TRANSPORTATION RESEARCH BOARD

COMMITTEE ON ENVIRONMENTAL ISSUES IN TRANSPORTATION LAW (AL050)

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NINTH CIRCUIT REJECTS CAFE STANDARDS FOR LIGHT TRUCKS AND NEPA ANALYSIS OF GREENHOUSE GAS EMISSIONS

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Several states and public interest organizations challenged the corporate average fuel economy (CAFE) standards for light trucks, model years 2008-11, established by the National Highway Traffic Safety Administration (NHTSA) in a final Rule on April 6, 2006. *See* 71 *Fed. Reg.*17,566. Petitioners asserted that the CAFE standards Rule was arbitrary, capricious, and contrary to the Energy Policy and Conservation Act of 1975 (EPCA). Petitioners argued that the agency failed under the National Environmental Policy Act (NEPA) to take a "hard look" at the greenhouse gas implications of its rulemaking, failed to analyze a reasonable range of alternatives, and did not examine the Rule's cumulative impact. The Ninth Circuit held that NHTSA's Rule was arbitrary and capricious and contrary to the EPCA. The Court also concluded that the EA was inadequate and that a full EIS is required prior to promulgation of new standards. The Court's consideration of the agency's NEPA analysis of the impact of greenhouse gas emissions is particularly noteworthy and will likely be cited in future transportation cases.

The Court's NEPA analysis specifically held that "the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." The Court determined that the EA's cumulative impacts analysis was insufficient because, although the EA *quantified* carbon dioxide emissions, it did not *discuss the actual environmental effects* that might result from those emissions nor did it place those emissions in the context of other CAFE rulemakings and other past, present, and reasonably foreseeable future actions. Thus, at least in the Ninth Circuit, merely calculating total tonnage of carbon dioxide emissions for a project does not satisfy the CEQ's cumulative impacts analysis requirements.

The Court also took issue with the fact that NHTSA analyzed in detail only a narrow range of alternatives, chiding NHTSA for asserting that its range of alternatives was constrained by EPCA's focus on technologically feasible and economically practicable standards. The Court concluded that NHTSA should have considered more stringent fuel economy standards that would have conserved more energy.

Finally, the Court held that NHTSA failed to provide a convincing statement of reasons for why a small decrease (rather than a larger decrease) in the growth of carbon dioxide emissions would not have a significant impact on the environment. According to the Ninth Circuit, NHTSA could not reasonably conclude that a 0.2 percent decrease in carbon dioxide emissions will not have a significant impact upon the environment without substantiating that claim. The Court cited scientific findings from the Intergovernmental Panel on Climate Change (IPCC) describing certain "thresholds" that, when crossed, may lead to irreversible climate impacts, and held that it is hardly "self-evident" that a 0.2 percent decrease in carbon emissions (as opposed to a greater decrease) is not significant.

Importantly, the Court rejected a prior case challenging NHTSA's decision not to prepare an EIS for new CAFE standards, *City of Los Angeles v. NHTSA*, 912 F.2d 478 (D.C. Cir. 1990). In that case, the CAFE standards were lowered for passenger cars from 27.5 mpg to 26.5 mpg. The *City of Los Angeles* court held that the petitioners had standing to sue on global warming grounds, but that NHTSA adequately explained its reasons for concluding that the contribution to environmental harm from global warming due to lowering the CAFE standard from 27.5 mpg to 26.5 mpg was not significant enough to justify preparation of a full EIS. Then-Judge Ruth Bader Ginsburg noted that the 1.0 mpg CAFE rollback at issue would yield a maximum theoretical increase of less than one percent in greenhouse gases and that the petitioners had not demonstrated that even a small increase in greenhouse gases could cause abrupt and severe climate changes. The Ninth Circuit determined that *City of Los Angeles* was inapposite because "petitioners have provided substantial evidence that even a small increase in greenhouse gases could cause abrupt and severe climate changes."

Thus, under the Ninth Circuit's standard, presumably any increase (or decrease that could be greater) in carbon dioxide emissions must be analyzed under the CEQ's standard "significance" criteria.

In preparing its EIS, NHTSA must now explain *why* its Rule will not have a significant effect and cannot presume no significant effects because the CAFE standards result in a decreased rate of growth of GHG emissions. Because Petitioners raised a substantial question of whether the CAFE standards *may* significantly affect the environment (*Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric.*, 681 F.2d 1172, 1178 (9th Cir. 1982)), the Court held that NHTSA must prepare a full EIS that adequately analyzes the impacts of the Rule. *Center for Biological Diversity v. NHTSA,* Ninth Circuit No. 06-71891, November 15, 2007. The opinion is available at http://pacer.cadc.uscourts.gov.

