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NEWSLETTER ARTICLE

# *Seven County*: A Win-Win For the Environment and Business

*Anthony Michael Sabino*

Since the enactment of the National Environmental Protection Act (NEPA) in 1969, the term environmental impact statement (EIS) has become deeply embedded in legal and business language. As is well known to this readership, the statutory framework requires an assessment of the anticipated environmental impacts of any project that is built, funded, or approved by the federal government.

Yet, for nearly six decades, federal appellate courts have disagreed over the appropriate level of judicial scrutiny to apply when reviewing a controversial EIS. This disagreement has resulted in unpredictability, varied outcomes, and the often regrettable practice of forum shopping. Only the US Supreme Court could resolve this internal conflict.

And now it has. In *Seven County Infrastructure Coalition v. Eagle County, Colorado,*[1] the High Court issued a multifaceted ruling that first confirmed

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the nation's initial approach to environmental protection is a "purely procedural" mechanism, one that does not dictate results but only the process to be followed.

Like most Supreme Court rulings, *Seven County* has sparked strong reactions. Some praised the decision for its resolution of a troublesome circuit split, while others criticized it as a setback for the environment.

The unified bench further instructed judges reviewing contested EISs to afford "substantial deference" to regulators' choices regarding what matters they consider appropriate for study. Finally, the Justices clarified that the potential environmental ramifications of projects separated in time and location from the proposal do not need to be included in a specific environmental assessment, especially when the regulatory authority of the submitting agency does not extend to those independent undertakings.

*Seven County* received a chilly reception from those who accused it of harming the cause of environmental preservation. Some questioned if this newly announced "substantial deference" rule was a revival of the recently discredited Chevron doctrine.[2]

This author respectfully argues that it is neither; in fact, this latest Supreme Court decision is a clear win-win for both the environment and business. How so? Because the Justices have now prioritized agencies and their experts at the forefront of assessing and mitigating environmental harm. Similarly, industry benefits from this shift, assured that proposals will be judged solely on their environmental merits—or shortcomings—without interference from unrelated issues. However, to fully explain, we must first outline *Seven County's* factual background.


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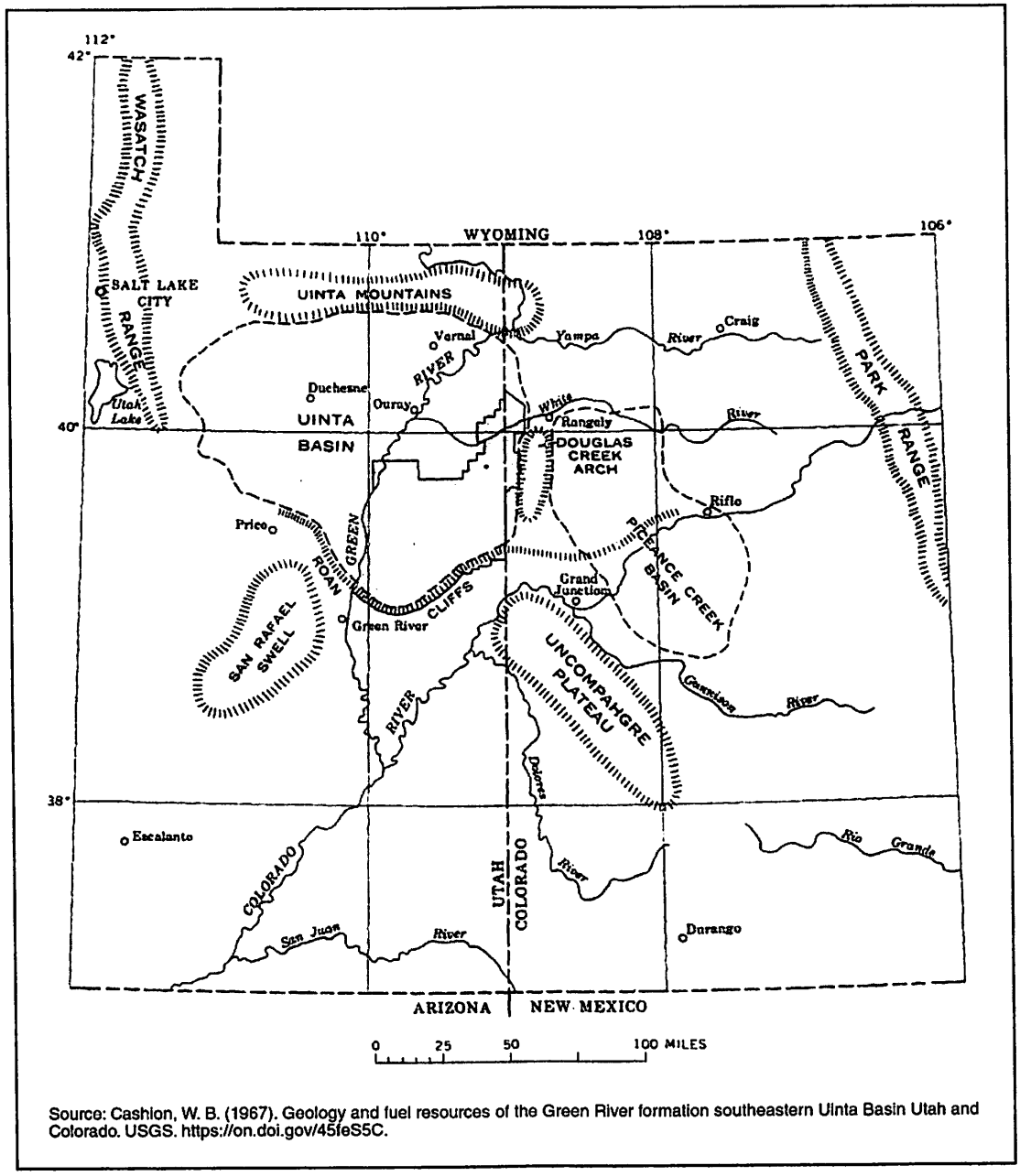
## CONNECTING THE UINTA BASIN

