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NEPA Narrowed: Implications of the Supreme Court's Uinta Basin Railway Decision

In brief…

The Supreme Court's *Seven Counties* decision narrows NEPA's scope by limiting required environmental reviews to impacts within an agency's regulatory authority. This decision will likely shift, rather than eliminate, litigation risk and reinforces the role of state and local laws in shaping project outcomes.

By: Finn Dobkin | July 7, 2025

Introduction

Considered the "magna carta" of environmental law, the National Environmental Policy Act (NEPA) requires that agencies incorporate environmental considerations into major federal actions.[1] While NEPA does not impose substantive environmental constraints on federal projects, it does require that agencies take a "hard look" at the potential impacts of projects and engage in a transparent decisionmaking process.[2] Over time, litigation has expanded the scope and complexity of environmental reviews, which has prolonged the process and elevated compliance costs. This has raised the question of whether NEPA has evolved from a public disclosure law to a tool used to block projects altogether. This tension was central to the May 2025 decision in *Seven County Infrastructure Coalition v. Eagle County* in which the Supreme Court addressed the question of how far agencies must go when evaluating the environmental effects of major federal infrastructure in the NEPA review process.[3]

The case originated in 2020, when the Seven Counties Infrastructure Coalition applied for approval of an 88-mile stretch of railway in Utah. Following the review process and project approval, Eagle County, Colorado alongside environmental groups challenged the approval in the DC Circuit. The court found that the Surface Transportation Board (STB) acted arbitrarily and capriciously when it failed to quantify the downstream effects of increased oil and gas production.[4] The case was subsequently appealed to the Supreme Court, which on May 29 overturned the DC Circuit's ruling, finding that

[1] Glicksman, R. L., Markell, D. L., Buzbee, W. W., Mandelker, D. R., & Bodansky, D. (2019). *Environmental Protection: Law and Policy*. Aspen Publishing.
[2] Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).
[3] Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. ___ (2025).
[4] Eagle County, Colorado v. Surface Transportation Board, No. 22-1019 (D.C. Cir. Aug. 18, 2023).

agencies were not required to assess the effects of actions beyond what they had the authority to regulate. This decision may signal a movement away from the expansive interpretations of NEPA frequently adopted by lower courts.

While commentators have subsequently argued that this decision may lead to a narrowing of the scope of NEPA reviews and a more expeditious review process, the effects on the rollout of infrastructure projects will likely depend on how the case affects the incentives of litigants to challenge projects. Likewise, rather than challenge projects under NEPA, litigants may instead opt to challenge under a different land-use or environmental statute, either federal, state, or local, underscoring the importance of all levels of government in the permitting process. Ultimately, the Seven County decision highlights the balancing act between ensuring thorough environmental review and preventing procedural delays, leaving open how agencies, courts, and litigants will navigate NEPA's evolving role in the years ahead.

What is NEPA

Passed in 1970, NEPA requires that federal agencies take a "hard look" at the environmental consequences of their actions. Largely a response to the belief that agencies, left to their own devices, would make decisions without regard to the environmental consequences of their actions, the law requires the public disclosure of environmental impacts, as well as proposed alternatives to the project.[5] This underscores an important distinction between NEPA and other environmental laws. Unlike the Clean Air Act or Toxic Substances Control Act, which mandate specific environmental thresholds be met, NEPA is procedural and does not mandate a specific outcome.

Importantly, reviews for major federal actions vary based on the environmental intensity of the project. Those projects with no known environmental impacts may undergo a Categorical Exclusion (CATEX), which requires minimal analysis and thus represents little burden to agencies. Examples of actions that may qualify for a CATEX include routine maintenance of existing facilities, installation of signage in national parks, or minor administrative actions such as renewing a lease or permit. Those with unknown environmental impacts (e.g., constructing a small visitor center or expanding a parking lot) will undergo an environmental assessment (EA). If the review concludes with a finding of no significant impact (FONSI), then the process ends. If the EA finds an impact, then an environmental impact statement (EIS) is required. Examples of projects that typically require an EIS include the construction of highways, large-scale energy infrastructure such as Liquid Natural Gas (LNG) terminals or offshore wind farms, and federal approval of large mining or timber operations. The EIS is the most extensive review process under NEPA and requires a broader examination of impacts and alternatives, as well as a more robust public engagement process. Agencies may also issue an EIS at the beginning of the process if there is a known environmental impact from the outset.[6]

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[5] For example, prior to NEPA, the Department of Transportation (DoT) was known to construct highways based on the shortest distance between two points without regard to the environmental consequences. By contrast, after the enactment of NEPA, DoT was forced to consider alternatives that were more environmentally sensitive (Lindstrom & Smith, 2001).