FTA AND FHWA WEIGH COMMENTS ON JOINT NEPA NPRM

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FTA and FHWA have received approximately 15 comments to the docket for the two agencies' NPRM to amend their joint environmental impact procedures at 23 CFR Part 771. That docket closed on October 9, 2007. The comments are generally supportive. The rulemaking consists of proposals for carrying out the SAFETEA-LU mandates for environmental review of capital transit and highway projects and a number of technical changes to the existing regulations.

LIMITED CONSTRUCTION ON MASS/NH I-93 PROJECT ALLOWED DURING PREPARATION OF LIMITED SEIS

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On August 31, 2007, the U.S. District Court for the District of New Hampshire issued its decision on a NEPA challenge brought by the Conservation Law Foundation (CLF) to a FHWA and NHDOT project to construct four additional highway lanes on a 19.8 mile segment of Interstate 93 (I-93). (See October, 2007 Issue for more background.) The Court largely rejected CLF's claims, finding sufficient the statement of purpose and need, study of alternatives, (including study of rail options), examination of direct and indirect environmental effects, and mitigation package. However, the Court found that the agencies had not considered and shared with the public in the FEIS the most recent population growth forecasts in generating their traffic projections. As a result, the agencies were ordered to prepare a limited SEIS to determine the effects of this latest data on congestion reduction, induced traffic, and air quality.

Significantly, the Court did not enjoin construction during preparation of the SEIS. Instead, immediately after the decision, the Court held a status conference and encouraged the parties to enter into negotiations to determine an appropriate course of action. The parties filed a joint status report on October 4, 2007, followed by a substantially identical proposed final judgment on November 21, 2007. The parties agreed that three discrete "Projects" may commence in 2008 during preparation of the SEIS. They include construction of select on- and off-ramps, as well as a new alignment to be paved with only two lanes and operated as an interim two-lane facility. In exchange for an agreement to let these projects commence during the court-ordered remand, the agencies provided detailed project information to CLF and certified that "proceeding with the above projects will not commit NHDOT and FHWA to a particular outcome in the NEPA process and will not influence the SEIS process and analysis and Supplemental Record of Decision."

The Court fully approved and adopted the parties' agreement as its final judgment. The case was formally closed, requiring the filing of a new complaint for any future challenge to a supplemental ROD. *Conservation Law Found. v. FHWA*, 2007 DNH 106 (D.N.H. Nov. 30, 2007), Case No. 1:06-cv-00045-PB.

DESIGNATION OF IMPAIRED WATERS UNDER CWA TAKES ON NEW SIGNIFICANCE— NO PERMITS FOR NEW DISCHARGES UNTIL ATTAINMENT SHOWN

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On October 3, 2007, the Ninth Circuit Court of Appeals (Ninth Circuit) issued a potentially landmark decision in *Friends of Pinto Creek v. U.S. Envtl Protection Agency* (*Pinto Creek*), No. 05-70785, 2007 U.S. App. LEXIS 23251 (9th Cir. Oct. 4, 2007). *Pinto Creek* holds that the EPA rules for National Pollutant Discharge Elimination System (NPDES) permit issuance in 40 C.F.R. § 122.4(i) preclude issuance of a "new" discharge permit for any water body listed as "impaired" under Section 303(d) of the Federal Clean Water Act (CWA) until: 1) existing "discharges" from "point sources" in the watershed are identified and made subject to compliance schedules; 2) the compliance schedules can demonstrate future attainment of all pertinent water quality standards. Approximately 45% of watersheds in the United States are listed as "impaired" under Section 303 (d) of the CWA for at least one pollutant.

EPA granted the Carlota Copper Company's application for a National Pollutant Discharge Elimination System (NPDES) permit in July 2000. As a condition of the permit, Carlota was required to conduct mitigation in and around a nearby abandoned mine in order to "offset" any additional loadings of copper associated with Carlota's proposed mining venture. As a result of the mitigation, Pinto Creek

would be cleaner after implementation of the new permit than before, but the creek remained on the State of Arizona's Section 303 (d) list for excessive copper. Friends of Pinto Creek and other non-governmental organizations (Plaintiffs) filed a petition challenging the issuance of the permit at the EPA Environmental Appeals Board (EAB) arguing that no new discharges could be undertaken until all state water quality standards for Pinto Creek were met or exceeded.

