

# Supreme Court Clarifies and Streamlines NEPA Requirements

by Michael Drysdale and Alyssa Florack-Hess

Yesterday the Supreme Court issued a decision that has the practical effect of reducing the requirements of the National Environmental Policy Act, or NEPA,<sup>[1]</sup> and making it more likely that agency environmental reviews will be upheld, particularly as applied to energy, natural resource, major infrastructure, and transportation projects.

## Yesterday's Supreme Court Decision

The decision, *Seven County Infrastructure Coalition v. Eagle County*,<sup>[2]</sup> concerned a railway in Utah that would make it easier to develop oil resources in remote parts of Utah. In 2021, the federal Surface Transportation Board ("STB") completed an environmental impact statement ("EIS") and approved the project. The STB declined to examine the environmental effects, including greenhouse gas emissions, tied to additional oil development upstream and refining downstream. The STB concluded that these effects would arise from separate projects regulated by other agencies and therefore did not need to be analyzed. The D.C. Circuit reversed the agency's approval in 2023, concluding that such effects needed to be analyzed because they were reasonably foreseeable impacts of the railway.

Yesterday, the Supreme Court agreed 8-0 that the D.C. Circuit was wrong. Writing for the Court, Justice Kavanaugh concluded that the D.C. Circuit made two errors: (1) the court failed to give the "substantial judicial deference required in NEPA cases" to the STB's determinations on the scope of the EIS, and (2) NEPA does not require the STB to examine the "upstream" effects of oil development or the "downstream" effects of oil usage because those impacts would be regulated by other agencies and are remote in time and place from the railway. In contrast to its 2024 decision in *Loper Bright* that courts should not defer to agency interpretations of a statute,<sup>[3]</sup> the Court scolded judges for "micromanaging" agencies in the context of NEPA reviews. The opinion distinguished NEPA from other environmental statutes with more specific requirements to explain its holding in light of *Loper Bright*, stating that NEPA grants agencies discretionary authority to implement broad obligations.

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- Michael Drysdale
- Alyssa Florack-Hess

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Justice Kagan wrote a concurring opinion, joined by Justices Sotomayor and Jackson, which agreed that the STB's review was sufficient in scope because the upstream and downstream effects fell outside of the agency's specific statutory authority. Noting that the STB does not have any authority over future oil development or refinement, the concurrence stated that agencies should only analyze impacts that their decision would be "at least in part" responsible for. These justices would therefore have reversed the D.C. Circuit without getting into the other policy issues. Although declining to discuss the issue of scoping any further, Justice Kagan also agreed with the need for agency deference, referencing her own dissent in *Loper Bright* on the value of agency expertise.

## **The Seven Counties Decision Should Lead to Fewer Reversals of Agency Decisions**

Yesterday's majority opinion in *Seven County* will be very beneficial to agency environmental reviews. The analysis of upstream and downstream effects has been a major area of litigation and judicial disagreement in recent years, particularly in the context of climate change. This decision will allow agencies to set clearer boundaries on which effects to analyze and reduce the scope of their analysis. Second, the High Court's emphasis on the need for deferential judicial review of agency actions is likely to give agencies greater confidence in making decisions and making them less likely to be overturned. This decision lessens the impact of the Supreme Court's curtailment of deference to agency interpretations of statutes in last Term's *Loper Bright* decision.<sup>[4]</sup> Notably, the majority opinion declared that agency approvals should not be overturned *even if the EIS is deficient in scope* unless there is other evidence that the agency would disapprove of the project if it considered additional factors. In a potentially important footnote, the Court noted that the 2023 BUILDER Act<sup>[5]</sup> limits EIS's to 150 pages, reinforcing the legitimacy and ability of agencies to do shorter, quicker, and simpler EIS documents.

## **Interplay with Other Current NEPA Developments**

The *Seven County* decision occurs in a regulatory environment generally in turmoil. In recent weeks, the Administration has:

- Rescinded the long-standing Council on Environmental Quality (CEQ) NEPA regulations; <sup>[6]</sup>
- Declared that high priority resource and energy projects should undergo extremely accelerated NEPA review, with EIS's completed in as little as a month; <sup>[7]</sup> and,
- Eliminated various tools and policy considerations like the Social Cost of Carbon<sup>[8]</sup> and Environmental Justice<sup>[9]</sup> from NEPA analyses.

All of these decisions are or are likely to be litigated. Whatever the outcome of those cases, the Administration and project proponents clearly benefit from *Seven Counties*. Because of the Court's emphasis on the need to defer to agency determinations of the proper scope of their review, an agency is more likely to have its decisions upheld against challenges that the agency did not check all the NEPA boxes. The biggest project beneficiaries of this decision will likely to be large energy, natural resource, infrastructure, and transportation projects. This is because these types of projects tend to

generate significant upstream and downstream environmental effects, spur or relate to numerous separate projects, and generate intense opposition. This has for decades made permitting such projects very challenging under NEPA.

Permitting may now be easier at the federal level, although still not truly simple. NEPA remains a very fact-dependent process, governed by a “rule of reason,” and there will remain projects where courts will find that agencies did not act reasonably in excluding certain effects from analysis. This is especially true where agencies employ extremely fast NEPA reviews currently endorsed by the Trump Administration for high priority projects. Although the Court’s decision in *Seven Counties* should result in increased deference to agency decisions, challengers will still be able question whether an agency’s decision not to consider certain impacts was arbitrary, especially in the context of highly abbreviated review periods.

[1] 42 U.S.C. §§ 4321 et seq.

[2] The decision is available through [supremecourt.gov](https://supremecourt.gov).

[3] 144 S. Ct. 2244 (2024), available through [supremecourt.gov](https://supremecourt.gov).

[4] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), available through [supremecourt.gov](https://supremecourt.gov).

[5] “Building United States Infrastructure through Limited Delays and Efficient Reviews Act of 2023.” Pub. L. 118–5, Div. C, Tit. III, §321, 137 Stat. 38–39.

[6] 90 FR 10610, available through [the Federal Register](https://www.federalregister.gov).

[7] Dept. Interior, *Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply* (Apr. 23, 2025), [U.S. Department of the Interior](https://www.doi.gov).

[8] See, e.g. Executive Order 14148, *Initial Rescissions of Harmful Executive Orders and Actions* (Jan. 20, 2025), available through [the Federal Register](https://www.federalregister.gov) (rescinding Executive Order 13990 and eliminating the Interagency Working Group on the Social Cost of Greenhouse Gases).

[9] *Id.* See also Executive Order 14151, *Ending Radical and Wasteful Government DEI Program and Preferencing* (Jan. 20, 2025), available through [the Federal Register](https://www.federalregister.gov).