Seven County Infrastructure Coalition v. Eagle County, Colorado: NEPA's "Hard Look" Requirement Narrowed in Policy Shift Towards Procedure

I. OVERVIEW OF THE CASE 203
II. BACKGROUND 204
III. COURT'S DECISION 207
IV. ANALYSIS 210
V. CONCLUSION 214

I. OVERVIEW OF THE CASE

In the noted case, *Seventy County Infrastructure Coalition v. Eagle County* ("*Seven County*"), the United States Supreme Court reached a flawed conclusion while creating an unnecessarily sweeping policy decision which will have widespread negative environmental consequences in future federal projects.[1] In *Seven County*, the U.S. Surface Transportation Board ("the Board") reviewed a proposal by a group of Utah counties for the construction and operation of an eighty-eight-mile railroad line in northern Utah, with the main purpose of the railway being the transportation of oil to refineries on the Gulf Coast.[2] The Board prepared an environmental impact statement (EIS) for the proposed project.[3] Various environmental groups and a Colorado county, Eagle County, alleged they were impacted by the railway, and challenged the validity of the Board's approval of the EIS.[4] Eagle County filed suit, alleging that the Board's environmental review of the railway was insufficient and, specifically, that the Board failed to account for upstream and downstream environmental impacts of the railway.[5] The United States Court of Appeals for the D.C. Circuit found that the Board failed to quantify reasonably foreseeable upstream and downstream impacts of the project and failed to take a hard look at environmental effects

1. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168 (2025).
2. *Id.* at 174-176.
3. *Id.* at 175.
4. Eagle Cnty., Colo. v. Surface Transp. Bd., 82 F.4th 1152, 1164 (D.C. Cir. 2023).
5. *Id.* at 1175.

downstream, as required by the National Environmental Policy Act (NEPA).[6]

The Supreme Court reviewed the case in 2024 and reversed the D.C. appellate court's ruling.[7] The Supreme Court *held* that the D.C. Circuit failed to afford the Board the appropriate level of deference required in NEPA cases and incorrectly required the Board to consider the environmental impacts of upstream and downstream projects that are separate in time or place from the proposed railway.[8]

II. BACKGROUND

In 1969, Congress passed the National Environmental Policy Act.[9] NEPA requires that for "major federal actions" carried out by the federal government, the responsible federal agency must write an environmental impact statement.[10] A major federal action is "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility."[11] The EIS must address the significant environmental impacts of the proposed project and present reasonable alternatives to mitigate environmental impacts.[12]

NEPA establishes a national policy on environmental quality and a basic process for considering environmental elements in federal decision-making.[13] NEPA is a procedural statute rather than a substantive one, meaning it mandates particular processes rather than outcomes.[14] NEPA requires federal agencies to consider whether a proposed action will have significant environmental impacts and, if so, document those impacts and consider reasonable alternatives.[15] NEPA does not specify which decisions agencies must make or require the most environmentally protective option.[16] NEPA only requires agencies to consider a thorough analysis of environmental impacts before decision-making.[17]

---

6. *Id.* at 1175-77.
7. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 170 (2025).
8. *Id.* at 169-70.
9. *Id.* at 172.
10. *Id.*; 42 U.S.C. § 4332(c).
11. 42 U.S.C. § 4336e(10).
12. 42 U.S.C. § 4336e(12).
13. Kristen Hite, Heather McPherron, CONG. RSCH. SERV., IF12960, Council on Environmental Quality Rescinds NEPA Regulations: Legal and Policy Considerations (2025).
14. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 333 (1980).
15. Kristen Hite, CONG. RSCH. SERV., R48717, Judicial Review and the National Environmental Policy Act (NEPA) (2025).
16. Methow Valley Citizens Council, 490 U.S. at 351.
17. *Id.*