The Uinta Basin spans much of northeastern Utah, as well as contiguous sections of Wyoming and Colorado (**Figure 1**). As vividly described by the *Seven County* court, this geological formation is a vast "rural territory roughly the size of the state of Maryland."[3] The region is abundant in deposits of "waxy crude" petroleum, which must be heated in containers to be shipped to refineries. Its inaccessibility and the challenging terrain made developing this and other natural resources impractical.[4]

To promote jobs and industry in the region, seven Utah counties formed a coalition to petition the Federal Surface Transportation Board (STB) for permission to build an approximately 88-mile rail

**Figure 1.** Geographical Map of the Unita Basin.




Source: Cashion, W. B. (1967). Geology and fuel resources of the Green River formation southeastern Uinta Basin Utah and Colorado. USGS. https://on.doi.gov/45feS5C.

line that would connect the Uinta Basin to the nationwide rail network.[5] This new connection to the national economy would boost economic growth in Utah and specifically "facilitate the transportation of crude oil from Utah to refineries in Louisiana, Texas, and elsewhere."[6]

As a required step before approving the construction of the rail line, the STB proposed "an extraordinarily lengthy EIS, spanning more than 3,600 pages of environmental analysis." Unimpressed by this extensive document, Eagle County, Colorado, and others challenged the agency's fact-finding, claiming that the regulators had given only minimal consideration to the environmental effects of projects that are independent of and geographically distant from the proposed project. The dissenters argued that once the rail line began operation, there would be an increase in upstream petroleum exploration and production, along with a corresponding rise in downstream refining, which would cause significant environmental harm.[7]

The US Court of Appeals for the District of Columbia (D.C. Circuit) sided with Eagle County. Vacating the board's approval, the panel criticized the regulators for "not sufficiently considering the environmental impact of projects *separate from the railroad line itself.*"[8] The tribunal's reasoning highlighted a persistent rift among the appellate courts regarding the appropriate standard for judicial review of EIS. While some circuit courts limited their oversight to merely determining compliance with NEPA's procedural requirements, the D.C. Circuit joined the courts that were aggressively demanding that environmental evaluations account for any potential harm from independent projects, even when those unrelated endeavors were separated in time and distance from the proposal under review.

Having determined that it was time to end this balkanization, the Supreme Court's first step was to clarify the precise role NEPA plays in environmental protection.

