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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

<b>ELIZABETH A. CAMPBELL</b> , a single woman, and <b>SEATTLE CITIZENS AGAINST THE TUNNEL</b> , a Washington State Non-profit corporation, <b>HARVEY FRIEDMAN</b> , a single man, and <b>SHARON J. PRICE</b> , a married woman,	)	CIV. NO. CO9-1305 JCC
	)	
	)	PLAINTIFF’S REPLY TO
	)	DEFENDANTS’ RESPONSE TO
	)	MOTION FOR TEMPORARY
	)	RESTRAINING ORDER
	)	
Plaintiffs,	)	
vs.	)	Hearing Date: May 7, 2010
	)	
<b>PETER JILIK</b> , in his official capacity as Urban Area Engineer of the <b>FEDERAL HIGHWAY ADMINISTRATION</b> , an agency of the United States, <b>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION</b> , an agency of the State of Washington,	)	(National Environmental Policy Act and Washington State Environmental Protection Act)
	)	
Defendants.	)	
	)	

REPLY

1. The importance of restraining the Federal Highway Administration (“FHWA”) and Washington State Department of Transportation (“WSDOT”) project known as the S. Holgate

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

8 To understand how this is possible it is important to briefly review the history of this  
9 Alaskan Way Viaduct and Seawall Replacement Program (“AWVSR Program”), of which the  
10 H2Kst project is a part, in order to gain the understanding that while publicly the FHWA and  
11 WSDOT claim they are chapter and verse following the appropriate environmental reviews and  
12 procedures, that they have made no final decision to proceed with the bored tunnel project, in  
13 their parallel bureaucratic universe the bored tunnel project has been considered a final decision  
14 since January 13, 2009. On that date the Governor, Mayor of Seattle, and the King County  
15 executive signed a memorandum of agreement which established that the bored tunnel was their  
16 “preferred alternative”. Under the National Environmental Protection Act (“NEPA”) that  
17 would have meant that that alternative would receive a certain preferential treatment as the  
18 environmental impact statement was drafted, however, that treatment would be constrained by  
19 NEPA law, and the other two alternatives, the hybrid-elevated alternative and the hybrid-  
20 surface alternative, would receive at the same time almost an equal amount of consideration as  
21 the bored tunnel.

22 Instead the FHWA and WSDOT have been pursuing an aggressive course of actions,  
23 working on establishing the planning, permitting, financing, and construction contract  
24 negotiations which will ensure that once the NEPA record of “decision” is made at the end of  
25 the Central Waterfront project environmental review, that all elements necessary to proceed  
26 with the bored tunnel are set in place in the interim.

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

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

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

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

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

17 **Seawall not included in EIS**

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

19 **Streetcar not included in EIS"**

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

24 2. The H2Kst project has been so designed to provide all the spatial and built structural  
25 elements in the south end of SR 99 where the boring for the tunnel is to begin. The H2Kst  
26 project will be the personification of the bored tunnel project, the first and final project of the  
AWVSR Program to be undertaken that will ensure that the entire Alaskan Way Viaduct is

1 demolished, and that will ensure that neither a hybrid-surface alternative nor an hybrid-elevated  
2 alternative are built along the waterfront. The H2Kst project will also ensure that the State and  
3 the City will proceed with at a minimum a \$4.5 Billion project, that provides half the capacity  
4 of the transportation structure that is being eliminated, the Alaskan Way Viaduct. Exhibit B  
5 demonstrates how that was to be and was accomplished. It is a Trend Notice, approved on  
6 March 25, 2009, for the H2K “Stage 2 Contract Alignment w/ Bored Tunnel Implementation  
7 Plan. It establishes the nexus between the bored tunnel project and the H2Kst Project.