In September of 2004, the EAB denied relief, and EPA Region IX issued a final NPDES permit to Carlota. Plaintiffs then appealed the EAB's decision to the Ninth Circuit which ruled in Plaintiffs' favor—holding that no "new" permits could be issued until all point sources in water quality impaired segments of Pinto Creek were made subject to compliance schedules that would demonstrate compliance with all water quality standards. *Pinto Creek*, 2007 U.S. App. LEXIS 23251 at *12-18. Although the Ninth Circuit denied that it was applying a categorical ban, the difficulty (and in some cases, impossibility), of applying water quality based compliance schedules to every existing point source in a watershed (prior to new permit issuance) may result in a *de facto* ban for many applicants.

Editor's Note: Although this case is not related directly to transportation, I asked for a summary so the readers of this newsletter can stay abreast of this key issue.

NEW BRIDGE FROM CANADA INTO MAINE OK UNDER NEPA AND 404

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The Project

Maine Department of Transportation (MDOT) proposed a bridge to provide a third port of entry from Canada into the United States in order to reduce congestion and long delays in the two existing border crossing points. Plaintiff Friends of Magurrewock (FOM) alleged that the third bridge would lead to future development and the widening of Route 1, which currently traverses a National Wildlife Refuge. Federal Highway Administration prepared an Environmental Assessment ("EA') and issued a Finding of No Significant Impact for the bridge in 2002. MDOT subsequently applied for a Clean Water Act (CWA) 404 permit and the Corps issued an EA in 2006 and granted the permit application. Six months after the Corps approval and after MDOT entered into contracts and began building the bridge, FOM filed an initial challenge, and shortly afterward, a request for a preliminary injunction (a suit for a Temporary Restraining Order was dismissed by agreement of the parties).

Clean Water Act Claims
FOM's CWA argument was that the Corps did not consider the least environmentally damaging practicable alternative ("LEDPA") when it selected "Alternative 3" instead of "Alternative 2A." The record showed that Alternative 2A would have greater wetland impacts, "greater indirect impacts to unfragmented wildlife habitat and potentially higher impacts to Atlantic salmon." The court concluded that FOM had not demonstrated a likelihood of success on the merits of their CWA claim because the Corps had properly considered alternatives in selecting the LEDPA.

NEPA Segmentation Claims
FOM's NEPA allegation was that the Corps failed to consider cumulative impacts, relative to potential future widening of Route 1, which the court also interpreted as an "improper segmentation" argument. In finding that the Corps' conclusion was not arbitrary and capricious, the court cited to the fact that the relevant transportation plans did not include such widening, and the Corps considered potential impacts should Route 1 have to be widened after the bridge's 2030 design life. Importantly, the Corps "did not take MDOT's representation at face value" and confirmed the lack of plans to widen Route 1. The court also upheld the Corps' conclusion that the bridge was independently justified and therefore was not improperly segmented.

NEPA Environmental Impact Statement Claim
FOM also claimed that the controversy over the project required preparation of an Environmental Impact Statement. On this claim, the court found that FOM did not show a likelihood of success. The court viewed the "controversy" as unsupported by reasoned analysis, stating that there was not a "*bona fide* controversy as to the environmental effects of the project." In addition, the Corps did consider FOM's opposition to the project in the EA.

The court found that because FOM was unlikely to succeed on the merits no preliminary injunction would issue, but the court evaluated the other factors for an injunction briefly anyway. Most useful to highway agencies and proponents of public works projects, the court found the six-month delay between the Corps approval and the filing of the complaint "troubling." The court considered the financial commitment already made and the harm related to the Corps' permitting program from tardy challenges. Finding that there was no excuse for the delay, the court concluded that "the hardship to the Corps and MDOT outweighs any hardship to FOM."

Friends of Magurrewock, Inc., v. United States Army Corps of Eng'rs, 498 F. Supp. 2d 365 (D. Me. 2007)

CONFORMITY RULE FOR PARTICULATE HOT SPOTS MOSTLY UPHELD, PARTLY REMANDED

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In December 2007, the Court of Appeals for the District of Columbia Circuit rejected most of the challenges brought by Environmental Defense and other environmental groups against EPA's transportation conformity hot spot rule for particulate matter, "$PM_{2.5}$ and PM_{10} Hot Spot Analyses in Project-Level Transportation Conformity Determinations for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards" ("Final Rule"), 71 *Fed. Reg.*12,468, 12,470-74 (Mar. 10, 2006) (to be codified at 40 C.F.R. pt. 93). However, EPA's determination that "hot spot" analyses may not have to meet all three requirements of Clean Air Act Section 106(c)(1)(B) was set aside as arbitrary and capricious. The rule was remanded for review and/or explanation on the agency's application of the term "any area" for purposes of conformity.