## THE NATIONAL ENVIRONMENTAL POLICY ACT

Writing for a unified court,[9] Justice Kavanaugh began with statements that might even be considered a *homage* of sorts to the cornerstone of contemporary environmental law. NEPA, the court notes, was signed into law by then-President Richard Nixon in 1969 and was "the first of several landmark environmental laws enacted by Congress in the 1970s," paving the way for, among other laws, the 1970 amendments to the Clean Air Act (CAA), the Clean Water Act (CWA) of 1972, and the Endangered Species Act of 1973.[10]

Regarding specific infrastructure proposals that are built, funded, or approved by the federal government, "NEPA requires federal agencies to prepare an environmental impact statement... address[ing] the significant environmental effects of a proposed project and identify[ing] feasible alternatives that could mitigate those effects." One of the statutory scheme's priorities is to ensure that both the reporting agency and the public "are aware of the environmental consequences" of planned endeavors, which, in turn, promotes sound decision-making and better project management.[11]

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Justice Kavanaugh observed that, notwithstanding some brief initial uncertainty, judicial review of EISs has been the standard since NEPA was codified. In sharp contrast, and as exemplified by the case here, the appropriate methodology for exercising that oversight has been contentious. Without mincing words, the learned Justice acknowledged a tension between jurists taking "an aggressive role in policing agency compliance" with NEPA and those who have "adopted a more restrained approach" for EIS review.[12]

## NEPA IS PROCEDURAL, NOT SUBSTANTIVE

Acting to replace this discord with harmony, *Seven County's* first action was to declare that NEPA "is purely procedural;" it outlines a process, but not specific outcomes.[13] The High Court reasoned that the nation's initial effort at environmental protection "imposes no *substantive* constraints on



  

the agency's ultimate decision to build, fund, or approve a proposed project," setting it apart from successive legislation like the CAA and the CWA.[14]

The statutory scheme's inherently procedural nature also limits the scope of judicial inquiry. Since NEPA "does not itself require any particular substantive outcome," courts are limited to reviewing whether an EIS is procedurally sufficient, rather than its substantive accuracy. The Supreme Court authorized judges to question if a controversial EIS "addressed environmental consequences and feasible alternatives" and if the agency submitting that report "reasonably explained" its findings but little beyond that. Justice Kavanaugh explained that the environmental statute "is a procedural cross-check, not a substantive roadblock," designed to "inform agency decision-making, not to paralyze it."[15]

## SUBSTANTIAL DEFERENCE

*Seven County's* second notable argument was that the text of NEPA grants substantial deference as the standard for judicial review of EIS. The judiciary must "afford substantial due deference as to the scope and contents of the EIS,"[16] because that document is "fact-dependent, context-specific, and policy-laden."[17] And acquiescence should be the norm, provided that the reporting agency acted reasonably, stayed within its purview, and adhered to other substantive environmental laws. This substantial deference would also be regulated by the "arbitrary and capricious" standard established by the Administrative Procedure Act (APA) nearly eight decades ago.[18]

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Here, Justice Kavanaugh emphasizes that "it is critical to disaggregate the agency's role from the court's role" in the promulgation of environmental assessments, reasoning that the former's experts "are better equipped to assess what facts are relevant to [their] own decision than a court is." The Supreme Court warned that judicial second-guessing should be scrupulously avoided; instead, the courts below must grant "broad latitude" to the regulators' choices as to where to draw the line between the proposal at hand and "other projects separate in time and place," a point of great significance to the case at hand.[19]

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The Justices provided the following additional guidance: the lower courts must be careful "not to micromanage" when reviewing an EIS; judicial oversight need only ensure that regulatory valuations "fall within a broad zone of reasonableness," and NEPA is best enforced through a "rule of reason," thereby preventing judges from substituting their own judgment for that of the reporting agency.[20]

## A "COURSE CORRECTION" FOR ENVIRONMENTAL REVIEWS

*Seven County* then proceeds to explain, gently yet firmly, why reversing the panel below was necessary. Speaking collectively, the high bench again reminds that NEPA is a "purely procedural statute," and judicial review conducted under it must adhere to the "statutory text and common sense."

