

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

**GEORGE WISE, MATTHEW PEKAR,
UTA MEYER, DAVID MARTINDALE
AND ROBERT WALKER**

PLAINTIFFS

Vs.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION, FEDERAL HIGHWAY
ADMINISTRATION; and ARKANSAS STATE
DEPARTMENT OF TRANSPORTATION**

DEFENDANTS

**PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER**

Come the Plaintiffs, George Wise, Matthew Pekar, Uta Meyer, David Martindale and Robert Walker, by and through their attorneys, Richard H. Mays and Heather Zachery of Williams & Anderson PLC, Little Rock, Arkansas, and for their Motion for Temporary Restraining Order, state:

1. On October 4, 2016, the Defendant Federal Highway Administration (FHWA) issued a document entitled "Tier 3 Categorical Exemption" authorizing the construction of certain significant additions, modifications and expansion more particularly described herein on that portion of Interstate 630 between University Avenue on the east, and the Baptist Medical Center entrance/exit ramps on the west, all in the City of Little Rock, Arkansas. A "Project Location Map" showing the location of the proposed Interstate expansion is attached hereto as **Exhibit No. 1**. A copy of the "Tier 3 Categorical Exemption" issued by the FHWA is attached hereto as **Exhibit No. 2**.

2. The Tier 3 Categorical Exemption was apparently executed pursuant to a Memorandum of Agreement between the FHWA and the Arkansas Department of Transportation (ArDOT) dated November, 2009, providing for the determination by ArDOT of the applicability of categorical exclusions on Federally-funded highway construction projects undertaken in Arkansas. Such Memorandum of Agreement expired in November, 2014 by operation of 23 C.F.R. §771.117(g)(2), and was not effective at the time of the signing of the Tier 3 Categorical Exemption. A copy of the Memorandum of Agreement is attached hereto as **Exhibit No. 3**.

3. On July 18, 2018, the Plaintiffs herein filed suit in the above entitled and numbered cause to have the said Tier 3 Categorical Exclusion declared ineffective as a basis for the decision by the FHWA and ArDOT to perform the additions, modifications and expansion of I-630 by reason of the inapplicability of such categorical exemption to such significant additions, modifications and expansion, and the failure of the Defendants, Federal Highway Administration (FHWA) and Arkansas Department of Transportation (ArDOT) to otherwise comply with the requirements of the National Environmental Policy Act (“NEPA”), 42 USC §4321- 70, and its implementing regulations issued by the White House Council on Environmental Quality (“CEQ”) 40 C.F.R. §§1500-08, including without limitation 40 CFR §1508.4; and the regulations of the Federal Highway Administration at 23 C.F.R. §771.115(b), and 23 C.F.R. §771.117(a), (b) and (c).

4. The FHWA’s Tier 3 Categorical Exclusion is final agency action authorizing the Defendant, ArDOT, to commence construction on the above-described portion of I-630, which will include the following expansions, modifications and additions:

Proposed improvements include eight 12-foot wide paved travel lanes (four in each direction) with 10-foot wide shoulders. A fifth auxiliary lane will be added in several locations between successive entrance and exit ramps. All existing bridges within the project limits (Bridge Numbers A5582/B5582, A5583/B5583, and 5584) will be replaced. A new 14-foot wide bicycle and pedestrian bridge will be installed north of bridge A5582. ... Storage and turning lanes will be added to the westbound I-630 exit ramps at John Barrow and Rodney Parham Road. Traffic signals will be improved at John Barrow and the westbound Interstate 630 ramps, at Rodney Parham Road and Mississippi Street, and at Rodney Parham Road and the eastbound Interstate 630 ramps. The westbound entrance ramp between University Avenue and Hughes Street will be removed.

(Tier 3 Categorical Exclusion, October 4, 2016, p. 1, **Exhibit No. 2** attached hereto)

5. A temporary restraining order is necessary in this case because the ArDOT has announced that in an Information Release that it commenced work on the I-630 Project on Monday, July 16, 2018, and that it will demolish the I-630 overpass over its intersection with Hughes Street on Friday, July 20, 2018, and detour traffic from I-630 to Markham Street and other streets of the City of Little Rock. ArDOT has announced that it will also demolish and replace two other bridges/overpasses on I-630 at its intersections with other Little Rock streets during the course of the Project. The demolition of any of those bridges/overpasses will cause permanent and irrevocable harm and frustrate any meaningful environmental review of the decision of FHWA and ArDOT to perform the project work. A copy of the ArDOT Information Release dated July 13, 2018 attached hereto as **Exhibit No. 4**.

6. The actions of the FHWA and ArDOT in failing to comply with the requirements of NEPA and NEPA and FHWA regulations for preparation of an environmental assessment or environmental impact statement, and in approving the Tier 3 Categorical Exclusion as a basis for determining that the I-630 Project would likely cause no

significant environmental impacts were unreasonable, arbitrary, capricious, an abuse of discretion and not in accordance with law as more fully described in the Brief that accompanies this Motion.

7. The actions of the Defendants as described above, and the continued construction of the I-630 Project will cause immediate, substantial and irreparable harm to the environment and to plaintiffs unless such activities are enjoined and construction of the Project ordered by the Court to be stayed pending determination of this matter on the merits. Plaintiff can show a substantial likelihood of prevailing on the merits on final hearing. The Defendants will suffer no harm by delay pending review of this matter on the merits. The public interest will be served in the issuance of a temporary restraining order and/or preliminary injunction to stop all activity in construction of the Project pending a final hearing in this matter.

8. Pursuant to 28 USC §1657 and 5 USC §705, Plaintiffs request that the Court expedite the consideration of this Motion by scheduling a hearing as soon as possible, and that a hearing on the merits be scheduled as expeditiously as possible thereafter.

9. A Brief in Support of this Motion is submitted simultaneously herewith.

WHEREFORE, Plaintiffs pray:

- A. For a Temporary Restraining Order restraining and enjoining the Defendants, and each of them and their contractors from any activities regarding any additional construction on or implementation of the I-630 Project, or in acting pursuant to the Categorical Exemption issued by the FHWA, pending hearing on the merits of the Complaint.

- B. That the Court expedite consideration of this Motion and set a date and time upon notice to the Defendants for a hearing on this Motion for Temporary Restraining Order or Preliminary Injunction.
- C. That the Court issue any and all other necessary and appropriate process to require the Defendants to cease and desist from implementation of the Project, or in acting pursuant to the Categorical Exemption issued by the FHWA, pending conclusion of these review proceedings, as provided by 5 USC §705.
- D. That plaintiff be awarded its costs and attorney fees, and for all other legal and proper relief.

Respectfully submitted,

WILLIAMS & ANDERSON PLC

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