The Clean Air Act conformity provision states, in pertinent part:

> Conformity to an implementation plan means–
> (A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and
> (B) that such activities will not –
> (i) cause or contribute to any new violation of any standard *in any area*;
> (ii) increase the frequency or severity of any existing violation of any standard *in any area*; or
> (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones *in any area.* 42 U.S.C. § 7506(c)(1) (emphases added).

Environmental groups have long argued that EPA inadequately applied the requirements of this section, by failing to assure that specific projects are evaluated for their particular contributions to air quality. This lawsuit involved claims that all projects must undergo project level (i.e., including hot spot) conformity analysis and demonstrate compliance with all provisions of subparts (A) and (B).

The Court rejected petitioners' claims that both subparts (A) and (B) must be satisfied in every rule, including the hot spot analysis. Rather, the Court accepted EPA's view that subpart (A) does not focus on specific areas, but rather overall conformity to the implementation plan's "purpose." This can be met by not increasing violations, rather than, as argued by the petitioners, reducing violations of air quality standards. The court accepted EPA's view that subpart (A) does not apply locally, but rather at the implementation plan level.

In contrast, the Court accepted petitioner's claim that all three parts of subpart (B) need to be applied to specific local projects. EPA's regulation had applied the first two subparts, but not the third. The Court found EPA's explanation inadequate:

> "EPA maintains on appeal that the Final Rule, along with the broader regulatory framework and the SIP process can satisfy the requirements of (B)(iii). Because it interprets the statute not to require each project to reduce emissions, EPA asserts that it is not necessary to include (B)(iii)'s conditions in the Final Rule. *See* Final Rule, 71 *Fed. Reg.* at 12,482. However, under EPA's revision of the 'hot spot' regulations, an individual project's emissions could counterbalance mitigation measures already in place, thereby delaying attainment of emissions standards and violating the requirement of (B)(iii) without either increasing or decreasing emissions. EPA's position thus does not seem to cover all circumstances where (B)(iii) is applicable. *Slip Op.* at 13.

On this point, the regulation was remanded for change or further explanation. We can expect that EPA and possibly FHWA will issue guidance on conformity determinations in the interim, while the regulation is on remand.

Environmental Defense v. Environmental Protection Agency, D.C. Cir. 12/11/07

MARYLAND INTERCOUNTY CONNECTOR HIGHWAY SURVIVES NEPA, 404, 4F AND CLEAN AIR ACT CHALLENGES

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The third time was indeed the charm for the proposed Intercounty Connector ("ICC"), as a federal district court judge in Maryland approved the NEPA analysis for the new 18-mile limited access highway planned for the suburbs outside of Washington, D.C. Plaintiffs' various challenges to the adequacy of the EIS were universally rejected in a 106-page opinion by Judge Alexander Williams. This marked the Maryland Department of Transportation's third attempt to complete the NEPA process, after two previous efforts in the 1980s and 1990s failed to result in an agreement between state and federal officials and a Record of Decision.

Two coalitions of local and national environmental organizations initially filed two separate but related actions in two federal district courts, each on the final day of the statutory limitations period under SAFETEA-LU and the Clean Air Act. The agencies succeeded in consolidating these cases in the Maryland district court. The complaints raised an assortment of claims. The Plaintiffs challenged the agencies' compliance with NEPA, Section 4(f) of the Transportation Act, Section 404 of the Clean Water Act, obligations to assess air quality impacts under the Clean Air Act, and alleged procedural and substantive obligations under Section 109(h) of the Federal-Aid Highways Act. Plaintiffs voluntarily dismissed from the

litigation the Washington area Metropolitan Planning Organization and claims related to its air conformity determinations. Even without those claims and the separate MPO defendants, the parties filed over 500 pages of briefing and the court conducted two separate oral arguments in advance of its ruling.

With regard to traditional NEPA claims, the Court rejected Plaintiffs' argument that the agencies had too narrowly defined the project's Purpose and Need. Relying in large part on the fact that the Purpose and Need included reference to connecting I-95/US 1 and I-270 in Maryland with a limited access highway, Plaintiffs asserted that the agencies had created too narrow a framework for the assessment of non-highway alternatives. The Court disagreed, stating that the agencies had in fact openly and fully analyzed a variety of alternatives, disproving any limitation from the statement of the project's Purpose and Need. The Court also pointed out that all of the state and federal agencies participating in preparation of the EIS had been given an opportunity to comment on and contribute to the Purpose and Need statement and that, after full discussions, the other lead permitting agencies concurred in the final statement incorporated into the EIS.

