

The Honorable Rosanna Malouf Peterson

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CITIZENS FOR SENSIBLE
TRANSPORTATION PLANNING,

Plaintiff,

v.

U.S. DEPARTMENT OF
TRANSPORTATION, FEDERAL
HIGHWAY ADMINISTRATION;
and RAY LaHOOD, SECRETARY
OF TRANSPORTATION,

Defendant.

NO. CV-10-00108-RMP

STIPULATION AND ORDER
OF DISMISSAL

STIPULATION

Plaintiff Citizens for Sensible Transportation Planning (“CSTP”) and
defendant U.S. Department of Transportation, Federal Highway
Administration (“FHWA”) et al., through their undersigned counsel of record,
stipulate as follows:

1 1. This is an action for declaratory and injunctive relief challenging
2 the United States Department of Transportation’s approval of a
3 \$35,000,000.00 grant under the Transportation Investment Generating
4 Economic Recover (“TIGER”) Discretionary Grant Program for construction
5 of the U.S. 395 North Spokane Corridor – Francis Ave. to Farwell Road
6 Southbound lanes project (“NSC”). The grant was awarded to the
7 Washington State Department of Transportation on February 17, 2010.
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10 2. Plaintiff brought this action seeking a declaratory judgment
11 finding that FHWA was arbitrary and capricious and failed to comply with
12 federal law by not preparing a supplemental environmental impact statement
13 (“SEIS”) as required by NEPA the National Environmental Policy Act, 42
14 U.S.C § 4321, et seq. (“NEPA”) analyzing the effect of mobile source air
15 toxics (“MSAT”) on the surrounding community and environment.
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18 3. CSTP is a Washington non-profit organization whose mission is
19 to engage the citizens of Spokane County in a dialogue about transportation
20 planning issues that can affect the livability and sustainability of our urban
21 environment. On behalf of its members, CSTP works to provide an
22 independent voice that can critically review and analyze the information
23 generated by the project’s proponent and ensure that the full impacts,
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1 including health, environmental and economic impacts of projects are
2 analyzed and discussed prior to implementation. CSTP works to educate the
3 citizenry so they can make informed decisions regarding transportation
4 projects within their communities. CSTP supports projects that make sense
5 from both an economic and a societal standpoint. CSTP educates the public
6 about transportation choices, and where appropriate, advocates on their
7 behalf. CSTP is composed of volunteers and members who draw on their
8 individual strengths and passions, contributing as they are able to CSTP's
9 effort.

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13 4. Plaintiff has been actively involved in the public processes
14 associated with review and comment on the proposed facility and the federal
15 agencies' review of the proposal. Plaintiff and its members participated fully
16 and substantially in the USDOT's public review process by submitting public
17 comments.

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20 5. The North Spokane Corridor Project creates approximately 10
21 miles of new major intermodal freeway, up to eight lanes wide, with up to
22 seven interchanges within an existing urban environment.

