

IN THE CIRCUIT COURT OF PULASKI COUNTY
_____ DIVISION

WASHINGTON WATER AUTHORITY

PLAINTIFF

v.

CASE NO. _____

ARKANSAS DEPARTMENT OF TRANSPORTATION
and CITY OF FARMINGTON

DEFENDANTS

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Comes now Plaintiff, Washington Water Authority (“Washington Water”), by and through its attorneys, Gill Ragon Owen, P.A., and for its Complaint for Declaratory and Injunctive Relief, states:

PARTIES AND JURISDICTION

1. Washington Water is a division of the Rural Development Authority of Washington County, Arkansas, with its primary purpose being to maintain and operate its water facilities in such a way as to provide a safe and adequate water supply to its customers. Washington Water is the sole provider of potable water service to approximately 7300 customers located in Washington County, Arkansas

2. Defendant Arkansas Department of Transportation, formerly Arkansas State Highway and Transportation Department (“ARDOT”), is a department of the State of Arkansas.

3. Defendant City of Farmington (“Farmington”) is a municipality located in Washington, County.

4. This Court has jurisdiction over this matter and the parties. Ark. Code Ann. § 16-13-201. Venue is proper with this Court. Ark. Code Ann. § 16-60-104.

FACTS

5. On or about January 28, 2015, ARDOT and Farmington entered an Agreement of Understanding in connection with the Arkansas Highway 170 Widening, Job No. 040683 (the “Project”). A true and correct copy of the Agreement of Understanding is attached hereto as **Exhibit A**.

6. The Project primarily involves the widening of an approximately two-mile stretch of Highway 170 located in or adjacent to Farmington, Arkansas, from Main Street to Clyde Carnes Road to three twelve-foot wide lanes with a continuous left-hand turning lane. The Project calls for both sides of the road to have five-foot-wide sidewalks, inclusive of gutter and curb.

7. The Project necessitates the relocation of various utility assets that previously ran adjacent to Highway 170. As a result of the widening of Highway 170, the expanded Highway 170 roadbed and related footprint will be constructed on and over all or a portion of these pre-existing utility assets thereby necessitating the relocation and reconstruction of same.

8. The Agreement of Understanding outlines how costs associated with the Project, including the relocation of utilities, will be paid for using a mixture of federal and local funds.

9. Specifically, regarding costs for relocation of utilities, the Agreement of Understanding provides that 20% is to be paid by Farmington and the remaining 80% is paid using federal funds. *See Exhibit A, p. 1.*

10. Washington Water owns and maintains a considerable stretch of water distribution line that has run parallel to Highway 170 for years if not decades. The water distribution line is entirely located within private easements acquired and owned by Washington Water. True and correct copies of Washington Water’s referenced easements are attached hereto as **Exhibit B**.

11. Since 2017, Washington Water, ARDOT, and Farmington have engaged in sporadic discussions regarding the contemplated relocation of the subject Washington Water lines, and the appropriate and just compensation due and owing to Washington Water related to the taking by ARDOT and Farmington of the Washington Water easements and distribution lines, the need to relocate and reconstruct same, and the need to acquire new private easements in which the Washington Water distribution lines can be located. Attached hereto as **Exhibit C** is an overlay illustration of the Project corridor's substantial—facility threatening—encroachments on Washington Water's existing water distribution line.

12. In response to a request by ARDOT and Farmington for an estimate of anticipated costs associated with the removal and relocation of its water distribution line imminently imperiled by the Project, Washington Water's outside engineering firm provided a cost estimate dated June 2020, opining the anticipated cost would be, at that time, \$1,517,292. Attached hereto as **Exhibit D** is a true and correct copy of the June 2020 estimate (the "Cost Estimate").

13. The Cost Estimate was reviewed internally by ARDOT and then discussed with Farmington, with ARDOT and Farmington both concluding that Washington Water was entitled to no compensation resulting from the water distribution line relocation edict dictated by ARDOT and Farmington. Attached hereto as **Exhibit E** is a chain of internal ARDOT communications regarding the Cost Estimate where it is concluded by ARDOT's Lead Utilities Coordinator that the Estimate does not seek compensation for "anything . . . that wouldn't be allowed."

14. After nearly a year of relative silence and dismissive emails, in response to Washington Water's numerous inquiries regarding next steps, and after receiving the Cost Estimate from Washington Water, Defendants provided Washington Water an email dated June 9, 2021, asserting that "no compensation is due in connection with the Water Authority's easements,"

and attaching appraisals (the “ARDOT Appraisals”) to that end. Attached hereto as **Exhibit F** is a true and correct copy of the ARDOT Appraisals and the referenced cover email.