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

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

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

24 5. Exhibit E, a WSDOT flow chart for the H2Kst and bored tunnel project dated February 2,  
25 2010, demonstrates that the WSDOT efforts to bring the bored tunnel project to fruition via the  
26 H2K project have continued apace, and with the recent opening of the bids for the project, are  
about to be rewarded. This exhibit further establishes the link between the bored tunnel project

1 and the H2Kst project, in fact according to this document the H2Kst project is actually a sub-  
2 project of the Bored Tunnel Project:

3 **Bored Tunnel Project**

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

Traffic: SR99 – Open  
Alaskan Way Surface Street -Open  
First Avenue So.- Open  
Denny Way Ramps – Open

5 **Construction:**

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

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

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

7 **Construction:**

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

8 **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

9 **Construction:**

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

10 **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.  
6<sup>th</sup> Avenue, Taylor Avenue, and Broad Street Periodic Closures due to  
Utility Relocations  
Mercer Street – South 2 Lanes Closed for Road Widening

11 **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 - 6<sup>th</sup> Avenue, Taylor Avenue, and Broad  
Street  
City of Seattle- Widen West 3<sup>rd</sup> of Mercer Street O’Xing  
City of Seattle- Widen Mercer Street  
Bored Tunnel-Settlement Mitigation  
Bored Tunnel-Utility Support/Replacement Along Tunnel Corridor

12 **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.  
6<sup>th</sup> Avenue, Taylor Avenue, and Broad Street Periodic Closures due to  
Utility Relocations  
6<sup>th</sup> Avenue Closed Between Thomas and Broad- Starting Feb. 2012  
Harrison Street Closed from 6<sup>th</sup> Avenue to SR99 Starting Feb. 2012  
Broad Street – Eastbound Lanes, Closed Starting Feb. 2012  
Mercer Street – South 2 Lanes Closed for Road Widening

13 **Construction:**

H2K – Construction of 1/3 EPS Fill  
Bored Tunnel- Setup Staging Yard  
North Access Utility Relocation - 6<sup>th</sup> Avenue, Taylor Avenue, and Broad  
Street  
City of Seattle- Widen West 3<sup>rd</sup> of Mercer Street O’Xing  
City of Seattle- Widen Mercer Street  
City of Seattle - Widen Middle 3<sup>rd</sup> of Mercer Street  
Bored Tunnel - Settlement Mitigation  
Bored Tunnel - Utility Support/ Replacement Along Tunnel Corridor

14 6. In addition to proceeding with the bored tunnel project under the cover of the H2Kst  
15 project, WSDOT with the FHWA’s agreement has altered other AWVSR Program projects to  
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1 conform with their decision to proceed with the bored tunnel. Exhibit E details the fact that  
2 WSDOT has terminated the AWVSR Program contract for the renovation of the Battery Street  
3 Tunnel. WSDOT cancelled this project and others because according to the Trend Notice  
4 register – “This trend was cancelled due to the decision for a bored tunnel for SR 99 and the  
5 decommissioning of the BST [Battery Street Tunnel].”

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

12 8. As of March 28, 2010 WSDOT is in the process of finalizing the legal documentation  
13 that must be recorded for WSDOT’s purchase of the subterranean land rights along the  
14 alignment that WSDOT has selected for the bored tunnel project - starting with land that lies  
15 within limits of the H2Kst project boundaries (see attached Exhibit G, WSDOT, Right of Way  
16 Limited Access Plan sheets).

17 9. Exhibit H is the Meeting Minutes for two WSDOT workshops, one held on February 17,  
18 2009 and the other held on February 20, 2009. The document which is entitled “Holgate to  
19 King Stage 2 and Tunnel Interface Options and Decisions Workshops I and II”, details the  
20 decisions that WSDOT has made in order to conform the H2Kst project to the bored tunnel  
21 project:

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

24 • The SB transition structure tie-in connects north of the NB transition structure  
25 tie-in

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

- 1 • The number of frames that need to be retrofitted drops from 6 to 4.
- 2 • The SB SR 99 traffic in 2 x 11' lanes has to snake through the existing
- 3 columns at a lowered design speed.
- 4 • Barriers would be placed on both sides of the traffic lanes to protect columns
- 5 • The entire WOSCA site is available to the Bored Tunnel contractor as early
- 6 as Jan 2011
- 7 • RR ramps can be removed by Oct 2011 as soon as the replacement ramps
- 8 are built
- 9 • **This alternative was favored by all due to the fact that it meets the objective**
- 10 **of not disrupting SR99 and City street traffic, maintains traffic on SR 99 at all**
- 11 **times, maintains the Bored Tunnel construction schedule, and the entire**
- 12 **WOSCA site is available to the Bored Tunnel contractor in Jan 2011.** [emphasis
- 13 added]

