

NEPA DECLAWED IN A POST-*LOPER* WORLD—A *SEVEN COUNTY* CASE NOTE

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I. INTRODUCTION AND BACKGROUND

The granular purpose of the 1887 Interstate Commerce Act was to function as a mechanism for federal regulation of the railroad industry across the United States.² A central feature of this regulatory framework was the establishment of an enforcement body designated as the Interstate Commerce Commission (Commission).³ Today, the Surface Transportation Board (Board), which succeeded the Commission in 1996,⁴ stands at the center of *Seven County Infrastructure Coalition v. Eagle County*, a significant procedural ruling by the Supreme Court of the United States.⁵ At its most fundamental level, this ruling significantly alters the scope of legal obligations under the National Environmental Policy Act (NEPA),⁶ driven by the Court’s early proclamation that “NEPA is a procedural cross-check, not a substantive roadblock.”⁷

The *Seven County* decision arrives as a “post-*Loper* correction”⁸ intended to rein in judicial review under NEPA with what the Court characterized as “common

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² Interstate Commerce Act, Pub. L. No. 49-41, 24 Stat. 379 (1887); Interstate Commerce Act (1887), NAT’L ARCHIVES, <https://www.archives.gov/milestone-documents/interstate-commerce-act> (last reviewed Feb. 8, 2022).

³ *Id.*

⁴ *Id.* (noting that in 2015, the Surface Transportation Board Reauthorization Act established the Board as a fully independent agency and continues operation today).

⁵ *Seven County Infrastructure Coalition v. Eagle County*, 605 U.S. 168, 188 (2025); (citing 49 U.S.C. § 10901) (requiring railroad construction and operation must first be approved by the U. S. Surface Transportation Board).

⁶ See *infra* Part II.

⁷ *Seven Cnty.*, 605 U.S. at 173.

⁸ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (overruling *Chevron* Deference).

sense and the statutory text.”⁹ The Court's use of *Loper* is particularly striking because NEPA, as a universally applied procedural statute, was generally not subject to *Chevron* deference to begin with, making the insertion of *Loper* seemingly less about correcting agency deference and more about deliberately declawing environmental review.¹⁰ In light of this anomaly, Justice Kavanaugh’s language in *Seven County* is worth exploring given its potentially broad implications.

The case involved the Board’s approval of an 88-mile railroad line connecting Utah’s oil-rich Uinta Basin to the Gulf Coast of Louisiana and Texas, designed to facilitate the transportation of crude oil to Gulf Coast refineries.¹¹ The Board conditionally approved the railroad,¹² but as mandated by NEPA,¹³ withheld final approval until an official Environmental Impact Statement (EIS) was conducted and completed.¹⁴ The EIS stood at a massive 3,600 pages and included numerous scientific findings on the environmental effects that the 88-mile railroad would have across the west.¹⁵

⁹ *Seven Cnty.*, 605 U.S. at 184.

¹⁰ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 841 (1984) (limiting review to the agencies specifically “entrusted to administer” the statute), overruled by *Loper Bright*, 603 U.S. at 412; *see also Bowen v. Am. Hosp. Ass’n*, 476 U.S. 610, 642, n.30 (1986) (plurality opinion) (establishing *Chevron* does not apply to a statute when multiple agencies promulgate those regulations by statute).

¹¹ Thomas C. Chidsey, Jr., *Oil and Gas in the Uinta Basin, Utah – What to Do with the Produced Water*, SURV. NOTES BY UTAH GEOLOGICAL SURV., May 2018, at 4, <https://geology.utah.gov/map-pub/survey-notes/uinta-basin-produced-water/>.

¹² *Seven Cnty.*, 605 U.S. at 173.

¹³ 40 CFR § 1502.3; Tiffany Middleton, *What Is an Environmental Impact Statement?*, ABA: TEACHING LEGAL DOCS (Mar. 2, 2021) https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-environmental-impact-statement/ (providing the EIS is a government document that outlines the impact of a proposed project on its surrounding environment, mandated by the National Environmental Policy Act requiring advance identification and disclosure of harm).

¹⁴ *Seven Cnty.*, 605 U.S. at 173.

¹⁵ *Id.*

In the wake of such conditional approval, Colorado County and several environmental organizations sued by filing petitions for review in the U.S. Court of Appeals for the D.C. Circuit.¹⁶ The D.C. Circuit faulted the Board for not sufficiently considering environmental effects separate from the railroad line itself.¹⁷ These deficiencies include a failure to consider the effect oil drilling would have on upstream water in the Uinta Basin and the effect that an increase in oil refining downstream would have along the Gulf Coast of Louisiana and Texas.¹⁸

Based on these deficiencies, the D.C. Circuit vacated the EIS and the Board's final approval order.¹⁹ The Coalition and the Uinta Basin Railway sought review and the Court granted *certiorari*.²⁰

The Court reversed the D.C. Circuit, holding that the Board was not required under NEPA to evaluate the environmental effects of upstream drilling or downstream refining.²¹ To reach this conclusion in the immediate wake of *Loper*, the Court engineered a highly discretionary threshold between legal interpretation and factual deference.²²

First, the majority in applying *Loper*, held that defining statutory terms—such as [what is a] “proposed action”²³ or the requirement that an EIS be “detailed”—is

¹⁶ *Id.* at 176.