[6] Council on Environmental Quality. (2020). *National Environmental Policy Act—Determining the appropriate level of NEPA review*, 40 C.F.R. § 1501.3(b).

Importantly, NEPA does not include a citizen suit provision; though it did not expressly preclude lawsuits.[7] As a result, early environmental reviews tended to be fairly terse, with some historians noting that they were typically under ten pages in length.[8] This changed early on, however, when the DC Circuit found that plaintiffs could sue under the Administrative Procedure Act (APA) if the review process was found to be arbitrary and capricious. Writing for the Court, Judge Skelly Wright noted that "Section 102 of NEPA mandates a particular sort of careful and informed decisionmaking process and creates judicially enforceable duties" and that the law is "intended to assure that all agencies of the Federal Government shall comply with the directives set out in said section `to the fullest extent possible' under their statutory authorizations and that no agency shall utilize an excessively narrow construction of its existing statutory authorizations to avoid compliance."[9] As the threat of litigation became a more prominent feature of the implementation of NEPA and as the President directed the Council of Environmental Quality (CEQ) to promulgate its first clear implementation rules, agencies adapted by conducting more thorough environmental reviews, which included a broader range of impacts, more defined alternatives, and additional public engagement processes, among other procedural reforms.[10]

The ability to sue under the APA did not go unnoticed. Litigants took advantage of this new legal avenue to challenge the development of projects in environmentally sensitive areas, or, in some cases, projects that posed other perceived disamenities, even if their environmental impact was minimal.[11] While there are few comprehensive estimates of the frequency of NEPA lawsuits, one estimate suggests that the rate may be as high as 30.8% of all EISs for the US Forest Service (USFS) and as low as 1.9% of all EISs for the Department of Energy, while the median duration of litigation lasts 23 months.[12] Commentators have noted that the threat of litigation may have a chilling effect on the interest and willingness of firms to construct large infrastructure projects due to the threat of project cancellation or rapidly escalating costs associated with prolonged litigation.[13]

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[7] Hernandez, J. (2018). California Environmental Quality Act Lawsuits and California's Housing Crisis. *Hastings Environmental Law Journal, 24*(21).

[8] Lindstrom, M. J., & Smith, Z. A. (2008). *The National Environmental Policy Act.* Texas A&M University Press.

[9] Calvert Cliffs' Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109 (D.C. Cir. 1971).

[10] Federal Highway Administration. (2017, June 27). *Addressing the Quiet Crisis: Section 6 – Adapting to NEPA.* U.S. Department of Transportation. Retrieved from https://www.fhwa.dot.gov/highwayhistory/nepa/06.cfm

[11] One notable NEPA lawsuit blocking a project with minimal environmental impact comes from the recent New York City Congestion pricing scheme. Among other NEPA lawsuits attempting to block the project, the State of New Jersey challenged the NEPA review, arguing that "traffic will increase in parts of New Jersey as drivers circumvent the toll" and as a result, "New Jersey will suffer harms to its sovereign and proprietary interests in the State's air quality, and the health and safety of its residents." As a result, they argued the project should be reviewed under an EIS rather than an EA, despite the EA extending nearly 4,000 pages. While the suit directly addressed the environmental considerations of the pricing scheme, interested politicians suggested that the suit was indeed motivated by the commuting costs impacting their constituents. Governor Phil Murphy of New Jersey noted that the "congestion pricing plan is a disaster for working- and middle-class New Jersey commuters and residents who need or want to visit Lower Manhattan and now need to pay a big fee on top of the bridge and tunnel tolls they already pay."

[12] Adelman, D., & Glicksman, R. (2018). Presidential and Judicial Politics in Environmental Litigation. *Arizona State Law Journal, 50*.

[13] Dourado, E. (2023). *The biggest no-brainer in all of energy policy*. Center for Growth and Opportunity. https://www.thecgo.org/benchmark/the-biggest-no-brainer-in-all-of-energy-policy/

Uinta Basin Railway Proposal

In 2020, the Seven County Infrastructure Coalition, a coalition of seven counties in Eastern Utah that promotes regional economic cooperation, applied to the STB to construct an 88-mile stretch of railway to connect the Uinta Basin to the National Freight Rail Network. The goal of the new rail line was to provide better access from the oil-rich Uinta Basin to the Gulf Coast Oil refineries. When the coalition applied for the permit, oil was being transported via a trucking fleet, which the plaintiffs noted was expensive and inefficient. This functionally created a cap on the amount of oil that could be transported from the Basin.[14] The railway would provide a more efficient and cheaper alternative to this system. They applied to the STB to use its authority to exempt them from the more extensive application process, which is allowable if either the "transaction or service is of limited scope" or the "application in whole or in part of the provisions is not needed to protect shippers from abuse of market power."[15] The Coalition further requested that the STB conditionally approve the project, subject to the completion of review under NEPA, arguing that the "ongoing COVID-19 pandemic and its economic impacts clearly create unique and compelling circumstances that justify conditional approval."[16]

