question.

16           However, with respect to the photography and a sense,  
17 which I think is significant, he testified and it is not  
18 contradicted, that the area behind the boat that appears in the  
19 foreground of C-6, which is a white area with a little bit of  
20 green vegetation in the middle, is a rocky area. It is not flat  
21 but in fact it is sloped upward at 15- to 20-degree upslope, and  
22 at the top of that there is a little brown area of sand. However,  
23 according to his uncontradicted testimony, that sandy area also  
24 slopes up at about 5 to 10 degrees, and that there are willow  
25 trees which do appear in the photograph to border to the left side

1 of the white area and along the top of the sandy area and a little  
2 bit larger -- I take it to be similar willow trees. right directly  
3 behind the lower willow trees -- and then, of course, the much  
4 larger trees behind that. As to the left side of the white area,  
5 that slopes down from the view in the photograph into willow trees  
6 or bushes and directly into the water. There is no real  
7 embankment there.

8           Mr. Daily testified that he was a passenger on the boat,  
9 on the left side of the boat. He indicates that he saw the  
10 aircraft off to the side and to the front. It was waiting for  
11 him, and indicating that the aircraft at its closest approach was  
12 approximately 100 feet away from the boat. He testified that he  
13 observed the aircraft to hover as we came out of the Hellgate  
14 Canyon, as he described the area, with the aircraft hovering on  
15 the left side. Testified it was a large rock which they had to  
16 come around.

17           He testified that the helicopter was operating close  
18 enough to the boat in which he was seated, on the side away from  
19 him where the helicopter was located, that he could actually feel  
20 the downdraft from the rotorcraft, and then he in fact made a  
21 statement to one of his passengers quoting, "Holy cow, it,"  
22 meaning the aircraft, "is pretty close."

23           On cross-examination he stated that he did recall seeing  
24 herons flying in the area. However, that he did concede there  
25 were communications between the aircraft, and apparently the boat

1 operator had a headset on and there was someone else also with a  
2 radio. That is the testimony of the Complainant's case.

3 Turning to the Respondent's case, Mr. Craig Morrison,  
4 Respondent, testified on his own behalf. He indicated that he has  
5 about 5,000 plus hours in this type of aircraft and that he has  
6 flown both E and D models, both 500 and 600 series. He has flown,  
7 by his testimony, flown over this area dozens of times and filming  
8 missions all over Oregon and California, some at low altitudes and  
9 some at high altitudes, and was in fact operating the aircraft  
10 June 30, 2010.

11 With respect to Exhibit C-6, Respondent testified that  
12 as far as making any type of landing, that there was areas off to  
13 the side which were not viewed in the photograph Exhibit C-5  
14 itself.

15 With reference to C-6, he indicated that if he had  
16 experienced a power loss that he could autorotate to an area in  
17 between the sand and the water; however, again, there is no  
18 indication from him as to what the topography of that area is.  
19 The only uncontradicted testimony of Mr. Patterson is this is a  
20 sloping area of 15 to 20 degrees and the sandy area of 5 to 10  
21 degrees. Meaning the helicopter would be landing at a tilt if it  
22 lands at all, which, again, with that testimony and not indicating  
23 how he would take into consideration the topography, testimony as  
24 to a safe autorotation without undue hazard is problematical.

25 With respect to the HV Diagram, Respondent testified in

1 his opinion it applies only for purposes of takeoff. However, I  
2 have already discussed my view of that, and I do accept it as more  
3 credible that hovering is essentially a vertical takeoff and that  
4 the aircraft must take into account cautions for operations within  
5 that crosshatch area.

6 With respect to C-7, Respondent indicated that he  
7 couldn't say at what altitude he was operating at that time, and  
8 that if he had autorotated to an area that it was not within the  
9 photograph.

10 I will simply comment here that with respect to  
11 Respondent's testimony as to where he would be able to autorotate  
12 to a safe landing other than in the river itself, his testimony  
13 was it was always some area that was not depicted in any of the  
14 photographs. He brought in no other evidence to establish where  
15 these areas were or how far away they would have been from where  
16 the aircraft was, in fact, depicted in the exhibits. So I take  
17 that testimony as being not entitled to substantial weight.

