

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGEAndrea KeiferNot Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) ORDER RE DEFENDANT LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY'S MOTION TO CONFIRM THE DISSOLUTION, OR IN THE ALTERNATIVE, TO DISSOLVE THE INJUNCTION (DKT. 188); FEDERAL DEFENDANTS' MOTION TO DISSOLVE THE INJUNCTION (DKT. 189)**

**I. Introduction**

In January 2013, Today's IV, Inc., doing business as Westin Bonaventure Hotel and Suites ("Plaintiff"), brought this action against several Defendants.<sup>1</sup> Plaintiff sought declaratory and injunctive relief as to the approval by the FTA of a Regional Connector Transit Corridor Project ("Project") for the construction of a new subway line in the City of Los Angeles. Dkt. 1. On May 29, 2014, summary judgment was granted as to Plaintiff's claim that the Final Environmental Impact Statement ("FEIS") issued by certain defendants was deficient. Dkt. 146 at 19-25. That Order concluded that the FEIS failed adequately to explain why open-face tunneling alternatives were rejected for construction of the subway line below South Flower Street between 4<sup>th</sup> and 7<sup>th</sup> Streets (the "Lower Flower Segment"). As a result, there was a violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* *Id.* Based on this same violation, on September 12, 2014, Plaintiff's Motion for Injunctive Relief was granted in part. Dkt. 157 at 31. Defendants were enjoined from commencing "Cut and Cover" ("C/C") construction on the Lower Flower Segment until completion of a supplemental NEPA analysis. *Id.*

On December 17, 2015, Defendants filed notice that a supplemental NEPA analysis had been completed, and a Final Supplemental Environmental Impact Statement ("FSEIS") had been issued. Dkt. 180. Defendants asserted that, as a result, the injunction was dissolved as a matter of law. *Id.* at 3-4.

<sup>1</sup> The Defendants who remain in this action are: the Federal Transit Administration ("FTA"); Therese W. McMillan, who is the Acting FTA Administrator; Leslie Rogers, who is the Regional Administrator of Region IX Office of the FTA; the United States Department of Transportation; Ray LaHood, who is the Secretary of the United States Department of Transportation (collectively "Federal Defendants"); the Los Angeles County Metropolitan Transportation Authority ("Metro"); and Phillip A. Washington, who is the Chief Executive Officer of Metro (replacing as a defendant Arthur T. Leahy, the former Chief Executive Officer) (collectively "Metro Defendants") (all together, "Defendants").

**UNITED STATES DISTRICT COURT  
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---

Plaintiff disagreed. Dkt. 181.

In light of this dispute, Defendants were directed to file a motion to confirm the dissolution of the injunction, or in the alternative, to dissolve the injunction. Dkt. 187. Subsequently, the Metro Defendants and the Federal Defendants each filed a separate, but substantially similar motion to dissolve the injunction (the "Motions"). Dkt. 188, 189. Plaintiff opposed (Dkt. 191) and Defendants replied. Dkt. 192, 193. Pursuant to Local Rule 7-15, the Motions were deemed appropriate for decision without oral argument, and were taken under submission. Dkt. 195. For the reasons stated in this Order, the Motions are **GRANTED**.

**II. Factual Background<sup>2</sup>**

**A. Overview of the Project**

The subway line that is to be constructed as part of the Project would "directly link 7<sup>th</sup> Street/Metro Center Station (the Metro Blue Line terminus and Metro Expo Line terminus) located at 7<sup>th</sup> and Figueroa Streets, to the Metro Gold Line near Little Tokyo/Arts District Station at 1<sup>st</sup> and Alameda Streets." FEIS ES-2, AR6021. Metro and the FTA expect that connecting the Blue and Gold Lines as proposed in the Project will result in reduced congestion on existing subway lines and buses as well as reduced motor vehicle traffic on nearby roadways. For these reasons, Defendants contend that the Project will result in significantly better subway service in the busiest commercial area in downtown Los Angeles. FEIS 1-28. The subway route begins at 7<sup>th</sup> and Flower Street and then proceeds north on Flower Street to 2<sup>nd</sup> Street. It then continues east on 2<sup>nd</sup> Street to Central Avenue, where it turns north to intersect the Gold Line at 1<sup>st</sup> and Alameda Streets. FEIS 4-446, AR6673.