Once the STB received the request, they began the NEPA review process, eventually publishing a final EIS totaling 3,650 pages including appendices.[17,18] Despite the lengthy review, the EIS focused on the direct effects of the project itself rather than the potential downstream effects resulting from increased crude oil production from the more efficient transportation of oil out of the Basin. In their written brief, the Center for Biological Diversity (CBD), one of the respondents, noted that it was "reasonably foreseeable" that the railway would lead to "future oil and gas development projects in the Basin."[19] Despite this, the final EIS "limited consideration of the effects of more drilling on vegetation and most wildlife in the Basin to the railway's footprint: 500 feet on each side of the railway" without acknowledging "the effects that refining Basin waxy crude would have near the refineries, such as increased air pollutant emissions in areas that already fail air quality standards."[20]

Ultimately, the STB approved the project, noting that it would have "substantial transportation and economic benefits" that "outweighed the environmental consequences."[21] Indeed, in the final EIS, the STB noted that the application was solely for the railway and thus the Board did not have "authority

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[14] Surface Transportation Board (2021). Uinta Basin Railway: Final Environmental Impact Statement (EIS No. 20210109). https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/details?eisId=338681

[15] 49 USC 10101

[16] Supreme Court of the United States. (2024, March 4). *Seven County Infrastructure Coalition, et al. v. Eagle County, Colorado* (No. 23-975) [Petition appendix]. Retrieved from https://www.supremecourt.gov/DocketPDF/23/23-975/302149/20240304125927184_Seven%20County%20Petition%20Appendix.pdf

[17] Surface Transportation Board (2021). Uinta Basin Railway: Final Environmental Impact Statement (EIS No. 20210109). https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/details?eisId=338681

[18] The environmental impacts were assessed using the pre-2020 CEQ regulations.

[19] Center for Biological Diversity, & Earthjustice. (2024). *Environmental respondents' brief, Seven County Infrastructure Coalition et al. v. Eagle County, Colorado et al., No. 23-975 (U.S. Supreme Court)*. https://www.supremecourt.gov/DocketPDF/23/23-975/328676/20241018152919651_No.%2023-975%20Envtl%20Rs%20Brief.pdf

[20] Ibid.

[21] Surface Transportation Board. (2021). Seven County Infrastructure Coalition—rail construction & operation exemption—in Utah, Carbon, Duchesne, and Uintah Counties, Utah; notice (86 FR 72366–72392; FR Doc No. 2021-27560). Federal Register. U.S. Government Publishing Office. https://www.govinfo.gov/content/pkg/FR-2021-12-21/html/2021-27560.htm

or control over potential future oil and gas development." The Board noted that approval for such projects and any effects they would have would have to take place under separate authorities.[22]

DC Circuit Ruling

The case was initially brought before the DC Circuit in May of 2023.[23] The petitioners, Eagle County and several environmental groups, alleged violations of NEPA, the National Historic Preservation Act (NHPA), the Endangered Species Act (ESA), and the Interstate Commerce Commission Termination Act (ICCT). Ultimately, the Court partially granted the petitions and partially denied them, vacating the STB's order, EIS, and ESA decision.

Under NEPA, the petitioners argued that the STB mischaracterized the effects of future oil production in the Basin as cumulative effects that would occur "independent of the railways construction" as opposed to indirect effects "caused by the construction and operation of the railway." The court rejected this argument noting that "even if the Board erroneously characterized the impacts related to increased oil production as cumulative impacts, Petitioners identify no way in which this decision materially affected the Board's analysis under NEPA." The court, however, did accept the argument that the final EIS "ignored certain upstream and downstream impacts of the Railway", specifically the "fail[ure] to disclose the downstream environmental impacts of increased crude oil refining along the Gulf Coast." While the STB argued that the downstream impacts are not "reasonably foreseeable", the Court notes that "in determining what effects are 'reasonably foreseeable', an agency must engage in 'reasonable forecasting and speculation'" and that "while great 'deference [is] owed to the [Board's] technical judgements' it still must provide a reasoned explanation" for omitting certain analyses." The court therefore vacated the final EIS.