Additionally, NEPA established the Council on Environmental Quality (CEQ) within the executive branch.[18] Historically, CEQ issued regulations to implement NEPA across federal agencies.[19] The CEQ directed federal agencies to establish their own procedures for environmental review and has historically attempted to standardize agency implementation of NEPA policies.[20] The CEQ used to require the assessment of direct, indirect, and cumulative environmental impacts of a proposed federal action; however, those regulations have been rescinded by revisions to CEQ guidelines in 2020 and again in 2025.[21] In February 2025, President Trump issued an executive order instructing the CEQ to rescind its NEPA regulations, effective April 2025.[22] The CEQ then directed federal agencies to establish and follow their own NEPA procedures.[23]

Depending on the scope of the project, NEPA provides that the responsible agency must produce one of the following: an EIS, an environmental assessment (EA), or categorical exclusion (CE).[24] Federal agencies may be challenged in federal court based on their environmental reviews under NEPA.[25] Challenges can be brought pursuant to the Administrative Procedure Act (APA) which provides a cause of action for challenges to agency actions.[26] The Supreme Court held that the APA imposes a deferential standard of review for agency policymaking and that when evaluating NEPA actions, the applicable agency is subject to an arbitrary and capricious standard of review. [27] This means that on factual matters concerning an EIS, courts should not use their own judgment to determine what an agency should include in its reports; rather, the court must only consider whether the agency determination was reasonable and explained.[28] Courts have identified various factors that may lead an agency's NEPA review to be deemed arbitrary and capricious.[29] These

18. Hite et al., *supra* note 13.
19. *Id.*
20. Hite, *supra* note 15.
21. 85 Fed. Reg. No. 137 (July 16, 2020).
22. Exec. Order No. 14154, 90 Fed. Reg. No. 18 (Jan. 29, 2025).
23. Memorandum for Heads of Federal Departments and Agencies, COUNCIL ON ENV'T QUALITY, (Feb. 19, 2025).
24. Hite, *supra* note 15.
25. *Id.*
26. *Id.*
27. *Id.*
28. Motor Vehicle Ass'n of the U.S. Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).
29. *Id.*

factors include: whether an agency relied on factors Congress did not intend, whether an agency failed entirely to consider an important impact of the project, whether an agency offers an explanation in contradiction to the facts before it, or whether the agency's conclusion is implausible in a way that cannot be accounted by for by a difference of views.[30] Additionally, courts have found that an agency's NEPA review to be arbitrary and capricious because there is a clear error in judgment.[31]

In addition to NEPA's statutory language, case law has developed around the practical application of NEPA. Federal courts have found that NEPA requires federal agencies to examine the significant environmental impacts of a proposed federal action and to inform the public of the environmental concerns that were considered in the agency's decisions.[32] The statutory language of NEPA mandates that an agency must provide a detailed statement of reasonably foreseeable environmental effects of the proposed federal agency action.[33] The issue of what constitutes a reasonably foreseeable environmental effect is becoming a hot subject for litigation.

In an early challenge to NEPA, the Supreme Court in *Baltimore Gas and Electric Co. v. Natural Resource Defense Council, Inc.*, reasoned that NEPA requires agencies to take a "hard look" at its environmental consequences, meaning that an agency must consider all significant environmental risks in regard to a proposed action.[34] The Court further developed its reasoning in *Department of Transportation v. Public Citizen*. In *Public Citizen,* the Court found that a federal agency does not have to account for potential environmental impacts of a proposed federal action if the environmental impacts would not occur at the same time or place as the proposed action and if the agency lacks the ability to control or regulate environmental impacts.[35]

A recent D.C. Circuit decision in *Sierra Club v. Federal Energy Regulation Commission* considered that environmental effects are reasonably foreseeable if they are so sufficiently likely to occur that a person of ordinary prudence would take them into consideration.[36] *Sierra Club* additionally held that a federal agency must account for downstream