¹⁷ *Id.* (citing *Eagle Cty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1196 (2023)).

¹⁸ *Id.* at 173-74.

¹⁹ *Seven Cnty.*, 605 U.S. at 177.

²⁰ *Eagle Cty.*, 82 F.4th at 1152, *cert. granted sub nom. Seven Cnty. Infrastructure Coal. v. Eagle Cty.*, 605 S. Ct. 2640 (2024).

²¹ *Id.* at 192.

²² *Bifurcate*, WEX, LII, <https://www.law.cornell.edu/wex/bifurcate> (last reviewed Dec. 2021) (defining “bifurcate” as “the dividing of a case into two parts for trial”).

²³ 42 U. S. C. §4332(2)(C).

purely a question of law subject to independent *de novo* judicial review.²⁴ Second, and shortly thereafter, the Court provided that the extent of the “details” that should be included in the EIS is a factual determination reserved for the Board, subject to the arbitrary and capricious standard.²⁵

The Court continued by providing, “the textual focus of NEPA is the ‘proposed action,’”²⁶ which is to be determined by, “the project at hand,” not separate projects.²⁷ The Court then quickly declared that agencies possess “broad latitude to draw a ‘manageable line’” when determining the scope of environmental reviews.²⁸ Shielded by this latitude, the Court held that the Board acted within a “*broad zone of reasonableness*”²⁹ by excluding upstream and downstream impacts because they were not *proximately caused* by the railroad itself,³⁰ and therefore did not necessitate such analysis in the EIS.³¹ In other words, the “upstream drilling or downstream refining” oil operations were not a part of the, “project at hand.”³²

The Court, however, failed to provide a guiding principle for when or how to pivot between law and fact.³³ This seemingly permits the Court to arbitrarily choose

²⁴ *Seven Cnty.*, 605 U.S. at 179 (citing *Loper Bright*, 603 U.S. at 391-92; 412) (explaining the deference that *Chevron* requires of courts reviewing agency action cannot be squared with the [Administrative Procedure Act]) (citing §4332(2)(C)); 5 U.S.C. § 706.

²⁵ *Id.* at 180-81 (providing what details to include are a matter of fact for the [Board]).

²⁶ 42 U. S. C. §4332(2)(C) (2018).

²⁷ *Seven Cnty.*, 605 U.S. at 182-83 (citing §4332(2)(C)).

²⁸ *Id.* at 183.

²⁹ *Id.* at 183 (emphasis added) (establishing a “broad zone of reasonableness” for agency discretion without providing a direct statutory or precedential citation for such phrasing effectively creating a new common law principle yet to be addressed).

³⁰ *Id.* at 187 (emphasis added) (citing *DOT v. Public Citizen*, 541 U.S. 752, 767 (2004)) (establishing that a separate project, such as the oil drilling operations, breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project).

³¹ *Id.* at 191.

³² *Seven Cnty.*, 605 U.S. at 191.

³³ Note, *National Environmental Policy Act — Administrative Law — Agency Deference — Seven Cnty Infrastructure Coalition v. Eagle Cnty*, 139 HARV. L. REV. 409 (2025).

on a case-by-case or statute-by-statute basis on when to apply *Loper*.³⁴ By doing so, courts can selectively expand or restrict an agency's procedural requirements effectively bypassing the deference owed to agencies on matters of fact by restricting the agency's conduct under a narrower interpretation of law.³⁵

Justice Sotomayor's concurrence exposes this bifurcated pivot as essentially an unnecessary judicial "sleight of hand."³⁶ In her concurring opinion, joined by Justices Kagan and Jackson, Sotomayor immediately agrees with Justice Kavanaugh that the Board would not be responsible for the harms caused by the oil industry even though the railway it approved would deliver oil to refineries and spur drilling in the Uinta Basin.³⁷ Unlike the majority though, Sotomayor simply concludes that, under its "organic statute" the Board had no authority to reject petitioners' application on account of the harms *third parties* would cause with products transported on the proposed railway.³⁸

While it is likely that courts will continue to wrestle with the impact of *Loper*, the implications of the *Seven County* decision are significant. In *Seven County*, the difference between "law" and "fact" is muddied, making the gap between discretion provided under the Administrative Procedure Act (APA) and questions of law to be granted *de novo* review minimal.³⁹ It appears the Court may now exercise discretion to cherry-pick when to restrict or shield agency conduct across the broader

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Seven Cnty*, 605 U.S. at 192.

³⁷ *Id.* at 193.

³⁸ *Id.* (emphasis added).

