

## RECENT NEPA CASES (2006)

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### ABSTRACT

This paper will review substantive NEPA cases issued by federal courts in 2006. The implications of the decisions and relevance to NEPA practitioners will be explained.

### Introduction

In 2006, federal courts issued 28 substantive decisions involving implementation of the National Environmental Policy Act (NEPA) by federal agencies. These cases involved 10 different departments and agencies. The government prevailed in 16 of the 28 cases (57 percent).

As in previous years, the U.S. Forest Service was the agency involved in the most number of cases (9), and prevailed in 6 of them. A close second, the Bureau of Land Management was involved in 8 cases, and prevailed in 3. Note that two cases involved both agencies (prevailed in 1, lost in 1).

Also,

- U.S. Army Corps of Engineers was involved in 5 cases and prevailed in 3 of them.
- The U.S. Nuclear Regulatory Commission was involved in 2 cases and prevailed in 1.
- The Animal Plant Health Inspection Service (lost), Bureau of Indian Affairs (prevailed), Department of Housing and Urban Development (prevailed), Department of Transportation (prevailed), Surface Transportation Board (prevailed), and the U.S. Army (lost) were each involved in one case.

Table 1 provides the case citation for and a brief synopsis of each case.

### Themes

- Courts upheld decisions where the agency could demonstrate it had given potential environmental impacts a “hard look.”
  - *Silverton Snowmobile Club v. United States Forest Service* (10<sup>th</sup> Cir.)
  - *Northwest Environmental Advocates v. National Marine Fisheries Service* (9<sup>th</sup> Cir.)
  - *Utah Shared Access Alliance v. Carpenter* (10<sup>th</sup> Cir.)
  - *Sierra Club v. United States Army Corps of Engineers* (M.D. Fla.)
- Courts invalidated decisions where they agency failed to give potential environmental impacts a “hard look.”
  - *Great Basin Mine Watch v. Hankins* (9<sup>th</sup> Cir.)
  - *Holy Cross v. United States Army Corps of Engineers* (E.D. La.)
  - *Pit River Tribe v. United States Forest Service* (9<sup>th</sup> Cir.)
  - *Oregon Natural Resources Council v. United States Bureau of Land Management* (9<sup>th</sup> Cir.)
- Courts invalidated NEPA documents that were not based on best available science or that used faulty scientific methodologies.
  - *Earth Island Institute v. United States Forest Service* (9<sup>th</sup> Cir.)
  - *Ecology Center, Inc. v. United States Forest Service* (10<sup>th</sup> Cir.)
- Proper consideration and application of categorical exclusions were upheld.

- *Colorado Wild v. U.S. Forest Service* (10<sup>th</sup> Cir.)
- *Utah Environmental Congress v. Bosworth* (10<sup>th</sup> Cir.)
- Courts invalidated decisions where the agency could not demonstrate that it had applied a categorical exclusion, or considered extraordinary circumstances, at the time the decision was made.
  - *Center for Food Safety v. Johanns* (D. Haw.)
  - *People v. U.S. Department of Agriculture* (N.D. Cal.)
- Courts upheld NEPA documents that properly analyzed the cumulative impact of the proposed action with other projects.
  - *Northwest Environmental Advocates v. National Marine Fisheries Service* (9<sup>th</sup> Cir.)
  - *Louisiana Crawfish Producers Ass'n-West v. Rowan* (5<sup>th</sup> Cir.)
- Courts invalidated NEPA documents that failed to fully consider cumulative impacts.
  - *National Audubon Society v. Kempthorne* (D. Alaska)
  - *Great Basin Mine Watch v. Hankins* (9<sup>th</sup> Cir.)
  - *Baykeeper v. U.S. Army Corps of Engineers* (E.D. Cal.)
  - *Oregon Natural Resources Council v. United States Bureau of Land Management* (9<sup>th</sup> Cir.)
- A court reiterated that a cumulative impact analysis need not consider future actions that are too speculative.
  - *Gulf Restoration Network v. United States Department of Transportation* (5<sup>th</sup> Cir.)