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24 6. The FHWA prepared a Final Environmental Impact Statement
25 ("FEIS") for the project on April 3, 1997. The FEIS was followed by a
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1 Record of Decision on November 20, 1997. FHWA prepared a Supplemental
2 FEIS on September 18, 2000 followed by another Record of Decision on
3 November 21, 2000.
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5 7. Neither the FEIS nor SFEIS analyzed the impact of Mobile
6 Source Air Toxics (MSAT) on the residential communities adjacent to the
7 NSC project.
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9 8. On January 30, 2006 CSTP petitioned the FHWA to prepare a
10 new Supplemental FEIS to address MSAT. The FHWA declined CSTP's
11 petition on January 12, 2007.
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13 9. Controlling air toxic emissions became a national priority with
14 the passage of the Clean Air Act Amendments of 1990, whereby Congress
15 mandated that the U.S. Environmental Protection Agency ("EPA") regulate
16 188 air toxics, also known as hazardous air pollutants.
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18 10. The EPA assessed the expansive list and issued its Control of
19 Hazardous Air Pollutants from Mobile Sources by rule on February 26, 2007.
20 The EPA rule identified a group of 93 compounds emitted from mobile
21 sources that are listed in its Integrated Risk Information System ("IRIS"). In
22 addition, the EPA identified seven compounds with significant contributions
23 from mobile sources that are among the national and regional-scale cancer
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1 risk drivers from its 1999 National Air Toxics Assessment. These are
2 acrolein, benzene, 1,3-butadiene, diesel particulate matter plus diesel exhaust
3 organic gases (diesel PM), formaldehyde, naphthalene, and polycyclic organic
4 matter.
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6 11. On June 17, 2009 the FHWA issued a Notice of Funding
7 Availability for Discretionary Grants for Capital Investments in Surface
8 Transportation Infrastructure under the American Recovery and Reinvestment
9 Act.
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11 12. On September 2, 2009, the Washington Department of
12 Transportation (“WSDOT”) applied to the FHWA for a \$35,000,000 grant for
13 construction of the U.S. 395 North Spokane Corridor – Francis Ave. to
14 Farwell Road Southbound lanes project.
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17 13. On September 30, 2009 the FHWA issued its Interim Guidance
18 Update on Mobile Source Air Toxic Analysis in NEPA Documents.
19 (“Interim MSAT Guidance”). The purpose of the Interim MSAT Guidance
20 document is to update FHWA Division offices on when and how to analyze
21 MSAT under NEPA for highway projects. The Interim MSAT Guidance
22 document develops a “tiered” approach for analyzing MSAT in NEPA
23 documents depending on the specific project circumstances.
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1 14. Tier 3 projects include those that have the potential for
2 meaningful differences in MSAT emissions among project alternatives. In
3 order to fall into the tier 3 category a project must: (1) Create or significantly
4 alter a major intermodal freight facility that has the potential to concentrate
5 high levels of diesel particulate matter in a single location or create new or
6 add significant capacity to urban highways such as interstates, urban arterials,
7 or urban collectors-distributor routes with traffic volumes where the AADT is
8 projected to be in the range of 140,000 to 150,000 or greater; and (2) be
9 located in proximity to populated areas.
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13 15. The U.S. 395 North Spokane Corridor – Francis Ave. to Farwell
14 Road Southbound lanes project meets the definition of a tier 3 project under
15 the Interim MSAT Guidance. According to the Interim MSAT Guidance,
16 projects falling within the third tier should be more rigorously assessed for
17 impacts. Analysis should include a quantitative analysis to forecast local-
18 specific emission trends of the priority MSAT for each alternative, to use as a
19 basis of comparison. If the analysis includes meaningful differences in levels
20 of MSAT emissions, the NEPA analysis is to identify and consider mitigation
21 options.
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1 16. CSTP filed comments with the FWHA regarding WSDOT's
2 TIGER grant application on December 9, 2009. CSTP's comments again
3 requested NEPA analysis of MSAT.
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5 17. United States Department of Transportation awarded a
6 \$35,000,000.00 discretionary TIGER grant to WSDOT on February 17, 2010,
7 for the US-395 North Spokane Corridor – Francis Ave., to Farwell Rd.
8 Southbound lanes project on February 17, 2010.
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10 18. FHWA did not analyze MSAT emissions in a NEPA
11 supplemental FEIS prior to approving the discretionary grant.
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13 19. FHWA recognizes that it should have completed an analysis of
14 MSAT emissions as part of its NEPA environmental review prior to
15 approving the TIGER grant for the NSC.
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17 20. As a result of this litigation the FHWA has now completed an
18 analysis of MSAT emissions for the NSC.
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20 21. Because the FHWA has now completed the necessary analysis of
21 MSAT emissions for the NSC it is appropriate that this case be dismissed
22 with prejudice.
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24 22. Because this action resulted in FHWA conducting the required
25 analysis of MSAT emissions for the NSC project, it is appropriate that
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1 Plaintiff be awarded its costs of litigation, including reasonable attorneys fees
2 pursuant to 28 U.S.C. § 2412, *et seq.*

3 Based on the foregoing stipulation, the parties stipulate and agree and
4 request that the court enter the following order:
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6 1. This matter is dismissed with prejudice.

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8 2. Plaintiff is awarded its costs of litigation, including reasonable
9 attorneys fees, pursuant to 28 U.S.C. § 2412, *et seq.*, in the amount of should
10 be awarded \$3000.00 in reasonable attorneys' fees and \$395.00 in costs.

11 SO STIPULATED, this ____ day of August, 2010.

12
13 GENDLER & MANN, LLP

14 /s David S. Mann

15 David S. Mann, WSBA No. 21068

16 Attorney for the Plaintiff

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ORDER

It is **SO ORDERED**.

DATED this _____ day of _____, 2010

ROSANNA MALOUF PETERSON
United States District Judge