30. *Id.*
31. Am. Wild Horse Campaign v. Raby, 144 F.4th 1178, 1188 (10th Cir. 2025).
32. Baltimore Gas and Elec. Co. v. Nat. Res. Def. Council, Inc., 462 U.S. 87, 97 (1983).
33. 42 U.S.C.A §4332 (2023).
34. *Baltimore Gas and Elec. Co*., 462 U.S. at 99-100.
35. Dep't of Transp. v. Public Citizen, 541 U.S. 752, 772 (2004).
36. Sierra Club v. Fed. Energy Regul. Comm'n, 867 F.3d 1357, 1371 (D.C. Cir. 2017).

emissions or explain why it did not.[37] The court reasoned that if environmental impacts are indirect, but reasonably foreseeable and within the applicable agency's control, the impacts must be accounted for in an EIS under NEPA.[38] Furthermore, in *Center for Biological Diversity v. Bernhardt*, the Ninth Circuit found that a federal agency's failure to consider environmental impacts of projects separate in time and place which were reasonably foreseeable was impermissible.[39]

While much case law has relied on the regulatory language of the CEQ to determine a federal agency's responsibilities under NEPA, the 2025 rescission of CEQ's regulations leaves an often-inconsistent body of law for agencies to navigate in their pursuit to fulfill their NEPA obligations.

III. COURT'S DECISION

In the noted case, the Supreme Court held that the D.C. Circuit failed to afford the Board the required level of judicial deference in crafting its EIS and that the Board is not required to consider upstream and downstream environmental effects that are separate in time and place from the project at hand.[40]

First, the proper standard of review for courts to employ when examining a federal agency's compliance with NEPA is arbitrary and capricious, meaning the only role of the court is to confirm that the agency addressed environmental impacts, presented reasonable alternatives, and reasonably explained its methodologies in its EIS.[41] Essentially, courts must defer to the agency's decision-making in its creation of an EIS as long as the agency's decisions fall within a "zone of reasonableness."[42] Applying these rules, the Court in *Seven County* found that the Board fulfilled its procedural obligations under NEPA when it chose not to consider environmental impacts of future crude oil drilling and refining which the proposed railroad will facilitate, noting that NEPA is a "purely procedural" statute and that an agency may weigh and document environmental effects as it reasonably sees fit.[43]

37. *Id.* at 1374.
38. *Id.*
39. Ctr. for Biological Diversity v. Bernhardt, 982 F.3d 723, 736 (9th Cir. 2020).
40. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 168 (2025).
41. *Id.* at 168-69.
42. *Id.*
43. *Id.* at 173.

The Board prepared a 3,600-page environmental analysis of the proposed Utah railroad line but did not consider the environmental impacts of separate projects, specifically, the environmental impacts of increased oil drilling upstream the railroad and increased oil refining downstream along the Gulf Coast of Louisiana and Texas.[44] The Court emphasized that agencies are responsible for determining what to include in its EIS and that agency discretion should not be overly questioned by courts.[45] Essentially, as long as an EIS addresses the environmental impacts of the project at hand, courts should offer great deference to agency's decisions about how far to consider the indirect environmental impacts of a project and whether it wants to analyze environmental impacts of projects separate in time and place from the project at hand.[46] The EIS at issue in *Seven County* addressed why it failed to consider environmental impacts of upstream and downstream oil production, stating that this was purely speculative and the Board lacked the authority to regulate these impacts.[47] Using the arbitrary and capricious standard of review, the Court was satisfied that the Board met its obligations under NEPA in its creation of the EIS.[48]

Second, the Board need not consider the environmental impacts of upstream and downstream projects separate from time and place in order to comply with NEPA.[49] The Court found that just because the proposed project may have environmental effects due to its facilitation of separate projects does not mean these separate projects must be accounted for in an EIS.[50] This is particularly true when the separate projects are outside the applicable agency's authority.[51] Furthermore, the Court found that NEPA does not permit courts to delay or block agency projects based on environmental impacts of other projects separate in time and place from the project at hand.[52]

