

National Environmental Policy Act/Sovereign Immunity: Federal Court Addresses Action Challenging Federal Highway Administration Decision



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The United States District Court, D. Utah, Central Division (“Court”) addressed in a May 14th Opinion on an issue regarding the doctrine of sovereign immunity in three consolidated cases involving the National Environmental Protection Act (“NEPA”). See *Salt Lake City Corporation v. Shepherd*, 2024 WL 2158128 (D. Utah, 2024).

The question presented to the court involved whether the federal government waived its claim of sovereign immunity.

The Federal Highway Administration (“FHWA”), in July 2023, acting on behalf of the Utah Department of Transportation (“UDOT”) announced the conclusion of the NEPA Environmental Impact Statement (“EIS”) process for the Little Cottonwood Canyon Project (“the Project”) as well as the availability of the Record of Decision (“ROD”).

The Project is a series of improvements that the United States Department of Transportation (“USDOT”) planned to address traffic concerns in and near Little Cottonwood Canyon. These are stated to include enhanced bus service, tolling, parking changes, and the construction of a gondola to improve access to the Alta and Snowbird ski resorts.

Salt Lake City Corporation, Sandy City Corporation, and Metropolitan Water District of Salt Lake & Sandy, among others filed lawsuits against the FHWA, and UDOT, objecting to various portions of the ROD and EIS.

Gloria Shepherd, in her official capacity as Executive Director of the Federal Highway Administration, Ivan Marrero, in his official capacity as Division Administrator for the Utah Division of FHWA, and FHWA (together “Federal Defendants”) sought to have the lawsuit dismissed. They argued the federal government had not waived sovereign immunity.

The Court stated sovereign immunity “shields the Federal Government and its agencies from suit,” the government’s waiver of sovereign immunity must be “unequivocally expressed,” and that a waiver “will not be implied.”

In reviewing the statutory text, the Court found that the Secretary of Transportation has the authority to assign, in the form of a memorandum of understanding (“MOU”), the responsibilities of the Secretary of

Transportation to a State “with respect to one or more highway projects within the State under the NEPA. It further found that the State “assumes responsibility” and shall be “solely responsible and solely liable” for the responsibilities assumed.

The Secretary of Transportation (through FHWA) and the State of Utah (through UDOT) entered into a memorandum of understanding in 2017, in which FHWA assigned UDOT all the Secretary of Transportation’s responsibilities for compliance with NEPA. The initial MOU had a five-year term and was later renewed for a second five-year term.

The statutory text as well as the MOU were determined to have not expressly waived sovereign immunity for the federal government. Therefore, the Federal Defendants could properly assert immunity. The Court granted the Federal Defendants’ Motion to Dismiss.

This ruling is in line with other courts who have held that the “FHWA does not waive sovereign immunity when it assigns its responsibility for environmental reviews to a state agency under an appropriate MOU.”

Congress allows states to assume responsibility for environmental assessments and requires that when a state assumes such a responsibility, it is “solely responsible and solely liable for carrying out” those reviews.

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