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THE NATIONAL LAW JOURNAL

Supreme Court's 'Seven County' Decision Smooths Way for Major Projects Requiring Federal Approval

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June 9, 2025

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 requires federal agencies to conduct a detailed environmental review before undertaking a major federal action (like issuing permits, 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 years, and—even after they are completed—NEPA can delay or block a project because NEPA offers an avenue for a project's opponents to sue, alleging that the project cannot proceed 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.

Courtesy photos

(l-r) Thomas D. Goslin, Colleen Roh Sinzdak and Matthew H. Ahrens of Milbank.

Last month, the U.S. Supreme Court issued an opinion that significantly curtails this NEPA run-around. In *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 2025 WL 1520964 (No. 23-975), 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.

The majority decision was written by Justice Brett Kavanaugh, and the judgment was unanimous. Justice Neil Gorsuch was recused, and Justice Sonia Sotomayor—joined by Justices Elena Kagan and Ketanji Brown Jackson—wrote separately to concur only in the judgment. The concurring justices agreed that the STB did not need to consider the upstream and downstream effects of oil development and refining, but in their view that is because STB's organic statutes preclude the agency from considering such effects in authorizing rail construction. A decision along those lines might have had consequences for the scope of STB's statutory authority, but it would have done very little to alter the NEPA framework because the court held over two decades ago, in *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004), that NEPA does not require an agency to consider environmental effects the agency "has no ability to prevent." Kavanaugh's majority opinion goes further. While the majority found that the upstream and downstream effects of the rail project "fall outside the Board's authority," the majority did not suggest that the lack of authority was essential to its holding. Instead, the majority held that STB was not required to consider the effects because they were more properly attributed to "potential future projects or from geographically separate projects." And the majority discussed the STB's absence of "regulatory authority over those separate projects" as a reinforcing point rather than a necessary ingredient of the decision. The court therefore laid the groundwork for agencies to decline to consider effects that are within their power to prevent, so long as they may be attributed to a distinct project.

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. The court explained that, under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must decide legal questions, such as what NEPA means when it requires an agency to produce a "detailed" environmental statement. The court said, "But when an agency exercises discretion granted by a statute ... a court asks not whether it agrees with the agency decision, but only whether the agency action was reasonable and reasonably explained." Thus, in reviewing an agency's decision about what details to include in its environmental analysis, "[c]ourts should afford substantial deference and should not micromanage those agency decisions so long as they fall within a broad zone of reasonableness," the high court stated. That is a big help when an 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 Donald Trump's early executive orders called for a repeal of many longstanding NEPA regulations. See Exec. Order 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 20, 2025). But this administration (like the prior ones) 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.

**Co-author Colleen Roh Sinzdak drafted the federal government's successful brief in* Seven County *in her prior role as an assistant to the solicitor general at the U.S. Department of Justice.*

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