

## **Federal Agency May Adopt Project that Combines Elements from Several Alternatives Studied in an Environmental Impact Statement**

In approving a project to repair a flood-damaged road in a national forest in Nevada, the U.S. Forest Service adopted a "Selected Alternative" that combined elements from three different alternatives that were evaluated in the Environmental Impact Statement for the project. In upholding the Forest Service's approval, the Ninth Circuit rejected the project opponents' claims that a supplemental EIS was required under the National Environmental Policy Act. [\*Great Old Broads for Wilderness v. Kimbell\*](#) (9th Cir. No. 11-16183, Mar. 4, 2013). The court started with the principle that a federal agency must have some flexibility to modify the alternatives studied in a draft EIS to reflect public input. Citing longstanding NEPA guidance issued by the Council on Environmental Quality, the court then explained that a new alternative does not trigger the requirement under NEPA to prepare a supplemental EIS if the alternative is "qualitatively within the spectrum of alternatives" discussed in the draft EIS. The court readily concluded that no supplementation was required here, based on its finding that all of the elements of the Forest Service's Selected Alternative had been adequately studied in the draft EIS. The court also rejected the claim that the Forest Service did not properly document its explanation as to why no supplemental EIS was required. The court acknowledged that that the Forest Service often presents this type of explanation in a Supplemental Information Report that is separate from the Record of Decision approving the project. But the court made clear that this procedure is not mandatory, as long as the Service makes a reasoned decision, documented in the record, that an supplemental EIS is not warranted. The case does not break new ground, but it highlights an important principle under NEPA: a supplemental EIS is not required merely because the agency selects an alternative that is different from those it studied in the EIS; rather, the question is whether the new alternative is within the range of what the EIS analyzed or instead represents a substantial deviation from the alternatives studied.

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