

Austin (Tex.) American-Statesman July 6, 1974 /

Court Refuses Block Of San Antonio Highway

NEW ORLEANS, La. (AP) — A federal appeals court refused Friday to block construction of a six-to eight-lane highway through parklands in the City of San Antonio. The 5th U.S. Circuit Court of Appeals agreed with the Texas Highway Department that the project was no longer subject to federal environmental restrictions.

The San Antonio Conservation Society has fought the highway in the courts for six years. This

was the second time the case has reached the appeals court here.

The society contended that required environmental studies before construction were not conducted. The highway department said the studies were no longer required.

At issue was whether an amendment by Congress in 1973 to the Federal-Aid Highway Act did away with the necessity of the environmental studies. The amendment severed all federal

connection with the San Antonio expressway.

The highway department said that amendment no longer subjected the expressway to requirements of the National Environmental Policy Act and the 5th Circuit court concurred.

"If Congress had not intended to exempt the Expressway from the environmental statutes, there would have been no purpose in passing the legislation," wrote Robert A. Ainsworth Jr. for the three-judge panel of the appeals court.

"We cannot believe that Congress intended a vain and useless act. Any doubt about the matter, however, is fully resolved by the legislative history which shows without question that Congress drew the bill with the evident purpose of exempting the Expressway from the provisions of federal environmental laws..."

"We conclude, therefore, that no environmental impact statement is necessary by the relationship of the North Expressway to the interstate highway system..."

"The environmental statutes were designed to apply to federal projects. The Expressway is now a state highway, not a federal highway. Its former federal status has been terminated by act of Congress. Congress have spoken in the matter, we see no reason to attempt to override the solemn expression of its will found in the enactment" of the 1973 amendment.

The court also refused the society's request to have its attorney fees paid by the defendants — the State of Texas acting for its highway department.

OPE 22-23