

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

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

PLAINTIFFS

v.

No: 4:18-cv-00466-JM

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

DEFENDANTS

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Come the Plaintiffs, George Wise, Matthew Pekar, Uta Meyer, David Martindale and Robert Walker, and for their Motion for Summary Judgment against the Defendants, United States Department of Transportation, Federal Highway Administration; and the Arkansas State Department of Transportation, state:

1. Pursuant to the Order of this Court, Defendants have lodged with the Clerk of the Court the Administrative Record compiled by the Defendants in this case, and upon which Record the Defendants purported to determine to utilize a categorical exclusion as the form of environmental assessment for the I-630 construction project that is the subject of this case.

2. Based upon the contents of the Administrative Record, the Plaintiffs are entitled to a Summary Judgment that the Defendants violated the requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §4231 et seq., and its implementing regulations contained in 40 C.F.R. §1508.4 and §1507.3, and the regulations of the Federal Highway Administration contained in 23 C.F.R §§771.115 and 771.117 promulgated in further implementation of NEPA,

Such violations render the Defendants' issuance of a categorical exclusion to be arbitrary and capricious.

3. That the Court should declare the Categorical Exclusion approved by Defendants and dated October 4, 2016 to be null and void.

4. That the Court should further Order the Defendants to perform and produce to the Court and counsel for the parties a sampling and analysis of current air quality conditions in the I-630 Project corridor; to conduct modeling by an independent contractor other than one used in the Project of air quality for the corridor (including surrounding neighborhoods) for the design year of 1939, using the anticipated average daily traffic count of 141,000 vehicles; to develop options and proposals for mitigation of mobile source air toxins in that corridor; and to implement any such options approved by the Court after opportunity for hearing.

5. That the Court should permanently enjoin Defendants from future use of categorical exclusions for highway projects undertaken with Federal funds in the State of Arkansas without first having conducted collection and analysis of data and information necessary to determine whether the proposed project will affect the human environment, and that such data, assessments and information be included in the administrative record for such project.

6. A Brief in Support of this Motion for Summary Judgment is filed herein contemporaneously with this Motion. A Statement of Facts is not filed herewith because the Administrative Record is deemed to be the statement of the facts in cases based upon review of such record. However, a separate Statement of Facts will be filed should the Court deem such Statement to be appropriate.

WHEREFORE, Plaintiffs pray that their Motion for Summary Judgment be granted, and that the Court grant the relief set forth above and in the accompanying Brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Motion is being served on counsel of record for the parties through the Court's ECF notification system. Counsel for Plaintiff is not aware of any party or attorney who requires service by other means.

Dated: May 26, 2020.

/s/ Richard H. Mays
Richard H. Mays