Metro proposes a variety of construction methods for the Project. Much of the construction will be undertaken below ground using a closed-face Tunnel Boring Machine ("TBM"). This device is designed to minimize noise, dust, and other impact at the surface level during construction. AR6673; AR10154. Other construction will be at ground level. Thus, C/C construction, an open trench method, is planned for the construction of the subway line that will be placed at the Lower Flower Segment. AR19692, Exh. 4; AR19166, Exh. 5. The C/C method involves digging a trench at the surface and then covering most of it with concrete decking.

Plaintiff's property is located on the Lower Flower Segment. The proposed subway route travels north from 2<sup>nd</sup> Street to Central Avenue and Alameda Street in Little Tokyo, where it is to proceed below a shopping area called the Japanese Village. A station is planned at the intersection of 1<sup>st</sup> Street and Central Avenue; this location is across the street from the Japanese Village parking garage.

Several business and property owners objected to the use of C/C construction along the Lower Flower Segment. AR18827. Metro responded that the use of TBM, instead of C/C, "south of 4th Street would not be practicable due to the need to remove tie-backs ahead of the [TBM]." AR8164. Certain property

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<sup>2</sup> A detailed factual history is set forth in the orders previously issued on the cross-motions for summary judgment ("SJ Order") (Dkt. 146) and Plaintiff's motion for injunctive relief ("Injunction Order") (Dkt. 157). Those orders are incorporated here by this reference.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

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Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

owners argued that two open-face tunneling methods could potentially be used through tiebacks: the Sequential Excavation Method (“SEM”) and the “Open-Face Shield” method. AR18410-24; 27728-36; MSAR15815-16; AR38730-42. Harvey Parker, who is a member of Metro’s Tunnel Advisory Panel (“TAP”), also raised the possibility of using these methods in December 2010. MSAR15815-16. And, in August 2011, an expert retained by Metro to conduct a value engineering study concluded that, “[t]here is new, open-faced technology available for TBMs that could cut through tie-backs.” MSAR16557. However, VMS noted that Metro “will not entertain Open Face TBM operations due to previous problems with such a construction method on the Red Line.” MSAR16537.

Metro approved the Project on April 26, 2012, and adopted C/C as the construction method along the Lower Flower Segment. AR15676-82. On the same date, the Metro Board approved a modification of the Project to include the use of TBM under Flower Street between 4<sup>th</sup> and 5<sup>th</sup> Streets if it could be done within the existing budget. FTAR5941; FTAR12432.

On June 29, 2012, the FTA issued its Record of Decision (“ROD”) approving the Project and the FEIS. FTAR14399-408. The FTA stated, “with the execution of the MMRP [mitigation monitoring and reporting plan] in Attachment A, all reasonable steps are being taken to minimize the adverse environmental effects of the Project, and where adverse environmental effects remain, no feasible and prudent alternative to such effects exists.” *Id.*

**B. The SJ Order**

On May 29, 2014, the SJ Order granted in part and denied in part each of the cross-motions for summary judgment. Plaintiff’s motion was granted with respect to its claim that the FEIS failed adequately to explain why Open-Face tunneling and SEM were rejected on the Lower Flower Segment. Dkt. 146 at 24-25. The SJ Order noted that Defendants had concluded, in separate, non-public studies, that these alternatives were not feasible. *Id.* at 22. However, the SJ Order stated that, in the FEIS, “Defendants were required, ‘for alternatives which were eliminated from detailed study . . . briefly [to] discuss the reasons for their having been eliminated.’” *Id.* at 24 (quoting *Am. Rivers v. FERC*, 201 F.3d 1186, 1200 (9th Cir. 2000) (alterations in original)). Further, the FEIS failed to address why neither Open-Face Shield nor SEM tunneling was considered for the Lower Flower Segment. Based on this analysis, the SJ Order determined that the FEIS was “not in accordance with the law” due to the absence of a consideration of Open-Face tunneling alternatives. *Id.* at 25.

