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***Aquifer Guardians in Urban Areas v. Federal Highway Administration*, 2011 WL 1542834
(W.D. Tex. Apr. 22, 2011).**

Bradley R. Jones

I. INTRODUCTION

In *Aquifer Guardians in Urban Areas v. Federal Highway Administration*¹³⁰, the United States Federal District Court for Western Texas held that the plaintiff, Aquifer Guardians, failed to show that the Federal Highway Administration's (FHWA) environmental review process was inadequate under the National Environmental Policy Act (NEPA).¹³¹ The Court ruled that the FHWA's decision to categorically exempt the highway project (the project) from an Environmental Impact Statement (EIS) was not arbitrary and capricious and therefore was due exceptional deference pursuant to the Administrative Procedure Act (APA).¹³² The plaintiff specifically sought a preliminary injunction against construction of the project.¹³³ However, the court ruled that the plaintiff failed to show success on the merits of its claim of improper environmental review and couldn't overcome APA mandated deference due to agency decision making.¹³⁴

II. FACTUAL BACKGROUND

On the edge of San Antonio lies the intersection of U.S. 281 and Loop 1604 through which thousands of commuters pass each day.¹³⁵ FHWA proposed further construction at the site to reroute traffic onto Loop 1604.¹³⁶ The FHWA's proposal included the construction of direct connectors between the two roads and ramp modifications which were meant to increase

¹³⁰ *Aquifer Guardians in Urban Areas v. Federal Highway Administration*, 2011 WL 1542834 (W.D. Tex. Apr. 22, 2011).

¹³¹ *Id.* at **7, 17.

¹³² *Id.* at **14, 17 (*see* 5 U.S.C. § 706 (2006)).

¹³³ *Id.* at *3.

¹³⁴ *Id.* at *4.

¹³⁵ *Id.* at *8.

¹³⁶ *Aquifer Guardians*, 2011 WL 1542834 at *8.

traffic efficiency and safety, according to FHWA's Administrative Record.¹³⁷ The highway renovation lay aboveground of the Edwards Aquifer and nearby to cave formations that might contain habitat for endangered invertebrates.¹³⁸ The plaintiff, a coalition of homeowners nearby to the proposed highway construction project and citizens concerned about the project's impact on the Edwards Aquifer, opposed the highway plan.

III. PROCEDURAL BACKGROUND

In August 2010, the plaintiff filed suit against FHWA, alleging that the proposed project violated the Endangered Species Act and that FHWA failed to conduct environmental review required by NEPA.¹³⁹ On December 20, 2010, FHWA filed an Administrative Record and the plaintiff subsequently moved for a preliminary injunction against the project.¹⁴⁰ The plaintiff claimed that the Loop 1604 project was improperly segmented from a much larger highway construction project to avoid the requirement under NEPA that a full EIS, rather than a shorter, less detailed Environmental Assessment be completed.¹⁴¹ The plaintiff further claimed that, as a result, a Categorical Exemption (CE) from the full EIS was not permissible under NEPA.

IV. ANALYSIS

The court first considered whether the plaintiff's a motion to enjoin the highway project would pass the requirements set for judicial review of agency decisions. The question was whether FHWA's determination that the interchange construction project qualified for a CE under NEPA was arbitrary and capricious.¹⁴²

The court held that the plaintiffs must establish that FHWA's decision to categorically exempt the Loop 1604 interchange project from further environmental review was arbitrary and

¹³⁷ *Id.* at *8.

¹³⁸ *Id.* at *2.

¹³⁹ *Id.* at *4.

¹⁴⁰ *Id.* at *4.

¹⁴¹ *Id.* at *9.

¹⁴² *Aquifer Guardians*, 2011 WL 1542834 at *4.

capricious. To establish the standard by which the court reviewed the plaintiff's claims, the court first clarified that a federal agency's decision is presumed valid under the APA.¹⁴³ Under the APA, the plaintiff bears the burden to show that the agency decision lacked even "minimal standards of rationality."¹⁴⁴ Thus, the court's role is narrow when approaching review of an agency decision based on the APA standard, and that it must decide whether the agency failed to consider relevant factors or made the decision in a clear error of judgment.¹⁴⁵ The scope of judicial review permitted by the APA was the Administrative Record of the proposal in question as presented to the court by FHWA.¹⁴⁶ The court determined that without a showing of extraordinary circumstances by the plaintiff, the court could not admit extraneous testimony or substitute the court's own judgment for that of the FHWA in reviewing documents not contained in the Administrative Record.¹⁴⁷

V. HOLDING

The court held that the plaintiff failed to establish a claim that could survive deferential APA review.¹⁴⁸ The court ruled that to have met this standard, the plaintiff must have demonstrated the success of its improper segmentation claim or its NEPA claim.¹⁴⁹

The court ruled that improper segmentation can only occur if the portion of the project in question has no "independent utility."¹⁵⁰ In this case, the court determined that the Administrative Record compiled by FHWA supported an independent use for the Loop 1604

¹⁴³ *Id.*

¹⁴⁴ *Id.* at *4 (citing *Gulf Restoration Network v. U.S. Dept. of Transp.*, 452 F.3d 362, 368 (5th Cir. 2006)).

¹⁴⁵ *Id.* at *9.

¹⁴⁶ *Id.* at *14.

¹⁴⁷ *Aquifer Guardians*, 2011 WL 1542834 at *14.

¹⁴⁸ *Id.* at *4.

¹⁴⁹ *Id.* at *5.

¹⁵⁰ *Id.* at *5 (citing *Save Barton Creek Assn. v. FHWA*, 950 F.2d 1129, 1140 (5th Cir. 1992)).

interchange solely to reduce traffic congestion and increase driver safety at the intersection, absent other highway improvements planned by the same agencies.¹⁵¹

The court also considered whether the Administrative Record showed a lack of consideration of “significant environmental impacts” required by relevant regulations which governed FHWA’s decision making.¹⁵² The court held that the plaintiff’s reliance on the cost and scope of the highway construction projects proposed by FHWA around the recharge zone of the Edwards Aquifer were not relevant factors to any environmental impact considerations.¹⁵³ The court ruled that FHWA had considered the significance of the project on the environment in the Administrative Record to the extent that the agency prepared a biological assessment, consulted with other agencies on potential impacts, and implemented plans for mitigation measures should harm to water or endangered species should become a possibility.¹⁵⁴ The court held that “significant environmental harm” was considered by FHWA in the Administrative Record and that deference was therefore due to FHWA’s interpretation of its own regulations as to its decision to categorically exempt the Loop 1604 project.¹⁵⁵

VI. CONCLUSION

In his opinion for *Aquifer Guardians*, Justice Biery concludes that, although the ideal solution for the well-being of both humans and cave invertebrates relying on the Edwards Aquifer likely rests with a more caring attitude towards the planet by humans, the court’s power of review is limited to the “arbitrary and capricious” standard as supported by the APA.¹⁵⁶ The

¹⁵¹ *Id.* at *17.

¹⁵² *Id.* (see also 23 C.F.R. § 771.117(a) (2011)).

¹⁵³ *Aquifer Guardians*, 2011 WL 1542834 at *17.

¹⁵⁴ *Id.* at *18.

¹⁵⁵ *Id.* at *5.

¹⁵⁶ *Id.* at *3.

plaintiff failed to show inadequate environmental review by FHWA on the merits of its claim and therefore, failed to show that FHWA's judgment was arbitrary and capricious.¹⁵⁷

¹⁵⁷ *Id.* at *7.