The Board noted in its EIS that future oil projects are separate, independent projects from the proposed railroad and therefore, the EIS need not consider the possible effects of separate upstream or downstream

44. *Id.* at 173-74.
45. *Id.* at 180-81.
46. *Id.* at 182.
47. *Id.* at 175-76.
48. *Id.* at 168-70.
49. *Id.* at 169-70.
50. *Id.*
51. *Id.*
52. *Id.*

projects.[53] The Court emphasized longstanding NEPA precedent that NEPA requires only assessment of environmental impacts of the "proposed action," not separate projects that may be built as a result of the proposed project.[54] Because the environmental impacts of increased oil production are due to a separate project entirely from the railroad, the EIS is not required to address them.[55] However, the Court did note that the environmental effects of a project may fall within the requirements of NEPA if even those effects go beyond the location and time of the project at hand, but the environmental impacts must be due to the same project, not a separate project altogether.[56]

The Court reasoned that requiring an agency to consider environmental impacts of a separate project would create a causal chain that is too attenuated, especially when the separate project is beyond the regulatory authority of the applicable federal agency.[57] Essentially, but-for causation is not enough to require the inclusion of environmental impacts in an EIS; rather, agencies must only focus on the impacts of the project at hand.[58] The Court emphasized that an agency must draw a "manageable line" in its preparation of environmental reports.[59] Even though the primary goal of the proposed Utah railway is to facilitate the drilling and refining of oil, because future environmental impacts of such oil production are separate in time and place from the proposed federal action, NEPA does not require that these impacts be accounted for. This is especially true because the Board possesses no regulatory authority over the future oil production.[60] The Court made it clear that there is no "reasonably close causal relationship" between the proposed railway and the oil production it will facilitate because the oil production is separate in time and place from the railroad and the Board lacks regulatory authority over the oil production itself.[61]

In a concurrence joined by two other justices, Justice Sotomayor wrote that the majority in this case reached the proper conclusion, but unnecessarily grounded its holding in policy concerns.[62] The concurrence

53. *Id.* at 186-87.
54. *Id.* at 186-87.
55. *Id.* at 186.
56. *Id.* at 187.
57. *Id.* at 187-88.
58. *Id.* at 189.
59. *Id.*
60. *Id.* at 188.
61. *Id.* at 187-88.
62. *Id.* at 192-93.

states that in drafting its EIS, the Board recognized that the railroad will facilitate the transportation of crude oil which will emit greenhouse gases, but failed to take a more detailed examination of the issue.[63] Additionally, the Board acknowledged that the emissions from this oil production could be equal to 0.04-0.1 percent of total global greenhouse emissions.[64] However, because railroads have common carrier obligations to transport all commodities upon reasonable request, and the Board lacks authority over the production of oil and gas as well as the ability to mitigate the environmental impacts of such products, the Board reasoned that it must not consider these impacts.[65]

The concurrence found this argument persuasive, writing that agencies need only analyze environmental impacts that it has the authority to prevent, and because the Board here lacked the legal authority to do so, the Board complied with NEPA.[66] Nor are agencies responsible for reviewing impacts that are "technically avoidable" but are too "causally attenuated" from the project at hand.[67] The concurrence found that because the Board here lacked the ability to deny oil production in relation to the proposed railroad, the analysis of the EIS stops there, even if the environmental impacts of oil production are reasonably foreseeable.[68] The concurrence argued that there is no need to establish greater policy considerations such as that by the majority opinion.[69]

IV. ANALYSIS

Under *Seven County* and the repeal of CEQ guidelines, federal agencies now lack cohesive guidelines informing them what to include in their environmental impact statements under NEPA. Both the decision in *Seventy County* and the rollback of CEQ uniform NEPA guidelines show a trend towards decentralizing NEPA regulations and deferring to federal agency's decision-making. While CEQ NEPA guidelines have been repealed, federal agencies still have their own reporting guidelines under NEPA which they follow.[70] This has the potential to result in disjointed and unpredictable regulations for federal agencies drafting EISs for major

63. *Id.* at 195.
64. *Id.*
65. *Id.* at 195-96.
66. *Id.* at 201.
67. *Id.* at 198.
68. *Id.* at 201-02.
69. *Id.* at 193.
70. Hite et al., *supra* note 13.

projects.[71] This is disconcerting because environmental reviews of major federal projects under NEPA are one of the main mechanisms in which individuals, such as the plaintiffs in *Seven County*, are informed about the environmental impacts of a proposed project.

