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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ELIZABETH A. CAMPBELL, a single woman, and **SEATTLE CITIZENS AGAINST THE TUNNEL**, a Washington State Non-profit corporation, **HARVEY FRIEDMAN**, a single man, and **SHARON J. PRICE**, a married woman,

Plaintiffs,

vs.

PETER JILIK, in his official capacity as Urban Area Engineer of the **FEDERAL HIGHWAY ADMINISTRATION**, an agency of the United States, **WASHINGTON STATE DEPARTMENT OF TRANSPORTATION**, an agency of the State of Washington,

Defendants.

CIV. NO. CO9-1305 JCC
PLAINTIFF'S AMENDED REPLY TO DEFENDANTS' RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND CERTIFICATE OF SERVICE

Hearing Date: May 7, 2010
(National Environmental Policy Act and Washington State Environmental Protection Act)

REPLY

1. Pursuant to the Federal Rules of Civil Procedure, § III, Rule 15 (a)(1)(A), plaintiff Elizabeth Campbell amends this reply.

1 2. The importance of restraining the Federal Highway Administration (“FHWA”) and the
2 Washington State Department of Transportation’s (“WSDOT”) project known as the S. Holgate
3 Street to S. King Street Stage 2 (“H2Kst”) project cannot be overstated, this is because it is
4 being undertaken without the entire extent of its environmental impacts being known. Because
5 it was reviewed on the premise that it is a standalone project, when it is not, there is a paucity of
6 information about the exact extent of its possible environmental effects of this project –
7 especially that part of the H2Kst project that will literally provide the sole vehicle for the final
8 ratification and irretrievability of the governmental decision to proceed with the bored tunnel
9 project.

10 3. To understand how this is possible it is important to briefly review the history of the
11 Alaskan Way Viaduct and Seawall Replacement Program (“AWVSR Program”), of which the
12 Washington State Department of Transportation’s (“WSDOT”) South Holgate St. to S. King St.
13 Stage 2 Project – (“H2Kst”) project is a part, in order to gain the understanding that while
14 publicly the FHWA and WSDOT claim they are chapter and verse following the appropriate
15 environmental reviews and procedures, that they have made no final decision to proceed with
16 the bored tunnel project, in their parallel bureaucratic universe the bored tunnel project has been
17 considered a final decision since January 13, 2009. On that date the Governor, the Mayor of
18 Seattle, and the King County executive signed a memorandum of agreement which established
19 that the bored tunnel was their “preferred alternative”.

20 Under the National Environmental Protection Act (“NEPA”) that would have meant that
21 that alternative would receive a certain preferential treatment as the environmental impact
22 statement was drafted, however, that treatment would be constrained by NEPA law, and the
23 other two alternatives, the hybrid-elevated alternative and the hybrid-surface alternative, would
24 receive at the same time almost an equal amount of consideration as the bored tunnel.

25 Instead the FHWA and WSDOT have been pursuing an aggressive course of actions,
26 working on establishing the planning, permitting, financing, and construction contract
negotiations which will ensure that once the NEPA record of “decision” is made at the end of

1 the Central Waterfront project environmental review, that all elements necessary to proceed
2 with the bored tunnel are set in place in the interim.

3 In order to accomplish such a feat, it was necessary for WSDOT to design the H2Kst
4 project so that it provides the spatial alignments and constructed facilities that are necessary for
5 the bored tunnel project. That effort was underway within ten days of the signing of the
6 executives' signing of the memorandum. By January 23, 2009 WSDOT was plunging ahead
7 with its plans to fully undertake the bored tunnel project. Exhibit A is a representative
8 document of those plans. It was created by a WSDOT employee, and is the draft for what is
9 known as the "Implementation Plan for the Bored Tunnel". It details all the project elements
10 that WSDOT will need to undertake in order to "open the bored tunnel to traffic in 2015"; a
11 recurring theme among the exhibits included herein.