#### Other NEPA Cases of Note

- *Silverton Snowmobile Club v. United States Forest Service* (10<sup>th</sup> Cir.): In this case involving both the U.S. Forest Service and the Bureau of Land Management, the court held that the agencies had satisfied NEPA's "hard look" requirement, but also that the plaintiffs had waived their claim that the agencies should have prepared an EIS instead of an EA because they failed to raise this issue during the administrative proceedings.
- *But see, Ilio'ulaokalani Coalition v. Rumsfeld* (9<sup>th</sup> Cir.): The court held that the plaintiffs did not waive their right to challenge the sufficiency of the Army's consideration of reasonable alternatives. Rather, the Army had independent knowledge of the very issue that concerned the groups in this case, such that "there is no need for a commentator to point them out specifically in order to preserve its ability to challenge a proposed action."
- *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* (9<sup>th</sup> Cir.): The U.S. Nuclear Regulatory Commission violated NEPA by refusing to consider the environmental effects of a potential terrorist attack in connection with its approval of a proposed spent fuel storage installation. The NRC argued that the possibility of a terrorist attack on a nuclear facility is so remote and speculative that the potential consequences of such an attack need not be considered in a NEPA document. The court held that "considering the policy goals of NEPA and the rule of reasonableness that governs its application, the possibility of terrorist attack is not so 'remote and highly speculative' as to be beyond NEPA's requirements."
- *Northern Alaska Environmental Center v. Kempthorne* (9<sup>th</sup> Cir.): Plaintiff environmental group challenged an EIS, arguing that it lacked site-specific analysis for particular locations where drilling might occur. The Bureau of Land Management argued, and the court agreed, that "no such drilling site analysis is possible until it is known where the drilling is likely to take place, and that can be known only after leasing and exploration. The government points out that the environmental consequences at specific sites can be assessed in connection with later applications for permits for drilling at those sites, and that no permits should issue without extensive site specific analysis of adverse environmental effects and of the mitigation measures appropriate to minimize them."

- *Holy Cross v. United States Army Corps of Engineers* (E.D. La.): With respect to the proposed dredging and disposing of contaminated sediment from the Industrial Canal, a five-mile link just east of New Orleans in the navigational system that connects the Gulf Intracoastal Waterway and the Mississippi River-Gulf Outlet with the Mississippi River and Lake Pontchartrain, the court held that the U.S. Army Corps of Engineers “failed to take a ‘hard look’ at the environmental impacts and consequences of dredging and disposing of the canal’s contaminated sediment and should revisit the Project in light of recent catastrophic events. The extra-record materials submitted by the Plaintiffs merely shed light on this fact. Notably, the EIS does not consider the reasonable dredging and disposal alternatives that the Corps has recently adopted for maintenance dredging of the same waters. In light of Hurricane Katrina, the underlying purpose of NEPA will not be served if the Corps moves forward with the Industrial Canal Project according to a plan devised almost a decade ago. Without further study and planning, the Project cannot be considered ‘environmentally conscious.’”

