

**Alert | Environmental/Energy & Natural Resources**



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## **Landmark Supreme Court Decision Limits NEPA Review Scope: Agencies Granted ‘Substantial Deference’ in Environmental Assessments**

In an 8-0 decision, the U.S. Supreme Court reversed a D.C. Circuit ruling that had blocked construction of a new 88-mile freight railroad line, clarifying the scope of impacts that federal agencies must consider under the National Environmental Policy Act (NEPA). The Court’s majority opinion in *Seven County Infrastructure Coalition v. Eagle County*, No. 23-975 (May 29, 2025) is a sharp rebuke to what the Court describes as the aggressive interference by certain federal lower courts with the exercise of agency discretion in determining the scope of a NEPA review, a practice the Court found contrary to the intent of NEPA as a “purely procedural statute” designed to assist in agency decision making.

### **Background**

The Uinta Basin Railway is a proposed 88-mile freight rail line intended to connect Utah’s Uinta Basin oil production to the national rail network. In 2020, the Seven County Infrastructure Coalition applied to the U.S. Surface Transportation Board (STB) for construction approval under 49 U.S.C. § 10901.

Pursuant to NEPA, the STB prepared a comprehensive Environmental Impact Statement (EIS), analyzing thousands of pages of potential environmental effects tied to the railway’s construction and operation. The EIS noted, but did not fully assess, potential upstream effects from increased oil drilling in the Uinta

Basin and downstream impacts from oil refining along the Gulf Coast. In December 2021, the STB approved construction of the line, citing its economic and transportation benefits.

Eagle County, Colorado and several environmental organizations challenged the approval. The U.S. Court of Appeals for the D.C. Circuit ultimately vacated the STB's decision authorizing the line's construction, as well as the associated EIS and biological opinion.<sup>1</sup> The D.C. Circuit held that the STB violated NEPA by failing to analyze foreseeable indirect environmental effects of increased fossil fuel development tied to authorizing and operating the line.

### The Supreme Court's Decision

Justice Kavanaugh authored the majority opinion for the Court, joined by Justices Roberts, Alito, Thomas, and Barrett. Justice Sotomayor filed a concurring opinion, joined by Justices Kagan and Jackson. Justice Gorsuch did not take part in the case.

The Court held that the D.C. Circuit erred in two fundamental respects:

1. Failing to grant proper judicial deference to the STB's judgment regarding the scope of the EIS.<sup>2</sup>
2. Misinterpreting NEPA's scope by requiring the STB to assess indirect effects of third-party oil and gas development and refining not caused by the project at issue.<sup>3</sup>

In an introductory discussion, Justice Kavanaugh briefly recounted the history of NEPA's interpretation by courts and noted that "some courts have assumed an aggressive role in policing agency compliance with NEPA," while others take a more "restrained" approach.<sup>4</sup> Offering a corrective to "continuing confusion and disagreement" among federal courts, the opinion comes down decidedly on the side of judicial restraint. It "reiterate[s] and clarif[ies] the fundamental principles" of NEPA judicial review, including that NEPA is a purely procedural statute that grants broad discretion to agencies, and courts should not interfere if agency decision making falls within "a broad zone of reasonableness."

Justice Kavanaugh emphasized that NEPA "does not mandate particular results" and, unlike other federal environmental statutes, does not impose any "substantive constraints" on the agency's decision about a project. Agencies must take a "hard look" at the environmental consequences of their actions in the context of projects under consideration, but they are not required to assess indirect effects of separate federal, state, or private projects, even if the action under review might facilitate those projects.<sup>5</sup> Making this scoping determination about indirect effects is clearly within the discretion of the agency preparing the NEPA document, and courts should honor it if it is "reasonable" and "reasonably explained."<sup>6</sup> Further, and of importance to NEPA jurisprudence, the Court instructed that "the adequacy of an EIS is relevant only to the question of whether an agency's final decision ... was reasonably explained."<sup>7</sup>

Focusing on the question at issue – whether impacts of potential separate projects upstream and downstream of the proposed railroad must be evaluated in the EIS – the Court criticized the D.C. Circuit's *legal* conclusion requiring inclusion of such projects in the EIS analysis. The Court reasoned that the STB had no decision-making or regulatory authority over such projects, and concluded that a separate project

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<sup>1</sup> See *Eagle County v. Surface Transp. Bd.*, 60 F.4th 828 (D.C. Cir. 2023)

<sup>2</sup> Slip op. at 9, 21.

