

PUBLICATION

***Seven County Infrastructure Coal. v. Eagle Cnty., Colo.* – Supreme Court's "Course Correction" on NEPA Already Steering Decisions in Infrastructure Development Cases**

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The United States Supreme Court issued a unanimous decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, on May 19, 2025, clarifying that the scope of judicial review of federal agency environmental analyses under the National Environmental Policy Act (NEPA) is narrow and emphasizing that courts should afford agency environmental reviews substantial deference. *Seven County* also is indicative of a developing trend toward minimizing legal hurdles for infrastructure development projects.

Case Background

Seven County arose from a United States Surface Transportation Board (Board) environmental review of a proposal by seven Utah counties for the construction and operation of an 88-mile railroad line that would connect Utah's oil-rich Uinta Basin to the broader national rail network, which would facilitate transportation of Uinta Basin crude oil to refineries on the Gulf Coast and would promote economic development in this remote area of northeastern Utah. After preparing a 3,600-page environmental impact statement (EIS) under NEPA that analyzed several potential environmental impacts and identified feasible alternatives to mitigate those impacts, the Board approved the railway project, finding that its potential economic benefits outweighed the potential environmental impacts identified in the EIS.

Eagle County, Colorado, and several environmental organizations sued to stop the project, claiming that the Board's approval of the project violated NEPA. The United States Court of Appeals for the D.C. Circuit agreed, concluding that the Board's EIS contained numerous NEPA violations, including the Board's failure to conduct a thorough analysis of the railway project's reasonably foreseeable environmental impacts such as upstream oil drilling and downstream oil refining. The D.C. Circuit rejected the Board's arguments that such upstream and downstream impacts were not reasonably foreseeable and that NEPA did not require the EIS to consider the environmental effects of downstream oil refining projects on Gulf Coast communities and greenhouse gases from oil combustion because those impacts were beyond the scope of the Board's regulatory approval and ability to mitigate. The D.C. Circuit vacated the Board's EIS and its decision to approve the railway project. The project applicant, Seven County Infrastructure Coalition, appealed to the Supreme Court.

Supreme Court Decision

At the outset, the Supreme Court reiterated that NEPA's basic textual requirement is procedural: federal agencies must address a proposed project's significant environmental impacts and identify feasible alternatives that could mitigate those impacts, but NEPA does not require a particular substantive outcome nor mandate specific evaluation methods. Instead, guided by any relevant substantive environmental laws and the applicable governing statute, agencies may evaluate environmental effects as they reasonably see fit. "NEPA is a procedural cross-check, not a substantive roadblock," and its goal "is to inform agency decision making, not paralyze it."

Nevertheless, confusion and disagreement among the lower federal courts about how to assess NEPA compliance necessitated clarification of the central principle of judicial review in NEPA cases – substantial deference to the agency. And because some courts had lost sight of this principle, judicial review in NEPA cases had become unpredictable and overly intrusive, resulting in needlessly time-consuming and turgid environmental reviews that, ultimately, frustrated many infrastructure development projects. Indeed, the Court highlighted how NEPA had become a litigation tool for opponents to delay projects or, even worse, to prevent much-needed projects from even being proposed. Writing for the unanimous Court, Justice Kavanaugh observed that, in NEPA, "[a] 1970 legislative acorn has grown over the years into a judicial oak that has hindered infrastructure development 'under the guise' of just a little more process" and that "[a] course correction" is needed to return judicial review in NEPA cases to "the statutory text and common sense."

The Supreme Court reversed the D.C. Circuit's decision for failing to afford sufficient deference to the Board's environmental review. The Court also faulted the D.C. Circuit on the merits, holding that NEPA requires agencies to consider only environmental effects that are directly and proximately caused by a project and fall within the agency's regulatory jurisdiction. In other words, agencies are not required to analyze every conceivable environmental effect, including those effects from projects "separate in time or place."

Immediate Legal Impact

Several courts have already applied *Seven County* to narrow NEPA's reach:

- **Ninth Circuit – Alaska Oil and Gas Development:** In a case involving a challenge by environmental groups to a NEPA analysis performed by the Bureau of Land Management (BLM) for an oil and gas development project in Alaska, the Ninth Circuit ruled that, consistent with *Seven County*, BLM was not required to evaluate the potential environmental impacts of possible future or geographically separate projects and that the method chosen by BLM to conduct its alternatives analysis fell within the broad zone of reasonableness and was entitled to deference. Nevertheless, the Ninth Circuit remanded without vacatur because of BLM's procedural error in failing to explain in the Record of Decision how the selected alternative complied with the standard it chose to evaluate alternatives. *Ctr. for Biological Diversity v. U.S. Bureau of Land Mgmt.*, 141 F.4th 976 (9th Cir. 2025); *see also American Wild Horse Campaign v. Raby*, No. 24-8055, 2025 WL 1933473 (10th Cir. July 15, 2025) (citing *Seven County* in finding BLM was entitled to deference in determining an alternative like land swaps was so slow and expensive as to be infeasible, and was not required to examine the environmental impacts of potential increased livestock grazing in its NEPA review); *Xerces Soc'y for Invertebrate Conserv. v. Animal & Plant Health Insp. Serv.*, No. 3:22-CV-00790-HZ, 2025 WL 1736922 (D. Or. June 23, 2025) (refusing plaintiffs' remedy of injunctive relief despite having found NEPA violations).
- **District of New Jersey – Offshore Wind Projects:** In New Jersey, a federal district court ruled in favor of the National Marine Fisheries Service (NMFS) in a case challenging its NEPA review of cumulative environmental impacts for project authorization approvals issued to windfarm developers off the coasts of New York and New Jersey. The court rejected plaintiffs' challenge to NMFS's decision to rely on categorical exclusions for the specific project approvals instead of preparing a full EIS to address the impacts from all project approvals in offshore waters, pointing to *Seven County's* reminder that even an "EIS need not address the effects of separate projects" and that the agency's determination of the scope and content of its environmental review is entitled to deference. *Save Long Beach Island v. Dep't of Commerce*, No. CV 23-1886, 2025 WL 1829543 (D.N.J. July 2, 2025).
- **D.C. Circuit – Mountain Valley Pipeline:** In the D.C. Circuit, the court denied environmental groups' petition for review of a decision by the Federal Energy Regulatory Commission (FERC) to extend the construction deadline for a segment of the much-litigated Mountain Valley natural gas pipeline

project. The court agreed with FERC that its original environmental review adequately addressed the project segment's environmental impacts and, while not expressly relying on *Seven County*, the court rejected petitioners' argument that FERC should have conducted a supplemental NEPA analysis, noting that FERC's decision as to whether a supplemental NEPA review was necessary was entitled to deference. Judge Henderson's concurrence pointed to *Seven County's* NEPA "course correction," opined that the NEPA litigation surrounding this project "is a testament to environmental review run amok," and predicted that further steps by the courts are necessary "to rein in NEPA." Judge Henderson's concurrence also included several helpful suggestions for doing so, including taking a "hard look" at the application of the Article III standing doctrine in NEPA cases because such "challenges are mounted overwhelmingly by interest groups with little to no tie to the challenged project." *Appalachian Voices v. FERC*, 139 F. 4th 903 (D.C. Cir. 2025) (Henderson, J., concurring).

These rulings reflect a clear trend: courts are increasingly deferring to agency expertise and narrowing the scope of NEPA reviews, consistent with the Supreme Court's directive in *Seven County*.

Practical Takeaways for Project Developers

- *Deference applies across NEPA stages:* The central principle of deference should apply to all levels of NEPA review where agencies must make "fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry – and also about the length, content, and level of detail of the resulting" NEPA review. *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497, 1513 (2025). So, whether an agency is evaluating an infrastructure project under a NEPA categorical exclusion or deciding whether a project modification requires a supplemental environmental review, the fundamental NEPA principles articulated by *Seven County* should control. And even if a court were to find a procedural misstep in an agency's NEPA review, "not every error in an EIS requires 'a court to vacate the agency's ultimate approval of a project.'" *Appalachian Voices v. FERC*, 139 F. 4th 903 (D.C. Cir. 2025) (Henderson, J., concurring) (quoting *Seven County*).
- *Focus EIS on direct, regulated impacts:* Agencies need not analyze speculative or geographically remote effects. This is particularly true for the effects of separate projects over which the agency would not exercise regulatory authority.
- *Concentrate on alternatives in EIS:* Project developers applying for federal permits or approvals should pay particular attention to alternatives analyses proposed by the approving agency at the draft stage to help ensure that the methodology for evaluating and selecting alternatives – both of which are entitled to deference – is applied consistently by the reviewing agency when making the final agency decision. The agency is allowed to apply common sense in determining whether potential alternatives are feasible, and project developers can play a role in educating the agency as to the feasibility of any proposed alternatives.
- *Intervene early:* Project developers should strongly consider intervening in cases challenging an agency's NEPA review to ensure that project information is accurately presented to the court and that the project's infrastructure development importance is properly understood and considered. After all, it was the project proponents themselves who petitioned for Supreme Court review in the *Seven County* case. *Eagle County, Colo. v. Surface Transp. Bd.*, 82 F.4th 1152 (D.C. Cir. 2023), *petition for cert. filed*, (U.S. Mar. 4, 2024) (No. 23-975).

How Baker Donelson Can Assist

The fundamental NEPA principles articulated by the Supreme Court in *Seven County* (and already being applied by courts around the country), coupled with Judge Henderson's suggestions in the Mountain Valley

Pipeline case, equip project developers with important tools to help steer agency NEPA reviews back to their proper course. Baker Donelson attorneys are available to assist infrastructure project developers with applications for federal permits or other approvals and associated environmental reviews, and to help project developers intervene in NEPA cases challenging agency environmental reviews.

If you have any questions regarding the *Seven County* decision, please reach out to [David Ayliffe](#), [Elizabeth Haskins](#), [Noelle E. Wooten](#), any member of [Baker Donelson's Environmental Group](#), or the attorney in the Firm with whom you are regularly in contact.