**Table 1. NEPA Cases Decided in 2006**

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<b>Department of Agriculture (Animal Plant Health Inspection Service [APHIS], U.S. Forest Service [USFS])</b>			
<i>Colorado Wild v. United States Forest Service</i>	<i>No. 05-1265, 36 ELR 20015 (10th Cir. Jan. 19, 2006)</i>	W	<b>Categorical exclusions.</b> The court upheld the Forest Service's decision allowing the salvage of dead and/or dying trees on up to 250 acres to proceed without the preparation of an EIS or EA. The methodology the Forest Service used in promulgating the categorical exclusion was not arbitrary or capricious. Nor did the Forest Service err substantively in concluding that projects under the exclusion will normally not have significant impacts on the human environment.
<i>Silverton Snowmobile Club v. United States Forest Service</i>	<i>No. 05-1005, 36 ELR 20014 (10th Cir. Jan. 13, 2006)</i>	W	<b>Obligation to raise issues in administrative proceedings.</b> The court affirmed a lower court decision dismissing plaintiffs' NEPA claims against the USFS and BLM in connection with changes to winter recreational access to public land near Durango, Colorado. The agencies satisfied NEPA's hard look requirement, and the organizations waived their claim that the agencies should have prepared an EIS instead of an EA because they failed to raise this issue during the administrative proceedings.
<i>Earth Island Institute v. United States Forest Service</i>	<i>No. 05-16776, 36 ELR 20062 (9th Cir. Mar. 24, 2006)</i>	L	<b>Scientific methodology.</b> The Court of Appeals reversed a district court's denial of environmental groups' motion to preliminarily enjoin two USFS post-fire restoration projects in the El Dorado National Forest. Plaintiffs argued that the EISs for the projects did not comply with NEPA because USFS used faulty scientific methodology and because the EISs failed to adequately consider adverse impacts on the California spotted owl. Because the groups showed a strong likelihood of success on the merits of their claims that the EISs did not comply with NEPA and because they otherwise satisfied the requirements for a preliminary injunction, the court reversed the lower court's denial. The court accused USFS of apparently being more interested in harvesting timber than in complying with environmental laws.
<i>Utah Environmental Congress v. Bosworth</i>	<i>No. 05-4102, 36 ELR 20072 (10th Cir. Apr. 7, 2006)</i>	W	<b>Categorical exclusions.</b> The Court of Appeals upheld a lower court decision that a 123-acre timber-thinning project to treat beetle-infested trees in Utah's Fishlake National Forest complied with NEPA. The project fell within the general confines of a categorical exclusion for small acreage timber-thinning projects and there were no extraordinary circumstances present. Therefore, an EA was not required.
<i>Ecology Center, Inc. v. United States Forest Service</i>	<i>No. 05-4101, 36 ELR 20128 (10th Cir. June 29, 2006)</i>	W (on NEPA claim)	<b>Best scientific evidence available.</b> The Court of Appeals partially reversed the dismissal of environmental groups' complaint challenging a USFS logging project in the Dixie National Forest. The USFS's EIS for the project took a hard look at the potential adverse environmental impacts of the project.
<i>Hells Canyon Preservation Council v. Haines</i>	<i>No. CV. 05-1057-PK, 36 ELR 20158 (D. Or. Aug. 4, 2006)</i>	W (on NEPA claim)	<b>Similar actions.</b> The court granted summary judgment in favor of environmental groups challenging the USFS's record of decision for 49 mining operations in the North Fork Burnt River watershed in the Wallowa-Whitman National Forest. The USFS did not err in analyzing all 49 mining operations in a single EIS.

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<i>Center for Food Safety v. Johanns</i>	<i>No. 03-00621 JMS/BMK, 36 ELR 20175 (D. Haw. Aug. 10, 2006)</i>	L	<b>Categorical exclusions.</b> The court held that APHIS violated NEPA in permitting four companies to plant genetically modified crops in Hawaii to produce experimental drugs without preparing an EA or EIS. There is nothing in the administrative record to indicate that APHIS considered the applicability of NEPA, categorical exclusions, or the exceptions to those exclusions.
<i>People v. United States Department of Agriculture</i>	<i>Nos. C05-03508, -04038, 36 ELR 20197 (N.D. Cal. Sept. 20, 2006)</i>	L	<b>Categorical exclusion.</b> The court held that the USFS violated NEPA when it repealed the nationally uniform "roadless area conservation rule" and replaced it with a less protective "state petitions rule." In adopting the state petitions rule, the USFS failed to conduct any environmental analysis under NEPA. Because the rule did not fit within the categorical exclusion for routine administrative procedures, and because the "no action" alternative included in the 2000 final EIS for the roadless rule did not satisfy the USFS's environmental review obligations under NEPA for the state petitions rule, the USFS violated NEPA. The court reinstated the 2001 roadless rule and enjoined any management activities contrary to that rule.
<i>Pit River Tribe v. United States Forest Service</i>	<i>No. 04-15746, 36 ELR 20223 (9th Cir. Nov. 6, 2006)</i>	L	<b>Failing to take a hard look.</b> The Court of Appeals held that BLM and USFS violated NEPA in extending certain leases on land considered sacred to Native American tribes and in approving a geothermal plant to be built there by a California power company. The agencies failed to take a "hard look" at the environmental consequences of the lease extensions, and they never adequately considered the no-action alternative before approving the project.
<i>WildWest Institute v. Bull</i>	<i>No. 06-35662, 36 ELR 20238 (9th Cir. Nov. 29, 2006)</i>	W	<b>Commitment of resources prior to ROD.</b> The Court of Appeals upheld a lower court decision refusing to preliminarily enjoin the USFS implementation of a "hazardous fuel reduction project" in the Bitterroot National Forest in Montana. Plaintiffs argued that USFS irreversibly and irretrievably committed resources in advance of a final decision by premarking trees for harvesting in violation of NEPA. While the USFS did indeed spend \$208,000 before the issuance of the Record of Decision, such expenditure did not necessarily prejudice the final outcome. Although plaintiffs also raised some valid concerns regarding the opinions of a soil scientist, many of the scientist's recommendations were incorporated into the final EIS.