15. Thus, as of June 2021, the parties’ positions were as follows as it relates to proper compensation to Washington Water for its water distribution line relocation costs and loss of easement rights: (a) Washington Water—\$1,517,292;¹ (b) ARDOT and Farmington—\$0.00.

16. After receiving the ARDOT Appraisals, Washington Water made demand on ARDOT and Farmington for just compensation, and this demand was rejected.

17. Against this backdrop, Washington Water notes that ARDOT’s own Utilities Internal Policies and Procedures Manual (“ARDOT’s Rules”) provides, in pertinent part, the following:

- 1.17.1 “Where the utility owner has acquired the location for its facilities in or near the highway by virtue of the fact that it has obtained or acquired a property right from the original owner of the fee interest or is on privately owned land on which it has obtained an easement from the land owner by purchase or other means of acquisition, then **this property right cannot be taken for highway purposes without just compensation.**”
- 1.17.2 “**Just compensation has been construed to be the net cost of making a relocation to restore the function of the interfering facility**, including the cost of replacing the right of way taken **in lieu of the market value approach** to determine the value of the property taken.” (emphasis added).

18. Furthermore, The Arkansas Constitution provides that “[t]he right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.” Ark. Const. art. 2, § 22.

¹ Washington Water notes that this \$1,517,292 figure is based on a June 2020 cost estimate (Exhibit D) and that the cost today if another estimate was conducted would likely be higher.

19. In light of this express constitutional provision, the Supreme Court of Arkansas has held that “a right-of-way or easement is entitled to all constitutional protections afforded to other property rights.” *Southwestern Bell Tel. Co. v. Davis*, 247 Ark. 381, 385, 445 S.W.2d 505 (1969).

20. Regarding the taking of a portion of a utility easement, if a utility company has a property interest in the easements adjoining a road, Arkansas law provides that the utility company may not be ousted from occupying that portion of the easement or forced to swallow its own costs in relocating without just compensation for same. *See Craighead Elec. Co-op. Corp. v. Craighead County* 352 Ark. 76, 98 S.W.3d 414 (2003 (citing *City of Little Rock v. Ark. La. Gas Co.*, 261 Ark. 347, 548 S.W.2d 133 (1977))).

21. In light of ARDOT’s Rules and the other above-cited legal precedents, pursuant to responses to Freedom of Information Act requests submitted by Washington Water, Washington Water has subsequently learned that substantial utility relocation costs have, in fact, been paid by ARDOT and Farmington to other third-party utility companies. These payments have been funded in spite of the fact that ARDOT and Farmington have asserted that no funds are available regarding the relocation of the Washington Water distribution lines

22. For example, Black Hills Energy was afforded approximately \$300,000 for its relocation costs in connection with the very same Project at issue herein. Attached hereto as **Exhibit G** is a true and correct copy of the Utility Relocation Agreement evidencing the compensation to Black Hills Energy associated with the Project.

23. Prairie Grove Telephone was afforded approximately \$160,000 for its relocation costs in connection with the Project. Attached hereto as **Exhibit H** is a true and correct copy of the Utility Relocation Agreement evidencing the compensation to Prairie Grove Telephone associated with the Project.

24. Cox Communications was afforded approximately \$35,000 for its relocation costs in connection with the Project. Attached hereto as **Exhibit I** is a true and correct copy of the Utility Relocation Agreement evidencing the compensation to Cox Communications associated with the Project.

25. Furthermore, other utilities, in contemplation of relocating assets due to the Project, have planted survey markers identifying new paths for their assets, or have already relocated their assets, essentially right on top (or otherwise within thirty-six inches) of Washington Water's existing water distribution line within its private easement.

26. Despite numerous emails, phone calls, and other correspondence from and on behalf of Washington Water in attempt to settle the matter without litigation, ARDOT and Farmington are refusing to recognize the senior rights that Washington Water possesses in and to its privately held easements, are refusing to recognize their taking of Washington Water's real estate interests and water distribution system assets, are refusing to recognize the cost and expense that Washington Water will incur in connection with its acquisition of new water distribution line easements, and are refusing to recognize the substantial and material reconstruction costs and expenses that Washington Water will incur as a result of the subject taking by ARDOT and Farmington.

