

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

CITY OF DARDANELLE;  
YELL COUNTY WILDLIFE FEDERATION

PLAINTIFFS

v.

No. 4:14-cv-98-DPM

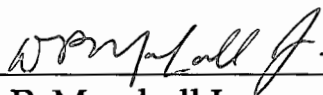
DEPARTMENT OF TRANSPORTATION;  
FEDERAL HIGHWAY ADMINISTRATION;  
ARKANSAS STATE HIGHWAY &  
TRANSPORTATION DEPARTMENT;  
RIVER VALLEY REGIONAL INTERMODAL  
AUTHORITY; and DEPARTMENT OF DEFENSE,  
United States Army Corps of Engineers, Little  
Rock District

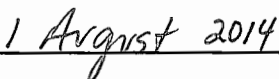
DEFENDANTS

ORDER

The Court appreciates counsel's attached letter. A Final Scheduling Order adopting the proposed schedule will issue. A mutually convenient date during the last week in August for a hearing on the motion to dismiss will be arranged.

So Ordered.

  
\_\_\_\_\_  
D.P. Marshall Jr.  
United States District Judge

  
\_\_\_\_\_  
1 August 2014

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July 14, 2014

Hon. D. Price Marshall, Jr.  
United States District Judge  
Richard S. Arnold U.S. Courthouse  
600 West Capitol Avenue – Room B155  
Little Rock, AR 72201-3325

Re: *City of Dardanelle et al v. United States Dept. of Transportation et al*  
U.S. District Court, Eastern District of Arkansas, No. 4:14-cv-98-DPM

Dear Judge Marshall:

I represent the Plaintiffs in the captioned case, which is a challenge to a Final Environmental Impact Statement (FEIS) and subsequent Record of Decision (ROD) issued relative to a proposed Intermodal transportation facility proposed for construction on the banks of the Arkansas River near Russellville and Dardanelle. The Defendants are the Federal Highway Administration of the U.S. Department of Transportation, the U.S. Army Corps of Engineers, Little Rock Division, the Arkansas State Highway and Transportation Department, and the River Valley Regional Intermodal Authority.

All of the Defendants have filed Answers to the Complaint, except the Corps of Engineers, which has filed a Motion to Dismiss the Complaint as to the Corps. The basis of the Motion to Dismiss, as I understand it, is that the Corps was a “cooperating agency” in development of the FEIS/ROD, and not the “lead agency” that actually signed the FEIS/ROD, and that it should not be a party. Further, it claims that it is preparing a supplemental EIS on a portion of the project (the slackwater harbor component) and that it has not yet completed the EIS or issued a ROD on that component, and the action is premature as to it. The Plaintiffs have responded to the Motion to Dismiss, and the Corps filed a Reply to the Response.

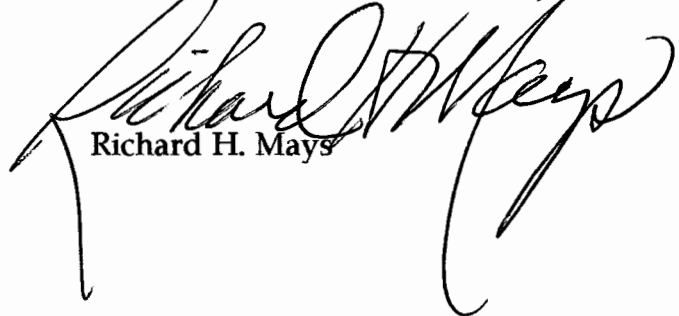
The issue of whether a “cooperating agency” is allowed or required to be a party to a case challenging an EIS/ROD is one that appears to be one of first impression. Thus, I request the opportunity to argue the Motion to Dismiss if the Court believes that it could benefit from an oral argument.

Also, in the Court’s Initial Scheduling Order dated May 5, 2014 (Doc. 25), the Court stated that it wondered whether the matter is amenable to cross motions for judgment based on the administrative record. The parties, in their Joint Rule 26(f) Report filed May 30 (Doc. 29), agreed that the case is amenable to that procedure, and proposed a schedule for the Defendants’ filing of the Administrative Record and subsequent filings of cross-motions for summary judgment by the parties. The Court has not entered an order on that schedule, and we might discuss it at the same time to see if the time frames proposed by the parties are acceptable, and whether the Defendants are on track to file the Administrative Record on the proposed date.

Thank you for your usual kind consideration of this request.

Sincerely,

**RICHARD MAYS LAW FIRM, PLLC**



Richard H. Mays

cc: Counsel for Defendants  
Mayor Carolyn McGee/City of Dardanelle  
Mr. James Woods/Yell Co. Wildlife Fed.