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<b>Department of Defense (U.S. Army, U.S. Army Corps of Engineers)</b>			
<i>Northwest Environmental Advocates v. National Marine Fisheries Service</i>	<i>No. 05-35806, 36 ELR 20176 (9th Cir. Aug. 23, 2006)</i>	W	<b>Hard look.</b> The Court of Appeals held that the U.S. Army Corps of Engineers took the requisite "hard look" at the environmental and economic impacts of a project that would deepen the Columbia River's navigation channel from 40 feet to 43 feet and add new sites for the disposal of dredged materials. The court concluded that the Corps performed exhaustive studies over numerous years, solicited and accommodated input from stakeholders, and thoroughly re-analyzed areas of particular concern. The Corps did not simply consider the channel deepening project in isolation, but analyzed its cumulative impact in conjunction with other projects. Moreover, the Corps responded to concerns from Oregon and Washington about sediment availability and provided additional analyses that led the states to certify the project. And it subjected its analyses to review by independent scientists who subsequently verified the Corps' findings.
<i>Louisiana Crawfish Producers Ass'n-West v. Rowan</i>	<i>No. 05-30956, 36 ELR 20182 (5th Cir. Aug. 29, 2006)</i>	W	<b>Alternatives, cumulative impacts.</b> The Court of Appeals upheld a lower court decision that the U.S. Army Corps of Engineers' EA for a section of the Atchafalaya Basin, a flood control area in Louisiana, complied with NEPA. Plaintiffs (a group of Louisiana crawfisherman) suggested that the Corps open up the historical bayous and enforce the permit requirements for pipelines as an alternative plan for the control area. Because the Corps did not address this alternative in its EA, the organization filed suit and sought an injunction of the project. But case law and the regulations at issue do not require that all proposed alternatives, no matter their merit, be discussed in an EA. In addition, the EA adequately considered the cumulative impact of the project on the surrounding areas, and the group failed to demonstrate that the Corps' FONSI was in error.
<i>Baykeeper v. U.S. Army Corps of Engineers</i>	<i>No. S-06-1908 FCD/GGH, 36 ELR 20202 (E.D. Cal. Sept. 20, 2006)</i>	L	<b>Connected actions, cumulative impacts.</b> The court preliminarily enjoined a port from dredging two areas of the San Joaquin River's Deep Water Ship Channel in Stockton, California. Environmental groups argued that the U.S. Army Corps of Engineer's dredge and fill permit authorizing the two dredging activities violated NEPA because it failed to prepare an EIS. The Corps argued that an EIS was unnecessary because the activities are wholly independent of a larger dredging project in the area and that the two dredging activities, standing alone, do not have any significant environmental effects. Yet the Corps' finding of "independent utility" runs counter to its own regulations, and even if the dredging activities were properly segmented from the larger project, the EA failed to adequately consider their cumulative impacts.
<i>Ilio'ulaokalani Coalition v. Rumsfeld</i>	<i>No. 05-15915, 36 ELR 20204 (9th Cir. Oct. 5, 2006)</i>	L	<b>Alternatives.</b> The court held that the plaintiffs did not waive their right to challenge the sufficiency of the Army's consideration of reasonable alternatives. Rather, the Army had independent knowledge of the very issue that concerned the groups in this case, such that "there is no need for a commentator to point them out specifically in order to preserve its ability to challenge a proposed action."

