

I-630 Widening/National Environmental Policy Act: Plaintiffs File Motion for Summary Judgment in U.S. District Court Alleging Violations



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Several individuals (collectively “Plaintiffs”) filed a May 26th Motion for Summary Judgment (“Motion”) along with a supporting Brief in the United States District Court for the Eastern District of Arkansas (“District Court”) alleging that the widening of Interstate Highway 630 in Pulaski County, Arkansas, was being undertaken by the United States Department of Transportation (along with the Federal Highway Administration [“FHWA”] and Arkansas Department of Transportation [“Arkansas DOT”]) without complying with applicable National Environmental Policy Act (“NEPA”) requirements.

The United States Court of Appeals for the Eighth Circuit previously upheld a District Court decision that denied a request for a temporary restraining order for alleged violations of NEPA. See *George Wise, et al. v. Department of Transportation, United States, et al.*, No. 18-3016.

The Plaintiffs’ May 26th Motion alleges that based on the Administrative Record that the Defendant agencies violated NEPA because it was inappropriate to utilize a categorical exclusion in lieu of an Environmental Assessment (“EA”) for the I-630 project. Further, Plaintiffs state in their Motion that they anticipate the Defendant agencies will argue that the action is moot because the project:

... has, for all practical purposes, been completed and is in use.

They argue that the issue “is still alive in this case” because, based on a review of the Administrative Record, the Defendant agencies did not “conduct even a perfunctory review of the potential environmental issues necessary to making the determination to use a categorical exclusion.” The District Court is asked to permanently enjoin Defendant agencies from future use of categorical exclusions for highway projects undertaken with federal funds in the State of Arkansas without:

... first having conducted collection and analysis of data and information necessary to determine whether the proposed project will affect the human environment, and that such data, assessments and information be included in the administrative record for such project.

NEPA requires federal agencies to include environmental values and issues in their decision-making processes. This federal mandate is accomplished by agency consideration of environmental impacts of proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a major federal action that will significantly affect the environment.

NEPA differs from action forcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of EA or EIS in certain defined instances. As a result, NEPA does not require that a certain alternative be met or a particular standard be attained.

Neither an EA or an EIS need be prepared if a particular federal action falls within the scope of a NEPA categorical exclusion. Categorical exclusions are promulgated by federal agencies and are described actions which have been determined to not involve significant environmental impacts.

The Plaintiffs argue that the utilization of a categorical exclusion in the I-630 widening project was not appropriate. The Plaintiffs' Brief discusses the requirements for utilization of categorical exclusions and argues why its use in the project was inappropriate. Further, they argue why the District Court can "fashion a remedy" therefore rendering the action not moot.

A copy of the Motion can be found [here](#) and Brief in Support of the Motion [here](#).