**C. The Injunction Order**

In light of the specific NEPA violation identified in the SJ Order, on September 12, 2014, Plaintiff’s request for an injunction was granted in part. The ROD was vacated in part, *i.e.*, with respect to its “approval of C/C construction on the Lower Flower Segment.” Dkt. 157 at 25. The Injunction Order also directed:

Once the action is remanded, Defendants must produce a supplemental NEPA analysis that addresses the feasibility of the Open-Face Shield and SEM tunneling alternatives. Thereafter, the FTA shall issue either a Finding of No Significant Impact or an Amended Record of Decision. This remedy satisfies NEPA’s purpose of “guarantee[ing] relevant information is available to the public,” *N. Plains Res. Council*, 668 F.3d at 1085, without

UNITED STATES DISTRICT COURT  
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CIVIL MINUTES – GENERAL

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

causing undue disruption to the entire Project.

Dkt. 157 at 25 (alteration in original).

The Order went on to explain that:

The Court declines to mandate a particular form of supplemental NEPA analysis. Plaintiffs contend that Defendants are required to prepare a supplemental EIS “to analyze feasible tunneling alternatives, including SEM and open-face tunneling.” Dkt. 101 at 9. However, as noted, the SJ Order did not conclude that either SEM or Open-Face tunneling was feasible. Plaintiffs cannot seek at this juncture to demonstrate, without bringing a motion for reconsideration, that these forms of tunneling were feasible alternatives that should have been presented together with a detailed study in the FEIS. Therefore, Plaintiffs have not shown that a supplemental EIS must be mandated by the Court.

Dkt. 157 at 25 n.17.<sup>3</sup>

In addition to the partial vacatur and remand, a “narrow injunction with respect to certain aspects of Project construction” was issued for the period during which the supplemental NEPA analysis was to be prepared. *Id.* at 26. Thus, the Injunction Order held that “an injunction of C/C construction along the Lower Flower Segment is warranted.” *Id.* Notably, the Injunction Order found that Plaintiff had not met its burden to show that it was also appropriate to enjoin utility relocation along the Lower Flower Segment. *Id.* As the Injunction Order explained:

Plaintiffs also suggest that utility relocation would not be required if Defendants adopt another alternative, which Plaintiffs call the “Deep Tunnel Alternative.” Dkt. 101 at 22. The Deep Tunnel Alternative, which was suggested by Plaintiffs’ expert, would require construction of the tunnel at a level that is approximately 60 feet deeper than the current route. Clough Decl. ¶¶ 16-20. However, Plaintiffs did not raise this alternative in connection with the SJ Motion. And, they do not contend that Defendants should have considered this alternative during the NEPA process. Nor could they have made such a claim; there is no evidence that the Deep Tunnel Alternative was raised by Plaintiffs or any other party during the administrative process. Accordingly, any argument with respect to this alternative has been waived. *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978) (To avoid the waiver of an objection, plaintiffs challenging an agency action are required to raise it with specificity “so that it alerts the agency to [their] position and contentions” during the NEPA comment period.).

Dkt. 157 at 27 n.20.

Following the issuance of the Injunction Order, the final judgment was entered in this action. It provides that “[u]nless and until FTA completes the Supplemental NEPA analysis, Defendants and their agents,

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<sup>3</sup> The docket citations found in the Injunction Order refer to the docket numbers in *Japanese Village LLC v. Federal Transit Administration, et al.*, LA CV13-00396 JAK (PLAx), a companion case to the present action.

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

contractors, subcontractors and representatives are **ENJOINED** from commencing any cut and cover construction along the Lower Flower Segment of the Project.” Dkt. 161 at 2 (emphasis in original).

**D. Defendants’ Supplemental NEPA Analysis**

In response to the Injunction Order, Defendants prepared a Supplemental Environmental Impact Statement (“SEIS”). Dkt. 188-1 at 10. Defendants state that: (i) the FTA published a Notice of Availability for the Draft SEIS in the Federal Register; (ii) the Draft SEIS was made available to the public for review and comment for a 45-day period from June 12, 2015 through July 27, 2015; (iii) Defendants held two public hearings; and (iv) a total of 13 comment letters were submitted. *Id.* at 12; Final SEIS (“FSEIS”), Dkt. 186-1 at 23. Plaintiff submitted a comment letter on July 27, 2015. Dkt. 188-1 at 12.