12 This plan also includes the initial framework for undertaking a greatly abbreviated
13 environmental review of this project. As the following excerpt from Exhibit A shows, there are
14 more bored tunnel and AWVSR Program elements to be *excluded* from the EIS than are to be
15 included in it:

16 **"EIS contains one build and one no-build only**

17 **EIS includes only basic two lane roadway from Elliott/Western
18 to Alaskan Way**

19 **Viaduct removal south of Pike not included in EIS**

20 **Seawall not included in EIS**

21 **North Alaskan Way not included in EIS**

22 **Streetcar not included in EIS"** [emphasis added]

23 This outlook on environmental review is in keeping with how the FHWA and WSDOT
24 handled the H2Kst environmental assessment – segment it off of the greater project, discard as
25 many elements from it claiming they are not germane, and avoid having to address any
26 cumulative effects.

1 4. The H2Kst project has been so designed to provide all the spatial and built structural
2 elements in the south end of SR 99 where the boring for the tunnel is to begin. The H2Kst
3 project will be the personification of the bored tunnel project, the first and final project of the
4 AWVSR Program to be undertaken that will ensure that the entire Alaskan Way Viaduct is
5 demolished, and that will ensure that neither a hybrid-surface alternative nor an hybrid-elevated
6 alternative are built along the waterfront. The H2Kst project will also ensure that the State and
7 the City will proceed with at a minimum a \$4.5 Billion project, that provides half the capacity
8 of the transportation structure that is being eliminated, the Alaskan Way Viaduct. Exhibit B
9 demonstrates how that was to be and was accomplished. It is a Trend Notice, approved on
10 March 25, 2009, for the H2K “Stage 2 Contract Alignment w/ Bored Tunnel Implementation
11 Plan. It establishes the nexus between the bored tunnel project and the H2Kst Project.

12 As per that Notice, “Alternative 3B (Attachment #1, page 5) was chosen over other
13 proposed interim transition alternatives [at the north end of the H2K project] due to
14 improvements in geometry over 3A and lesser schedule and surface street impacts related to the
15 Alternative 4 families.” The new alternative in this Notice is being selected because, “Inclusion
16 of the NB Alaskan way movement will further reduce space in the WOSCA property for the
17 tunnel contractor.” Exhibit B, page 1.

18 5. With the passage on April 24, 2009 of ESHB 5768 WSDOT was further emboldened to
19 proceed with the bored tunnel. Writing about the bored tunnel being authorized by the
20 legislature, in an email to his staff, dated April 28, 2009, John White project manager for the
21 AWVSR Program wrote, “The Alaskan Way Viaduct team will be moving forward with the
22 bored tunnel through downtown Seattle.” (see attached hereto as Exhibit C)

23 6. WSDOT continued to proceed with the bored tunnel project, assembling a large
24 contingent of WSDOT employees and consultants to work on the project, and in the process
25 assembling the necessary bored tunnel tasks and deliverables that would lead to the launch of
26 the bored tunnel project. Exhibit D, which is comprised of two WSDOT documents, one dated
June 11, 2009, and the other dated June 18, 2009, details those efforts.

1 7. Exhibit E, a WSDOT flow chart for the H2Kst and bored tunnel project dated February 2,
2 2010, demonstrates that the WSDOT efforts to bring the bored tunnel project to fruition via the
3 H2K project have continued apace, and with the recent opening of the bids for the project, are
4 about to be rewarded. This exhibit further establishes the link between the bored tunnel project
5 and the H2Kst project, in fact according to this document and the excerpt included below, the
6 H2Kst project is actually a sub-project of the Bored Tunnel Project:

7 **Bored Tunnel Project**

8 **Holgate to King: (6 Months) May 2010- Nov 2010**

9 **Traffic: SR99 – Open**
10 **Alaskan Way Surface Street -Open**
11 **First Avenue So.- Open**
12 **Denny Way Ramps – Open**

