

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

THOMAS MATHEWS, CHAD )  
ALDERMAN, RANDALL DAMON, )  
DORIS RENDER, HAROLD RENDER, )  
and BRENT HINDERS, )  
Plaintiffs, ) Civil No. 4:02-CV-10652  
vs. )  
NOMRAN MINETA, as Secretary of )  
Department of Transportation; BOBBY ) ORDER  
BLACKMON, as Division Administrator, )  
Federal Highway Administration; )  
and CITY OF DES MOINES, IOWA, )  
Defendants, )

Plaintiffs filed a complaint claiming that defendants’ decision to construct a highway in Des Moines, Iowa violated § 4(f) of the Federal Highway Act and §§ 314.23 and 314.24 of the Iowa Code. The federal and city defendants filed motions to dismiss on February 28, 2003 and March 5, 2003, respectively. Plaintiff filed resistances on March 17 and 18, 2003. The federal defendants replied on March 24, 2003. Plaintiff filed a supplemental resistance on April 1, 2003, to which the federal defendants replied on April 4, 2003.

I. BACKGROUND

Martin Luther King, Jr., Parkway (“MLK”) is a major arterial street in Des Moines, Iowa.

Proposals have been considered for the reconstruction of MLK for a number of years. On December 28, 1987, defendants submitted a final environmental impact statement (“EIS”) addressing the affects different construction alternatives would have on Water Works property. *See* Brief In Support of Federal Defendants’ Motion To Dismiss, Exhibit 1 (EIS). Three construction alternatives were considered in the EIS. The “Preferred Alternative” was projected to impact approximately twelve acres of Water Works property, “Alternative A” seven acres, and “Alternative B” seventeen acres. *Id.*

In the EIS, the Federal Highway Administration (“FHWA”) initially found that the Water Works property that would be affected by the project did not qualify as a park under § 4(f) of the Federal Highway Act.<sup>1</sup> *Id.* In the alternative, the FHWA stated that even assuming the property qualified as a park, there were no feasible and prudent alternatives to using the property, and that all possible planning to minimize harm had been incorporated in the proposed project. *Id.* On March 9, 1988, the FHWA issued a record of decision. *See* Brief In Support of Federal Defendants’ Motion to Dismiss, Exhibit 2 (Record of Decision). The “Selected Alternative” for the project consisted “of the construction of a four-to six-lane divided highway” and combined portions of various Alternatives that were described in the final EIS. *Id.*

A Supplemental EIS was prepared and a Supplemental Record of Decision was issued on December 21, 1999. According to the federal defendants, these documents did not address any issue

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<sup>1</sup> Section 4(f) of the Federal Highway Act has been recodified and is found in 49 U.S.C. § 303. However, this code section continues to be referred to as § 4(f). Section 4(f) precludes the Department of Transportation (“DOT”) from approving a construction project that uses land from a publicly owned park unless certain determinations are made.

pertaining to Water Works property. *See* Brief In Support of Federal Defendants’ Motion to Dismiss, Affidavit of Bobby Blackmon, Federal Highway Administration Division Administrator for Iowa. Plaintiffs have not disputed this assertion.

## II. APPLICABLE LAW AND DISCUSSION

Plaintiffs claim that defendants’ decision to construct a roadway in Des Moines, Iowa violated § 4(f) of the Federal Highway Act and §§ 314.23 and 314.24 of the Iowa Code. 28 U.S.C. § 2401(a) provides that “every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.” This limitation period applies to cases challenging final agency actions under the Administrative Procedures Act (“APA”), 5 U.S.C. § 702. “Although [plaintiff] does not expressly assert an APA claim, an action challenging the FHWA’s determination concerning § 4(f) property is properly brought under the APA.” *Park and River Alliance, Inc. v. Slater*, 1998 U.S. Dist. LEXIS 22131, \*7 (Dist. Minn. 1998) (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 411-12 (1971); and *Sierra Club v. Slater*, 120 F.3d 623, 630-31 (6<sup>th</sup> Cir. 1997)).

A right of action accrues under the APA at the time of a final agency action. “[I]t appears well-established that a final EIS or the [record of decision] issued thereon constitute the ‘final agency action’ for purposes of the APA.” *Slater*, 120 F.3d at 631 (citations omitted). In this case, federal defendants’ § 4(f) findings pertaining to Water Works property were included in the final EIS dated December 28, 1987. The record of decision was completed and signed on March 9, 1988.

Accordingly, defendants argue that the six-year statute of limitations started running on March 9, 1988 and expired on March 9, 1994.

Plaintiffs filed their complaint on December 31, 2002. They argue that their complaint is not barred by the six-year statute of limitations based on the following allegations: 1) defendants delayed the project numerous times over the years and gave indications that the project would not be continued; and 2) defendants have recently proposed changes in the reconstruction of MLK that impact plaintiffs' property more significantly than the plan that was reviewed in the 1987 EIS.

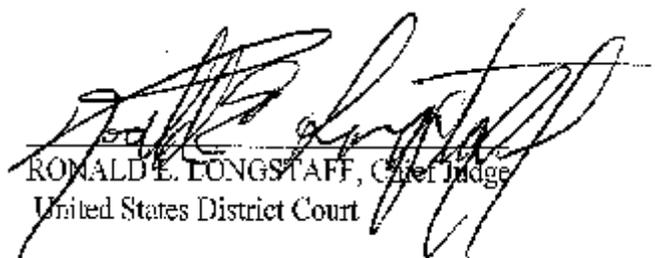
The Court finds that the fact plaintiffs thought the proposed action would never take place is no basis for reviving the six-year statute of limitations. Once the record of decision issued, the statute of limitations started to run. However, the Court finds that if significant changes have been made to the reconstruction plan in the past six-years, this may be a sufficient ground for reviving the statute of limitations. Based on the record before it, the Court cannot determine how the Selected Alternative described in the 1988 record of decision was expected to impact Water Works property. The Court therefore cannot determine whether the current reconstruction proposals would impact Water Works property in a significantly different way than the 1988 Selected Alternative. The Court will hold a hearing on this issue on April 30, 2003 at 2:00 p.m.

III. CONCLUSION

Plaintiffs have asserted facts which establish a cause of action under the Federal Administrative Procedures Act. The six-year statute of limitations set forth in 28 U.S.C. § 2401 applies. The original statute of limitations for plaintiffs' claim has expired. However, plaintiffs allege facts which may justify reviving the statute of limitations. The Court will hold a hearing on this matter in Des Moines on April 30, 2003 at 2:00 p.m.

IT IS SO ORDERED.

This 11<sup>th</sup> day of April, 2003.



RONALD E. LONGSTAFF, Chief Judge  
United States District Court