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I-30 Widening - Reconstruction/National Environmental Policy Act: U.S. District Court (E.D. Arkansas) Addresses Cross Motions for Summary Judgment

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United States District Court Judge James M. Moody (“Court”) addressed in a March 31st Order an allegation by Plaintiffs (seven neighborhood associations) that the expansion of I-30 interstate violated the National Environmental Policy Act (“NEPA”). See *The Little Rock Downtown Neighborhood Association, Inc., et al. v. Federal Highway Administration, et al.*, 2022 WL 990341.

The NEPA lawsuit was filed against the Federal Highway Administration (“FHWA”) and the Arkansas Department of Transportation (“ADOT”) (collectively “Agencies”).

The Plaintiffs allege that the issuance of a Finding of No Significant Impact (“FONSI”) for the expansion was in error. They further argued that the Agencies were required to prepare an Environmental Impact Statement (“EIS”) instead of relying on an Environmental Assessment (“EA”).

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 EIS. However, the requirement to produce this document is only triggered in the event of a major federal action which will significantly affect the quality of the human environment.

As opposed to an EIS, which is a much more detailed document, the EA is supposed to provide sufficient evidence and analysis for determining whether an FONSI or an EIS should be prepared. Neither an EA nor an EIS need be prepared if a particular federal action falls within the scope of a NEPA categorical exclusion. Categorical exclusions are promulgated by the federal agencies and are described actions which have been determined to not involve significant environmental impacts.

NEPA differs from action enforcing 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 an EA or EIS in certain defined instances. As a result, NEPA does not require a certain alternative or meet a particular standard. Nevertheless, the failure of an agency to follow NEPA’s procedural mandates can be a basis for a court to enjoin a federal action.

In addressing the parties' cross motions for summary judgment the Court undertakes an explanation of the I-30 expansion project and notes that it involves:

. . . the redesign, reconstruction, and widening of approximately 7.3 miles of I-30 and I-40 that transect Little Rock and North Little Rock, with Phase One of the construction focusing on a 1.6-mile expanse covering the I-30/I-630 interchange and the I-30/East Broadway Street interchange, including the Arkansas River Bridge.

A process the Agencies are stated to have begun in 2014 is denominated Planning and Environmental Linkages ("PEL"). Subsequent to a number of meetings, a PEL Report was stated to have been created in 2015 following which the Agencies began preparing a NEPA EA.

The NEPA EA, which the Agencies issued in draft in 2018, is stated to have referenced several configurational alternatives – two of which were indicated to have been first recognized in the PEL Report. ADOT is stated to have subsequently proposed what is denominated Action Alternative 2B as the selected alternative citing various reasons.

This preferred alternative was referenced at a public hearing but attendees were stated to have had the ability to view the draft EA, project design plans, and discuss it with ADOT, FHWA, and U.S. Army Corps of Engineers. After receipt of written and public comments, the Agencies determined there was no need to perform additional analysis or use different methodology to evaluate impacts.

ADOT issued a final EA in 2018. In addition, FHWA conducted an independent review and issued a FONSI on February 26, 2019, determining that the preferred alternative would have no significant impact on human or natural environment.

ADOT and the contractor are stated to have subsequently agreed upon a reduced scope for a first phase of the Project because of budgetary constraints. As a result, design changes were undertaken after the issuance of the EA and FONSI. Such changes are described in the Court's Order. Further, FHWA conducted a re-evaluation of the Project to determine whether the FONSI remained valid or whether additional NEPA documentation was required. It subsequently determined that the previous findings remained valid and that no additional or significant impacts would result.

The Court first addressed a motion by the Plaintiffs to compel re-evaluation or a supplemental EA because of an Arkansas Supreme Court decision. *Buonaiuto v. Gibson*, 609 S.W.3d 381 (Ark. 2020) held that Constitutional Amendment 91 did not allow its funds to be used for improvements to six-lane interstate highways. Therefore, ADOT could not use Amendment 91 funds for the I-30 widening.

