

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

SPOKANE AIRPORT BOARD, et al.,

Petitioners,

v.

MICHAEL P. HUERTA, Administrator, Federal
Aviation Administration, and FEDERAL AVIATION
ADMINISTRATION,

Respondents.

No. 13-71172
consolidated with
13-71133, 13-71177,
13-71178, 13-71179,
13-71181, 13-71175,
13-71187, 13-71202,
13-71247, 13-71248,
13-71253, 13-71259,
13-71348, 13-71351,
13-71388, 13-71414,
13-71423, 13-71442,
13-71518, and 13-71514.

UNOPPOSED MOTION TO DISMISS

For the reasons set forth below, the Federal Aviation Administration (FAA) and Michael P. Huerta, Administrator, ask this Court to dismiss the above-captioned consolidated petitions for review as moot. The government also asks that the Court suspend the schedule for all filings in this matter (including the government's opposition to petitioners' motion to strike portions of the administrative record, presently due on May 15, 2013) pending disposition of this motion.

1. In early March 2013, FAA announced that it was considering discontinuing federal funding for 189 low-activity contract air traffic control towers as part of the agency's effort to cut its fiscal year 2013 budget by \$637 million. This cut, the agency explained, was required by the Budget Control Act of 2011, 2 U.S.C. §§ 901a,

906(k)(2), as implemented by Presidential order on March 1, 2013. *See* 78 Fed. Reg. 14,633 (Mar. 6, 2013).

On March 22, 2013, the agency announced that it had determined to continue funding for 40 of these towers for the remainder of the fiscal year, but – to reach the necessary budget cuts – would not fund the remaining 149 contract towers. The FAA initially planned to terminate funding in stages, beginning on April 7, 2013, and expected to save \$32 million. FAA subsequently determined that defunding of the 149 contract towers would not take effect until June 15, 2103.

2. Petitioners in the above-captioned cases (principally, affected airport sponsors) brought suit to challenge the FAA’s March 22 decision. On April 15, 2013, the parties filed joint motions for consolidation and expedition, and explained that a decision on the merits was needed by June 15. The parties’ motions were granted, and an expedited briefing schedule was ordered.

The government filed the administrative record on April 24, 2013. The petitioners filed their opening briefs on May 6. The government’s response is currently due on May 20, and the petitioners’ reply is due on May 28.

Petitioners have also filed a motion to strike parts of the administrative record, and the government’s response is due May 15, 2013. In addition, two motions for stays of the March 22 decision have been filed, and the government’s responses are due May 24. The matter has been calendared for oral argument on June 5, 2013.

3. On May 1, 2013, Congress enacted the Reducing Flight Delays Act of 2013, Public Law 113-9. The Act provides the Secretary of Transportation with discretion to transfer up to \$253 million from funds “available for ... as discretionary grants-in-aid for airports pursuant to section 47117(f) of title 49, United States Code” or “any other program or account of the [FAA]” to “appropriations accounts providing for the operations of the [FAA]” to the extent that Secretary determines the transfer “to be necessary to prevent reduced operations and staffing of the [FAA] during fiscal year 2013 to ensure a safe and efficient air transportation system.”

4. On May 10, 2013, the Secretary of Transportation announced that he had determined that the new legislation will allow the FAA to transfer sufficient funds to continue funding the 149 contract towers, and the towers will thus remain funded for the remainder of the fiscal year 2013. Attachment A (Department of Transportation Press Release, May 10).

5. In light of this development, the petitions for review of the March 22 defunding decision are moot and should therefore be dismissed. *See, e.g., Grand Canyon Trust v. U.S. Bureau of Reclamation*, 691 F.3d 1008, 1016-17 (9th Cir. 2012) (explaining that “[t]he doctrine of mootness ... requires that an actual, ongoing controversy exist at all stages of federal court proceedings” and that “[a] claim is moot if it has lost its character as a present, live controversy,” and holding, where an agency opinion was superseded by a later agency opinion, that challenges to the earlier opinion were rendered moot) (internal citations omitted).

The consolidated petitions for review asked this Court to vacate the March 22 decision, because the petitioners challenged the agency's decisionmaking and sought to avoid the planned termination of fiscal year 2013 funding for the 149 contract towers. In light of the Reducing Flight Delays Act of 2013 and Secretary's May 10 determination, however, the March 22 decision no longer has force, and the air traffic control contracts at issue will no longer be slated to be terminated. Accordingly, on May 13, in a letter to counsel for petitioner AAAE/USCTA, FAA stated that "[i]n light of the congressional direction and the DOT/FAA's ... May 10 decision, ... the FAA's prior decisions regarding the defunding of the 149 contract towers are rescinded and vacated." Attachment B (FAA Letter of May 13). The petitions for review are therefore moot and should be dismissed.

6. Pursuant to Circuit Rule 27-11, briefing is suspended pending the Court's disposition of a motion to dismiss. We respectfully ask that the Court also suspend the deadlines for all filings in this matter (including the government's opposition to petitioners' motion to strike portions of the administrative record, presently due on May 15) pending disposition of this motion.

7. Counsel for all of the petitioners and intervenors have been notified of this motion and the representations of the respondents herein. Counsel for all of the

petitioners and intervenors have authorized us to state that they do not oppose this motion.¹

Respectfully submitted,

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s/ Abby C. Wright

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MAY 2013

¹ Counsel for the petitioners have asked us to make express that the statements in the respondents' motion are those of the respondents only and that they have authorized us to state only that they do not oppose the motion; we do so here.

CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2013, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

s/ Abby C. Wright

Abby C. Wright
Counsel for Respondents