

two other environmental groups,² sought declaratory and injunctive relief compelling the Department of the Interior to prepare a basin-wide or comprehensive EIS, and enjoining construction of federal water projects in the basin pending completion of that study. Because congressional action foreclosed the possibility of an injunction halting construction of the projects,³ the plaintiffs now seek only an order compelling completion of the study.⁴ For the reasons set forth below, we vacate the District Court's opinion and remand this case for further proceedings.

Before initiation of this lawsuit, and while it was before the District Court, the Department of the Interior had recognized the desirability and necessity of completing a CEIS for the entire Colorado River Basin. The Department had refrained from completing such a study because Congress had not expressly allocated funds for the project.⁵ During the pendency of this appeal, however, the Department of the Interior changed its position regarding the necessity for the basin-wide study. Shortly before oral argument, the Department delivered to this court an affidavit from the Department's Deputy Assistant Secretary

for Land and Water Resources informing the court that the Department will no longer seek funding for a Colorado River Basin CEIS. The Department stated that it would meet NEPA requirements in the Colorado River Basin through project or site-specific environmental impact statements in which the Department will "discuss[] and evaluat[e] any cumulative and synergistic environmental impacts." At oral argument counsel for the Department contended that this approach is consistent with both NEPA and the Supreme Court's decision in *Kleppe v. Sierra Club*, 427 U.S. 390, 96 S.Ct. 2718, 49 L.Ed.2d 576 (1976).

[1, 2] In *Kleppe*, environmental organizations sought to compel the Department of the Interior to prepare a comprehensive environmental impact statement covering the development of coal reserves in the Northern Great Plains region. The Court identified two circumstances in which the preparation of a CEIS may be required under NEPA. First, the Court made clear that an agency must prepare a CEIS with respect to any major federal action that is intended to be "regional" in scope. See *id.* at 398-402, 96 S.Ct. at 2724-2726.⁶ Second, the

2. Although collectively labeled "EDF" for the purpose of this opinion, the plaintiffs also include Trout Unlimited and the Wilderness Society.

3. In a rider to an appropriations bill for the Department of the Interior, Congress specified that, "[n]otwithstanding any provisions of NEPA, 'construction of any feature' of certain water projects in the Colorado River Basin 'shall proceed if a final Environmental Impact Statement has been filed on such feature.'" Pub.L.No. 95-465, § 110(a)-(c), 92 Stat. 1279, 1291 (1978). In other words, Congress decided that construction of these water projects should not be halted in the absence of a comprehensive (i. e., basin-wide) environmental impact statement, so long as a site-specific EIS had been prepared for each proposed project. This anti-injunction rider was added in direct response to the possibility that the present lawsuit might result in an injunction. See Remarks of Rep. Forsythe, 124 Cong. Rec. H11,685-86 (daily ed. Oct. 5, 1978). Of course, this rider does not, by its terms, prohibit the Department of the Interior from preparing a CEIS for the entire Colorado River Basin. See Remarks of Rep. Udall, 124 Cong. Rec. H11,686 (daily ed. Oct. 5, 1978) (supporting the anti-in-

junction rider, but still expressing the hope that a basin-wide EIS would be prepared).

4. Also parties to this suit are five intervenor-cross appellants—the Utah Power & Light Co. and the states of Arizona, Colorado, Nevada, and Wyoming. The intervenors contend that the District Court erred in holding that the Department of the Interior has the discretion to complete a basin-wide or comprehensive EIS. Because of our disposition of this case, we do not reach that issue.

5. All parties recognize that until this litigation, Congress has never required express funding for a CEIS in the budget of the Department of the Interior. The Department sought funding, however, after individual members of Congress contacted the Department about their concern that the Department's budget did not specifically provide for completion of a CEIS in the Colorado River Basin.

6. There is no doubt that if an agency has adopted a region-wide plan that can be characterized as a "major federal action," § 102(2)(C) of NEPA requires the agency to prepare an EIS covering the entire "region." See note 1, *supra*. Issues