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<i>Holy Cross v. United States Army Corps of Engineers</i>	<i>No. 03-370, 36 ELR 20208 (E.D. La. Oct. 4, 2006)</i>	L	<b>Failing to take a hard look.</b> With respect to the proposed dredging and disposing of contaminated sediment from the Industrial Canal, a five-mile link just east of New Orleans in the navigational system that connects the Gulf Intracoastal Waterway and the Mississippi River-Gulf Outlet with the Mississippi River and Lake Pontchartrain, the court held that the U.S. Army Corps of Engineers “failed to take a ‘hard look’ at the environmental impacts and consequences of dredging and disposing of the canal's contaminated sediment and should revisit the Project in light of recent catastrophic events. The extra-record materials submitted by the Plaintiffs merely shed light on this fact. Notably, the EIS does not consider the reasonable dredging and disposal alternatives that the Corps has recently adopted for maintenance dredging of the same waters. In light of Hurricane Katrina, the underlying purpose of NEPA will not be served if the Corps moves forward with the Industrial Canal Project according to a plan devised almost a decade ago. Without further study and planning, the Project cannot be considered ‘environmentally conscious.’”
<i>Sierra Club v. United States Army Corps of Engineers</i>	<i>Nos. 3:05-cv-362-J-32TEM, 3:05-cv-459-J-32TEM, 36 ELR 20236 (M.D. Fla. Nov. 19, 2006)</i>	W	<b>Hard look.</b> The court held that, "by the slimmest of margins," the U.S. Army Corps of Engineers' issuance of a regional general permit authorizing the dredge and fill of wetlands in a 48,150-acre region in Northwest Florida does not violate NEPA. The scope of the permit is not beyond that contemplated by the CWA's general permitting scheme, it adequately describes a category of activities that are similar in nature, and the permit activities will cause only minimal adverse effects to the environment both individually and cumulatively. The Corps also took the requisite "hard look" at the evidence in arriving at its FONSI determination, and it did not violate NEPA in rejecting the "no action" alternative.
<b>Department of Housing and Urban Development (HUD)</b>			
<i>Coliseum Square Ass'n, Inc. v. Jackson</i>	<i>Nos. 03-30875, 04-30522, 36 ELR 20195 (5th Cir. Sept. 18, 2006)</i>	W	<b>Adequacy of EA.</b> The Court of Appeals upheld HUD's evaluation of environmental and historic preservation impacts of a revitalization project in New Orleans. In issuing a FONSI and EA in lieu of an EIS for the project, HUD did not act arbitrarily, capriciously, or contrary to law in deciding that the project did not cause significant effects to human environment.
<b>Department of the Interior (Bureau of Indian Affairs [BIA], Bureau of Land Management [BLM])</b>			
<i>Silverton Snowmobile Club v. United States Forest Service</i>	<i>No. 05-1005, 36 ELR 20014 (10th Cir. Jan. 13, 2006)</i>	W	<b>Obligation to raise issues in administrative proceedings.</b> The court affirmed a lower court decision dismissing nonprofit organizations' NEPA, NFMA, and FLPMA claims against the USFS and BLM in connection with changes to winter recreational access to public land near Durango, Colorado. The agencies satisfied NEPA's hard look requirement, and the organizations waived their claim that the agencies should have prepared an EIS instead of an EA because they failed to raise this issue during the administrative proceedings.