In *Seven County*, a group of environmentalists sued the Transportation Board to require the Board to include a full analysis of the environmental impacts of oil drilling and refining which would increase due to the project at hand, specifically, a railroad whose main purpose was to facilitate oil production from the Utah Basin to the Gulf Coast.[72] The Supreme Court found that because the Board was entitled to great judicial deference in its decision-making, because the environmental impacts of increased oil production were separate in time and place from the railroad itself, and because the Board lacked regulatory authority over these separate projects, the Board was not required to include these environmental impacts even though they were "reasonably foreseeable."[73] The Supreme Court particularly emphasized that courts had policed federal agencies too much under NEPA and courts may not delay projects based on environmental impacts "separate from the project at hand.[74] The Court reached this holding even though the "main purpose" of the railroad was to facilitate oil production.[75]

The concurrence wrote that it agreed with the holding based on the Board's lack of regulatory authority over the projects separate from the proposed railway and ended its analysis there.[76]

In the midst of its NEPA analysis, the Court in *Seven County* chose to make a sweeping policy declaration, stating that "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 of sorts is appropriate to bring judicial review under NEPA back in line with . . . common sense."[77]

However, the D.C. court's reasoning in *Seven County* was well within the realm of common sense. The D.C. court determined that agencies may draw the line of forecasting to exclude environmental impacts beyond that which are reasonably foreseeable.[78] The court

71. *Id.*
72. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 168 (2025).
73. *Id.* at 168-170.
74. *Id.* at 170.
75. *Id.* at 193.
76. *Id.*
77. *Id.* at 184.
78. Eagle Cnty., Colo. v. Surface Transp. Bd., 82 F.4th 1152, 1178 (D.C. Cir. 2023).

emphasized that an agency is not required to foresee the unforeseeable, but neither can it avoid considering an environmental impact just because it involves some degree of forecasting.[79] The D.C. court bolstered it's argument by referencing a 2017 case, *Sierra Club v. Federal Energy Regulatory Commission*, in which an agency developing a pipeline argued that it could not include greenhouse gas emissions in its EIS because it did not know the exact quantity of emissions that would result from the project.[80] The court rejected this argument because the pipeline developers had identified the particular power plants that would receive the gas and already estimated the quantity of gas that the pipelines would transport and therefore, the agency should have given an estimate of emissions in its EIS or explained why it could not do so.[81]

Similar to *Sierra Club v. Federal Energy Regulatory Commission*, the Board in *Seven County* already identified that part of the oil transported by the railroad would be delivered to Texas and the Louisiana Gulf Coast and noted that 175,000 barrels of oil per day would be delivered to these areas.[82] Accordingly, as the Board had already made these determinations, it is reasonable to expect the Board to fully analyze these environmental impacts or explain why it cannot.

However, the Supreme Court remained unpersuaded by such an argument, finding that because future oil production facilitated by the railway would be that of a separate project, even if factually foreseeable, it is not relevant to an agency's decision-making process.[83] While this reasoning was certainly part of the Supreme Court's analysis in *Seven County*, the Court seemed to focus its holding more on the judicial deference afforded to federal agencies in their decision-making and to the lack of regulatory authority for agencies. By doing so, the Supreme Court successfully flouted the analysis of major environmental impacts in favor of procedural requirements.