³⁹ *See supra* notes 21-35.

administrative state, potentially “on the basis of the Judge’s personal policy preferences.”⁴⁰

These “personal policy preferences,” empowered by *Seven County*’s failure to establish a principled boundary between *de novo* legal interpretation and factual deference, have broad implications. This is especially true given the sheer volume and frequency of NEPA litigation.⁴¹ The danger of *Seven County* lies not in what the Court mandated, but in what it deliberately left unsaid.⁴² By using this shift between law and factual deference, without articulating a guiding principle for when to deploy either, the Court effectively “opened the door” to environmental deregulation.⁴³

This was not a mistake by the Court. Instead, it was an intentionally driven policy preference designed to reduce and “declaw” NEPA’s enforcement mechanism.⁴⁴

II. DISCUSSION

Lower courts are already “walking through the door” that *Seven County* opened and have begun to dismantle environmental protections, starting with the most comprehensive document in the administrative state: the EIS.⁴⁵ An EIS is a government document that outlines the impact of a proposed project on its surrounding environment which, in the United States, are mandated by federal law

⁴⁰ See *Chevron*, 467 U.S. at 865 (providing judges are not experts in the field, and are not part of either political branch of the government and that courts must, in some cases, reconcile competing political interests, but not on the basis of the judges’ personal policy preferences).

⁴¹ See *infra* Part II.A.

⁴² *Seven Cnty*, 605 U.S. at 192.

⁴³ See *infra* Part III (discussing the implications of the federal lower courts).

⁴⁴ See *infra* Part II.

⁴⁵ See *infra* Part II(A).

for certain projects.⁴⁶ An EIS is a legally required report that identifies and publicly discloses the potential environmental harms of a project, rather than strictly prohibiting them from happening.⁴⁷ This mandate applies to any major federal action, including infrastructure and development projects that utilize federal funding, land, or agency jurisdiction.⁴⁸

A. Federal Courts have Already Begun to Declaw NEPA’s EIS Mandate

In *Metro. Transp. Auth. v. Duffy*, the Southern District of New York illustrates how quickly *Seven County* has “declawed” NEPA from a tool used for environmental protection to a mere formality.⁴⁹ In March 2026, the New York court applied the deregulatory tool created by *Seven County* to legally ignore the environmental consequences of canceling a pro-environmental initiative.⁵⁰ By adopting *Seven County’s* characterization of NEPA as a mere “procedural cross-check,” the Court demonstrated how agencies can entirely bypass environmental review when terminating protective programs.⁵¹

At the heart of this dispute was the federal cancellation of a Value Pricing Pilot Program (VPPP) agreement, which effectively terminated New York’s Central Business District Tolling Program (CBDTP), Manhattan’s first major congestion

⁴⁶ Tiffany Middleton, *What is an Environmental Impact Statement?*, ABA: TEACHING LEGAL DOCS (Mar. 2, 2021), https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-environmental-impact-statement/.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Metro. Transp. Auth. v. Duffy*, No. 25-cv-1413 (LJL), 2026 U.S. Dist. LEXIS 43178, at *203–04 (S.D.N.Y. Mar. 3, 2026) (citing *Seven Cnty.*, 605 U.S. at 173).

⁵⁰ *Id.* at 203.

⁵¹ *Id.* at 204-205.

pricing initiative.⁵² Known as the Congestion Relief Zone (CRZ), the program launched in January 2025 and charges vehicles entering Manhattan below 60th Street around \$9 during peak hours.⁵³ The initiative aims to reduce traffic by over 10%, thereby improving air quality, and generating, on average, \$550 million annually for MTA public transit infrastructure upgrades.⁵⁴

Then, in February 2025, the newly confirmed Secretary of Transportation of the U.S. Department of Transportation (Department) abruptly rescinded this approval and terminated the VPPP agreement.⁵⁵ The Secretary justified the termination on two statutory grounds: first, that the program's "cordon pricing" model lacked a toll-free option and therefore exceeded the legal scope of the VPPP; and second, that the program was unlawfully designed primarily to raise revenue for the Metropolitan Transportation Authority (MTA) rather than to reduce congestion.⁵⁶

Plaintiffs, including the MTA and organizational intervenors, challenged the termination under NEPA.⁵⁷ They alleged that "the Federal Government was required to undertake a new environmental review upon cancellation" of the VPPP Agreement.⁵⁸

⁵² *Id.* at 16-17.

⁵³ Chris McCahill, *One Year into Congestion Pricing, Every DOT Can Learn from New York City*, INNOVATIVE DOT: SSTI BLOG (Jan. 20, 2026), <https://ssti.us/2026/01/one-year-into-congestion-pricing-every-dot-can-learn-from-new-york-city/>.

⁵⁴ *Id.*

⁵⁵ *Duffy*, 2026 U.S. Dist. LEXIS 43178, at *17.

⁵⁶ *Id.* at 16-17.

⁵⁷ *Id.*

⁵⁸ *Id.* at 17.

The court then applied *Seven County* to dismantle the plaintiffs' NEPA challenge.⁵⁹ By agreeing with the Secretary's legal interpretation of what authority the Department was provided by statute, the court reduced the legal threshold for the definition of an agency action to exclude the *termination* of the program entirely from EIS review.⁶⁰ The court ruled that because the Secretary correctly concluded the Department lacked the "regulatory authority" to enter the VPPP agreement in the first place, his termination of the program "did not involve a 'decision'" capable of triggering NEPA.⁶¹

Referencing *Seven County*, the court declared that NEPA "is a procedural cross-check, not a substantive roadblock" and "does not require the agency to weigh environmental consequences in any particular way," in turn validating the Department's silence regarding environmental impacts.⁶² Even though the court ultimately vacated the termination on separate APA grounds,⁶³ its granting of summary judgment to the Defendants on the NEPA claim proves that the *Seven County* framework functions as a durable shield for deregulation, allowing agencies to dismantle environmental protections without pushback from the populace.