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<i>TOMAC v. Norton</i>	<i>No. 05-5206, 36 ELR 20007 (D.C. Cir. Jan. 6, 2006)</i>	W	<b>Hard look, cumulative impacts.</b> The court dismissed claims challenging BIA's decision to take certain land into trust for the Pokagon Band of Potawatomi Indians so that it could be used in part for a proposed casino. The BIA's preparation of an EA rather than an EIS was proper, its handling of the casino's potential impact on air quality was neither arbitrary and capricious nor an abuse of its discretion, and the agency's cumulative impacts analysis was sufficient.
<i>Northern Alaska Environmental Center v. Kempthorne</i>	<i>No. 05-35085, 36 ELR 20141 (9th Cir. July 26, 2006)</i>	W	<b>Level of analysis.</b> Plaintiff environmental group challenged an EIS, arguing that it lacked site-specific analysis for particular locations where drilling might occur. The Bureau of Land Management argued, and the court agreed, that "no such drilling site analysis is possible until it is known where the drilling is likely to take place, and that can be known only after leasing and exploration. The government points out that the environmental consequences at specific sites can be assessed in connection with later applications for permits for drilling at those sites, and that no permits should issue without extensive site specific analysis of adverse environmental effects and of the mitigation measures appropriate to minimize them."
<i>Great Basin Mine Watch v. Hankins</i>	<i>No. 04-16125, 36 ELR 20150 (9th Cir. Aug. 1, 2006)</i>	L	<b>Cumulative impacts.</b> The Court of Appeals held that BLM's cumulative impact analyses prepared in conjunction with two gold mining permits it issued to a mining company violated NEPA. BLM prepared an EIS for each permit. The first EIS stated that cumulative mining emissions would be minimized due to the distance between projects, meteorological conditions, and the fact that not all projects would produce emissions concurrently. Yet nowhere is this statement supported by data broken down by mine, or even by cumulative data. The EIS also stated that the project would cumulatively result in larger volumes of hazardous waste but that the volumes of waste could not be quantified until future hazardous waste generators were identified. At the very least, BLM could have quantified existing volumes of hazardous waste, but it failed to do so. Similarly, the second EIS' analysis of cumulative impacts on air is only five sentences long and includes no mine-specific or cumulative data. Nor does it contain any discussion of the cumulative impacts of sludge or hazardous waste disposal. "The [Bureau] cannot simply offer conclusions. Rather, it must identify and discuss the impacts that will be caused by each successive [project], including how the combination of those various impacts is expected to affect the environment, so as to provide a reasonably thorough assessment of the projects' cumulative impacts."
<i>National Audubon Society v. Kempthorne</i>	<i>No. 1:05-cv-00008-JKS, 36 ELR 20189 (D. Alaska Sept. 9, 2006)</i>	L (on NEPA claim)	<b>Cumulative impacts.</b> The court issued a preliminary injunction to temporarily block BLM's plans to lease approximately 1.7 million acres within the National Petroleum Reserve in Alaska for oil exploration. Although BLM's failure to prepare a supplemental EIS prior to adopting one of the alternatives from the final EIS, BLM did violate NEPA by failing to fully consider the cumulative environmental effects of the lease sales in the eastern and western sections of the reserve. Notably BLM did analyze the combined effects of the proposed oil development activities and climate change.



Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<i>Utah Shared Access Alliance v. Carpenter</i>	<i>No. 05-4009, 36 ELR 20196 (10th Cir. Sept. 19, 2006)</i>	W	<b>Substantial evidence.</b> The Court of Appeals upheld several ORV restrictions imposed by the BLM in certain parts of Utah. The court found that BLM's decision to close various public lands to ORV use was supported by substantial evidence, and the agency's reasoning in doing so was not implausible.
<i>Klamath Siskiyou Wildlands Center v. Boody</i>	<i>No. 06-35214, 36 ELR 20224 (9th Cir. Nov. 6, 2006)</i>	L	<b>Failure to apply NEPA to decisionmaking.</b> The Court of Appeals reversed a lower court decision upholding BLM's annual species review decisions for the red tree vole and its approval of certain timber sales in the Pacific Northwest. BLM's annual species review decisions for the red tree vole violate FLPMA because the dramatic change in policy regarding the vole's "survey and manage" designation cannot be reasonably defined as anything other than a change in a "term or condition" in the associated resource management plans. Similarly, BLM's failure to conduct an environmental review of these decisions violates NEPA.
<i>Pit River Tribe v. United States Forest Service</i>	<i>No. 04-15746, 36 ELR 20223 (9th Cir. Nov. 6, 2006)</i>	L	<b>Failing to take a hard look.</b> The Court of Appeals held that BLM and USFS violated NEPA in extending certain leases on land considered sacred to Native American tribes and in approving a geothermal plant to be built there by a California power company. The agencies failed to take a "hard look" at the environmental consequences of the lease extensions, and they never adequately considered the no-action alternative before approving the project.
<i>Oregon Natural Resources Council v. United States Bureau of Land Management</i>	<i>No. 05-35245, 36 ELR 20244 (9th Cir. Dec. 4, 2006)</i>	L	<b>Mootness, failing to take a hard look, cumulative impacts.</b> The Court of Appeals held that BLM's EA for a logging project in Oregon violated NEPA and that the lower court erred in dismissing the case as moot. Although the harvested trees cannot be restored, harm to old growth species may yet be remedied by any number of mitigation strategies. Hence, an appropriate EA can yield effective post-harvest relief and the case is not moot. In addition, BLM's failure to take the requisite "hard look" in this case has present consequences. The EA failed to disclose and consider quantified and detailed information regarding the cumulative impact of the logging project combined with past, present, and reasonably foreseeable logging projects, and it was tiered to other documents that did not contain the requisite site-specific information about cumulative effects. "On remand, the district court is instructed to enjoin the remainder of the [project] until the BLM provides a revised Environmental Assessment, including the required hard look at cumulative impacts of the logging already completed on contiguous habitat areas or neighboring habitat areas to be impacted by contemplated future sales."
<b>Department of Transportation (including Surface Transportation Board)</b>			
<i>Gulf Restoration Network v. United States Department of Transportation</i>	<i>No. 05-60321, 36 ELR 20105 (5th Cir. June 8, 2006)</i>	W	<b>Cumulative impacts.</b> The Court of Appeals denied a petition for review challenging DOT's decision to grant a license for a liquefied natural gas facility in the Gulf of Mexico. The EIS for the project complied with NEPA. The Secretary did not act arbitrarily or abuse his discretion in concluding that the effects of three potential future projects in the Gulf of Mexico were too speculative to consider in evaluating the cumulative impact of the licensing decision under NEPA.