In addition, Plaintiffs had posed an assortment of non-highway alternatives both prior to and after publication of the Draft EIS and argued that they were not given full consideration in the NEPA process. Again, based on the administrative record, the Court disagreed. It held that the agencies properly determined that these proposed alternatives did not meet the project Purpose and Need and that it was not necessary to study these options in full detail because they were deemed not reasonable. The Court also deferred to the expertise of the agencies in assessing various common measures of effectiveness concerning the transportation benefits associated with the alternatives retained for detailed study and Plaintiffs' proposed alternatives, determining that Plaintiffs' simply different view of transportation goals and benefits did not render the agencies' analysis arbitrary or capricious. In this regard, the Court echoed earlier cases cautioning against a court becoming a "super professional transportation analyst" to determine the appropriate model or MOE's to use in a given case.

The agencies' analysis of a variety of key resource impacts also was upheld. Plaintiffs focused a great deal of attention on the analysis of secondary and cumulative effects and the project's potential for mobile source air toxics ("MSAT"). In these instances, the Court deferred to the agencies' application of complex planning and transportation models and acknowledged that appreciable uncertainly existed to fully analyze the potential health impacts of MSAT on people living near a roadway. Despite this uncertainty, the Court held that the agencies reasonably conducted an MSAT analysis, using an aggregate emission standard across the NEPA Study Area.

In a lengthy analysis, the Court approved all elements of the agencies' Section 4(f) analysis, including the initial identification of resources in the Study Area and

the agencies' decision that parks "jointly planned" by the park owner with a highway right-of-way barred a finding of "constructive use" of such parkland. The Court also spoke favorably about the agencies' extensive efforts to minimize and/or mitigate impacts to Section 4(f) properties through engineering design and the fact that the State committed to the purchase and designation of similar replacement parkland at a ratio of over 8 acres for every acre used by the project.

The Army Corps of Engineers prepared a separate Record of Decision to memorialize its consideration of factors in compliance with Section 404 and its 404(b)(1) Guidelines for the granting of individual permits under that program. Plaintiffs alleged that the Corps had made its decision by improperly relying on the flawed analysis of the FHWA. The Court rejected those claims, ruling that the Corps exercised independent judgment throughout the permitting and NEPA process in issuing the Section 404 permit. The Court upheld the finding that the Selected Alternative was reasonably concluded to be the "least damaging practicable alternative." In part, the Court found persuasive the Corps's assessment that potential impacts to an important drinking water source in the Study Area associated with one of the proposed build alternatives was a reasonable basis to reject that alternative. Like the consideration of parkland impacts, the Court found that the binding mitigation package upon which the Corps permit was conditioned was "commendable" and regarding certain items, agreed that the mitigation was "unprecedented in Maryland."

The Court's analysis of Clean Air Act claims involved review of a complex portion of the administrative record and a review of the most recent EPA guidance and rulemaking concerning the assessment of so-called "hot-spots" for any new localized PM 2.5 sources (fine Particulate Matter). First, the Court held that the agencies properly utilized a qualitative methodology to perform this analysis, as the U.S. EPA has not yet promulgated an effective quantitative methodology. Second, the Court upheld the agency's use of the "monitor comparison" method, even though the best existing monitor selected by the agencies was not located immediately adjacent to the proposed highway. Defendants, the Court found, used the best information available to them in selection of that monitor for the comparison methodology. Although the Court expressed some reservations concerning the accuracy of calculations for the Study Area, it held that the choice of that particular monitor was not arbitrary or capricious.

Finally, the Court agreed with the agencies that the Federal-Aid Highways Act, particularly, Section 109(h) of that Act, is a "general policy statement which does not imply a private right of action." Moreover, the Court found that the FHWA's compliance with the NEPA regulations jointly implementing Section 109(h) satisfied any obligations under both statutes. Finally, the Court accepted the agencies' arguments that the various factors articulated in the ROD regarding social, environmental and economic impacts of the proposed highway satisfied the general statement in Section 109(h) that the FHWA should consider the "best

overall public interest" in its final determination, and no separate, substantive "public interest" showing was required.