13 **Construction:**

14 **H2K-Construction of the East Frontage Road**
15 **H2K-Construction of Alaskan Way -Port Side Path**
16 **H2K-Utility Relocation for the WOSCA Detour**

17 **Holgate to King (5 Months) Nov 2010 – April 2011**

18 **Traffic: SR 99- Open Holgate to Denny**
19 **Alaskan Way Surface Street (King St. – Royal Brougham.)- One Lane**
20 **Each Direction. (Royal Brougham – So.Atlantic)- Closed**
21 **First Avenue So.(Railroad Way to WOSCA)- Reduced 1 Lane Ea.**
22 **Direction. Periodic Evening Closures.**
23 **Denny Way Ramps – Open**

24 **Construction:**

25 **H2K- SIG Tail Track Relocation**
26 **H2K- Construction of WOSCA Detour**
H2K- Ground Improvements, Construction of SB-1 Structure

Holgate to King (3.5 Months) April 2011- July 16 2011

Traffic: SR 99-NB, SB on Exist Viaduct, SB Off-Ramp, NB On-Ramp
on WOSCA Detour Open.
Alaskan Way Surface Street -Detour on East Frontage Road
First Avenue So.(Railroad Way- WOSCA)- Reduce to One Lane Ea.
Direction. Open to Two Lanes in Each Direction June 2011

Construction:

H2K - Construction of SB-1 Structure
H2K – Widening of First Avenue South

Stage 1 (4.5 Months) July 16 2011- Dec 2011

Traffic: SR 99-NB, SB on Exist Viaduct, SB Off-Ramp, NB On-Ramp
on WOSCA Detour Open.
Alaskan Way Surface Street -Detour on East Frontage Road
First Avenue So.- Open to Two Lanes in Each Direction.
6th Avenue, Taylor Avenue, and Broad Street Periodic Closures due to
Utility Relocations
Mercer Street – South 2 Lanes Closed for Road Widening

Construction:

H2K - Construction of SB-1 Structure
Bored Tunnel - Secant Pile Install and Excavation at Alaskan Way
Bored Tunnel - Setup Staging Yard
North Access Utility Relocation - 6th Avenue, Taylor Avenue, and Broad Street
City of Seattle - Widen West 3rd of Mercer Street O'Xing
City of Seattle - Widen Mercer Street
Bored Tunnel - Settlement Mitigation
Bored Tunnel - Utility Support/Replacement Along Tunnel Corridor

Stage 2 (5 Months) December 2011- May 2012

Traffic: SR 99-NB on Exist Viaduct, SB on WOSCA Detour and new SB-1 Structure SB Off-Ramp, NB On-Ramp on WOSCA Detour Open.
Alaskan Way Surface Street -Between King St. and So. Atlantic - Closed
First Avenue So. - Open to Two Lanes in Each Direction.
6th Avenue, Taylor Avenue, and Broad Street Periodic Closures due to Utility Relocations
6th Avenue Closed Between Thomas and Broad- Starting Feb. 2012
Harrison Street Closed from 6th Avenue to SR99 Starting Feb. 2012
Broad Street – Eastbound Lanes, Closed Starting Feb. 2012
Mercer Street – South 2 Lanes Closed for Road Widening

Construction:

H2K – Construction of 1.0 EPS Fill
Bored Tunnel - Setup Staging Yard
North Access Utility Relocation - 6th Avenue, Taylor Avenue, and Broad Street
City of Seattle - Widen West 3rd of Mercer Street O'Xing
City of Seattle - Widen Mercer Street
City of Seattle - Widen Middle 3rd of Mercer Street
Bored Tunnel - Settlement Mitigation
Bored Tunnel - Utility Support/ Replacement Along Tunnel Corridor

8. In addition to proceeding with the bored tunnel project under the cover of the H2Kst project, WSDOT with the FHWA's agreement has altered other AWVSR Program projects to conform to their decision to proceed with the bored tunnel. Exhibit F details the fact that WSDOT has terminated the AWVSR Program contract for the renovation of the Battery Street Tunnel. WSDOT cancelled this project and others because according to the Trend Notice register – "This trend was cancelled due to the decision for a bored tunnel for SR 99 and the decommissioning of the BST [Battery Street Tunnel]."