Connected to the NEPA decision were the claims of ESA violations. The STB's exemption order relied on the ESA Biological Opinion (BiOp), which was based on the STB's estimation of the area impacted by the railway.[24] According to the BiOp, the operation of the railway would likely "release pollutants that negatively affect ESA-listed species", which would "harm the aesthetic interests" of the plaintiffs. However, the BiOp nonetheless provided too narrow of a buffer zone around the railway, as the downline impacts from potential oil spills and train derailments could harm additional species not considered in the document. This is despite the fact that the STB projected an increase in rail traffic resulting from the project. Thus, not only did this violate the ESA itself, but it also undermined the ICCT determination and NEPA review, as it relied on the BiOp to make their respective conclusions.

The plaintiffs further argued that the STB violated Section 106 of the NHPA, which mandates that federal agencies consider the effects of their actions on historic properties and includes a public engagement process with relevant stakeholders. Specifically, the plaintiffs note that the STB "'arbitrarily

[22] The CBD partially addressed this point in their brief noting that the Interstate Commerce Commission Termination Act allows the STB to not certify a railway if they find that doing so would be "inconsistent with the public convenience and necessity" (PL 104-88).

[23] This case was not seen before a District Court but instead went directly to the Court of Appeals. Under 28 USC 2342, the Court of Appeals has exclusive jurisdiction over "all rules, regulations, or final orders" made by the Surface Transportation Board.

[24] A BiOp is an analysis of all ESA listed species and critical habitats to ensure that a proposed action will not reduce their likelihood of recovery or survival.

restricted consultation with local governments to Utah counties near the rail line proposed to be constructed' despite the known increase in rail traffic and train noise downline." Addressing these arguments, the court found that "the County had ample opportunity to raise any concerns related to historic resources downline given its participation in the EIS process. Yet, the County effectively concedes that it failed to name any historic resources during those proceedings."

The failure to properly evaluate the environmental effects, the Court finds, directly leads to the violation of procedural requirements under the ICCT. According to 40 USC 10101, the STB must evaluate the effects of a rail project on safety, environmental protection, and public convenience. In this case, however, the Court held that the EIS violated the APA and thus "those errors infect the final determination, as well." In addressing the ICCT claims, the Court further notes that the STB also did not provide adequate attention to comments brought before them regarding the financial viability of the railway. In failing to properly weigh the economic and environmental costs of the project, the STB "failed to 'supply an acceptable rationale' as to its consideration of the relevant Rail Policies and therefore the Final Exemption Order."

Supreme Court's Decision

The Supreme Court's opinion, which was authored by Justice Kavanaugh and joined by Justices Roberts, Alito, and Barrett, addressed whether NEPA requires agencies to assess environmental effects beyond those tied to actions within their regulatory authority.[25] At a high level, the opinion focused on three main points: 1) the procedural nature of NEPA; 2) the respective roles of courts and agencies; and 3) the proper scope of environmental review, particularly regarding the limits of agency authority and judicial oversight.

The opinion opens with a discussion of NEPA's history, highlighting the law's procedural nature. Although the procedural nature of the law has been widely accepted, Justice Kavanaugh gave an important clarification. Noting that the STB made their approval decision by balancing economic, transportation, and environmental considerations, requiring agencies to favor one set of values over another would transform NEPA from a procedural statute into a substantive one, effectively mandating specific outcomes rather than ensuring a particular process. This, he noted, would undermine NEPA's core requirement that agencies take a "hard look" at environmental consequences, which only requires that agencies consider the environmental impacts, rather than dictate a specific result. In other words, as long as an agency carefully evaluates environmental impacts and discloses their reasoning, they have the discretion to engage in actions with environmental costs, so long as the process complies with NEPA's procedural requirements.[26]

The opinion then turned to the scope of environmental review with a particular emphasis on agency discretion in deciding which effects to analyze. The Court offered agencies considerable deference in this regard, emphasizing that while agencies must consider significant direct effects of a project, they also have discretion in determining how far to go in assessing indirect effects, including those occurring outside the immediate project area or arising from future or geographically separate projects spurred by the current project. Importantly, Justice Kavanaugh noted that direct effects don't

[25] Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. ___ (2025).

[26] Robertson v. Methow Valley Citizens Council, 490 U.S. 332 (1989).

need to occur nearby or simultaneously with the project. Rather, it is only subsequent actions, like the construction of new infrastructure, that break the "chain of proximate causation." He underscored this point by defining the proposed action as "the project at hand—no other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration."

Further limiting the expansiveness of EISs, the opinion stated that courts reviewing future EISs should not assess their adequacy in detail but should ask whether "the agency's final decision was reasonable and reasonably explained." Justice Kavanaugh emphasized that such reviews involve "fact-dependent, context-specific, and policy-laden" judgments that courts should not micromanage. Excessive judicial intervention, he warned, risks transforming NEPA into a tool for blocking infrastructure projects regardless of their environmental merits.

