



U.S. Department
of Transportation
Federal Highway
Administration

1200 New Jersey Avenue, SE.

Washington, DC 20590

OCT 31 2018

In Reply Refer to: HCR-20
DOT# 2018-0354

(b) (6)

Subject: Acknowledgment of Complaint DOT# 2018-0354

Dear (b) (6)

This letter acknowledges the Federal Highway Administration's (FHWA) Office of Civil Rights received your complaint against the Kern Council of Governments (KCOG), which alleged that KCOG violated Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by the United States Department of Transportation (49 C.F.R. Part 21) and the Federal Highway Administration (23 C.F.R. Part 200). Your complaint was received by this office on September 17, 2018.

The complaint has been assigned to Kevin Resler, FHWA National Title VI Coordinator – Office of Civil Rights. Mr. Resler will keep you informed regarding the status of your complaint. You may contact him at 202-366-2925 or via e-mail at kevin.resler@dot.gov.

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. Any individual alleging such harassment or intimidation may file a complaint with the FHWA. Any questions or concerns that you have regarding the complaint process and your rights can be discussed with Mr. Resler.

Sincerely,

Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Vincent Mammano, Division Administrator, FHWA CA Division Office
Paul Schneider, Assistant Division Administrator, FHWA CA Division Office
Will McClure, Civil Rights Specialist, FHWA CA Division Office
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights



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In Reply Refer to: HCR-20
DOT# 2018-0354

(b) (6)

Subject: Dismissal of Complaint DOT# 2018-0354

Dear (b) (6)

This letter is to inform you that the Federal Highway Administration (FHWA) Office of Civil Rights has determined that it will dismiss the above complaint, which alleged violations that may be related to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation (USDOT) Title VI implementation regulations at 49 C.F.R. Part 21 and/or FHWA's Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. To be accepted for investigation, a complaint must meet the jurisdictional requirements described in FHWA's Investigations Manual, which conforms to the U.S. Department of Justice's procedures and standards for investigating complaints of discrimination. First, the complaint must be in writing. Second, it must describe an alleged discriminatory act that, if true, would fall under FHWA's jurisdiction and potentially violate FHWA's Title VI regulations. Finally, it must be filed within 180 calendar days of the alleged discriminatory act.

You alleged that you submitted written public comments on the Kern Council of Government's (KCOG's) 2018 Regional Transportation Plan and Sustainable Communities Strategy (Plan) and that KCOG's written responses to your comments mischaracterized your statements. You also alleged that when you notified KCOG of these issues, KCOG refused to issue a corrected version of the final Plan, which you alleged constituted discrimination based on your race as an African-American.

After careful consideration, FHWA has determined that the allegations and facts in your complaint do not meet the minimum criteria from which FHWA could establish a case of disparate treatment or impact under Title VI. For these reasons, this complaint will be dismissed by FHWA and closed with no further action.

If you have any questions, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,



Nichole McWhorter
Title VI Team Leader
Office of Civil Rights

cc: Vincent Mammano, Division Administrator, FHWA CA Division Office
Paul Schneider, Assistant Division Administrator, FHWA CA Division Office
Will McClure, Civil Rights Specialist, FHWA CA Division Office
Losa Smith, Civil Rights/ROW Specialist, FHWA CA Division Office
Jim Esselman, Senior Attorney-Advisor, FHWA Office of Chief Counsel
Yvette Rivera, Associate Director, Equal Employment Opportunity Programs Division,
Departmental Office of Civil Rights
Kevin Resler, National Title VI Program Coordinator, FHWA Office of Civil Rights

September 13, 2018,

Will McClure
Civil Rights Program Manager
Federal Highways Administration California Division
650 Capitol Mall, Suite 4th Floor
Sacramento, CA 95814

RE: Title VI discrimination complaint against Kern Council of Governments in development of the recently adopted 2018 Regional Transportation Plan and Sustainable Communities Strategy

Mr. McClure,

I wish to file a complaint against Kern Council of Governments "KCOG" the Municipal Planning Organization for the County of Kern in California.

