

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AQUIFER GUARDIANS IN URBAN)	
AREAS,)	
)	<i>Plaintiff,</i>
)	
vs.)	CIVIL ACTION NO. SA-08-CA-0154-FB
)	
FEDERAL HIGHWAY)	
ADMINISTRATION; UNITED STATES)	
FISH AND WILDLIFE SERVICE;)	
AMADEO SAENZ, JR., Executive)	
Director, Texas Department)	
of Transportation; TERRY)	
BRECHTEL, Executive Director,)	
Alamo Regional Mobility Authority.)	
)	
)	<i>Defendants.</i>

**[PROPOSED] ORDER ON
PRELIMINARY INJUNCTION**

On this ___ day of January 2011, the Court considered the evidence, pleadings, and arguments of counsel for all parties, and based thereon, enters the following order:

Plaintiff seeks preliminary injunctive relief barring, until a decision on the merits, Defendants Federal Highway Administration (FHWA), and Amadeo Saenz, Jr, Executive Director of the Texas Department of Transportation (TxDOT) and Terry Brechtel, Executive Director of the Alamo Regional Mobility Authority (ARMA), in their official capacities, from further construction, land clearing, or final construction design work on the US 281/Loop 1604 Interchange project, and from making any further financial commitments in pursuit of these activities.

The evidence demonstrates a substantial likelihood of success on the merits. The Court finds that Defendant FHWA’s approval of the “Categorical Exclusion” of the US 281/Loop 1604

Interchange project from the National Environmental Policy Act (NEPA) is, upon a trial on the merits, likely to be determined a violation of NEPA and the relevant NEPA implementing regulations. Plaintiff has standing to bring its claims and has a federal cause of action pursuant to the Administrative Procedures Act.

Preliminarily, the Court finds as follows. The “interchange” project is a large scale highway construction project estimated to cost well in excess of one hundred million (\$100,000,000) dollars and require more than two years of construction. The project is much more than an “interchange” project. It will add multiple different types of additional lanes extending six miles along Loop 1604 and three miles along US 281. Most of this construction will take place on top of the highly vulnerable, karstic, cave-forming Edwards Aquifer, the Environmental Protection Agency designated “sole source aquifer” water supply for the City of San Antonio. The remainder will take place over the Edwards Aquifer transition zone. The project will alter travel patterns and add capacity to US 281 and Loop 1604, with resulting direct, indirect, and cumulative effects. It will likely cause significant impacts from air, water and noise pollution from both the construction and post-construction phases. During construction, commuters would suffer from construction delays while neighbors, including those in Hollywood Park, would suffer from additional cut-through traffic. The project does not fit within any discernible category of projects that can or should be exempted from the requirements of the National Environmental Policy Act.

The Court also finds, preliminarily, that the Interchange Project is within, and part of, the Loop 1604 project now subject to an ongoing NEPA Environmental Impact Statement process, and that allowing the Interchange project to go forward at this time would likely cause irreparable harm to the environment and would have the effect of limiting reasonable alternatives

to be considered in the Loop 1604 process. The same may also be true of the Interchange project's relationship to the ongoing US 281 EIS process.

The evidence demonstrates that the environment and Plaintiff's interests in the environment will be harmed in the absence of a preliminary injunction. Defendants FHWA, Saenz, and Brechtel are preparing to initiate construction of the subject project within a matter of weeks. Such construction will involve significant excavation within the Edwards Aquifer recharge zone, and in close proximity to local businesses, schools, churches, and neighborhoods. Noise, dust, air and water pollution are all a certainty from this process; there is only a question of degree of the adverse impacts from such large-scale construction. Similarly, the large scale construction will result in construction traffic delays and diversions, with resulting harm to commuters, adjacent businesses and adjacent and nearby neighborhoods.

Allowing the project to go forward at this time, with a commitment of significant resources, would necessarily undermine the NEPA decisionmaking process for the Interchange project and for the Loop 1604 project (assuming Plaintiff ultimately prevails on the merits). Alternatives would be foreclosed or rendered less viable by the premature commitment of significant financial resources during the course of litigation of this case. The Court's ability to render an effective remedy upon a trial on the merits would be significantly undermined.

The Court finds that harm to the Plaintiff in the absence of a preliminary injunction outweighs the harm to the Defendants under a preliminary injunction. While a preliminary injunction may cause some disruption to Defendants, the Interchange project is still at an early stage of development and construction has not begun. Defendants have not yet coordinated a construction phase traffic management plan with adjacent businesses or with the adjacent communities of Hollywood Park and Hill Country Village. A preliminary injunction of a matter

of months would, at a minimum, provide the opportunity for an improved and better coordinated construction phase traffic management plan. The same is likely true for construction phase water quality management. Such improved plans would benefit Defendants as well as Plaintiff and the general public.

The Court further finds that the public interest will be served by a preliminary injunction. The environment will be protected, for a limited time, from adverse impacts from the planned construction in an environmentally sensitive area. A preliminary injunction will help assure that Defendants examine the environmental, social, and economic impacts of the proposed Interchange project and will give additional time for considering ways to further minimize and mitigate adverse impacts from the project.

Based on the above reasons, it is ORDERED that Defendants FHWA, Saenz and Brechtel (in their official capacities) are preliminarily ENJOINED from further construction, pre-construction, land clearing, or final phase design work on the US 281/Loop 1604 Interchange project, and from making any further financial commitments in pursuit of these activities.

This order does not prohibit Defendants from continuing to study the US 281/Loop 1604 Interchange project. Nor does this order prohibit Defendants from efforts to explore or prepare plans to minimize or mitigate impacts from the proposed project, or from consulting with relevant officials, entities, or the public concerning such plans. In the event that some initial land clearing or site preparation has begun, this order does not prohibit Defendants from taking steps to re-vegetate cleared areas or take other steps to demobilize construction or pre-construction activities.

It is further ORDERED that this preliminary injunction shall take effect upon the posting of a bond of \$1,000 and the service of notice of such bond posting on the Defendants.

This order will expire upon entry of a final order by the Court following a trial on the merits or by other order of the Court upon motion and hearing by the Court.

A trial on the merits of this case is hereby set for _____ on the ___ day of _____, 2011.

SIGNED this _____ day of January, 2011.

HON. FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE