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## NEPA narrowed: Clearing the tracks for focused environmental reviews

**The U.S. Supreme Court clarified that under the federal National Environmental Policy Act, agencies are not required to assess the environmental effects of separate, future, or geographically distinct projects beyond their control, thereby affirming agency discretion in defining the act's scope.**

By Davin A. Widgerow

**T**he federal National Environmental Policy Act, commonly known as NEPA, is a procedural statute that requires federal agencies to evaluate the significant environmental effects of proposed federal projects and identify feasible alternatives. In *Seven County Infrastructure Coalition v. Eagle County, Colorado* (U.S., May 29, 2025, No. 23-975) 2025 WL 1520964, the U.S. Supreme Court provided clear boundaries on the scope of potential environmental impacts that must be evaluated under NEPA.

### What is NEPA, and how does it affect local governments?

NEPA is a procedural statute that requires federal agencies to examine the potential impacts of proposed “major federal actions significantly affecting the quality of the human environment.” (42 U.S.C. § 4332(C)). A “major federal action” is an action that is subject to substantial federal control and responsibility, considering the amount of federal funds expended by the action, the number of people affected, the length of time consumed, and the extent of the federal government planning involved, among other factors. (42 U.S.C. § 4336e 10); *S.W. Neighborhood Assembly v. Eckard* (D.D.C. 1978) 445 F.Supp. 1195, 1199.)

If a major federal action is at issue, and the federal agency determines that significant effects on the human environment will occur as result of the action, the agency must prepare an Environmental Impact Statement (EIS). The EIS must describe the environmental impacts of the action; adverse im-



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pacts that cannot be avoided if the action is implemented; alternatives to the action; the relationship between people's short-term use of the environment and long-term productivity; and any irreversible commitment of resources that would be required if the action were implemented. (42 U.S.C. § 4332(C).) The EIS must analyze the primary and direct impacts of a proposed action, as well as the cumulative impacts and the reasonably foreseeable indirect impacts of the action, although speculation about remote impacts is not required. (*Center for Biological Diversity v. Bernhardt* (9th Cir. 2020) 982 F.3d 723, 737.) Notably, NEPA's requirements are strictly procedural,

and the statute does not impose any substantive environmental requirements or particular outcomes from EIS analyses. (*Robertson v. Methow Valley Citizens Council* (1989) 490 U.S. 332, 350.)

Although NEPA primarily applies to federal agencies, state and local government agencies can be subject to NEPA's requirements when the local agency is in a partnership or other joint venture with the federal government, and when the scope of the federal government's involvement in the local project is so extensive so as to “federalize” the project. In such cases, there will often be a significant disparity between federal and local funding, and federal deci-

sion-makers usually retain ultimate control and authority over the proposed project. (*Rattlesnake Coalition v. U.S. EPA* (9th Cir. 2007) 509 F.3d 1095, 1101.) Examples of such projects include airport projects, highway construction efforts, bridge upgrades, and nuclear power plant modifications, as well as many projects funded by federal block grants. (See 61B Am.Jur.2d Pollution Control § 88 [citations omitted].)

### What is the case about?

The U.S. Surface Transportation Board (STB) is the federal agency tasked with reviewing construction and operation of new railroad lines in the United States. (49 U.S.C. § 10901.) After receiving an application for the construction and operation of a new railroad line, the STB is required to issue a notice alerting the public that it is reviewing the application. (*Id.* at subd. (b); *Seven County Infrastructure Coalition*, supra, 2025 WL 1520964 at \*3.) The STB must issue a certificate of authorization approving any new railroad line application, unless it finds that the proposal is “inconsistent with public convenience and necessity.” (49 U.S.C. § 10901(c).)

In May 2020, seven Utah counties submitted an application to the STB to construct and operate a new 88-mile railroad line in northeastern Utah's Uinta Basin. The new railroad line would connect the Uinta Basin, which contains significant crude oil deposits, to the national rail network, including to crude oil refineries thousands of miles away in Louisiana and Texas. (*Seven County*, supra, 2025 WL 1520964 at \*\*3, 13-14.) The STB determined that the proposed railroad line was subject to

NEPA's requirements because it was a "major federal action significantly affecting the human environment." (*Id.* at \*14 [citing 42 U.S.C. § 4332(C)].) Accordingly, the STB prepared an Environmental Impact Statement (EIS) for the proposed project, which was completed in August 2021 and consisted of a 600-page report and around 3,000 pages of appendices. (*Seven County, supra*, at \*\*4, 14.)

The STB's EIS concluded that the proposed railroad line would have potentially significant direct impacts on local water quality, land use, and recreation, and minor impacts involving air pollution and wildlife. (*Id.* at \*4.) However, the EIS also noted, but did not fully analyze, the more indirect "upstream" effects of more oil drilling in the Uinta Basin and the "downstream" effects of increased oil refining in Louisiana and Texas. (*Ibid.*) In both cases, the EIS concluded that such indirect impacts were too speculative and attenuated to fully analyze because the STB had no power to permit increased oil drilling upstream of the Basin, nor to approve increased refining in states thousands of miles downstream of the Basin, and approval of the railroad project would do neither. (*Ibid.*) These conclusions are the subject of the Supreme Court's decision in the *Seven County* case.