Characterizing the case at hand as representative of the appellate courts that "have strayed and not applied NEPA with the level of deference demanded by the statutory text and this Court's cases," Justice Kavanaugh explained there was an urgent need for a "course correction of sorts." To that end, the current decision eliminated the misconceptions that had turned the fundamental environmental law into a "blunt and haphazard tool," which encouraged "overly intrusive" judicial review, resulting in inconsistent outcomes.[21]

The Supreme Court ruled that the D.C. Circuit was "mistaken on the merits" when it vacated the STB's report for its alleged failure to evaluate the environmental impact of "projects that are separate in time and place" from the 88-mile railroad project. For one, the nation's leading railway regulator had

no jurisdiction over any upstream drilling or downstream refining activities that might eventually occur once the rail connection was complete. Because the focus was on the proposal at hand, "not other future or geographically separate projects," the agency's evaluation complied with NEPA's text.[22]

Next, the STB's report had explicitly rejected the allegation that the rail link under consideration was the first phase of a two-stage scheme for future energy development. In this context, the Justices added a key distinction, likely to be valuable in future cases: even if the proposal before an agency "might lead to the construction or increased use *of a separate project* ... the agency need not consider the environmental effects of *that separate project.*"[23]

Third, Justice Kavanaugh emphasizes the significance of proximate cause in these reviews, noting how an effort unrelated to the proposal at hand can break any causal link. The veteran jurist clarified that simply because an unrelated project might have a foreseeable environmental impact, it "does not mean that those effects are relevant to the agency decision-making process." The scope of environmental assessments reflects regulatory choices, and the reasonableness of those selections must be weighed against proximate cause.[24]

The scope of environmental assessments reflects regulatory choices, and the reasonableness of those selections must be weighed against proximate cause.

The unified bench further noted that jurisdictional borders influence the presence or absence of proximate causation. It is well established in NEPA jurisprudence that "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority."

In the case at hand, the STB's statutory authority was limited to railroads, not energy. Therefore, it was reasonable to dismiss the claim that a "reasonably close causal relationship" existed between the proposed rail line and potential upstream or downstream energy projects. In Justice Kavanaugh's view, "the fact that other projects might foreseeably be built or expanded in the wake of the current project does not, by itself, make the agency responsible for addressing the environmental effects of those other projects."[25]

It is well established in NEPA jurisprudence that "agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority."

The Supreme Court then summarized its rationale for reversing the lower tribunal and remanding the case for further proceedings. The Justices decreed that the proper focus of an EIS is the environmental impact of the proposal currently before the agency, "not on the potential environmental effects of future or geographically separate projects." Furthermore, regulators have the discretion to draft a "manageable line" between the matter under review and endeavors "separate in time and place."[26] The circuit court erred by denying the reporting agency the latitude to make its own considered decision to include nothing more than a *de minimis* evaluation of the possible environmental effects of hypothetical upstream or downstream projects, which stood at a remove from the proposed rail link.[27]

## COMMENTARY

Like most Supreme Court rulings, *Seven County* has sparked strong reactions. Some praised the decision for its resolution of a troublesome circuit split, while others criticized it as a setback for the environment. In short, there are winners and losers.

This author respectfully disagrees. Taken as a whole, this recent High Court decision is a win-win. *Seven County* continues the framework and spirit of the nation's initial efforts in environmental protection, while simultaneously demanding adherence to the statutory scheme enacted by the political branches.

First, *Seven County* is pro-environment. It places the burden of creating a comprehensive EIS on the reporting agencies, precisely as the lawmakers intended. After all, these regulators are experts in their field, and their ranks include those with specialized expertise in environmental issues. It is far better



  

for the experts to have the primary responsibility in compiling an EIS than generalist judges.

As *Seven County* demonstrates, the energy sector and the transportation industry, as just two examples, can now proceed with confidence that their proposals will undergo an environmental review specific to the merits of a particular project, free from distractions from independent endeavors separated by distance and time.

Next, these experts can now proceed without fearing interference from a meddlesome judiciary. *Seven County* clears the path for agencies to exercise their sound discretion by making value judgments, provided their selections withstand scrutiny for rationality and reasonableness.

Finally, *Seven County* shifts the battleground to the administrative domain. Those most deeply concerned about the environmental impact of a particular project will now focus their efforts on making their case within the agency, before experts who are undoubtedly better equipped to collect and explain all information pertinent to a comprehensive environmental assessment.

*Seven County* stands as a victory for other reasons. Now that the Supreme Court has declared that NEPA's infrastructure is "purely procedural" and not substantive, the paramount role of agencies in promulgating EIS is beyond dispute. Equally, judicial tinkering with such analyses is now prohibited. As interpreted by the High Court, this is what the lawmakers intended some six decades ago. To be sure, the Justices showed commendable judicial restraint in clarifying this truth for the courts below.