Perhaps just as impactful as the new guardrails on which impacts are to be assessed is the discussion of the role of courts versus agencies. While closely connected to the discussion of environmental impact assessment, Justice Kavanaugh noted that the only role for the court is to "confirm that the agency has addressed environmental consequences and feasible alternatives as to the relevant project." He goes on to note that the "adequacy of an EIS is relevant only to the question of whether an agency's final decision was reasonably explained", thereby only requiring EISs to cover issues of fact.[27] Justice Kavanaugh argued that this will ensure that courts do not micromanage agencies but instead neutrally arbitrate whether the agency's decisionmaking process was reasonable and complied with procedural requirements. This underscores a consistent theme throughout the opinion. Courts must only intervene in agency decisions if the agency decision is outside of a "broad zone of reasonableness." The risk of failure to do so, the opinion argues, has led to rulings that have slowed down and blocked projects, causing "litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects."

Concurring Opinion

Justice Sotomayor authored the concurring opinion and was joined by Justices Kagan and Jackson, agreed that the STB was not responsible for the environmental impacts caused by the oil industry.[28] However, her concurrence was critical of the Court's majority opinion for grounding too much of its reasoning in policy considerations. In contrast, her concurrence focused more on the statutory limits of the STB's authority, addressing similar concerns about the consideration of indirect effects.

She begins by affirming that NEPA's purpose is for agencies to engage in more measured decisionmaking by integrating environmental values into agency actions. To this end, she notes that agencies don't need to consider every possible environmental impact but only those for which the agency has the ability to regulate. She equates this principle to the familiar doctrine of proximate

[27] Issues of fact concern are issues concerning the accuracy, completeness, and conclusiveness of the review (Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989)).

[28] Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. ___ (2025).

causation, which posits that liability arises only when harm is a foreseeable result of an action.[29] In other words, if an agency could not lawfully have avoided a given impact either by mitigating it or by forgoing the federal action, it bears no responsibility for that effect. Similarly, if the impact of the action is "technically avoidable" but "so causally attenuated from or ancillary to the agency's statutorily assigned tasks that it could not reasonably have been expected to consider them as part of the decisionmaking process," then the agency need not consider it.

One important place where the majority opinion and Sotomayor's concurrence diverge concerns the role of judicial deference to agency actions. The concurrence emphasizes that if in an agency's judgment, it did not need to review a particular impact because it was "too causally attenuated from the question at hand, courts must ask whether the agency 'acted arbitrarily' in doing so." This level of deference, she argues, is appropriate in this case because of the technical expertise required to apply a regulation under this specific context. This approach gives the judiciary a stronger oversight role than the approach endorsed by the majority.

The concurrence also points to the organic statute authorizing the STB to guide the consideration of direct and indirect effects. Under the Interstate Commerce Commission Termination Act, railroads approved by the STB are required to provide "transportation or service on reasonable request" to any person or commodity. Thus, when the statute authorizing the STB and its activities does not allow for consideration of a particular issue, the agency need not consider it in the NEPA review. Justice Sotomayor finds that to be the case in this instance, as STB's statutory mandate to approve rail service on reasonable request limits its ability to deny projects based on impacts that fall outside its regulatory authority.

The Future of NEPA review

Agencies have more legal backing for project fragmentation

Central to the Court's Opinion is the "project at hand" standard for identifying the proximal impacts that an EIS must assess. This narrows the impacts to be evaluated to those most proximal to the federal action. This narrower definition has important ramifications for future NEPA reviews. One tactic that agencies have used to expedite the NEPA review process is to segment large federal actions into smaller projects to minimize the environmental impacts of any one part of the project.[30] While this is not expressly forbidden in NEPA, it is not allowable for connected actions that "automatically trigger other actions which may require environmental impact statements" and are "independent parts of a larger action and are dependent on the larger action for their justification."[31] By only requiring agencies to review the environmental impacts from the federal action over which they have regulatory authority,

[29] Legal Information Institute. (n.d.). *Proximate cause*. Cornell Law School. https://www.law.cornell.edu/wex/proximate_cause

[30] Segmentation, also known as "piecemealing," refers to the practice of dividing a larger federal project into smaller components to avoid a comprehensive environmental review under NEPA.

[31] U.S. Department of Agriculture, Forest Service. (2011). Bear Valley Mountain Resort Expansion Project: Environmental Assessment. Stanislaus National Forest, Calaveras Ranger District. https://www.fs.usda.gov/emc/nepa/revisions/includes/docs/infrastructure/recsitestrails/bearvalley-ea.pdf

agencies may have an avenue to redefine major projects in a more modular manner, even when they are functionally dependent on each other.