The complaint is based on how I, an African-American native born Californian, was treated in my attempts to participate in the development of the recent 2018 Regional Transportation Plan and Sustainable Communities Strategy "RTP/SCS". I am an independent transportation consultant that retired from KCOG three years ago. Therefore, I have relevant knowledge, experience, and an interest in contributing to the development of the RTP/SCS.

In particular, KCOG submitted written responses to comments containing false misleading statements related to my comment letter submitted during the RTP/SCS public comment period. My letter contained among other things questions about the Environmental Justice and Title VI maps and the data listed in the comparison tables in "Appendix D - INTEGRATED PERFORMANCE MEASURES ANALYSIS of the RTP/SCS." (b) (6)

KCOG in the written response to comments falsified three misleading statements about the comments I made in my letter. The response labeled 7.3 can be found on page 22 in the RPAC August 1, 2018 staff report "Attachment B - RTP Response to Comments". (b) (6)

The following is an excerpt from the document. The falsified misleading statements are highlighted in bold italics

*"7-3 The methodology used to determine impact to EJ and Title VI areas evaluates how these areas perform compared to the county as a whole. The method is the same as used in the 2014 RTP. Changing this method to compare the Plan with the No Build Alternative **as proposed by the commenter** was not recommended at any of the three RTP Environmental and Social Equity Roundtables where that methodology was vetted by stakeholders including representatives of disadvantaged communities, nor by the RPAC/TPPC in several public meetings during the past four years when the methodology was presented. Based on the publicly vetted method, the measures indicate that in every instance, the No Build alternative EJ/Title VI areas perform better than the No Build countywide measures as a whole. **The commenter questions the measures dealing with just 2 of the 10 RTP goals – mobility***

and accessibility. The measures look at average travel time (mobility) and average travel time to job centers (accessibility). Using the alternative comparison method suggested by the commenter, several of the measures for the No Build alternative EJ/Title VI areas do perform better than the Plan EJ/Title VI areas 12 for transit travel time. However, in the No Build alternative, transit boardings are down 48% and all federal criteria air pollutant emission are up compared to the Plan, demonstrating that this is a poor method of comparison for the travel time measures. Some of the transit travel time performance gains are the result of a scaled back transit system with shorter routes. Increased congestion also limits the ability to travel, further degrading overall mobility and accessibility.”

In the same document on page 75 you can review the actual letter and my comment labeled 7.3 in red in the RPAC staff report “Attachment C - Comments Received”. You can clearly see that I did not make the false misleading statements highlighted above as “commenter”.

The KCOG Regional Planning Advisory Committee “RPAC” requested that KCOG staff provide all of the comments submitted and the response to comments at their August 1, 2018 meeting which was in advance of the KCOG Transportation Planning Policy Committee “TPPC” and Board meeting scheduled for August 16, 2018. The RTP/SCS was expected to be adopted at that August 16th meeting.

Prior to the August 1, 2018 RPAC meeting I notified KCOG staff of the false and misleading statements, During the public comment period of the meeting I did make comments and notified the RPAC members of the false misleading statements made in the response to comments labeled 7.3.

The following is an excerpt from Page 257 of the TPPC August 16, 2018 meeting staff report that includes minutes from the RPAC August 1, 2018 meeting. (b) (6)

The comments I made at the August 1, 2018 RPAC meeting informing the committee members of the false misleading statements KCOG made in the response to comments are highlighted in bold italics.

“He went on to state that in staff report, it was referred to as 7.3 but further on in the actual attachment where all the comments are listed, under 7.3 is completely different then what is in the staff report. It stated that it goes on to discuss what methodology was used. The statement was made that the commenter proposed to change the methodology, it stated that the commenter questions the measures that deal with only 2 of the 20 RTP goals. (b) (6) stated that nowhere in his comment letter did he mention any changes in methodology, suggestions of changing methodologies or changing of the RTP goals. He stated that it was not consistent with the comments he submitted or consistent with the staff reports.”