Next, in *American Wild Horse Campaign v. Raby*, the Tenth Circuit utilized *Seven County* to dismiss challenges to the Bureau of Land Management's (BLM)

⁵⁹ *Id.* at 203-04 (citing *Seven Cnty*, 605 U.S. 173).

⁶⁰ *Duffy*, 2026 U.S. Dist. LEXIS 43178, at *203-204.

⁶¹ *Id.* (citing *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004)) (extending the "rule of reason" principle ensuring that agencies themselves get to determine whether and to what extent to prepare an EIS based on the usefulness of any new potential information to the decision-making process).

⁶² *Id.* at 203.

⁶³ *Id.* at 206.

“minimal” EIS regarding wild horse herd elimination.⁶⁴ By using *Seven County’s* rule and that separate *third-party* projects break the chain of proximate causation,⁶⁵ the court demonstrated how this highly discretionary judicial framework permits an agency to harm wildlife populations without ever confronting the environmental consequences.⁶⁶

The underlying controversy involved an amended Regional Management Plan (RMP) under the Wild Free-Roaming Horses and Burros Act,⁶⁷ governing southern Wyoming’s “checkered” lands, an environment of alternating public and private square-mile parcels.⁶⁸ Complying with the requests of private-party grazing associations, the BLM’s amendment altered two Herd Management Areas to “Herd Areas,” reducing the wild horse population goal in those tracts of land to zero.⁶⁹ This removal of the protected horses then created an environmental harm on the public lands that would eventually be filled by increased commercial livestock grazing.⁷⁰

Plaintiffs, a coalition of wild horse advocates challenged, among other things, the EIS under NEPA.⁷¹ Plaintiffs argued that: first, the BLM failed to properly consider land swap alternatives—specifically, the possibility of trading, with private

⁶⁴ *Am. Wild Horse Campaign v. Raby*, 144 F.4th 1178, 1192 (10th Cir. 2025) (citing *Seven Cnty.*, 605 U.S. at 182).

⁶⁵ *See Seven Cnty.*, 605 U.S. at 187 (citing *Pub. Citizen*, 541 U.S. at 767) (establishing that a separate project, such as oil drilling operations, breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project); *see also supra* note 30.

⁶⁶ *Wild Horse*, 144 F.4th at 1192. (providing that just because the effects are foreseeable, does not mean BLM can be held responsible for these effects at this time).

⁶⁷ 16 U.S.C. §§ 1331-1340.

⁶⁸ *Wild Horse*, 144 F.4th at 1184.

⁶⁹ *Id.* at 1188.

⁷⁰ *Id.* at 1192.

⁷¹ *Id.* at 1188.

parties, the checkerboard land to consolidate federal property for wild horse management; second, the BLM did not consider the environmental impacts of increased grazing.⁷² In response, the Tenth Circuit utilized *Seven County* to neutralize the plaintiffs' NEPA claims on two distinct fronts.⁷³

First, to address the plaintiffs' argument that the agency failed to fully consider land swap alternatives, the court utilized *Seven County* to grant the agency factual deference on when an "alternative analysis" is sufficient.⁷⁴ The court deferred to the agency's judgment that plaintiffs' demand of full consideration would be too burdensome and time consuming.⁷⁵ When petitioners argued that how "quickly an alternative solves a problem," should not excuse the agency from considering such alternative, the Tenth Circuit disagreed.⁷⁶ Quoting *Seven County*, the court ruled that determining whether an alternative is "so slow and expensive as to be infeasible is the exact kind of 'fact-dependent, context-specific, and policy-laden choice'" that demands "substantial deference."⁷⁷ By using this deference, the court completely shielded the agency's refusal to rigorously explore the land swap alternative from further judicial scrutiny.

Second, to address the agency's failure to analyze the downstream environmental impacts of *potential* increased livestock grazing, the court applied

⁷² *Id.* at 1191.

⁷³ *Wild Horse*, 144 F.4th at 1191.

⁷⁴ *Id.* at 1192.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Seven County to sever the agency's liability purely as a matter of law.⁷⁸ The court concluded that because increased grazing cannot occur without a "separate decision-making process," it legally constitutes a "separate project."⁷⁹ Relying on the Court's mandate, the Tenth Circuit declared that "[j]ust because these effects are foreseeable does not mean BLM can be held responsible for these effects at this time."⁸⁰ By utilizing this legal threshold, the court permitted the agency to remove the wild horses without ever having to evaluate the clearly foreseeable environmental damage that would follow.⁸¹

Indeed, the court in *Wild Horse* did more than apply *Seven County*; it expanded its deregulatory utility. The court first deployed a "deference trap" to insulate the agency's refusal to explore land-swap alternatives, reclassifying a failure of environmental inquiry as a mere "fact-dependent" and "policy-laden" choice beyond judicial reach.⁸² Having shielded the agency's present conduct, the court then utilized the "separate project" principle as a legal barrier to break the causal chain between the immediate horse removal and the downstream commercial operations despite environmental impacts.⁸³ In effect, this reasoning successfully shielded the foreseeable environmental destruction of the Wyoming plains from the legal record.⁸⁴ Through this approach, the Tenth Circuit demonstrated that *Seven County* provides

⁷⁸ *Wild Horse*, 144 F.4th at 1192.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *See supra* Part II.A.