18 And to underline that, Respondent testified with respect  
19 to Exhibit C-8 that, while he wasn't in a hover, he was at an  
20 altitude of about 40 to 50 feet and that he had somewhere -- that  
21 was his word that he used -- somewhere outside the parameters of  
22 the exhibit that he could autorotate to. Again, that is not  
23 definitive testimony.

24 With respect to Exhibit C-10, he states that he was  
25 moving across the river from side to side and that he -- well,

1 that he probably had an area in front of him to which he could  
2 autorotate. Again, has nothing definitive from the Respondent as  
3 to any area, either in the photographs or on his testimony,  
4 defining exactly where he would autorotate in the event of an  
5 engine failure.

6           Lastly, he expressed his opinion that at no time during  
7 the course of his operation did he constitute a hazard to persons  
8 or property on the surface in the event of an engine failure or  
9 that he operated in a careless or reckless manner during the  
10 course of that entire operation.

11           On cross-examination, reference was made to prior  
12 deposition testimony which, one of the testimony without  
13 belaboring it, did appear to me to impeach him, since his  
14 testimony on the stand today, with respect to Exhibit C-7, is not  
15 consistent with the testimony that he gave with the deposition.

16           Mr. Miller was called to testify. He was a passenger in  
17 the boat. He testified that the rotorcraft had never flown  
18 directly over the boat. He was completely vague on any lateral  
19 distances, in fact, indicating he would not be able to estimate  
20 lateral distances that the rotorcraft had been operating from the  
21 boat.

22           Mr. Mark Friskel was received as an expert to testify in  
23 this trial. He has an airline transport pilot's certificate with  
24 rotor designation. He is a private pilot single engine land. He  
25 is a certificated flight instructor for rotor and instrument. He

1 has 14,000 plus hours, and has operated 28 different types of  
2 rotorcraft.

3 His testimony is based upon his review of the  
4 deposition, listening in the courtroom today as to the testimony.  
5 And looking at Exhibit C-5 he estimated that the aircraft was  
6 operating at about 35 feet or a bit higher, but within the  
7 crosshatch area on the Height-Velocity Diagram. In his opinion  
8 that the operation did not constitute a hazard to a person on the  
9 ground but that possibly it would have been a hazard to the  
10 Respondent himself because of where he would need to autorotate.

11 Mr. Friskel testified in his opinion the Height-Velocity  
12 Diagram is restricted to takeoff through a clear area, however  
13 that it could be applied to other circumstances, that is, other  
14 circumstances of flight operations. So that while it is a Height-  
15 Velocity Diagram, which is a reference and is shown in the  
16 exhibits to takeoff, it can be correlated to operations in other  
17 circumstances as a caution that it is something that the pilot  
18 should take into consideration.

19 With respect to other exhibits, his testimony was to  
20 altitudes of operations of 30 to 40 feet. C-7 is, in his opinion,  
21 an altitude of about 20 feet, which he indicated was a guess, slow  
22 hover with at best maybe 10 to 18 knots of possible wind. As to  
23 airspeeds, an altitude that he couldn't tell other than possibly  
24 30 feet, airspeed he could not tell. C-9, estimated the altitude  
25 of about 20 feet with a slow airspeed. C-10, he indicated in his

1 opinion the aircraft was about 1500 feet and within the Height-  
2 Velocity Diagram. However, in his opinion as he expressed it, at  
3 no time did the operation as he viewed it and gleaned it from the  
4 testimony in depositions was operated by the Respondent in  
5 violation of any applicable provisions of Sections 91.119 and  
6 91.13 of the Federal Aviation Regulations.

7           Mr. Shawn Adams also testified on behalf of the  
8 Respondent. He was in the aircraft in the back seat and  
9 apparently the one that was there as the photographer. According  
10 to his testimony the closest to the boat was, in the Hellgate  
11 area, was no closer than 100 feet. So Mr. Adams places and  
12 confirms some of the testimony of the Complainant as to the  
13 distance of 100 feet. And that is the distance from Hellgate area  
14 to the Galice store and from the Galice Store up to  
15 Mr. Patterson's house. Again, Mr. Adams indicated the closest  
16 would be 100 feet between the rotorcraft and the boat.