For example, LNG infrastructure might include fracking wells to extract the gas, pipelines to transport the gas, a liquefaction terminal to process it, and tanks and storage to store it prior to export.[32] While they are all a part of the same supply chain, if the pipeline or terminal isn't built, the upstream development has no outlet. Likewise, if the wells aren't drilled, the terminal would have nothing to process. Despite the interconnected nature of the infrastructure, the approval process would occur over multiple agencies. The Federal Energy Regulatory Commission (FERC) would approve the pipeline and terminal and could only point to the effects on coastal land use and immediate emissions because the fracking process is not reasonably foreseeable and within their regulatory authority.[33] Other federal agencies and state agencies would only oversee the fracking permits, despite relying on the pipeline to transport the fuel. As a result, no one agency would review the full environmental impacts of the project, despite being dependent on each other for fuel development.

Historically, situations like this have arisen and the government has lost in the courts. In *Sierra Club v. FERC (2017)*, the Sierra Club challenged FERC's approval of the Southeast Market Pipelines Project, arguing that FERC segmented its review by treating pipeline approvals as separate from the power plants and related infrastructure.[34] As a result, they underestimated the full environmental consequences of the whole infrastructure system. The DC Circuit rejected FERC's narrow framing of the EIS, holding that they needed to consider the downstream impacts because they are reasonably foreseeable and tied to the pipeline.

After the *Seven Counties* case, however, petitioners' claims of project segmentation may face a higher bar. Petitioners would need to show that components of a project are dependent so that one part of the project would be entirely unable to operate without the other, thereby effectively creating a single project, and that the agency has the statutory authority to regulate both components. Applying the Court's Opinion in *Seven Counties*, it is entirely possible that without the ability to regulate fracking operations, FERC would not be required to evaluate the full LNG project and would be allowed to assess the pipelines in isolation, thereby overriding the lower court's opinion in *Sierra Club v. FERC*. In other words, one project facilitating or influencing another may not be a high enough bar for requiring additional NEPA review.

Environmental Protection Agency's (EPA) role under Section 309 of the Clean Air Act may be limited

Under Section 309 of the Clean Air Act, EPA is required to review and provide comments on all draft EISs.[35] If EPA decides that an EIS is not satisfactory, they may refer it to CEQ for review. In order to evaluate draft EISs, EPA provides a rating based on a number of criteria. Broadly, however, the focus

[32] Zakir, F., Wang, D., Rehman, A., Waheed, A., Iffat, Z., & Wang, L. (2020). LNG Supply Chain: Challenges, Opportunities and Future Prospectives. IEEE Transactions on Energy Infrastructure. 2020 3rd International Conference on Computing, Mathematics and Engineering Technologies (iCoMET). doi: 10.1109/iCoMET48670.2020.9073830.
[33] Pipeline and Hazardous Materials Safety Administration. (n.d.). *LNG regulatory documents*. U.S. Department of Transportation. https://www.phmsa.dot.gov/pipeline/liquified-natural-gas/lng-regulatory-documents
[34] Sierra Club v. FERC, No. 16-1329 (D.C. Cir. 2017).
[35] 42 USC § 7609

of the criteria includes 1) violations of EPA public health, welfare, or environmental standards; 2) an assessment of the severity, duration, disproportionately or geographical scope of the impacts on public health, welfare, or environmental quality; and 3) whether the proposed public health, welfare, or environmental quality impacts resulting from the action are of national importance based on the threat to public health, welfare or environmental resources or conflicts with environmental policies (e.g., national policies related to addressing impacts to communities with environmental justice concerns, impacts from greenhouse gas emissions or changing climate conditions).[36] Importantly, EPA defines "national importance" as "local or regional issues that are precedent-setting, are conflicting with national policies, or are in areas that have been or are currently overburdened by environmental impacts, have a special designation such as protected habitat areas, or other national attention" suggesting that EPA has a more expansive definition of which effects to consider when evaluating agency EISs.[37]

In the context of the *Seven Counties* case, the latter consideration highlights an important tension between EPA and lead agencies. Historically, EPA has assessed issues such as greenhouse gas emissions (GHG) or climate impacts from a systems-level perspective.[38] That is, any one part of a larger system of infrastructure may appear to have limited individual impact, but when viewed cumulatively with other related projects may have a notable environmental impact. An example of this is the EPA's comment on the Keystone XL Pipeline Draft EIS.[39] In their comment on the EIS, EPA noted that "there is a reasonably close causal relationship between issuing a cross-border permit for the Keystone XL project and increased extraction of oil sands crude in Canada" and that it would "be helpful to provide a quantitative estimate of these [GHG] emissions." In other words, although the pipeline itself did not produce GHG emissions from the combustion of crude oil, it was a necessary component to produce energy within the U.S. and thus an assessment of the GHG impacts was a necessary part of the EIS.