⁸³ *See supra* Part II.A.

⁸⁴ *See supra* Part II.A.

a shield for agencies to achieve possibly environmentally harmful outcomes while remaining legally silent on such harms.⁸⁵

B. Federal Courts have Already Begun to Expand *Seven County* to non-NEPA EIS Procedures and Questions including Environmental Assessments and Categorical Exclusions

In both *Duffy* and *Raby*, *Seven County* proved rather effective at ending the mandate for massive, landscape-sized-EIS from judicial scrutiny.⁸⁶ However, a critical question remains: if *Seven County* can shield a lack-luster EIS, may agencies also utilize the shield in other procedures?

The Ninth Circuit answered: yes.⁸⁷ By using *Seven County*, the judiciary began applying the same deference to, pursuant to NEPA, the more concise Environmental Assessment (EA).⁸⁸ An EA, unlike the more comprehensive EIS, is a concise review document taking into account the purpose and needs of the proposal, its alternative, and a brief review of the impacted environment.⁸⁹ In terms of procedure, to determine whether an EIS is required at all, an agency may first prepare an EA.⁹⁰ If after the preparation of the EA, an agency determines the action will not have a significant

⁸⁵ *See supra* Part II.A.

⁸⁶ *See supra* Part II.A.

⁸⁷ *See infra* discussion accompanying Part II.B.

⁸⁸ *See infra* discussion accompanying Part II.B.

⁸⁹ *The Difference Between an Environmental Assessment (EA) and an Environmental Impact Statement (EIS)*, CITIZENS FOR HEALTHY COMMUNITY, www.chc4you.org/wp-content/uploads/2016/11/EA-vs-EIS_NFMMDP.pdf (last visited Mar. 25, 2026).

⁹⁰ *Id.*

effect on the human environment, then the agency may make a “Finding of No Significant Impact” (FONSI) and need not prepare an EIS.⁹¹

In *Cascadia Wildlands v. United States BLM*, the Ninth Circuit utilized the Court’s ruling in *Seven County* to validate a narrow interpretation of forest management obligation regarding what information to include in the EA, in turn permitting the glossing over of the EIS entirely.⁹²

The dispute centered on the "Big Weekly Elk Forest Management Project" (BWE Project) in coastal Oregon, created to authorize the thinning and harvesting of thousands of acres of forest habitat.⁹³ The BWE Project proposed a series of forest management activities on BLM-administered lands in Coos County, Oregon, located within 28 miles of the Pacific Coast.⁹⁴ Specifically, the proposal authorized heavy commercial thinning in certain forest stands and "regeneration harvesting" in others to meet federal timber sale quotas.⁹⁵

While the BLM did not propose thinning directly inside "occupied" murrelet stands, it authorized harvesting in a "substantial" number of acres immediately adjacent to them.⁹⁶ To authorize these actions, the BLM utilized a "tiering" strategy, referring back to a landscape-level EIS from 2016 rather than conducting a new, comprehensive study for the site-specific impacts of the BWE Project.⁹⁷ By asserting

⁹¹ *Id.*

⁹² *Cascadia Wildlands v. U.S. Bureau of Land Mgmt.*, 153 F.4th 869, 907 (9th Cir. 2025).

⁹³ *Id.* at 883.

⁹⁴ *Id.* at 887.

⁹⁵ *Id.* at 881.

⁹⁶ *Id.* at 887.

⁹⁷ *Cascadia Wildlands*, 153 F.4th at 903.

that the environmental consequences had been "covered sufficiently" by this decade-old document, the BLM issued an EA and FONSI.⁹⁸

Plaintiffs, Cascadia Wildlands and Oregon Wild, challenged the project under both Federal Land Policy and Management Act of 1976 (FLPMA) and NEPA, asserting that the BLM's approval of the BWE Project failed to conform to the governing Resource Management Plan (RMP) and failed to take a "hard look" at environmental impacts under NEPA by "tiering" a decade-old document instead of a new environmental assessment.⁹⁹

Under the FLPMA claim, plaintiffs argued that the project violated the RMP's strict prohibition against "modifying" marbled murrelet nesting habitat.¹⁰⁰ They asserted that authorizing heavy commercial thinning immediately adjacent to the nests would indirectly "modify" the habitat by creating harmful microclimate "edge effects."¹⁰¹ To resolve this dispute, the Ninth Circuit applied *Kisor* deference, a doctrine which dictates that a court *must* defer to an agency's reasonable reading of its own genuinely ambiguous regulations, to the BLM's interpretation of its own plan.¹⁰² The court deferred to the agency's "narrow interpretation" of the term "modifying nesting habitat," legally concluding that the term applies only to the *direct* alteration of habitat and *excludes* indirect "edge effects" caused by thinning in

⁹⁸ *Id.*

⁹⁹ *Id.* at 882, 878.

