

Flight Restrictions Over Standing Rock: Is The FAA Effectively Taking Sides In Pipeline Dispute?

John Goglia, contributing to Forbes | NOV 27, 2016

Keeping the media from documenting law enforcement actions is not part of the FAA's mission. Nor is it a legal basis for issuing flight restrictions. Although that's exactly what it was caught doing during the violent protests that followed the police shooting of an unarmed black teenager in Ferguson, Missouri. Transcripts on a recorded air traffic control line show that the air traffic control center responsible for issuing the temporary flight restriction – or TFR – knew that the restrictions were requested to keep media out and actively assisted in wording the flight restrictions to keep media out. If you don't believe me, read the transcripts obtained by the Associated Press, and quoted in a recent post by Peter Sachs writing in the [Drone Law Journal](#).

Mr. Sachs, a well-known authority on drone law, raises the question whether the TFR issued over the Standing Rock protests in North Dakota was issued for the same reason as the Ferguson TFR: to prevent journalists, specifically photojournalists using drones, from flying over the protest site and documenting the events. Because of the FAA's flight restrictions, "neither the mainstream media, nor citizen journalists, nor activist hobbyists may fly in that area to document what law enforcement is doing."

According to Rhianna Lakin (a drone photojournalist best known for her [photos](#) of an erupting volcano in Indonesia) who has been in Standing Rock for more than two weeks over the last month, drones have been used to document the North Dakota pipeline's progress, expose "violations by the oil company," document law enforcement and security actions against protesters and expose "environmental atrocities." Ms. Lakin has not been flying the drones herself but has been providing technical assistance to Native American drone journalists. Because of the TFR, journalists have been forced to fly "rogue" in order to capture what many see as excessive use of force against demonstrators – including a video of law enforcement using water hoses in sub-freezing weather against what appear to be peaceful protesters.

As Mr. Sachs points out in his article, the FAA has to follow specific regulations in establishing airspace flight restrictions. In this case, the FAA has to determine that the flight restrictions are necessary "to protect persons and property on the surface or in the air from a hazard associated with an incident on the surface." Here, the flight restrictions are based on "law enforcement operation" and only aircraft "in support of the law enforcement activity under the direction of the North Dakota Tactical Operation Center" and aircraft approved by air traffic control are authorized. In this case, Mr. Sachs argues that the danger to aircraft and persons on the ground has been created by law enforcement – specifically shooting down drones used to record their activities (yes, he provides links to that, too) – and the FAA has laid out "in essence, a 'giant tarp' ...over the site, allowing law enforcement to act with impunity and without any witnesses."

I reached out to the FAA for more specific information on why the TFR was issued, including whether it was issued because of the reports of drones being shot down. I also requested information on whether drone journalists could get permission to fly through the TFR and, if so, how. Lastly, I asked what the FAA was doing to investigate and prosecute the 8 or more

instances of drones being shot down as the agency confirmed to me several months ago that shooting down drones was a felony. The FAA indicated that it would respond tomorrow. I will provide an update when it does.

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(Highlights, footnotes and minor edits may have been added, but only to add analysis & clarification)