9. The Battery Street Tunnel project was not the only project WSDOT halted to accommodate the bored tunnel. According to a WSDOT presentation dated February 23, 2010, WSDOT stopped work on the AWVSR Program Massachusetts St. power line relocation project - "WSDOT suspended work between S. Royal Brougham Way and Railroad Way S., until further design is complete on the southern portal for the bored tunnel section of the central waterfront section of SR 99." (Exhibit F)

10. As of March 28, 2010 WSDOT is in the process of finalizing the legal documentation that must be recorded for WSDOT's purchase of the subterranean land rights along the

1 alignment that WSDOT has selected for the bored tunnel project - starting with land that lies
2 within limits of the H2Kst project boundaries (see attached Exhibit G, WSDOT, Right of Way
3 Limited Access Plan sheets).

4 11. Exhibit H is the Meeting Minutes for two WSDOT workshops, one held on February 17,
5 2009 and the other held on February 20, 2009. The document which is entitled "Holgate to
6 King Stage 2 and Tunnel Interface Options and Decisions Workshops I and II", details the
7 decisions that WSDOT has made in order to conform the H2Kst project to the bored tunnel
8 project:

9 Alternative 3A was developed by the Project Team as a variation to Alternative 3
10 with a 25 MPH design speed for the Transition Structure tie-in to the Ex Viaduct

11 • The SB transition structure tie-in connects north of the NB transition structure
12 tie-in

13 • The mainline traffic is always maintained on SR 99 before it is diverted on to
14 the Transition Structures

15 • The number of frames that need to be retrofitted drops from 6 to 4.

16 • The SB SR 99 traffic in 2 x 11' lanes has to snake through the existing
17 columns at a lowered design speed.

18 • Barriers would be placed on both sides of the traffic lanes to protect columns

19 • The entire WOSCA site is available to the Bored Tunnel contractor as early
20 as Jan 2011

21 • RR ramps can be removed by Oct 2011 as soon as the replacement ramps
22 are built

23 • **This alternative was favored by all due to the fact that it meets the objective**
24 **of not disrupting SR99 and City street traffic, maintains traffic on SR 99 at all**
25 **times, maintains the Bored Tunnel construction schedule, and the entire**
26 **WOSCA site is available to the Bored Tunnel contractor in Jan 2011.** [emphasis
added]

1 This document and its attachments are replete with references to the linkage between the H2Kst
2 project and the bored tunnel project; as is Exhibit I, eleven pages of a series of WSDOT
3 documents for the H2Kst project that conclusively show that the bored tunnel project and the
4 H2Kst project are irretrievably intertwined.

5 Exhibit J, which includes: a reprint of a December 11, 2009 article from the Seattle PI, a
6 one page excerpt from WSDOT's March, 2010 Landscape Design presentation by its urban
7 landscape designer, ROMA, a 14 page WSDOT Trend Notice dated December 12, 2009, a three
8 page excerpt from WSDOT's December 2009 South Portal Working Group Presentation, a one
9 page placeholder from the final construction plan set for the H2Kst project, and WSDOT's
10 eight page, March, 2010 presentation titled "Proposed South End Viaduct Replacement
11 Construction Staging Concept", all document the H2Kst-bored tunnel project nexus, and they
12 irrefutably show that the FHWA and WSDOT have made the decision to proceed with the
13 bored tunnel project, absent a completed environmental review and concomitant record of
14 decision, and that they are using the H2Kst project to undertake that project.

15 12. The Court should not give a pass to the FHWA and WSDOT and allow the H2Kst project
16 to proceed unimpeded, because by allowing the H2Kst project to proceed to be constructed
17 means that the bored tunnel project is underway, without any environmental review of it and the
18 H2Kst project, without any understanding of the cumulative effects of the projects.