¹⁰⁰ *Id.* at 893-94.

¹⁰¹ *Id.* at 895-96.

¹⁰² *Cascadia Wildlands*, 153 F.4th at 894-97 (citing *Kisor v. Wilkie*, 588 U.S. 558 (2019)) (applying the *Kisor* framework to defer to the agency's narrow interpretation after finding that the plan's language was genuinely ambiguous, the interpretation was reasonable, and the character and context of the interpretation entitled it to controlling weight); compare *Loper Bright*, 603 U.S. at 412 (overturning *Chevron's* mandate to defer to an agency's reasonable interpretation of a genuinely ambiguous statute).

adjacent stands.¹⁰³ This legal reclassification of the harm directly dictated the court's subsequent NEPA analysis.¹⁰⁴

Next, on the NEPA claim, Plaintiffs argued the EA was deficient because it failed to provide a detailed, site-specific analysis of how thinning adjacent to murrelet habitat would degrade that habitat via edge effects.¹⁰⁵ However, the court, after acknowledging the factual distinction between the EIS in *Seven County* and the EA in the present matter,¹⁰⁶ utilized *Seven County* to shield the agency's EA brevity.¹⁰⁷ The court ruled that because the court had already legally accepted the agency's narrow definition of "modifying" habitat, the BLM was not required to provide an "exhaustively detailed discussion" of those indirect effects in the EA.¹⁰⁸

By tethering *Kisor* deference to the *Seven County* "broad zone of reasonableness," a standard that insulates discretionary agency choices from judicial review,¹⁰⁹ the court permitted the agency to effectively vanish the site-specific impacts of the project from the legal record.¹¹⁰

In sum, the *Cascadia* court successfully demonstrated how *Seven County* can be paired with other deference doctrines to further walk through *Seven County*'s deregulatory door.¹¹¹ By first utilizing *Kisor* to legally narrow the agency's

¹⁰³ *Id.* at 894-97.

¹⁰⁴ *Id.* at 902 (addressing plaintiffs second claim of the NEPA violation).

¹⁰⁵ *Id.* at 905.

¹⁰⁶ *Id.* at 903 (providing that although *Seven* involved a different NEPA posture from the case before us, it arose in the context of evaluating plaintiffs' challenge to an EIS rather than an EA, we find its teachings fully applicable here).

¹⁰⁷ *Cascadia Wildlands*, 153 F.4th at 905.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* at 903.

¹¹⁰ *Id.*

¹¹¹ See *supra* discussion accompanying note 100-108.

management duties, and then deploying *Seven County* to lower the bar for factual review, the court allowed the BLM to completely avoid analyzing the actual, site-specific destruction of marbled murrelet habitat.¹¹² The result is a complete NEPA procedural bypass: by reclassifying an omission of environmental inquiry as a "policy-laden" choice, the court ensures that NEPA's "hard look" is reduced to a mere "procedural cross-check."¹¹³

Finally, In *Sweetwater Coalition of Volusia Cnty. Inc. v. Perdue*, the Middle District of Florida applied *Seven County* to shield a federally funded highway interchange constructed in "protected wetlands" through agency deference.¹¹⁴ By applying *Seven County* to justify the use of a minimal "categorical exclusion" finding, the court demonstrated how the mandate of administrative deference under NEPA, allows agencies to bypass review by internally reclassifying "significant impacts" as minor effects.¹¹⁵

The conflict here centered on the Florida Department of Transportation (FDOT) and the Army Corps of Engineers (ACOE) authorizing the construction of a new highway interchange between Pioneer Trail Road and Interstate 95 in New Smyrna Beach, Florida.¹¹⁶ The project site involved "special aquatic sites," requiring the dredging and excavation of wetlands.¹¹⁷ Relying on their own findings of fact

¹¹² *Cascadia Wildlands*, 153 F.4th at 881.

¹¹³ *Seven Cnty.*, 605 U.S. at 173.

¹¹⁴ *Sweetwater Coal. of Volusia Cnty. Inc. v. Perdue*, 6:25-cv-1695-PGB-LHP, 2026 U.S. Dist. LEXIS 11395, at *10–11 (M.D. Fla. Jan. 22, 2026) (citing *Seven Cnty.*, 605 U.S. at 173).

¹¹⁵ *Id.* at 13.

¹¹⁶ *Id.* at 2.