14 This document and its attachments are replete with references to the linkage between the H2Kst  
15 project and the bored tunnel project, as is Exhibit I, eleven pages of a series of WSDOT  
16 documents for the H2Kst project that conclusively show that the bored tunnel project and the  
17 H2Kst project are irretrievably intertwined. Exhibit J, which includes: a reprint of a December  
18 11, 2009 article from the Seattle PI, a one page excerpt from WSDOT's March, 2010  
19 Landscape Design presentation by its urban landscape designer, ROMA, a 14 page WSDOT  
20 Trend Notice dated December 12, 2009, a three page excerpt from WSDOT's December 2009  
21 South Portal Working Group Presentation, a one page placeholder from the final construction  
22 plan set for the H2Kst project, and WSDOT's eight page, March, 2010 presentation titled  
23 "Proposed South End Viaduct Replacement Construction Staging Concept", all document the  
24 H2Kst-bored tunnel project nexus, and they irrefutably show that the FHWA and WSDOT have  
25 made the decision to proceed with the bored tunnel project, absent a completed environmental  
26 review and concomitant record of decision, and that they are using the H2Kst project to  
undertake that project.

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

5 Considering for a moment the magnitude of the environmental impact of these one-and-  
6 the same/two projects, and specifically the bored tunnel project element involving the  
7 excavation, the bored tunnel, which is essentially a 9,100 foot long cylinder with an  
8 approximate 55' diameter, excavating it will produce for example somewhere in the  
9 neighborhood of over 800,000 cubic yards of what is called "spoils". The spoils are the rock,  
10 debris, and soil that will be displaced by the boring machine. For the bored tunnel that  
11 WSDOT is proceeding to build, that equates to over 35,000, 24 cubic yard truck loads of spoils  
12 that will be hauled out of this hole in the ground. It will then be trucked across town and then  
13 placed in either a train hopper car or a barge for deposit in an as yet unknown location.  
14 Conservatively, this will require, if the train delivery method is chosen for example, sending  
15 approximately 9,700 hopper car loads of dirt and rock out to be deposited and spread over some  
16 landscape, somewhere.

17 11. In addition to the environmental damage from the excavation, all forms of tunneling  
18 machines consume copious amounts of water during their operation also. The water they  
19 require is part of the slurry that contains bentonite and foam polymers and mixes with the spoils  
20 to move them to the surface, all of which must be pumped into treatment plant specifically  
21 designed to separate out the solids, chemicals and water. Once that water is treated it can be  
22 discharged; in this case either into Puget Sound or the City of Seattle sewage system. At this  
23 point with the H2Kst project poised for implementation, no one has provided evidence of what  
24 the environmental effect of this will be.

25 12. There are additional implications in terms of water pollution, treatment, and discharge,  
26 and that is the groundwater that will have to be pumped out from the ground as the tunnel bores



1 underground; it will come to the surface contaminated, will require treatment, and then  
2 somewhere for it to be discharged.

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

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

13 This request for a TRO is an important step towards ensuring that both the public's  
14 interests are protected, that the plaintiffs' interests are protected, that the environment is  
15 protected, all against two governmental agencies, the Federal Highway Administration and the  
16 Washington State Department of Transportation – who are intent upon not just bending and  
17 avoiding the environmental review laws and regulations that govern their actions, but intent  
18 upon utterly flouting those statutes, and by extension defying their constitutional (both state and  
19 federal) duties.

20 14. Plaintiffs pray one more time for the Court's intervention in this matter and request that  
21 the Court issue a temporary injunction, barring the defendants from proceeding with the H2Kst  
22 project, and then providing for further review of the matter.

23 Respectfully submitted this 7th day of May, 2010.

24 /s/

25 Elizabeth A. Campbell, Pro Se  
26 3826 24<sup>th</sup> Avenue W.  
Seattle, WA 98199 206-769-8459

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the following documents:

1. Plaintiffs' Reply
2. Plaintiff Campbell's Declaration;
3. Certificate of Service.

were served on the following as indicated below:

Amanda Phily, Attorney General's Office  
Deborah Cade, Attorney General's Office  
State of Washington  
7141 Clearwater Drive SW  
Tumwater WA 98501

Via Electronic Filing, and E-mail

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

DATED this 7<sup>th</sup> Day of May, 2010 in Seattle, Washington.

/s/

---

Elizabeth A. Campbell, Plaintiff  
Pro Se  
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Seattle, WA 98199

206-769-8459