27. The Project is ongoing and Washington Water believes that the start of substantial highway construction is imminent, as evidenced by the numerous survey flags and markers that ARDOT and Farmington have placed upon Washington Water's easements. Development of the Project absent the relocation of Washington Water's distribution lines, represents an imminent threat of irreparable harm to the health, safety, and welfare of Washington Water's customers. Moreover, if not otherwise funded by ARDOT or Farmington, Washington Water would possibly

be required to substantially increase its customer water rates in order to fund pipeline relocation expenses necessitated by the further pursuit and development of the Project.

28. The construction of the Project upon and over Washington Water's distribution lines poses a serious health concern to the customers of Washington Water given the inevitable leakage and infiltration of oil, gas and other carbon emissions from vehicles rolling over and across the Washington Water distribution lines. Additionally, the constant vibrations generated by vehicular traffic run the risk of damaging the integrity of the Washington Water distribution lines thereby resulting in water leaks, water losses, corresponding losses in revenue, and substantially enhanced water line maintenance costs and expenses. With regard to aspects of the Project that do not actually cross on to the Washington Water easements and lines, the construction of highway drainage ditches that would parallel the Washington Water lines will result in a substantial risk of undermining the stability of the soil and rock in which the subject water lines are embedded, thereby furthering the risk of water leaks, water losses, revenue losses and enhanced maintenance expenses.

COUNT I: DECLARATORY JUDGMENT (Washington Water v. ARDOT)

29. Washington Water realleges and incorporates by reference the preceding Paragraphs above.

30. Ark. Code Ann. § 25-15-207 affords a party the right to seek a declaration of rights from this Court in connection with the applicability of state agency rules as they related to state action.

31. Washington Water seeks a declaration that ARDOT's own rules and the Arkansas Constitution require that Washington Water be justly compensated for the required location of its water distribution line and the taking of its easement rights associated with the Project.

COUNT II: DECLARATORY JUDGMENT (Washington Water v. Farmington)

32. Washington Water realleges and incorporates by reference the preceding Paragraphs above.

33. Ark. Code Ann. § 16-111-102 affords a party the right to seek declaration of rights from this Court under “written contract or writings constituting a contract.”

34. Regarding costs for relocation of utilities necessitated by the Project, the Agreement of Understanding provides that 20% is to be paid by Farmington and the remaining 80% is paid using federal funds. *See* Exhibit A, p. 1.

35. As a utility that is forced to relocate its water distribution line and be subjected to encroachments on its private easement because of the Project, Washington Water is a third-party beneficiary under the Agreement of Understanding and is due just compensation under Arkansas law, ARDOT’s Rules, and the Agreement of Understanding.

36. As a third-party beneficiary of the Agreement of Understanding, Washington Water seeks a declaration that it is entitled to receive no less than 20% of its just compensation associated with the Project from Farmington.

37. Washington Water also requests an award of its costs associated with this action that this Court deems equitable and just under the circumstances pursuant to Ark. Code Ann. § 16-111-110.

**COUNT III: PRELIMINARY & PERMANENT
INJUNCTIVE RELIEF (Washington Water v. ARDOT and Farmington)**

38. Washington Water realleges and incorporates by reference the preceding Paragraphs above.

39. Washington Water’s property at issue herein represented by its easements and water distribution line is unique and Washington Water has an interest in and to the property. The rights

possessed by Washington Water in and to its easements are senior and superior to the rights of all other parties, including any interest that ARDOT or Farmington may possess or assert.

40. Washington Water possess the right to utilize its easements free and clear from any and all interference by Defendants.

41. Washington Water possess the right to operate and maintain its water distribution line that is imminently threatened with irreparable harm represented by the highway widening over it or otherwise within thirty-six inches of it.

42. Washington Water has reason to believe that that Defendants will not cease with the Project or otherwise work with Washington Water on a lawful resolution absent an injunction from this Court.

43. In light of Defendants' position, continued dealings between the parties would be futile.

44. Accordingly, pursuant to Ark. R. Civ. P. 65, and to prevent any additional damage during the pendency of this action, Washington Water hereby requests this Court issue a preliminary injunction against Defendants and any other third parties prohibiting them from paving over or near Washington Water's water distribution line or from disturbing or otherwise encroaching upon Washington Water's easement interests at issue herein unless and until Washington Water is afforded just compensation for its relocation costs and loss of easement rights.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order (1) providing that Washington Water is entitled to just compensation for its relocation costs and loss of easement rights; (2) enjoining the Defendants with continuing with the Project unless and until Washington

Water is afforded just compensation; and (3) awarding Washington Water any all further relief the Court deems just and proper.

Respectfully submitted,

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