The recommendation to review GHG emissions, however, did not solely originate from NEPA guidance but from the EPA's guidance on the implementation of Section 309. The Supreme Court's findings in *Seven Counties* will likely create a new tension between the EPA and lead agencies, as the evaluation of GHGs often falls under the assessment of indirect effects or otherwise those that break the chain of proximate causation. In other words, EPA's mandate under Section 309 is more expansive than individual agency mandates under the findings of *Seven Counties*. How EPA will respond, however, is not currently known. EPA could propose voluntary mitigation measures in an effort to encourage consideration of GHG and other indirect effects, or it could abandon its consideration entirely and focus more on improving the evaluation and mitigation of direct effects.

There will be varying effects on the speed of project development

[36] U.S. Environmental Protection Agency. (2023). Policy and Procedures for the Review of Federal Actions Impacting the Environment under Section 309 of the Clean Air Act. https://www.epa.gov/system/files/documents/2023-09/309-nepa-policy-and-procedures-manual-9-26-23.pdf

[37] Ibid.

[38] Ibid.

[39] Department of State (2010). Keystone XL Oil Pipeline Project Presidential Permit for the Proposed Construction Connection Operation and Maintenance of a Pipeline and Associated Facilities at the United States Border for Importation of Crude Oil from Canada (EIS No. 20100126) https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/details?eisId=77263

Due to the Court's endorsement of agency discretion and a narrower scope for EISs, the substance of EISs will likely change. What this change exactly looks like is not yet clear. On the more extreme end, agencies may feel less pressure to overcompensate with more lengthy analysis in order to reduce the risk of litigation. To this end, they may reduce the length and depth of analysis in their EISs. On the other hand, agencies may still voluntarily assess these effects in anticipation of potential litigation. The reality will likely be a combination of something in between and based on a variety of factors.

First, individual District and Circuit courts in which these projects originate may have idiosyncratic precedents towards agency deference or environmental issues. For example, researchers have suggested that outcomes in the Ninth Circuit tend to favor pro-environment litigants.[40] In this case, EISs may be more substantial in the Ninth Circuit or similar Circuits than elsewhere, especially if a project has a greater spatial or environmental impact. In practice, this means that the rigor of EISs may in part reflect the precedent of each Circuit instead of a more uniform federal standard for review or until the Supreme Court clarifies any outstanding issues..

Second, similar state environmental statutes, such as the California Environmental Quality Act (CEQA), which have similar goals as NEPA but whose review processes are more rigorous than those of NEPA may lead to review requirements that are essentially unchanged. Specifically, if a project has overlapping requirements with NEPA and state reviews, both reviews will take place together. This ensures projects that are approved by the federal government are not positioned to fail to meet state requirements. It also ensures that there is no duplicative scoping, public engagement, or documentation processes, saving resources. At the same time, it means that if indirect effects are required to be considered by the state, they must be considered in the joint documentation.[41]

Third, agency cultures may influence the length and substance of reviews, with agencies that are more insular or have a less environmentally-oriented mission less likely to consider effects outside of their regulatory scope. For example, the Bureau of Prisons does not request cooperating agencies in their EISs but instead only engages informally towards the end of the review process.[42] Without engagement from agencies with more direct knowledge of the impacts of prisons on air quality, wetlands, or endangered species, agencies, such as the Bureau of Prisons, may be more responsive to *Seven Counties* restricting the assessment of impacts to effects that they can regulate. By contrast, agencies with a more

[40] Keele & Malsheimer (2015) examined federal court cases from the US forest Service between 1989 and 2008 and found that Districts within the Ninth Circuit were more likely to reverse an agency action if it was unfavorable to environmental outcomes (36.2% versus 21.0%). Importantly, however, they did not find any significant difference at the appellate level, suggesting that challenging decisions in certain Districts may lead to more environmentally favorable outcomes for plaintiffs compared to others. Importantly, the USFS primarily focuses on public lands, timber harvesting, and recreation and thus this paper may not be representative of all environmental outcomes, however, other authors have made similar comments related to the full Circuit itself (Hilferty, 2015; Hernandez & DeHerrera, 2015). This variation has at times been attributed to the Ninth Circuit's established under the Carter administration and thus possesses a longer held liberal precedent compared to other Circuits.