17           As to any rafters or kayakers that were in the water,  
18 that they came along the way, in his opinion they took evasive  
19 action to avoid those objects. Mr. Adams did indicate on cross-  
20 examination that, in fact, he holds a pilot certificate,  
21 helicopter, and has about 350 hours.

22           Mr. Rice was the final expert witness called by  
23 Respondent. He holds a commercial rotorcraft single engine multi-  
24 engine land instrument rating, has 11,000 hours and in excess of,  
25 I think it is 2,000 hours in the MD500, 600 series. And I --

1 forgive my scribbling -- it is either 2000 or 200. In any event,  
2 that is a significant number of hours. He is familiar on his  
3 testimony with the area as depicted in Joint Exhibit 1, which  
4 includes the section of the river we are concerned about here from  
5 the Hellgate Bridge up through Mr. Patterson's residence.

6 He indicated that he based his testimony on the review  
7 of the investigative report compiled by the Federal Aviation  
8 Administration, all of the depositions that were taken within the  
9 last 2 weeks and as late as this last Friday, and that he  
10 recognizes the area in C-6. He indicates there is a large rocky  
11 area off to the backside as it appears in the photograph. The  
12 aircraft on his estimation appears to be about 75 feet, and he did  
13 not know what airspeed the aircraft could have been operating.

14 With respect to C-9, he indicates that the aircraft is  
15 at least 75 feet with an open area behind him that he would be  
16 able to autorotate into. However, again, there is no indication  
17 what the composition of that open area is. There is an open area  
18 beyond the line of trees along the river bank, but, again, there  
19 is no testimony to describe the area itself.

20 With respect to C-6, he indicates that the aircraft is  
21 possibly operating within the hashed area of the Height-Velocity  
22 Diagram. However, on his testimony, it is that the Height-  
23 Velocity Diagram applies only to takeoff and in no way applies to  
24 any other type of flight regimes. This, of course, is  
25 contradictory to the testimony of the Respondent's other expert,

1 Mr. Friskel, who testified that the Height-Velocity Diagram could  
2 be applied to other flight regimes and circumstance and, of  
3 course, the testimony of Complainant's witnesses. I take that  
4 into account in evaluating the testimony.

5           Lastly, Mr. Rice opined that in his opinion, based upon  
6 the information that he reviewed, that the Respondent never  
7 operated the regulatory violation of the operative provisions of  
8 Section 91.119 or 91.13 of the Federal Aviation Regulations.

9           That, gentlemen, is my understanding of the pertinent  
10 evidence offered in this case. The burden of proof, of course,  
11 indicates, rests always with the Complainant who must sustain that  
12 by a preponderance of the reliable and probative evidence.

13           In this instance I also must make credibility  
14 determinations and I have made them in my observation of the  
15 demeanor of the witnesses, taking into account the testimony given  
16 by the witnesses as to their experience and to the experience as  
17 shown in the curriculum vitae that were offered with respect to  
18 the various witnesses who have testified as experts in this case.

19           Based upon that I would attach or indicate more weight  
20 to the testimony offered by the Complainant's witnesses, Mr. Long  
21 and Mr. Judge. As I indicated, I did find a contradiction between  
22 the Respondent's two expert witnesses with respect to the Height-  
23 Velocity Diagram, although they did agree that there were no  
24 regulatory violations. However, I do take that into account in  
25 assessing the weight of their testimony.

1           The Height-Velocity Diagram is not dispositive in this  
2 case, however it is a factor that the Board has in its decisions  
3 taken into account. And on the evidence in front of me it is a  
4 factor to be taken into consideration in this case. There was no  
5 testimony as to whether this aircraft was operating in standard  
6 conditions. And, of course, the Board has also indicated in  
7 Administrator v. Reynolds, while the burden of proof is on the  
8 Administrator to show that a landing engine out presents an undue  
9 hazard, that is defined as an unreasonable risk.

