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Supreme Court's *Seven County* Decision Smooths the Way for Major Building Projects Requiring Federal Approvals

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For over half a century, companies that need federal permits, licenses, and approvals for construction and development projects have had to contend with the National Environmental Policy Act (NEPA). NEPA requires federal agencies to conduct a detailed environmental review before undertaking a major federal action (like permitting, granting a right-of-way, or holding a lease sale for offshore projects) that could have a significant effect on the environment. NEPA reviews can hold up projects for months or even years, and—even after they are completed—NEPA can delay or even block a project because NEPA offers an avenue for a project's opponents to sue, alleging that the project has to be stopped because the NEPA review was not sufficient. Moreover, while NEPA does not compel an agency to take any particular action based on the results of an environmental review, a finding of a major adverse environmental effect often triggers still more review, and agencies frequently elect to mitigate the identified effects, by—for example—reducing the scope of a permit or imposing conditions on a project.

Last week, the Supreme Court issued a unanimous opinion that significantly curtails this NEPA run around. In *Seven County Infrastructure Coalition, et al. v. Eagle County, Colorado*, [1] the Supreme Court held that NEPA did not require the Surface Transportation Board to analyze the upstream and downstream effects of oil and gas drilling and development before approving the construction of a railroad line that will help transfer oil from wells in Utah to refineries on the Gulf Coast. The Court explained that NEPA requires agencies to look at the environmental effects of the project itself—here, the construction of the railroad line—not the effects of other projects like oil development and refining that the construction might encourage, whether directly or indirectly. And the Supreme Court emphasized that courts should be very leery about second-guessing an agency's NEPA decisions, observing that courts should afford strong deference to an agency's determination that what it did was enough. [2]

The decision is great news for any entity that wants to build or invest in a project that needs government approval. In the past, NEPA reviews and follow on litigation have tied up or derailed a wide range of high value projects like pipeline development, oil and gas leasing, and even the construction of renewable energy projects, such as wind farms. The Supreme Court sent a strong message that this is not what Congress intended. Going forward, NEPA reviews should be tightly limited and take substantially less time. While NEPA litigation may still arise, the chance of success is substantially reduced and the underlying projects are more likely to go forward unimpeded.

But it isn't all good news. The first half of the Court's opinion repeatedly emphasizes the need for deference to the agency performing the NEPA analysis. That is a big help when the agency wants to move a project along, but it could spell trouble when the government tries to use NEPA to hold up development or construction of projects it disfavors. The Court seems to have anticipated this problem: In a footnote it observed that when an agency bars a project based on environmental concerns, the project's proponents can sue the government, arguing—among other things—that the agency "acted unreasonably in denying approval by weighing environmental consequences too heavily… or perhaps that the agency erred because the governing statute did not allow the agency to weigh environmental consequences at all." Another footnote observes that Congress amended NEPA in 2023 to "*prohibit[]* an agency's [environmental review] from going on endlessly"—expressly limiting NEPA reviews to 150 pages in length and no more than two years in duration. These footnotes will help, and the current Administration has signaled that it generally favors less NEPA review; one of President Trump's early Executive Orders called for a repeal of many longstanding NEPA regulations. [3] But this Administration (like the prior one) has also had no qualms about invoking NEPA as an obstacle to projects it dislikes. And NEPA will undoubtedly remain an important consideration for project sponsors and their financers when a project depends on federal government approval.

Milbank's environmental lawyers routinely advise clients regarding the impact of NEPA, and Milbank Litigation & Arbitration partner Colleen Roh Sinzdak, former Assistant to the Solicitor General, drafted the government's successful brief in *Seven*

[1] 2025 WL 1520964 (No. 23-975)

[2] While the Court's judgment was unanimous, Justices Sotomayor, Kagan, and Jackson concurred only in the judgment, and Justice Gorsuch was recused.

[3] See Exec. Order 14154, *Unleashing American Energy*, 90 Fed. Reg. 8353 (Jan. 20, 2025).

County. She has a deep familiarity with NEPA litigation and other suits involving the federal government's regulation of oil, gas and mining projects.

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