After taking those steps, Defendants issued the FSEIS on December 16, 2015. *Id.* at 13; FSEIS, Dkt. 186. The FSEIS states that it “is intended to provide more information on the tunnel construction alternatives on Flower Street that were withdrawn from consideration, specifically Open-Face Shield and Sequential Excavation Method (SEM) tunneling for the Flower Street portion of the Regional Connector project alignment . . . .” FSEIS, Dkt. 186-1 at 14. In order to address these alternative tunneling options, the FSEIS reviews two alternative tunneling options:

Alternative A considers an open-face tunnel shield to construct a portion of the tunnels from 4<sup>th</sup> Street south to approximately 5<sup>th</sup> [S]treet followed by SEM construction of the balance of the tunnels and double crossover to the existing 7<sup>th</sup>/Street Metro Center Station.

Alternative B considers extending EPBM tunneling on a lower alignment to avoid tie-backs from 4<sup>th</sup> Street south to approximately 5<sup>th</sup> Street followed by SEM construction of the balance of the tunnels and double crossover to the existing 7<sup>th</sup>/Street Metro Center Station.

*Id.* at 31.

The FSEIS begins with a background summary of the Project and the purpose of the SEIS. It then presents a lengthy discussion of the various alternatives to the C/C tunnel construction method approved in the original FEIS. The FSEIS provides an overview of each tunnel construction method considered for the Lower Flower Segment -- C/C, EPBM, SEM and Open-Face Shield Tunneling -- and provides a brief summary as to the benefits and risks associated with each. *Id.* at 38-46. It includes a statement as to why each method was rejected, if applicable. *Id.* The FSEIS then provides a detailed analysis of Alternatives A and B, and their predicted effect on: (i) transportation and circulation; (ii) the environment, including visual and air quality, climate change, noise and vibration, geotechnical, subsurface and seismic hazards and energy resources; (iii) historic resources; and (iv) environmental justice. *Id.* at 69-154. The FSEIS then presents a comparative analysis of Alternatives A and B, and the Project. *Id.* at 167-83. This section addresses how each option would meet the purpose and need of the overall Project, the construction and risk considerations, the operational considerations, the cost and funding considerations and the environmental considerations. *Id.* at 167.



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

Also included in the FSEIS is the 60-page Flower Street Tunneling Report. It provides an extensive analysis of the feasibility of the alternative construction methods. *Id.* at 189, App'x A. The FSEIS also includes each of the 13 comments submitted by the public, including the one made by Plaintiff, and the responses to each comment by Metro. FSEIS, Dkt. 186-2 at 159, App'x J. Plaintiff's submission, which totals nearly 200 pages, included a 14-page letter and 12 attached exhibits. It is included in this section of the FSEIS, along with a detailed response from Metro. *Id.* at 195-247; FSEIS, Dkt. 186-3 at 2-157.

The FSEIS then concludes that neither Alternative A nor B would be as effective "in meeting purpose and need" of the overall Project, and that both Alternative A and B "would impact Metro operations, would pose construction and safety risks, and would result in environmental impacts." FSEIS, Dkt. 186-1 at 17. Specifically, the FSEIS concludes that Alternatives A and B "would result in a higher safety risk, would cost more money, would take longer to construct, and would result in additional adverse environmental effects than the Project. . . . While implementing Alternatives A and B may be technically possible, . . . those alternatives were considered infeasible as a matter of sound public policy, and thus were withdrawn from further consideration." *Id.* at 18. The FSEIS then concludes:

Alternatives A and B would have major impacts in comparison to the Project. In terms of feasibility, both would cause unacceptable construction risks related to excessive ground surface settlement, sinkholes, and utility service interruption along Flower Street. FSEIS 5-5. Both would increase impacts to Little Tokyo, an environmental justice community, in that excavation-related truck activity would be extended in the Little Tokyo neighborhood for approximately seven months under Alternative B and 15 months under Alternative A. *Id.* Both Alternatives A and B would delay completion of the Project by a minimum of three years. *Id.* Both alternatives would extend the travel time for passengers on the new line by approximately 1.2 minutes per one-way trip, potentially making rail transit a less attractive option and thereby reducing air quality and climate change benefits as compared to the Project. *Id.* at 5-6. Both would require the use of jet grouting for ground stabilization, which would thereby increase construction, traffic and circulation, visual, air quality, climate change, and noise impacts in comparison to the Project. *Id.* at 5-13. Additionally, costs to construct the Flower Street segment would increase from \$171 million for the Project to an estimated \$510 to \$575 million for Alternative A and \$447 to \$503 million for Alternative B. *Id.* at 5-11, 5-12.