10           The Board went on in amplifying its prior decision in  
11 the Administrator v. Michelson case, that an unreasonable risk is  
12 a risk that a reasonable and prudent pilot would recognize and  
13 avoid. And to assessing whether the risk is reasonable or  
14 unreasonable, you take into consideration weather conditions, the  
15 topography of the area, the space, whether it is confined such as  
16 within river banks, the presence of people or other objects that  
17 might be in the area of the flight operations itself.

18           With respect to Mr. Patterson's testimony, which was  
19 really not contradicted, the aircraft was essentially hovering  
20 directly across from him as he was standing on the porch. And on  
21 the testimony of the Respondent's expert, really in all of these  
22 instances, the only autorotation that they really testified to in  
23 the majority of instances would be an autorotation into the river  
24 itself. But, again, there is no testimony other than that given  
25 on the part of the Complainant that this river has a current in

1 it. Mr. Patterson also testified that it is rocky. And we have  
2 an upper and lower Rocky Riffle, and one can see the rapids, the  
3 water foaming in the area.

4 Again, with respect to particularly C-6, Mr. Patterson's  
5 testimony is that the white area is a rocky area. It is a sloped  
6 area. The sandy area which has bushes or willow trees, small  
7 ones, growing into it is also a sloped area and there are trees,  
8 willow trees surrounding it. Off to the side, that was pointed  
9 out by one of the Respondent's experts as an area of autorotation,  
10 is an area of trees with a slope into the river.

11 There was also testimony on the Complainant's part which  
12 was not contradicted that the river includes channels with rocks,  
13 so that it is not a wide open space without obstructions in it.  
14 And, again, there is no indication at any of these instances what  
15 type of topography is under the river's surface. Is the aircraft  
16 coming down into deep water? Is it coming down into sandy bottom,  
17 soft, so that the aircraft is going to rollover or be carried away  
18 by the current? None of that was explained on behalf of the  
19 Respondent.

20 Testimony which stands in front of me is that this  
21 aircraft was being operated at low altitudes, 45, 50 feet.  
22 Ms. Filer testified she was looking down on from it her point of  
23 73 feet up, with paddlers in the area in which the helicopter was  
24 operating. From the testimony of Mr. Daily and the testimony  
25 received, it appears that this rotorcraft was being operated at

1 least within 100 feet of the boat.

2 In my view, therefore, on the weight of the probative  
3 and reliable evidence by a preponderance, it does establish to my  
4 satisfaction and in concert with the Board precedent, such as  
5 Administrator v. Michelson, 3 NTSB 3111, 1980 case; Administrator  
6 v. Reynolds, 4 NTSB 240, a 1982 case, that the Respondent's  
7 operation of the aircraft in the area, taking into account there  
8 is no indication as to standard conditions -- we have a rugged  
9 terrain, there's rocks, we don't know what's under the water  
10 surface, water rotation into the water itself, unknown bottom  
11 conditions, unknown rocks under the water, yes or no, being within  
12 100 feet, and we don't know which direction the helicopter could  
13 lose its power, whether it is going to come straight down or veer  
14 towards the boat or away from the boat -- in my view there has  
15 been no really acceptable objective evidence offered by the  
16 Respondent as to suitable autorotation areas other than into the  
17 river itself.

18 Contrasted to the testimony offered by the Complainant's  
19 witnesses, particularly with respect to Exhibit C-5 and the white  
20 area, sloped area, that there is no suitable water autorotation  
21 area, whereas if the helicopter had, in fact, experienced an  
22 engine loss, that the operation could have been conducted without  
23 hazard to persons or property on the surface, that is, persons in  
24 the boat or paddlers and kayakers that were in the water; and, of  
25 course, even to Mr. Patterson who was on his deck with the

1 helicopter operating at low altitude directly across from him and  
2 in the area as described by Mr. Patterson with topography.

3 I also find that on the preponderance of the evidence in  
4 front me that the Respondent could not have executed an emergency  
5 landing without undue hazard to persons or property on the  
6 surface. And an undue hazard is a hazard which a reasonable,  
7 prudent pilot I think would have recognized. And on his  
8 testimony, knowing this area and flying through this area, without  
9 any definitive explanation as to where he was going to autorotate  
10 to, all areas being somewhere off to the side, in his testimony,  
11 as I indicated, quoting, somewhere possibly; taking into account  
12 the topography, the fact that it is confined between river banks,  
13 that there was a boatload of people, there were kayakers, he was  
14 operating at least one time directly opposite Mr. Patterson who  
15 was on his deck, that he should have, as a reasonable and prudent  
16 pilot, recognized that operations at the altitudes he was at would  
17 place him in a position where he was in an area where he would  
18 experience an undue risk or hazard to performing a safe  
19 autorotation without hazard to persons or property on the surface.