By segregating the more prominent tasks of the reporting agencies from the limited oversight role of the judiciary, *Seven County* effectively resolves the ongoing circuit conflict, ensuring consistency and predictability among the federal courts in these critical controversies. More importantly, it eliminates the previous uncertainty and forum shopping that led to inconsistent and unfair outcomes.

In all honesty, the industry will also benefit from the Supreme Court's latest ruling. As *Seven County* demonstrates, the energy sector and the transportation industry, as just two examples, can now proceed with confidence that their proposals will undergo an environmental review specific to the merits of a particular project, free from distractions from independent endeavors separated by distance and time. This is only fair; moreover, it fulfills the legislative intent articulated by NEPA.

Nor does this case represent a return to the now-defunct *Chevron* doctrine of widespread judicial deference to agency action. Instead, the substantial deference *Seven County* exemplifies is rooted in NEPA's language, not a judicial contrivance.

## CONCLUSION

The Supreme Court has now determined that NEPA is a "purely procedural" law, which allows agencies issuing EISs to exercise discretion in establishing the boundaries of their reports. Furthermore, substantial deference to the regulators' choices regarding substance and scope will now be the prevailing standard for judicial review.

*Seven County* clears the path for agencies to exercise their sound discretion by making value judgments, provided their selections withstand scrutiny for rationality and reasonableness.

*Seven County* exemplifies all these principles very well, especially its explicit acknowledgement that the reporting agency may limit or entirely omit from its environmental assessments the consideration of projects that are independent and located far away in time and space from the specific project being evaluated.

Environmental protection is well served by this robust clarification of NEPA and the respective roles agencies and courts play in enforcing it. Industry also benefits because this new precedent is likely to result in greater predictability and consistency in the issuance and judicial review of EIS. Overall, *Seven County* is a win-win for all concerned.

## NOTES

[1] *Seven County Infrastructure Coalition et al. v. Eagle County, Colorado, et al.*, 23-975, *605 U.S.* (2025). https://bit.ly/3HgxiJR.

[2] See *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and the former maxim of judicial deference to agency expertise). https://bit.ly/40KwUdh.

[3] *Seven County, slip op.* at 2. Maryland's land area is well over 9,000 square miles. *See Maryland State Archives at msa.maryland.gov.*

[4] Ibid. See also (Sotomayor, J., concurring), *slip op.* at 1-2.

[5] Since 1996, the STB has borne sole responsibility for regulating the nation's interstate railroads. See Sabino, (2025, May 28). When railroads, pollution, and preemption collide, *New York Law Journal*, 273, p. 4, col. 4. https://bit.ly/4fiEgLb.

[6] *Seven County, supra, slip op. at 2.*

[7] Ibid.

[8] Ibid. (Emphasis supplied).

[9] Justice Gorsuch took no part in the decision, most likely because he is a native Coloradan and had previously sat on the Tenth Circuit Court of Appeals in Denver.

[10] Ibid at 1.

[11] Ibid at 6.

[12] Ibid at 8.

[13] Ibid at 6. See *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 558 (1978), where the Supreme Court decreed that NEPA's "mandate to the agencies is essentially procedural," designed to "insure a fully informed and well-considered decision," not one which a reviewing court must agree with nor should that choice be "subject to reexamination in the federal courts under the guise of judicial review".

[14] Ibid at 9. (Emphasis in the original).

[15] Ibid at 2. (Emphasis supplied).

[16] Ibid at 21.

[17] Ibid at 12.

[18] See 5 U.S.C. § 500, et seq.; see also *Department of Transportation v. Public Citizen*, 541 U.S. 752, 763 (2004) ("An agency's decision not to prepare an EIS can be set aside only upon a showing that it was 'arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law,'" quoting 5 U.S.C. § 706(2)(A)). Compare *Loper Bright*, supra.

[19] Ibid at 11.

[20] *Seven County,* supra, at 11-12. See also *Department of Transportation*, supra, 541 U.S. at 767 ("[I]nherent in NEPA and its implementing regulations is a 'rule of reason' which ensures that agencies determine" what information is pertinent to the decision-making process.) (Internal quotations and citation omitted).

[21] Ibid at 13–14.

[22] Ibid at 15.

[23] Ibid at 16 (Emphasis in the original).

[24] Ibid at 16–17.

[25] Ibid at 18–19.

[26] Ibid (Internal quotation omitted).

[27] Ibid at 21.