19 13. Considering for a moment the magnitude of the environmental impact of these one-and-
20 the same/two projects, and specifically the bored tunnel project element involving the
21 excavation, the bored tunnel, which is essentially a 9,100 foot long cylinder with an
22 approximate 55' diameter, excavating it will produce for example somewhere in the
23 neighborhood of over 800,000 cubic yards of what is called "spoils". The spoils are the rock,
24 debris, and soil that will be displaced by the boring machine. For the bored tunnel that
25 WSDOT is proceeding to build, that equates to over 35,000, 24 cubic yard truck loads of spoils
26 that will be hauled out of this hole in the ground. It will then be trucked across town and then
placed in either a train hopper car or a barge for deposit in an as yet unknown location.

1 Conservatively, this will require, if the train delivery method is chosen for example, sending
2 approximately 9,700 hopper car loads of dirt and rock out to be deposited and spread over some
3 landscape, somewhere.

4 14. In addition to the environmental damage from the excavation, all forms of tunneling
5 machines consume copious amounts of water during their operation also. The water they
6 require is part of the slurry that contains bentonite and foam polymers and mixes with the spoils
7 to move them to the surface, all of which must be pumped into treatment plant specifically
8 designed to separate out the solids, chemicals and water (see attached Exhibit J). Once that
9 water is treated it can be discharged; in this case either into Puget Sound or the City of Seattle
10 sewage system. At this point with the H2Kst project poised for implementation, no one has
11 provided evidence of what the environmental effect of this will be.

12 15. There are additional implications in terms of water pollution, treatment, and discharge,
13 and that is the groundwater that will have to be pumped out from the ground as the tunnel bores
14 underground; it will come to the surface contaminated, will require treatment, and then
15 somewhere for it to be discharged.

16 16. The foregoing arguments and exhibits clearly and with exigency demonstrate why it is
17 incumbent upon the Court to intervene and even supervise the NEPA process and the
18 concomitant SEPA process, not just for the H2Kst project, but for the entire AWVSR Program.

19 Because of the magnitude of environmental disturbance and ecological impact that the
20 H2Kst project will have by virtue of it establishing the underlying spatial arrangements and
21 built environment for the bored tunnel project, because the H2Kst project ushers in both its own
22 environmental impacts and those which can be linked to the bored tunnel, because the H2Kst
23 project is the result of the intentional acts by FHWA and WSDOT officials to avoid the full
24 environmental scrutiny of the projects which they are undertaking by segmenting the AWVSR
25 Program, the Court must intercede.

26 This request for a TRO is an important step towards ensuring that both the public's
interests are protected, that the plaintiffs' interests are protected, that the environment is

1 protected, all against two governmental agencies, the Federal Highway Administration and the
2 Washington State Department of Transportation – who are intent upon not just bending and
3 avoiding the environmental review laws and regulations that govern their actions, but intent
4 upon utterly flouting those statutes, and by extension defying their constitutional (both state and
5 federal) duties.

6 17. Plaintiffs pray one more time for the Court’s intervention in this matter and request that
7 the Court issue a temporary injunction, barring the defendants from proceeding with the H2Kst
8 project, and then providing for further review of the matter.

9
10 Respectfully submitted this 13th day of May, 2010.

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14 Elizabeth A. Campbell, Pro Se
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16 Seattle, WA 98199

17 206-769-8459
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23
24 *Prepared with the assistance of counsel*¹

25 ¹ “These rules govern the procedure in all civil actions and proceedings in the United States district
26 courts, except as stated in Rule 81. They should be construed and administered to secure the just, speedy,
and inexpensive determination of every action and proceeding.” Federal Rules of Civil Procedure I(1)
[emphasis added]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 13, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participant(s):

- | | |
|---------------------|--|
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th Day of May, 2010 in Seattle, Washington.

Elizabeth A. Campbell, Plaintiff
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