Furthermore, in a persuasive Ninth Circuit ruling in *Center for Biological Diversity v. Bernhardt*, the Ninth Circuit found that a federal agency's failure to consider the environmental impacts of projects separate in time and place which were reasonably foreseeable was impermissible.[84] In *Center for Biological Diversity*, the Center for

79. *Id.*
80. *Id.*
81. *Id.*
82. *Id.* at 1177.
83. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 179 (2025).
84. Ctr. for Biological Diversity v. Bernhardt, 982 F.3d 723, 736-37 (9th Cir. 2020).

Biological Diversity brought suit against the Bureau of Ocean Energy Management for the construction of an offshore oil drilling and production facility because the Bureau did not consider a rise in greenhouse gas emissions due to foreign oil consumption facilitated by the project in its EIS.[85] The Center for Biological Diversity asserted that the EIS was arbitrary and capricious by failing to consider a key variable, foreign oil consumption, in its EIS.[86]

The court highlighted that NEPA required federal agencies to evaluate both the direct and indirect effects of the proposed action, but only required the consideration of indirect effects that are reasonably foreseeable.[87] The court found that an increase in foreign oil consumption was a reasonably foreseeable effect of the proposed oil drilling facility, and therefore, the EIS was inadequate under NEPA because it neither quantified these foreseeable effects or provided a well explained reason it could not.[88]

Furthermore, the court in *Center for Biological Diversity* found that it is insufficient for an agency to argue that greenhouse gas projections are speculative because even if the quantity of greenhouse emissions is not foreseeable, the existence of the emissions themselves are foreseeable.[89]

The facts in *Center for Biological Diversity* are comparable to those in *Seven County*. Just as the agency in *Center for Biological Diversity* failed to consider reasonably foreseeable environmental effects of the project in hand, the Board in *Seven County* failed to adequately consider the environmental impacts of the transportation of oil facilitated by railroad. Yet, the Court in *Seven County* allowed the Board to avoid consideration of these emissions by asserting that they are separate in time and place from the railway because the oil production would be carried out by different actors in the future.

Additionally, while it is true that a quantification in greenhouse emissions due to the railroad in *Seven County* would require a degree of estimation, courts have clearly established that forecasting and speculation are integral in NEPA and agencies may not skirt their responsibilities by framing future environmental effects as a "crystal ball

85. *Id.* at 736.
86. *Id.*
87. *Id.* at 737.
88. *Id.* at 738.
89. *Id.*

inquiry."[90] Moreover, an increase in greenhouse emissions due to the railroad is not merely speculative; it is certain, with the Board itself estimating that increased oil production facilitated by the railroad will cause an increase in greenhouse gas emissions equal to 0.04-0.1 percent of global emissions.[91] An agency is required to fulfill its duties under NEPA to "the fullest extent possible," which is especially salient in a case like *Seven County* where the greenhouse emissions will have global impacts for generations to come.[92]

V. CONCLUSION

In conclusion, the majority in *Seven County* reached a faulty conclusion that allows a federal agency to ignore the consequential environmental impacts of its project. In finding that the link between the railroad in *Seven County* and an increase in greenhouse gas emissions was not causally sufficient to require consideration, the Court disregarded years of precedent that require at least the consideration of reasonably foreseeable environmental impacts of federal projects. Increased greenhouse gas emissions due to the proposed railroad in *Seven County* is more than reasonably foreseeable; it is a certainty. The ruling in *Seven County*, in combination with the CEQ's rollback of uniform NEPA regulations for federal agencies, enables federal agencies to skirt responsibility for their environmental impacts by weakening federal oversight and minimizing analysis requirements. In order to maintain transparency and accountability, the time and place restriction for environmental impact statements under NEPA must be reversed, and the CEQ regulations must be reinstated.

Annie Blair*

90. Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

91. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo., 605 U.S. 168, 195 (2025).

92. *Id.*

* © 2026 Annie Blair is the Business Editor for Volume 40 of the *Tulane Environmental Law Journal* and is expected to graduate in May 2027.