

case was now insufficient so as to require the preparation of a supplemental EIS as a prerequisite of constructing of the levee. CEQ, which sets forth the agency's body of rules, states that the Corps must supplement an original EIS if:

- I) The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- II) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Applying *de novo* review, the Fifth Circuit held that the district court did not make a finding of significant new circumstances relevant to environmental concerns and bearing on the proposed action or its impacts. Therefore, the court of appeals found that the district court erred in finding that the Corps' decision not to supplement the EIS before commencing construction of the levee was arbitrary and capricious and the court's issuance of the injunction was improper. The court of appeals then vacated the district court's order and dissolved the injunction.

STEVE BRONSON

*Lockhart v. Kenops*, 927 F.2d 1028 (8th Cir. 1991)

Appellant, a local land owner, appealed the district court's grant of summary judgment to the United States Forest Service. The lower court held that the Agency's decision not to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA), was not arbitrary and capricious. Appellant brought an action seeking declaratory and injunctive relief to prevent the Forest Service from proceeding with the exchange of a parcel of federal land until it had complied with the requirements of NEPA.

The court first discussed the scope of NEPA, which requires an EIS to be made for all major federal actions significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(3). Generally, the government's determination as to the need for for an EIS hinges on whether the proposed action will "significantly" affect the environment. This determination requires consideration of a list of factors found in 40 C.F.R. § 1508.27. The court clarified this procedure, stating that NEPA mandates federal agencies to consider not only the

environmental impact of the actual exchange of land from federal to private hands, but also the impact of the private purchaser's proposed use of the land.

Applying this proposed-use standard, the court found that the Forest Service had considered the effect of the private purchaser's planned development of the land when it determined that the exchange would not "significantly" affect the human environment and, therefore, an EIS was not required. The court found the Forest Service's conclusions, that the planned development of the exchanged land would not significantly affect the water quality, air quality, soil, esthetics, endangered or threatened species or historical and cultural resources of the land, satisfied the requisite considerations under 40 C.F.R. § 1508.27. Moreover, the court found that the exchange would not threaten to violate state environmental protection laws. Although the Forest Service failed to specifically refer to such state statutes, as required by 40 C.F.R. § 1508.27(10), this error was harmless because its determination as to the need for an EIS covered the same subject matter as would a determination of possible infringement of state environmental protection laws.

The court also addressed the potential for significant environmental effects to the exchanged land if sold by the first private purchaser to another private party with different development plans. This was an immediate concern, because the private party in the land exchange had advertised the land for sale. Here, the court declined to expand the scope of NEPA. Although the government must consider the environmental impact of the proposed use of exchanged land by the initial private purchaser, it need not consider the possible effects of use by "hypothetical subsequent purchasers." Because the Forest Service complied with the statutory and regulatory requirements under NEPA, and its decision to exchange federal land was not arbitrary and capricious, the court affirmed the decision of the district court.

MATT MATHEWS

*Macht v. Skinner*, 916 F.2d 13 (D.C. Cir. 1990)

Appellants sought to enjoin the construction of a light-rail line because of appellees' failure to complete the environmental analysis required by section 4(f) of the Department of Transpor-