[41] Newman, J. (1990). A Consideration of Federal Preemption in the Context of State and Local Environmental Regulation. *UCLA Journal of Environmental Law and Policy*, *9*(1). https://doi.org/10.5070/l591018759

[42] Council on Environmental Quality. (2016). Attachment A: Fourth Report on Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (NEPA). https://ceq.doe.gov/docs/ceq-reports/Attachment-A-Fourth-Cooperating-Agency-Report_Oct2016.pdf

environmentally-forward focus, such as USFS or EPA, where indirect effects may be incorporated into the broader agency mission, may continue to assess and integrate these effects into their EISs.[43]

The above discussion, however, is likely to be most applicable to larger, more controversial projects. Much of the lengthening of EISs was attributable to the threat of litigation, which is most salient for larger, more controversial projects that have a more significant environmental and spatial impact. Smaller projects, such as routine upgrades, smaller renewable energy projects, or land exchanges, are less likely to face the same opposition.[44] In these cases, agencies may be able to more confidently limit the review to direct impacts thereby reducing the time for project sponsors to complete NEPA requirements. Of course, compliance will still require the same scoping, public engagement, draft, and finalization processes. Thus, it is possible that the bulk of the time savings will come from the litigation rather than the review process itself. By contrast, litigants may still opt to challenge more controversial projects. What is likely to change, however, is whether they challenge these projects under NEPA or a separate land-use or environmental law.

This much was clear when *Seven Counties* was in front of the DC Circuit. Not only was it challenged under NEPA, but also the NHPA, ESA, and ICCT. Importantly, however, parallel litigation over large infrastructure could just as easily occur in state and local venues, even when there is a federal nexus. For example, despite undergoing four NEPA reviews under an EIS for separate sections of the railway, the California High Speed Rail has been challenged for violations of CEQA, as well as King County's land-use laws and general plan.[45] This suggests that in areas where local and state land-use and environmental laws have broader standing requirements or have a lower threshold to issue an injunction, litigants may find it more advantageous to challenge in these venues compared to federal court under NEPA where they no longer have the same tools available to them. Likewise, if the NEPA process has been delegated to a state agency, as is often the case with highways and similar transportation projects, then obtaining these local and state land-use permits is a condition of approval under NEPA. In other words, *Seven Counties* may just shift the compliance burden rather than eliminate it altogether.

Conclusion

While the *Seven Counties* decision will almost certainly change the landscape of the NEPA review process, its substantive impact on the length of time for the review remains to be seen. When it is, it will depend on a number of factors outside of the NEPA process directly. It is probable that whatever the effects are on the expeditiousness of the review process, those effects will occur unevenly. While the decision will reduce the scope of direct impacts that are assessed, the incentive of litigants to challenge unpopular or impactful infrastructure has not changed. However, where those challenges

[43] Stern, M. J., Blahna, D. J., Cerveny, L. K., & Mortimer, M. J. (2009). Visions of success and achievement in recreation-related USDA Forest Service NEPA processes. *Environmental Impact Assessment Review*, *29*(4), 220–228. https://doi.org/10.1016/j.eiar.2008.10.003

[44] Bennon, M., & Wilson, D. (2023). NEPA Litigation over Large Energy and Transport Infrastructure Projects. *Environmental Law Reporter*, *53*(10836). https://cddrl.fsi.stanford.edu/publication/nepa-litigation-over-large-energy-and-transport-infrastructure-projects

[45] *Tos v. California High-Speed Rail Authority*, No. 34-2011-00113919 (Cal. Super. Ct. Sacramento Cnty. filed Nov. 14, 2011).

occur will likely depend on the agency involved, the court involved, and other statutory requirements of the project.

There are a number of important questions that the majority opinion leaves unanswered. While the opinion limits the requirement to assess indirect effects, one could argue that the definition of effects outside the scope of an agency's statutory authority could have greater clarity than the court provided. Following the opinion, several commentators noted that climate impacts are likely off the table in future NEPA reviews.[46,47] Does this include the impacts of a project on climate change, or does it mean climate mitigation measures, as well? This is one of several indirect effects that agencies may have to rethink in future analyses.

Overall, the *Seven Counties* ruling reflects a changing paradigm on environmental permitting issues. On one hand, there is the need to assess the environmental effects of federal actions. On the other hand, there is a desire to ensure that laws such as NEPA do not interfere with or altogether block the deployment of large infrastructure projects. While the *Seven Counties* opinion does not resolve this tension, it does provide clearer guidance for agencies figuring out which impacts to consider while narrowing the ability of litigants to challenge major federal actions under NEPA. Of course, its impact will likely be slow to unfold and largely reflective of the agencies and courts involved in each action.

[46] Biber, E., & Farber, D. (2025). *Implications of the Seven County Decision: Possible limitations on NEPA analysis for climate effects and indirect effects*. Legal Planet. https://legal-planet.org/2025/06/04/implications-of-the-seven-counties-decision

[47] Chung, A. (2025). US Supreme Court limits environmental reviews in Utah railway ruling. *Reuters*. https://www.reuters.com/world/us/us-supreme-court-sides-with-utah-railway-challenged-by-environmentalists-2025-05-29/