Dkt. 188-1 at 11-12.

After Defendants issued the FSEIS, the FTA issued a Supplemental ROD. FSEIS, Dkt. 186-3 at 195, App'x K. It states that the "FTA has decided that Alternatives A and B will not be carried forward, and the LPA and construction method as identified in the Final EIS will remain the same and will be carried forward." *Id.* at 196.

### **III. Analysis**

#### **A. Legal Standard**

Fed R. Civ. P. 60(b)(5) provides that "the court may relieve a party or its legal representative from a final

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

judgment, order, or proceeding” where “the judgment has been satisfied, released or discharged . . . or applying it prospectively is no longer equitable.” The party seeking relief from judgment bears the burden of establishing circumstances that warrant the relief. *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383 (1992); see also *Bellevue Manor Assocs. v. United States*, 165 F.3d 1249, 1255 (9th Cir. 1999) (“*Rufo* sets forth a general, flexible standard for all petitions brought under the equity provision of Rule 60(b)(5).”). To meet this burden, the party seeking relief must show a significant change in factual or legal conditions. 502 U.S. at 384. If it does so, a court must then determine whether the requested relief “is suitably tailored to the changed circumstance.” *Id.* at 391.

**B. Application**

Defendants contend that they have complied with the terms of, and fulfilled their corresponding obligations set forth in the Injunction Order. Thus, they claim that they have produced “a supplemental NEPA analysis that addresses the feasibility of the Open-Face Shield and SEM tunneling alternatives” and the FTA has issued an Amended ROD. Dkt. 157 at 25. Defendants argue that this reflects a sufficient change in circumstances to warrant dissolution of the injunction.

Plaintiff does not directly dispute that Defendants have complied with the directive of the Injunction Order. However, Plaintiff argues that the “injunction must remain in place because [D]efendants have again violated NEPA in a way similar to that found in the 2014 decision . . . .” Dkt. 191 at 3. Plaintiff then identifies eight claimed violations of NEPA by Defendants:

- Defendants failed to address a third, “deep tunnel” option submitted by Plaintiff at various points, including in its July 27, 2015 comment. Although Plaintiff states that the FSEIS included Defendants’ response to Plaintiff’s comment, it argues that this response “d[id] not reveal the nature of their analysis other than their conclusions. This concealment of the analysis is what the 2014 injunction sought to correct.” Dkt. 191 at 4-5;
- Defendants failed to analyze a fourth tunneling option, which would combine aspects of Alternative A and B. *Id.* at 5-6;
- Defendants failed to analyze different levels of greenhouse gases that will be generated during project operations in the coming decades, as required both by NEPA and under a policy adopted by Metro in 2014. *Id.* at 6-10;
- Defendants ignored the risks associated with PBTBM machines, as reflected recently by the use of such a machine in Seattle, Washington. *Id.* at 10;
- Defendants have falsely used the potential construction of a 5<sup>th</sup>/Flower Station as a reason not to pursue Alternative A or B, because there is no actual plan to create such a station. *Id.* at 10-11;
- Metro changed the Project in late 2015, when it revealed that the C/C construction may require some closure of Plaintiff’s parking garage and loading dock entrances on Flower Street. *Id.* at 11;
- Metro changed the Project in early 2016, when it announced that during C/C construction, the water to Plaintiff’s facilities may be cut off for several hours. *Id.* at 11; and
- Metro changed its schedule for pile trenching and installation on Flower Street, which is now set to begin at 4<sup>th</sup> Street, rather than at Wilshire Boulevard as previously planned. *Id.* at 12-13.