20 With respect to the operation in itself, as an entire  
21 operation, Section 91.13(a) prohibits a careless or reckless  
22 operation that would endanger the life or property of others. In  
23 this instance, the complaint seeks reckless. Reckless indicates  
24 an intentional operation. Obviously the operation by the  
25 Respondent on the date in question, he intended to operate the

1 aircraft as it was operated and established through the testimony.  
2 Therefore it is an intentional operation.

3           The operation itself, as I already discussed, based upon  
4 the evidence in front of me by a preponderance of the evidence did  
5 present a hazard to persons or property on the surface, and  
6 therefore I do find the regulation of Section 91.13(a) as charged  
7 in the complaint established on the preponderance of the reliable  
8 probative evidence.

9           Turning to the issue of sanction, by statute, deference  
10 is to be shown to the Administrator's choice of sanction, unless  
11 it is shown that the choice of sanction is arbitrary, capricious,  
12 or not in accordance with precedent. The burden of so showing  
13 rests with the Respondent and has not been met here.

14           Therefore, as required by statute, I must show deference  
15 to the Administrator's choice of sanction, and I do not find that  
16 I can articulate any viable reason to vary from there. Therefore,  
17 having to exercise deference, I will affirm the Administrator's  
18 Order of Suspension, complaint herein, as issued.

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ORDER

IT IS THEREFORE ORDERED that:

1. The Amended Order of Suspension, the complaint herein, is hereby affirmed as issued.

2. The Respondent's commercial pilot certificate be, and the same hereby is, suspended for a period of 120 days.

Entered this 6th day of July, 2011 at Medford, Oregon.

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PATRICK G. GERAGHTY

Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE GERAGHTY: Either party to this decision and order may appeal from the decision and order by filing with the Board within 10 days from the date of this decision, that is, today's date, a notice of appeal. The appealing party must further, within 50 days from this date, file with the Board a brief in support of that appeal.

Those documents must be filed with a Docket Section, Office of Administrative Law Judges, National Transportation Safety Board, Washington, D.C. with copies of each document served upon the opposing party. Parties are specifically cautioned that the Board takes a stringent view of the time limitations appended to appeals, and that the Board may upon its own motion dismiss an

1 appeal for the untimely filing of the notice or supporting brief  
2 by even 1 day or may dismiss on the motion of the opposing party.  
3 Parties are referred to the Board's Rules of Practice and sections  
4 dealing with appeals for further information concerning the issues  
5 that are viewable on appeal to the Board.

6           If no appeal is taken to the Board within the time  
7 provided, the decision and order will become final as provided by  
8 Board Rule. However, on the timely filing of the appeal and  
9 supporting brief or upon decision by the Board on its own to  
10 review the decision order, the decision order will be stayed  
11 during the pendency of the full Board review.

12           ADMINISTRATIVE LAW JUDGE GERAGHTY: Anything on the  
13 record for the Complainant?

14           MR. SHAYNE: Nothing from the Complainant.

15           ADMINISTRATIVE LAW JUDGE GERAGHTY: Respondent?

16           MR. FLAHERTY: Nothing, Your Honor.

17           ADMINISTRATIVE LAW JUDGE GERAGHTY: Being nothing  
18 further for the record, I thank you, gentlemen, for the  
19 presentation, and the proceeding is closed. Thank you.

20           (Whereupon, at 4:33 p.m., the hearing in the above-  
21 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the  
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Craig S. Morrison

DOCKET NUMBER: SE-19067

PLACE: Medford, Oregon

DATE: July 6, 2011

was held according to the record, and that this is the original,  
complete, true and accurate transcript which has been compared to  
the recording accomplished at the hearing.

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Terry Thompson  
Official Reporter