As with any summary of a 106-page opinion, this one is necessarily abbreviated. However, both the ruling and the parties' briefs provide an enormous resource into the most current research and legal interpretation of a variety of transportation and environmental statutes and implementing regulations. As a sidebar, this project became the first transportation facility designated on the President's Executive Order for streamlining NEPA review to obtain complete judicial approval. The ruling can be found at: *Audubon Naturalist Soc'y v. United States Dep't of Transp.*, 2007 U.S. Dist. LEXIS 84051 (D. Md. Nov. 8, 2007).

USE OF TIERING UPHELD FOR 150 MILE STRETCH OF I-69 IN INDIANA

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On December 10, 2007, the U.S. District Court for the Southern District of Indiana issued its decision in the case of *Hoosier Environmental Council v. USDOT*. This case revolves around the proposed construction of an approximately 150 mile stretch of I-69 in southwestern Indiana. The Indiana Department of Transportation (INDOT) and the Federal Highway Administration (FHWA) examined the project alternatives through the use of a tiered EIS. The first tier, which was the subject of the lawsuit, examined several alternative corridors and combinations of corridors. Slip op., pp.6-7. Plaintiffs essentially argued that the tiering of the EIS enabled FHWA to skirt other environmental laws, such as the Clean Water Act and the Endangered Species Act, and that approval of the EIS by the U.S. Army Corps of Engineers and the Fish & Wildlife Service (FWS) locked those agencies into future actions without adequate analysis.

The Court agreed with some of Plaintiffs' concerns, stressing that "if tiering is not carefully coordinated and checked, it can enable agencies to abrogate or circumvent provisions of other environmental laws with substantive mandates and safeguards." Slip op., p. 18. Nevertheless, it rejected Plaintiffs' claims, holding that the degree of detail available to and provided by the agencies was appropriate given the degree of approval they were providing. In other words, "the preferred alternative will have a number of environmental impacts. The agencies foresee those impacts as manageable and acceptable at this point." But after the second tier analysis, "those impacts may or may not turn out to be acceptable. It is possible, although not probable given the information available, that INDOT and FHWA may have to return to the drawing board and reconsider previously rejected alternatives to achieve their goals." *Id.*, p.19.

Thus, for example, "the use of tiering in this project means that the Clean Water Act protections will not be triggered until the agencies reach their second tier of

analysis." *Id.* at 38. As a result, "tiering did not preclude the Army Corps 'from considering a full range of alternatives' when evaluating permit applications during the second tier." *Id.* at 35-36. Similarly FWS made its "jeopardy findings using the best available scientific and commercial information." *Id.* at 47. This was sufficient for the Court despite the fact that "[n]o existing evidence indicates that the defendants will re-initiate formal consultation in the second tier." *Id.* at 52. In large part, this was because the Court held that the jeopardy finding could be challenged at some future point. *Id.* at 48. ("As further information develops in the second tier, challenges to the sufficiency of the [first tier] biological opinion may be suitable for further evaluation.")

Hoosier Environmental Council v. USDOT, No. 1-06-cv-1442-DFH-TAB, 12/10/07

NOTES FROM THE CHAIR

Submitted by Peggy Strand
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I look forward to seeing many of you in January for the TRB Annual Meeting. Our committee meeting is set for **Monday, January 14, 2008, 8:00-9:45 a.m.** at the **Marriott** in the **Taft Room**. Please check the schedule for other committee meetings and sessions of interest, including our "sister" environmental committees.

TRB has initiated a Special Task Force on Energy and Climate Change. This will be the spotlight theme for the 2009 TRB Annual Meeting. Please come to our committee meeting with thoughts and suggestions to help our Subcommittee on Energy and Climate Change work on this important initiative.

The Agenda for our Committee meeting on January 14, 2008 follows:

Introductions
Update on TRB Information
Hot Topics Roundtable
Planning for July Legal Workshop
Early Planning for 2009 TRB Annual Meeting

Thanks to the many volunteers who step forward to help with *The Natural Lawyer* and other Committee efforts. If you are not attending the 2008 Annual Meeting, feel free to pass along ideas to me via e-mail or phone. mstrand@venable.com or 202-344-4699

NEXT DEADLINE FOR SUBMISSIONS IS MARCH 14, 2008

Anyone who would like to submit a case summary or other news for the April, 2008 edition of this newsletter should send the material to the Editor at Richard.Christopher@hdrinc.com or at chrislagra@sbcglobal.net and should use Microsoft Word. Submissions are due by the close of business on March 14, 2008.