National Electric Vehicle Infrastructure Formula Program: Environmental Organizations Complaint for Intervention Challenging U.S. Department of Transportation's Freezing of Funds



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Several environmental organizations filed a May 23rd Complaint-in-Intervention of Public Interest Organizations ("Complaint") against the United States Department of Transportation in the United States District Court for the Western District of Washington challenging the freeze of federal funding for the National Electric Vehicle Infrastructure ("NEVI") Formula Program.

The environmental organizations filing the Complaint include:

- SIERRA CLUB
- NATURAL RESOURCES DEFENSE COUNCIL
- CLIMATE SOLUTIONS
- SOUTHERN ALLIANCE FOR CLEAN ENERGY
- CLEANAIRE NC
- WEST END REVITALIZATION ASSOCIATION
- PLUG IN AMERICA

(Collectively, "Sierra Club").

The Complaint is filed in support of a number of states that had previously filed a judicial challenge.

The United States Department of Transportation's Federal Highway Administration NEVI Formula Program provides funding to states to deploy electric vehicle chargers and to establish an interconnected network to facilitate data collection, access, and reliability. Funding has been available for up to 80% of eligible projects including:

- Acquisition, installation, and network connection of electric vehicle chargers to facilitate data collection, access, reliability;
- Proper operation and maintenance of electric vehicle chargers; and
- Long-term electric vehicle charger data sharing.

The program is authorized by the 2021 Infrastructure Investment and Jobs Act. The 50 States, Puerto Rico, and the District of Columbia had previously submitted plans to the United States Department of Justice for FYs 2022 through 2025.

The Federal Highway Administration is stated to have previously issued a Memorandum which announced the cancellation of all previously issued guidance for the NEVI Formula Program and the suspension of all state plans previously submitted under the Program. Until new guidance is issued, and new state plans are submitted and approved, it is alleged that no new obligations for the Program can be incurred. However, expenditures pursuant to existing project agreements are stated to be able to continue.

Sierra Club alleges that what they characterize as an "indefinite freeze" of NEVI funds is unlawful. Further, it is alleged that:

…By blocking the distribution of formula funds in direct contravention of congressional directives, Defendants have violated the Administrative Procedure Act, the constitutional separation of powers, the Executive Branch's duty to faithfully execute the laws, and have acted ultra vires.

Sierra Club's Complaint seeks vacatur of the United States Department of Transportation's actions, as well as a declaratory and injunctive relief to end what it characterizes as an "unlawful freeze" and Defendants' compliance with Congress's binding directive to distribute NEVI formula funds to the States.

A copy of the Complaint can be downloaded here.