Plaintiff’s arguments exceed the scope of the present Motions. Each of these eight alleged failures

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL MINUTES – GENERAL**

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

represents a new issue not addressed in the SJ Order or Injunction Order. Therefore, none bears on whether the injunction should be dissolved. For example, the first argument -- that Defendants failed to analyze a third, deep tunnel option -- refers to a matter that was expressly excluded by the Injunction Order. It stated that, because this argument was not raised in connection with the SJ Motion, it did not have to be addressed in the supplemental NEPA analysis:

Plaintiffs also suggest that utility relocation would not be required if Defendants adopt another alternative, which Plaintiffs call the "Deep Tunnel Alternative." Dkt. 101 at 22. The Deep Tunnel Alternative, which was suggested by Plaintiffs' expert, would require construction of the tunnel at a level that is approximately 60 feet deeper than the current route. Clough Decl. ¶¶ 16-20. However, Plaintiffs did not raise this alternative in connection with the SJ Motion. And, they do not contend that Defendants should have considered this alternative during the NEPA process. Nor could they have made such a claim; there is no evidence that the Deep Tunnel Alternative was raised by Plaintiffs or any other party during the administrative process. Accordingly, any argument with respect to this alternative has been waived. *Vermont Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 553 (1978) (To avoid the waiver of an objection, plaintiffs challenging an agency action are required to raise it with specificity "so that it alerts the agency to [their] position and contentions" during the NEPA comment period.).

Dkt. 157 at 27 n.20 (alteration in original).

If these new claims are viable, they would have to be presented through a new action. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 162 (2010). As explained in the Injunction Order, the Supreme Court held that it was improper for a district court to enjoin an agency action different from the one that led to the filing of the initial suit:

Respondents . . . brought suit under the APA to challenge a particular agency order: APHIS's decision to *completely* deregulate RRA. The District Court held that the order in question was procedurally defective, and APHIS decided not to appeal that determination. At that point, it was for the agency to decide whether and to what extent it would pursue a *partial* deregulation. If the agency found, on the basis of a new EA, that a limited and temporary deregulation satisfied applicable statutory and regulatory requirements, it could proceed with such a deregulation even if it had not yet finished the onerous EIS required for complete deregulation. If and when the agency were to issue a partial deregulation order, any party aggrieved by that order could bring a separate suit under the Administrative Procedure Act to challenge the particular deregulation attempted.

561 U.S. at 159-60 (citing 5 U.S.C. § 702) (emphasis in original).

The result here is the same. The SJ Order and Injunction Order identified and addressed only one, narrow NEPA violation: Defendants' failure to discuss the reasons for eliminating open-face tunneling and SEM as alternative tunneling options. Because each of the eight alleged failures identified by Plaintiff is outside the scope of this litigation and the Injunction Order at issue, they cannot serve as a basis to deny the requests to dissolve the injunction.



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV13-00378 JAK (PLAx)

Date February 5, 2016

Title Today's IV, Inc. v. Federal Transit Administration, et al.

---

Plaintiff also asserts that Defendants have violated the injunction by "pile trenching" on the Lower Flower Segment. Dkt. 191 at 13-14. Defendants dispute this assertion, and state that the only construction on the Lower Flower Segment is related to utility relocation, which was expressly allowed by the Injunction Order. Dkt. 192 at 13-14; Dkt. 193 at 12. The Injunction Order stated that "[r]elocation of the storm drains and sanitary sewer lines is scheduled to take place at the same time as soldier pile installation and installation of temporary decking on the Lower Flower Segment. That would constitute the beginning of C/C construction." Dkt. 157 at 26 n.19. Defendants assert that, consistent with that statement, "Metro's contractor has not begun installing soldier piles or temporary decking." Dkt. 193 at 12. Plaintiff has presented no contrary evidence sufficient to show that Defendants have violated the terms of the injunction.

Defendants have met the burden of showing that there are sufficient changes in the factual circumstances to warrant the requested relief. As explained in Section II.D. *supra*, Defendants have developed "a supplemental NEPA analysis that addresses the feasibility of the Open-Face Shield and SEM tunneling alternatives." Dkt. 157 at 25. Consequently, the relief requested -- dissolution of the injunction preventing commencement of C/C construction until the supplemental analysis has been completed -- is tailored to these changed circumstances.

**IV. Conclusion**

For the reasons stated in this Order, the Motions are **GRANTED** and the injunction set forth in the September 12, 2014 Injunction Order is **DISSOLVED**.

**IT IS SO ORDERED.**

Initials of Preparer \_\_\_\_\_ : \_\_\_\_\_  
ak \_\_\_\_\_