

THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE STATE OF CALIFORNIA, by and through XAVIER BECERRA, in his official capacity as Attorney General,

Petitioner,

v.

FEDERAL AVIATION ADMINISTRATION, STEPHEN DICKSON, in his official capacity as Administrator of the Federal Aviation Administration, SAN BERNARDINO INTERNATIONAL AIRPORT AUTHORITY, and HILLWOOD ENTERPRISES, L.P.,

Respondents.

PETITION FOR REVIEW

The State of California, by and through Attorney General Xavier Becerra, hereby petitions this Court to review the Federal Aviation Administration (FAA) Order entered on December 23, 2019, approving the National Environmental Policy Act (NEPA) review of the proposed Eastgate Air Cargo Facility (Project) at the San Bernardino International Airport in San Bernardino, California. This Court has jurisdiction directly to review the FAA Order pursuant to 49 U.S.C. § 46110(a), Section 4370m-6 of NEPA, and the Administrative Procedure Act, 5

U.S.C. §§ 701-706. California submits this petition in accordance with Federal Rule of Appellate Procedure 15(a) and Circuit Rule 15-1.

In October 2018, after reviewing the Project under the California Environmental Quality Act, the San Bernardino International Airport Authority published a Final Environmental Impact Report, finding that the Project would have significant and unavoidable impacts on the environment. The airport authority then reviewed the Project under NEPA, but failed to produce an Environmental Impact Statement required under NEPA for actions that may cause significant impacts on the environment. 42 U.S.C. § 4332(2)(C). California submitted comments to the FAA and the airport authority on November 26, 2019, urging the agencies to conduct further environmental analysis under NEPA and prepare an Environmental Impact Statement, but the agencies declined to do so. On December 20, 2019, the FAA approved the airport authority's Final Environmental Assessment. And on December 23, 2019, the FAA memorialized this approval in a Finding of No Significant Impact and Record of Decision, which together constitute the Order that is the subject of this petition (Exhibit A, attached). One week later, on December 30, 2019, the airport authority held a "Special Meeting" to approve the Project's ground lease agreement with developer Hillwood Enterprises, L.P., who immediately began construction.

California seeks relief from the FAA's unlawful approval of the Project. Attorney General Xavier Becerra is the chief law enforcement officer of the State and is authorized to file actions to protect public rights and interests, including to protect the natural resources of the State from pollution, impairment, or destruction. Cal. Gov. Code §§ 12600-12612. This challenge is brought pursuant to the Attorney General's independent constitutional, common law, and statutory authority to represent the public interest. *See* Cal. Const., art. V, § 13; Cal. Gov. Code §§ 12511, 12600-12. The FAA's approval of the Project without adequate environmental review deprives California of its right to an adequate public review process essential to NEPA. The Project is located in a part of California already burdened with significant air pollution, and its development will directly harm the State's air quality and the health of California's communities. California's interests will thus be adversely and irreparably impacted by the FAA's failure to comply with NEPA, unless the relief requested is granted.

Therefore, California respectfully requests this Court to set aside the FAA's December 23, 2019 Order as arbitrary and capricious, an abuse of discretion, and contrary to law. In addition, California requests this Court to set aside the Final Environmental Assessment approved by the FAA on December 20, 2019—which is the basis for the FAA's unlawful Order—as arbitrary and capricious, an abuse of discretion, and contrary to law. California further requests this Court to vacate the

December 30, 2019 ground lease agreement between San Bernardino International Airport Authority and Hillwood Enterprises, L.P., which is based on the FAA's unlawful Order. Finally, California requests this Court to require the FAA to prepare an Environmental Impact Statement for the Project in accordance with the law.

Respectfully submitted this 20th day of February 2020.

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILING

I hereby certify that on February 20, 2020, pursuant to Federal Appellate Rules 15(c) and 25(c)(1), and Circuit Rule 25-5(f)(2), I electronically filed the **PETITION FOR REVIEW** and **EXHIBIT A** with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit using the Appellate Electronic Filing system, and I caused to be served the foregoing documents by mail or third party commercial carrier for delivery within 3 calendar days to these case participants:

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Executed on February 20, 2020, in Oakland, California.

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