Case Name	Citation/ Federal Court	Agency Won/Lost	NEPA Issue/Holding
<i>Mayo Foundation v. Surface Transportation Board</i>	<i>Nos. 06-2031 et al, 37 ELR 20006 (8th Cir. Dec. 28, 2006)</i>	W	<b>Alternatives.</b> The Court of Appeals upheld a Surface Transportation Board decision approving a railroad company's proposal to build approximately 240 miles of new rail line to reach the coal mines of Wyoming's Powder River Basin and to upgrade more than 600 miles of existing rail line in Minnesota and South Dakota. According to the court, "it is clear that the Board thoroughly examined the purposes of the two projects, and this examination ... informed its conclusion in its 2006 decision that [another rail link] did not provide a reasonable alternative to DM&E's route through Rochester (the environmental effects of which have been exhaustively studied). The Board was thus not required to consider the environmental impacts of the [other] alternative, and its decision not to do so was not arbitrary and capricious or an abuse of discretion." Similarly, the Board's rejection of a horn noise mitigation measure was not arbitrary and capricious and the Board more than adequately considered the reasonably foreseeable significant adverse effects of increased coal consumption on the human environment.
<b>U.S. Nuclear Regulatory Commission (NRC)</b>			
<i>San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission</i>	<i>No. 03-74628, 36 ELR 20101 (9th Cir. June 2, 2006)</i>	L	<b>Terrorist acts as reasonably foreseeable.</b> The U.S. Nuclear Regulatory Commission violated NEPA by refusing to consider the environmental effects of a potential terrorist attack in connection with its approval of a proposed spent fuel storage installation. The NRC argued that the possibility of a terrorist attack on a nuclear facility is so remote and speculative that the potential consequences of such an attack need not be considered in a NEPA document. The court held that "considering the policy goals of NEPA and the rule of reasonableness that governs its application, the possibility of terrorist attack is not so 'remote and highly speculative' as to be beyond NEPA's requirements."
<i>Environmental Law &amp; Policy Center v. United States Nuclear Regulatory Commission</i>	<i>No. 06-1442, 36 ELR 20239 (7th Cir. Dec. 5, 2006)</i>	W	<b>Purpose and need, alternatives.</b> The Court of Appeals upheld NRC's Atomic Safety Licensing Board's dismissal of environmental groups' intervention in early site permit proceedings for new nuclear power facilities in Clinton, Illinois. The groups contended, among other things, that the applicant failed to adequately consider energy efficiency or combinations of wind or solar power with fossil-fueled plants. The court found that "it was reasonable for the Board to conclude that NEPA did not require consideration of energy efficiency alternatives when [the applicant] was in no position to implement such measures." Further, it was reasonable for the Board to delay the need-for-power analysis until the combined license application takes place. In addition, because the applicant is a private company engaged in generating energy for the wholesale market, the Board's adoption of baseload energy generation as the purpose behind the permit was not arbitrary or capricious. Finally, the court concluded "that the board rigorously explored all reasonable alternatives and took a hard look at the environmental impacts of the proposed action."