¹¹⁷ *Id.* n.1.

regarding the impact of the highway over an aquatic ecosystem, FDOT classified the massive construction project as a "categorical exclusion" under NEPA to avoid drafting an EIS.¹¹⁸ A categorical exclusion is a category of actions that an agency has determined normally does not significantly affect the quality of the human environment.¹¹⁹ Following this classification, the ACOE issued a discharge permit without considering off-site alternatives to save the wetlands.¹²⁰

The Sweetwater Coalition challenged the project under the APA, asserting violations of NEPA.¹²¹ Seeking a preliminary injunction, the plaintiffs argued that FDOT's designation of the project as a categorical exclusion, under NEPA, was incorrect because the massive interchange would induce significant impacts to planned growth, travel patterns, and water quality.¹²²

The court applied *Seven County* to establish strong agency deference.¹²³ Providing that, NEPA "does not require the agency to weigh environmental consequences in any particular way,"¹²⁴ an agency only needs to make a "short statement" that it considered the environment.¹²⁵ When the plaintiffs presented evidence of actual impacts to water quality and traffic,¹²⁶ the court neutralized the challenge by providing that a "categorical exclusion contravenes the APA only when

¹¹⁸ *Id.* at 7, 10.

¹¹⁹ Categorical Exclusions, U.S. Dep't of the Interior, <https://www.doi.gov/oepe/programs/nepa/categorical-exclusions> (last visited Apr. 6, 2026); 42 U.S.C. § 4336e(1).

¹²⁰ *Sweetwater*, 2026 U.S. Dist. LEXIS 11395, at *8.

¹²¹ *Id.* at 3.

¹²² *Id.* at 11-13.

¹²³ *Id.* 10-11.

¹²⁴ *Id.* at 11 (citing *Seven Cnty.*, 605 U.S. at 173).

¹²⁵ *Sweetwater*, 2026 U.S. Dist. LEXIS 11395, at *11.

¹²⁶ *Id.* at 13

the record demonstrates that the agency failed to consider the environmental consequences.”¹²⁷ Quoting *Seven County’s* mandate that “the central principle of judicial review in NEPA cases is deference,”¹²⁸ the court used such standard to accept the agency’s subjective finding that the water impacts were minor.¹²⁹ Shielded by *Seven County*, the court permitted the agency to bypass a full EIS for a major infrastructure project with nothing more than a brief statement.

Given the widespread use of *Seven County* across these lower courts,¹³⁰ a question naturally arises: what happens when a judge actively attempts to hold an agency accountable for factual errors? Even in those instances, the Court’s *Seven County* ruling continues to function as a durable structural shield for agency conduct.¹³¹ As the following case demonstrates, a court may successfully strike down flawed data on a localized issue, only to have *Seven County* constrain its ability to review broader, landscape-scale environmental impacts.

C. Even When a Judge Tries to Hold the Line and Enforce NEPA, *Seven County* Provides the Agency with a Strong Deference Shield

In *Ctr. for Biological Diversity v. United States Forest Serv.*, the District of Montana highlights the power of the unprincipled *Seven County* ruling.¹³² While the Montana court enforced NEPA’s “hard look” mandate under the APA on one claim

¹²⁷ *Id.* at 11.

¹²⁸ *Id.* at 10.

¹²⁹ *Id.* at 13

¹³⁰ *See supra* Section II(A)(B).

¹³¹ *See infra* Section II(C).

¹³² *Ctr. for Biological Diversity v. U.S. Forest Serv.*, No. 22-91-M-DLC, 2025 U.S. Dist. LEXIS 230653, at *41 (D. Mont. Nov. 24, 2025).

through the striking down of the agency's insufficient data on grizzly bear habitat,¹³³ the court shielded the agency's failure to address landscape-scale cumulative impacts analysis on a separate claim.¹³⁴ While the court did enforce the “hard look mandate”,¹³⁵ *Seven County* has functionally restricted large-scale cumulative impacts of environmental harm from judicial review.¹³⁶

At issue was the Forest Service’s authorization of the Knotty Pine Project, a “logging and prescribed burning initiative” across thousands of acres of threatened grizzly bear habitat in the Kootenai National Forest.¹³⁷ Central to the environmental review was the agency's "road density" calculation,¹³⁸ which relied on purposefully excluding known "illegal motorized road use" to create the illusion of healthy habitat.¹³⁹

Plaintiffs challenged the project under NEPA and the ESA.¹⁴⁰ They successfully asserted that the Forest Service's failure to identify and analyze unauthorized road use resulted in its habitat analysis being arbitrary and capricious under the APA.¹⁴¹ However, plaintiffs also raised a “cumulative impacts claim,” arguing the agency failed to provide a sufficiently detailed analysis of how this project

¹³³ *Id.* at 33.

¹³⁴ *Id.* at 44.

¹³⁵ *Id.* at 30 (citing *Alliance for the Wild Rockies v. Probert*, 412 F. Supp. 3d 1188 (D. Mont. 2019)).

¹³⁶ *Id.* at 41.

¹³⁷ *Ctr. for Biological Diversity*, 2025 U.S. Dist. LEXIS 230653, at *3-4.

¹³⁸ *Id.* at 29 (providing federal defendants contradicted themselves by using the “road density” calculation in IGBC guidelines).

¹³⁹ *Id.* at 25, 27-28, 30.

¹⁴⁰ *Id.* at 9-10.

