

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE;
SIERRA CLUB; TEAMSTERS LOCAL
1932; SHANA SATERS; MARTHA
ROMERO,

Petitioners,

v.

FEDERAL AVIATION
ADMINISTRATION; STEPHEN M.
DICKSON, in his official capacity as
Administrator of the Federal
Aviation Administration,

Respondents,

EASTGATE BLDG 1, LLC; SAN
BERNARDINO INTERNATIONAL
AIRPORT AUTHORITY,

Intervenors.

No. 20-70272

STATE OF CALIFORNIA, by and
through Rob Bonta,* in his official
capacity as Attorney General,
Petitioner,

No. 20-70464

OPINION

v.

FEDERAL AVIATION
ADMINISTRATION; STEPHEN M.
DICKSON, in his official capacity as
Administrator of the Federal
Aviation Administration; SAN
BERNARDINO INTERNATIONAL
AIRPORT AUTHORITY,
Respondents.

On Petition for Review of an Order of the
Federal Aviation Administration

Argued and Submitted February 1, 2021
San Francisco, California

Filed November 18, 2021

Before: Eugene E. Siler,** Johnnie B. Rawlinson, and
Patrick J. Bumatay, Circuit Judges.

* Under Fed. R. App. P 43(c)(2), Rob Bonta has been substituted for his predecessor, Xavier Becerra, as Attorney General of the State of California.

** The Honorable Eugene E. Siler, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

Opinion by Judge Siler;
Concurrence by Judge Bumatay;
Dissent by Judge Rawlinson

SUMMARY**

Federal Aviation Administration / Environmental Law

The panel denied a petition for review challenging the Federal Aviation Administration (“FAA”)’s Record of Decision, which found no significant environmental impact stemming from the construction and operation of an Amazon air cargo facility at the San Bernardino International Airport (the “Project”).

To comply with their duties under the National Environmental Policy Act (NEPA), the FAA issued an Environmental Assessment (EA) that evaluated the environmental effects of the Project. In evaluating the environmental consequences of the Project, the FAA generally utilized two “study areas” – the General Study Area and the Detailed Study Area. Petitioners are the Center for Community Action and Environmental Justice and others (collectively “CCA”), and the State of California.

In attacking the parameters of the study areas, the CCA asserted that the FAA did not conform its study areas to the FAA’s Order 1050.1F Desk Reference. The panel held that the FAA’s nonadherence to the Desk Reference could not alone serve as the basis for holding that the FAA did not take

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a “hard look” at the environmental consequences of the Project. Instead, the CCA must show that the FAA’s nonadherence to the Desk Reference had some sort of EA significance aside from simply failing to follow certain Desk Reference instructions. The panel held that the CCA had not done so here.

CCA next asserted that the FAA failed in its obligation to sufficiently consider the cumulative impacts of the Project. CCA first argued that the FAA only considered past, present, and reasonably foreseeable projects within the General Study Area and should have expanded its assessment to include an additional 80-plus projects. The panel held that the record showed that the FAA did consider the fact that the 80-plus projects would result in massive average daily trips in the first year of Project operations. The fact that CCA could not identify any specific cumulative impacts that the FAA failed to consider suggested that there were none. CCA additionally argued that the EA did not disclose specific, quantifiable data about the cumulative effects of related projects, and it did not explain why objective data about the projects could not be provided. The panel held that CCA’s belief that the FAA must provide quantifiable data was based on a misreading of this court’s precedent. The panel concluded that there was no reason to find that the FAA conducted a deficient cumulative impact analysis.

California chiefly argued that the FAA needed to create an environmental impact statement (EIS) because a California Environmental Impact Report prepared under the California Environmental Quality Act (CEQA) found that the proposed Project could result in significant impacts on air quality, greenhouse gas, and noise. First, California argued the FAA should have refuted the CEQA findings

regarding air quality impacts. The thresholds discussed in the CEQA analysis that California pointed to are those established by the South Coast Air Quality Management District (SCAQMD). The panel held by the SCAQMD's own assessment, the Project will comply with federal and state air quality standards. Second, California argued that the FAA should have refuted the CEQA findings regarding greenhouse gas impacts. The panel held that California did not refute the EA's rationale for why it found no significant impact of the Project's greenhouse gas emissions on the environment, and did not articulate what environmental impact may result from the Project's emissions standards exceeding the SCAQMD threshold. The panel also rejected California's noise concerns. The panel concluded that California failed to raise a substantial question as to whether the Project may have a significant effect on the environment so as to require the creation of an EIS.

Petitioners alleged certain errors related to the FAA's calculations regarding truck trip emissions generated by the Project. First, the panel held that there was no authority to support petitioners' assertion that the EA had to use the same number of truck trips that the CEQA analysis used, or that the FAA was required to explain the difference. The panel held further that petitioners failed to show arbitrariness or capriciousness in the EA's truck trip calculation method. Second, petitioners provided no reason to believe that the EA did not correctly analyze total truck trips emissions. Finally, the panel rejected petitioners' argument that the record contained an inconsistency concerning the number of daily truck trips calculated by the FAA.

Finally, petitioners asserted that the FAA failed to consider the Project's ability to meet California state air quality and federal ozone standards. First, the CCA argued

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