I had expected that the false misleading statements would be removed or corrected. KCOG did make edits and corrections to their response to comments for other parties that submitted comment letters. However, the false misleading statements about my comments were not.

During the August 16, 2018 TPPC meeting public comment period prior to approval of the RTP/SCS I informed the TPPC members that there are false and misleading statements in the response to comments for the RTP/SCS they will be voting on to adopt. I requested that those

statements be removed prior to adopting the RTP/SCS. However, my comments were ignored and the TPPC voted to adopt the RTP/SCS with known false and misleading statements.

The following is an excerpt from Page 3 of the TPPC August 16, 2018 meeting minutes. (b) (6)

The comments I made at the TPPC meeting informing them of the false and misleading statements KCOG made in the response to comments are highlighted in bold italics.

“..He stated that there is still one outstanding issue, in the response that was made, they quoted him as making statements that I didn’t make, and they were not in the comment letter. He stated that he brought this up previously and his understanding was that they were going to look into it and make those corrections. He stated that he did not want to go into them, but for example, it says that “the commenter proposed to make changes in methodology,” he stated that he did not propose any changes in the methodology. It goes on to say that he wanted to make changes in RTP goals, he advised that he made no mention of RTP goals. He stated that since this is going to be the final document, he would not like these statements quoting him incorrectly in the document. He requested that the Board direct staff to make that correction as part of the adoption.... He stated that with that, his understanding that the RTP and the SCS will meet the designated target, so he supports adoption of the RTP and the SCS with the corrections that he requested.”

The following day KCOG staff sent me the email message below and called me requesting that I help draft some clarifying statements that they would add to the TCCP meeting minutes. It is my understanding that once the RTP/SCS was adopted the day before that the responses to comments become a permanent part of the RTP/SCS. I stated this in my reply to the email. I believe their request is inappropriate because the RTP/SCS has already been adopted by KCOG.

“On Fri, 8/17/18, Rob Ball <RBall@kerncog.org> wrote:

Subject: Addressing your comments last night

To: (b) (6)

Cc: "Ahron Hakimi" <AHakimi@kerncog.org>

Date: Friday, August 17, 2018, 10:28 AM

(b) (6) – Thanks for your clarifying comments and support for adoption. We have been in discussion this morning with our attorney to come up with a way to address your comments at the meeting last night.

- 1) We will capture your comments in the meeting minutes.*
- 2) Although it’s not proper procedure to change the document after adoption, our attorney said adding a clarifying comment received during the adoption might be possible. Ahron has asked that I run the following statement by you for inclusion in the response to comments on the RTP.*

“At the Board Hearing adopting the 2018 RTP, Troy Hightower requested that Response 7-3 be clarified to indicate that he did not want the methodology changed. Kern COG understands that (b) (6) did not suggest that the methodology be changed.”

Let us know if this accurately captures your concern. I look forward to continue working with you on improving our region and transportation system.

*Robert "Rob"
R. Ball, Director of Planning and Deputy Director,
www.kerncog.org
rball@kerncog.org
office 661-635-2900; desk 661-635-2902"*

In summary, the discriminatory actions of KCOG staff and committees have been repetitive and on-going. They are also related to their Title VI analysis in the RTP/SCS. The multiple efforts to inform and requests to correct the false misleading statements were ignored. KCOG did edit response to comments for others. The referenced documents above will confirm KCOG actions or lack of action and my statements. I can provide hardcopies if required.

All of the above leads me to believe KCOG staff, Board of Directors, RPAC and TPPC planning committees did not consider me, my comments, or the Title VI concerns I attempted to raise as of any relevance. In addition, their actions prevented opportunities to improve the RTP/SCS in general and disadvantaged communities in particular.

Respectfully I request your review and consideration of this matter.

(b) (6)