¹⁴¹ *Id.* at 29.

combined with other foreseeable logging actions in adjacent areas, would impact the environment.¹⁴²

Having struck down the agency's use of insufficient factual road data, the court, in following precedent, utilized *Seven County* to neutralize the cumulative impacts challenge.¹⁴³ Quoting *Seven County*, the Montana court provided agency deference, that agencies possess "broad latitude to draw a 'manageable line" regarding other projects.¹⁴⁴ The court classified the agency's refusal to "aggregate" the adjacent environmental logging damage as a "policy-laden" choice falling within a still unaddressed "broad zone of reasonableness,"¹⁴⁵ thereby restricting judicial oversight through agency deference.¹⁴⁶

Ultimately, the bifurcated ruling in *Center for Biological Diversity* is evidence of the inescapable trap of *Seven County*. Even when a judge successfully strikes down flawed data in an attempt to enforce environmental accountability, the Court's mandate of deference provides agencies with a final, judicial shield.¹⁴⁷ By ensuring that landscape-scale environmental harm legally "vanishes" under the guise of agency discretion, *Seven County* continues the dismantling of NEPA.¹⁴⁸

III. ANALYSIS

¹⁴² *Ctr. for Biological Diversity*, 2025 U.S. Dist. LEXIS 230653, at *41-43.

¹⁴³ *Id.* at 44.

¹⁴⁴ *Id.* at 43-44 (citing *Seven Cnty.*, 605 U.S. at 168).

¹⁴⁵ *Id.* at 42-44; see *Seven Cnty.*, 605 U.S. at 182 (establishing a "broad zone of reasonableness" for agency discretion without providing a direct statutory or precedential citation for such phrasing effectively creating a new common law principle yet to be addressed).

¹⁴⁶ *Id.* at 44.

¹⁴⁷ See *supra* Part II.C.

¹⁴⁸ See *supra* Part II.C.

The common law principles sprawling across the aforementioned case law arise from the Court's failure to provide a guiding principle for determining when to apply questions of legal interpretation or agency discretion, which in *Seven County*, was an intentional effort at NEPA deregulation.¹⁴⁹ By intentional design, the application of *Loper* to NEPA, "opened the door" to a country-wide deregulatory toolkit, requiring lower courts to use *Seven County* to shield agency action that otherwise would harm the environment or permit the agency to simply ignore certain harms.¹⁵⁰

Courts are utilizing the Court's ruling regarding how deep an agency must look to legally justify the agency not looking at all.¹⁵¹ Ultimately, the judiciary has significantly lowered NEPA's procedural floor, driving the statute further along to a point where one day, it may be entirely declawed under the guise of agency discretion.¹⁵² Because *Seven County* allows an agency to legally ignore environmental harm at the outset of a project, *Seven County* effectively permits agencies to green-light possibly environmentally destructive actions without ever confronting the risks.¹⁵³

Furthermore, an additional consequence of *Seven County* is its function as an inevitable and inescapable precedent that captures even those judges attempting to protect the environment.¹⁵⁴ Even when a court seeks to use NEPA to strike down insufficient, localized baseline data, the *Seven County* "broad latitude to draw a

¹⁴⁹ See *supra* Part I.

¹⁵⁰ See *supra* Part II.A-B.

¹⁵¹ See *supra* Part II.B.

¹⁵² See *supra* Part II.B. (examining the absolute deference granted in *Sweetwater*).

¹⁵³ See *supra* Part II.B.

¹⁵⁴ See *supra* Part II.C.

'manageable line" language provides the administrative state with an ultimate, unreviewable "shield" to legally vanish environmental cumulative impacts into an agency's "broad zone of reasonableness."¹⁵⁵

IV. CONCLUSION

The Court's ruling in *Seven County* represents a fundamental shift in the judicial oversight of environmental protection, marking a significant step in NEPA's transition from an enforceable environmental safeguard to a declawed procedural formality. By engineering an unprincipled pivot between *de novo* legal interpretation and absolute factual deference, the Court effectively "opened the door" for agencies to bypass rigorous environmental review. Through this ruling, the Court granted agencies the "broad latitude to draw a 'manageable line'" regarding the scope of their environmental inquiries, essentially providing a versatile deregulatory toolkit that lower courts are now required to apply.¹⁵⁶

Ultimately, the "post-*Loper* correction" seen in *Seven County* does more than just rein in judicial review under NEPA; it effectively vanishes environment harm and risk from the legal record. When courts are mandated to defer to an agency's "manageable line" and accept a mere "procedural cross-check" as sufficient review, the statutory purpose of NEPA is fundamentally subverted. Even when a judge identifies clear factual deficiencies in the agency's data, the overarching weight of *Seven County* ensures that the agency's ultimate operations remain untouched. By

¹⁵⁵ See *supra* Notes 29, 109, 145.

¹⁵⁶ See *supra* Parts I–III (discussing the procedural-substantive split).

prioritizing administrative efficiency and agency discretion over the advanced identification of environmental harm, the Court has not only declawed NEPA but has also ushered in a new era of environmental deregulation that operates beyond the reach of citizens and the law.¹⁵⁷

¹⁵⁷ See *supra* Part II.A-C. (analyzing factual deference and the "manageable line" doctrine).