Plaintiffs argued that this loss of source of funding constituted a significant new circumstance or information relevant to environmental concerns and bearing on the proposed action.

The Court rejected this argument finding that such loss of funding did not obligation the Agencies to perform a re-evaluation. The Court stated in part that it was:

. . . not convinced that the regulations relied on by Plaintiffs, which are directed at environmental impact statements (EIS) apply to EAs.

Further, the funding was stated to have included language that indicated if a shortage occurred during Phase I ADOT would use state funds to supplement the shortfall.

In addressing the cross motions for summary judgment, the Court addressed seven NEPA issues raised by the Plaintiffs which included:

- Was an EIS required?

The Court rejected the Plaintiffs' argument that seven of 10 factors listed in 40 CFR § 1508.27(b) supported a finding that the Project was significant and required an EIS. It detailed each factor and ultimately determined that none of the factors alone or when considered together established that the

Agencies' decision to issue an EA/FONSI was arbitrary and capricious. Cited in support of this conclusion was the EA Appendix which was stated to have contained 18 technical reports which convinced the Court that the Defendants took a "hard look" at each factor.

- Was a supplemental EA required as a result of the redesign of the Project into phases?

The Court rejected this argument stating that it was satisfied FHWA had conducted a re-evaluation as a result of the changes in the immediate scope of the Project once it had been broken into phases and that its conclusion was not arbitrary or capricious.

- Was the scope of the EA sufficient?

Plaintiffs argued that the scope of the EA was too limited and that traffic congestion would be shifted to portions of the interstate system outside the Project area and the document did not analyze such impacts. This was argued to be an improper attempt to "segment" the interstate system to avoid having to conduct an analysis of all affected areas. The Court concluded that the relevant segment contained in the EA had independent utility in that regardless of whether other projects were completed this one standing alone would result in improvements including the correction of the Arkansas River Bridge deficiencies.

- Did the EA address the indirect impact of the Project on minority and low-income residential areas?

The argument was rejected because the Court determined that the EA and re-evaluation considered the impact on the predominantly minority community of expanding I-30 and the I-630 interchange and weighed it against existing dangerous conditions.

- Did the EA adequately address direct and indirect impacts on the River Market, Clinton Presidential Park, Heifer International, North Little Rock Riverfront Park/Argenta Areas and the Rock Region Metro System?

Plaintiffs argued that indirect impacts (i.e., including economic impacts to the downtown venues) were not sufficiently analyzed in the EA. They contended that a more intense examination in the form of an EIS was warranted. The Court rejects the argument stating that the EA acknowledged the loss of on-street parking and the shift of access ramps along with the creation of one-way streets. A technical report is stated to have evaluated the alternatives impacts on regional and community grown and public facilities, services and destination, including locations highlighted by Plaintiffs as well as others. It determined that the FONSI reflected "sound consideration of these issues and a balancing of public concerns for the Project's impacts with the area's need for the planned improvements."

- Was the computer modeling of the traffic analysis for the various alternatives flawed?

The Plaintiffs argued that computer modeling undertaken by the Agencies did not assume additional lanes would be added to the I-30 segment for the no-action alternative. They interpreted this to mean that the resulting computer modeling was manipulated into showing a faster rate of travel for the action alternatives and more congestion for the no-action alternative. The Agencies responded that there were practical reasons for not including the lane additions in the no-action alternative at the time because there was no current plan to add lanes. The Court rejected the argument that the Agencies could not use a re-evaluation to make certain computer modeling revisions. It cites case law which held:

"Where the EA fails to address fully a specific issue but the record makes clear that the agency and public were apprised of the deficiency and that the agency sufficiently considered the matter before making a final decision or permitting actions to be taken, it has fulfilled NEPA's procedural mandate.

- Was the public entitled to opportunity to comment on the design change resulting from the decision to construct the Project in phases?

The Court rejects this argument noting that the re-evaluation report is not a NEPA document. As a result, it held that the Agencies were not required to give the public an opportunity to comment on the design changes reflected in Phase I.

The Court grants summary judgment to the Agencies.

A copy of the Order can be downloaded [here](#).