In December 2021, the STB approved the proposed Uinta Basin railroad project. Shortly thereafter, Eagle County, Colorado, and several environmental organizations filed lawsuits challenging the STB's decision and the EIS's compliance with NEPA. (*Seven County, supra*, 2025 WL 1520964 at \*\*4-5.) The U.S. Court of Appeals for the D.C. Circuit reversed the STB's approval of the project, finding that the EIS violated NEPA by limiting its analysis of the project's indirect upstream and downstream impacts. The D.C. Circuit concluded that both the upstream and downstream impacts of the project were reasonably foreseeable and therefore required full analysis regardless of whether those projects were under the authority of other agencies. (*Ibid.*) The U.S. Supreme Court agreed to review the case to decide the specific question of whether NEPA requires an agency to study environmental impacts beyond those caused by projects under the agency's control.

### What did the court decide?

The Supreme Court rejected and overruled the D.C. Circuit. Every Supreme Court justice agreed that the STB was not required to examine the environmental impacts of upstream oil drilling projects and downstream oil refining projects outside of the agency's direct control, even if the railroad project were connected in some manner to those potential projects. (Justice Neil Gorsuch did not participate in the case or the decision.) In so doing, the Court provided agencies with some clarity on the scope of environmental analysis required under NEPA.

The Court's majority concluded, first, that the D.C. Circuit failed to give the STB substantial deference as required by NEPA. The Court explained that the D.C. Circuit should have deferred to the STB's decisions about the scope of analysis to apply to projects outside of their control. "So long as the EIS addresses environmental effects from the project at issue," the Court explained, "courts should defer to agencies' decisions about where to draw the line—including (i) how far to go in considering indirect environmental effects from the project at hand and (ii) whether to analyze environmental effects from other projects separate in time or place from the project at hand." (*Seven County, supra*, 2025 WL 1520964 at \*8.) Therefore, courts should defer agencies' decisions about whether and how to limit analysis of other projects' environmental impacts, so long as the agency provides sufficient rationale to justify its decisions.

Second, the Court explained that NEPA does not require agencies to consider future or geographically separate projects that may occur as a result of the approval of the immediate project under the agency's consideration. In other words, "when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project." (*Seven County, supra*, at \*10 [emphasis added].) The Court concluded that no "reasonably close causal relationship" exists between an agency's proposed project and environmental impacts of other, separate projects, especially

if the agency has no regulatory authority over the separate projects. (*Id.* at \*\*10-11.) In sum, NEPA does not require that an agency analyze the environmental impacts of geographically and temporally separate projects that may be instigated by approval of the project at hand, especially if those separate projects are within the regulatory approval authority of another agency.

The Court's majority opined that a correction was required for federal courts that fail to apply the deference required by NEPA and who indulge in "overly intrusive" and "unpredictable" judicial review that has transformed the statute into a "blunt and haphazard tool employed by project opponents." (*Seven County, supra*, 2025 WL 1520964 at \*8.) The Court's minority wrote a concurrence objecting to these statements as policy disputes, but that nevertheless agreed with the majority's conclusion that NEPA does not require agencies to analyze environmental impacts of projects beyond their authority and control. (*Id.* at \*\*13, 18.)

### What does the decision mean for local agencies?

The Supreme Court's decision in *Seven County* could help local public agencies to better establish, limit and defend the scope of their environmental analyses under NEPA. Specifically, the Court's decision makes clear that NEPA does not require public agencies to analyze the potential impacts of geographically and temporally separate projects that are under the authority or control of another agency, even if those separate projects are a reasonably foreseeable result of approving the instant project before the agency. Moreover, the decision reiterates that courts must defer to agencies' decisions about the scope of environmental review, providing some legal safe harbor to agencies that provide adequate reasoning and justification for the constraints they establish on NEPA project review.

The Court's decision therefore should ideally promote administrative finality, reduce legal exposure and lower consultant costs. Local agencies considering expanded airport terminals, bridge upgrades, highway refurbishments and port projects that trigger NEPA's re-

quirements can limit their environmental analyses to focus just on environmental impacts caused by those specific projects, rather than also analyzing potential future projects that are under the control of another agency. For example, a city creating a new freight terminal at a local municipal airport may not need to examine the environmental impacts of a potential logistics warehouse 15 miles away that can only be approved by another agency, but which will receive freight arriving through the new terminal. Similarly, a port authorizing a new lumber terminal may not need to analyze the impacts of the proposed paper factory being considered for approval in a different county, but which will be served by a railway and highway originating at the new lumber terminal. Local agencies can proceed with projects with more certainty knowing that NEPA requires only that they analyze the environmental impacts of projects they themselves approve and control.

The Supreme Court's decision only affects environmental review under NEPA, and does not affect environmental review under state analogs such as the California Environmental Quality Act (CEQA), that may be broader in scope and impose stricter requirements than NEPA. Local agencies subject to both NEPA and state law environmental requirements review must remain cognizant that the *Seven County* decision will not relieve them from complying with more restrictive state law requirements.

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