<sup>3</sup> *Id.* at 6-9, 19-21.

<sup>4</sup> *Id.* at 8.

<sup>5</sup> *Id.* at 20-21.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> *Id.*

“breaks the chain of proximate causation.”<sup>8</sup> Crucially, the Court stated that an agency’s determination of project scope—including whether a particular impact is the result of the action itself or of a separate project—is entitled to substantial deference, provided the agency offers a reasoned explanation.<sup>9</sup> But the decision goes further, concluding that NEPA’s requirement to consider reasonably foreseeable impacts does not, as a matter of law, require agencies to include the indirect impacts of separate projects for which the lead agency plays no role in an EIS.

Justice Sotomayor’s concurrence emphasized that the majority reasoning should not be used to sidestep meaningful environmental review.<sup>10</sup> The concurring opinion agreed with the outcome but emphasized the need for vigilance in ensuring agencies do not avoid meaningful environmental review through overly narrow interpretations of project scope or causation.

### GT Insights

The decision is a win for project sponsors—including developers of infrastructure, housing, renewable energy, and industrial facilities—because it narrows the circumstances under which federal agencies must evaluate indirect adverse impacts of a project undergoing NEPA review. The Court reaffirmed that NEPA imposes procedural obligations only; agencies must take a “hard look” at environmental effects, but they are not required to engage in speculative or limitless analysis of impacts from separate projects.<sup>11</sup>

Much of the decision is a general discussion – citing the Court’s precedents – about the broad discretion agencies enjoy under NEPA and the requirement of judicial deference to that discretion. While some of this language may be *dicta*, it nonetheless has importance to lower court judges, agencies, and project proponents because it signals that the Court believes that the time and effort spent by agencies in preparing comprehensive NEPA reviews has gone beyond the statute’s intent at the expense of new infrastructure projects. Particularly relevant is the Court’s observation that “intrusive (and unpredictable)” reviews by lower courts “have slowed down or blocked many projects and, in turn, caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects.” The decision at multiple points expresses disapproval of the use of NEPA to delay or block projects that “otherwise comply with all relevant substantive environmental laws,” leading to “fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like.”

The decision, however, also emphasizes that the substantial deference that courts should afford agency NEPA determinations in no way should be viewed as inconsistent with its recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which eliminated *Chevron* deference. The Court distinguished between *Chevron* deference to agency interpretations of statutory language with agencies’ exercise of discretion expressly granted to them by NEPA. The Court found that agency determinations as to the scope and detail of a NEPA review are not statutory interpretations, but rather fact-intensive endeavors to which courts must defer unless the decisions issued in connection with such review violate the Administrative Procedure Act’s “arbitrary and capricious” standard.

The Court explicitly noted that omissions in an EIS are not automatically fatal to an agency approval. So long as the agency provides a rational explanation for its ultimate decision, including decisions about what need not be considered in a NEPA review, courts may not substitute their judgment for that of the

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<sup>8</sup> *Id.* at 16-17.

<sup>9</sup> *Id.* at 21.

<sup>10</sup> *Id.*, Sotomayor, J., concurring at 1-2.

<sup>11</sup> *Id.* at 6-7.

agency.<sup>12</sup> Also, echoing arguments of some NEPA reform advocates, the Court introduced a new concept that EIS deficiencies need not always result in vacatur, “absent a reason to believe that the agency might disapprove the project if it added more to the EIS.”<sup>13</sup>

The Court pointed to a broader concern: NEPA litigation has increasingly been used to block or delay projects, resulting in more litigation and fewer projects. The decision may therefore provide needed guardrails for agencies and developers, reducing litigation risk stemming from speculative or tangential environmental claims.<sup>14</sup>

*Seven County* stands as a declaration by the U.S. Supreme Court that lower courts should not allow litigants to use the strictly procedural requirements of NEPA in a manner that unnecessarily delays or blocks infrastructure projects approved by federal agencies. It remains to be seen the extent to which the lower courts and federal agencies that grapple with future controversial projects will take that declaration to heart.

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<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 14.

<sup>14</sup> *Id.* at 23.

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