

Maybe this will help 8/11/71  
Clarify some of your  
questions of last night's  
phone conversation.

Really, I felt we, or I,  
could not advise you on  
what to write to Sierra  
Club, as a member of Sierra Club.  
Sorry. Appreciate your desire to  
consult.  
Whatever you write might,  
or might not help. (?)  
I was exhausted, time was  
out. Fred waving of teakettle  
WHISTLING!!!

as



8/11/71

ADDITIONAL Chronology of Litigation

Note that our first chronology includes everything we filed from May 10 until time of hearing June 24, 1971.

Court's decision - Judge B. Brown - on June 24 on CIVIL NO. C-70-17

reads: ...."plaintiffs filed a motion to be allowed to amend their complaint by alleging that Secretary Volpe has not complied with the National Environmental Policy Act (NEPA) and that such is necessary before he can effectively approve the construction contracts let after the effective date of that Act. The motion was supported by a memorandum and there was no request for oral argument.....  
.....We thereupon considered the motion, the response, and the memoranda and determined that the motion should be denied and so ordered. ....  
Counsel for plaintiffs contend in the motion to rehear.....  
We have granted and have heard oral argument on the motion to rehear."

"Plaintiffs seem to contend, and at the same time to forego the contention, that they are entitled to amend as a matter of right. We do not believe that they are so entitled because they have already amended once. However, we are handling the instant controversy as if plaintiffs had amended and defendants had moved to strike the amendment, thus dealing with the substance of the controversy." .....

"It is not disputed by defendants that defendant Volpe has not complied with NEPA.

"Although the question is not without difficulty, we still are of the opinion that, based on the undisputed facts as shown by the present record, NEPA is not applicable to approval of contracts by the Secretary which are let after the effective date of the Act.....In short, and applying the applicable authorities, it appears to the Court that, by the time NEPA became effective on Jan. 1, 1970, this project had proceeded too far for NEPA to be applicable to it or to contracts contemplated by the project and let after the effective date of NEPA.

"With respect to defendants' reliance on laches on the part of plaintiffs.... However, since plaintiffs are acting as a 'private Attorney-General', we do not rule that laches is a separate ground for denying the application of plaintiffs. "

"It is therefore ORDERED that plaintiffs' application to amend be and it is denied, ENTER this 24th day of June 1971."

See News reports in Com. Appeal 7-31-71; Press-Scimitar 7-31-71.

"Park Expressway Foes Given Wide Legal Path"; "Pro-X-Way Groups Allowed to Intervene in Park X-way Case," regarding June 24 hearing.

Plaintiffs given permission to take depositions. See list in Press-Scimitar.

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DEPOSITIONS ordered by court to start at once. H. S. Lewis and Robert Matlin were subpoenaed for April 10, 1971 in Park Commission's offices, August 10.

Mr. W. W. Deupree and Mrs. Stoner attended entire day's depositions.

Defendants' attorneys present; given opportunity to cross-examine.

AS