The Future of NEPA and Federal Permitting After Eagle County

Erika Kranz
Hannah Perls

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Introduction

On May 29, 2025, the Supreme Court ruled 8-0 in *Seven County Infrastructure Coalition v. Eagle County* that courts owe "substantial agency deference" when reviewing environmental documents under the National Environmental Policy Act (NEPA). The Court also narrowed the required scope of agencies' NEPA reviews, holding that an agency need not analyze the upstream or downstream effects of projects that are separate in time or space from a proposed action or are outside that agency's control.

The decision comes at a time of substantial uncertainty for federal NEPA processes. Passed in 1970, NEPA is the foundational law that requires agencies to assess the environmental effects of certain proposed actions before allowing, rejecting, or allowing with conditions the action. For nearly 50 years, federal agencies have relied on NEPA implementing rules published by the White House Council on Environmental Quality (CEQ) to harmonize federal permitting processes across all federal agencies. However, the Trump administration recently upended this longstanding NEPA regulatory scheme. In response to an executive order by President Trump, CEQ rescinded all of its prior NEPA rules and issued guidance telling agencies to update their own agency-specific NEPA rules within one year to reflect the administration's more limited view of the statute's requirements. Several agencies have now submitted updated rules to the White House Office of Management and Budget (OMB) for review. At the same time, Congress is considering amendments to NEPA that would significantly limit courts' oversight role in federal permitting for certain projects.

The Supreme Court's decision in *Eagle County* reflects bipartisan interest in reducing what many perceive as unnecessary barriers to development. It is not clear that the decision or the regulatory changes in progress will achieve that goal, but they may result in NEPA reviews that fail to capture the full picture of projects' environmental effects. And, as we discuss below, if agencies rely on *Eagle County* to justify significantly abbreviating the NEPA process and public comment in particular, these processes may be more drawn out than before due to increased litigation and other forms of opposition.

In this analysis, we discuss the legal consequences of *Eagle County*, how the decision fits within this broader regulatory and legislative context, and what other changes for NEPA may be on the way.

For and explainer of the NEPA process see our NEPA Overview page.

Case overview

At the heart of the case is a request by a railroad and a coalition of seven Utah counties for permission from the Surface Transportation Board (Board) to construct an 88-mile railway line in Utah to facilitate the transportation of crude oil to distant refineries and thereby expand oil production in the state. The line would connect the Uinta Basin, an area where oil producers extract waxy crude oil, to the broader rail network, allowing basin oil to reach Gulf Coast refineries. To comply with NEPA, the Board completed an environmental impact

statement (EIS) in August 2021 and authorized the construction of the railway several months later.

Eagle County, Colorado and several environmental organizations petitioned for review of the Board's decision in the D.C. Circuit, challenging, among other things, the scope and adequacy of the Board's EIS. The D.C. Circuit agreed that the Board had failed to fulfill NEPA's mandate to consider the environmental effects of its actions because it did not analyze in its EIS the upstream effects of oil development in the Uinta Basin and the downstream effects of refining that oil.[1]

Applying the Supreme Court's decision in *Department of Transportation v. Public Citizen*,[2] the D.C. Circuit held that because the Board had "exclusive jurisdiction over the construction and operation of the railway, including authority to deny the [application] if the environmental harm caused by the railway outweighs its transportation benefits,"[3] the Board had authority to prevent the upstream and downstream effects of the expanded oil production that was the "undisputed purpose of the railway."[4] Thus, the court held the Board was not excused from analyzing those foreseeable harms in its EIS.[5] The court also found other faults in the Board's analysis and compliance with other statutes; it vacated the authorization for the rail line's construction and remanded the matter to the Board.[6]

The project applicants petitioned the Supreme Court for review of the decision in March 2024, arguing the D.C. Circuit had strayed too far from *Public Citizen* in requiring the Board to analyze those upstream and downstream harms.[7] Although the D.C. Circuit had ruled against the federal government on this issue, it urged the Supreme Court to deny the petition, arguing that the case did not warrant Supreme Court review. Despite the federal government's opposition, the Supreme Court agreed to hear the case.

In the Supreme Court, the federal parties supported the project applicants' arguments that the D.C. Circuit's decision was in error.[8] Also supporting the petitioners were parties representing extractive-energy-related interests, the US Chamber of Commerce, and others that urged a reining-in of courts' application of NEPA, particularly as related to energy infrastructure projects.[9]

On May 29, 2025, the Supreme Court decided 8-0 (Justice Gorsuch did not participate in the decision) to reverse the D.C. Circuit's decision.[10] The majority opinion, written by Justice

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[1] *Eagle County, Colorado v. Surface Transportation Board*, 82 F.4th 1152 (D.C. Cir. 2023).
[2] *Department of Transportation v. Public Citizen*, 541 U.S. 752, 768–70 (2004)
[3] *Eagle County,* 82 F.4th at 1180.
[4] *Id*.
[5] *Id.*
[6] *Id.* at 1196.
[7] Petition for Writ of Certiorari, *Seven County Infrastructure Coal. v. Eagle County, Co*., No. 23-975, 2024 WL 1009149 (filed Mar. 4, 2024).
[8] Brief for the Federal Respondents Supporting Petitioners, *Seven County Infrastructure Coal. v. Eagle County, Co*., No. 23-975, 2024 WL 4028223 (filed Aug. 28, 2024)
[9] *See* docket, *Seven County Infrastructure Coal. v. Eagle County, Co*., No. 23-975, https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/23-975.html.
[10] *Seven County Infrastructure Coal. v. Eagle County, Co*., 145 S. Ct. 1497 (2025).

Kavanaugh, agreed that the Board's EIS was adequate. The Court deferred to the Board's determination of the scope of effects it was required to analyze under NEPA and held that agencies need not analyze the effects of separate projects, particularly when those projects are outside the agency's regulatory authority or are initiated by a private party. Applied to this case, the Court explained that the Board was required only to analyze the environmental effects of the construction and operation of the rail line and was not required to consider the projects it deemed "separate," such as the upstream oil production or downstream oil refining facilitated by the rail line.[11]

Eagle County follows the Supreme Court's trend of emphasizing a limited judicial role when reviewing agencies' NEPA documents

The Court's decision emphasizes that courts have come to play an outsized role in NEPA implementation. Fundamental to *Eagle County* is the fact that NEPA is a short statute that says little about what belongs in the analyses agencies must conduct. The skeletal nature of the statute led Justice Marshall just a few years after its enactment to observe that the statute seemed "designed to serve as no more than a catalyst for development of a 'common law' of NEPA" by courts.[12] The courts have done so, "giv[ing] meaning to"[13] the language of NEPA and creating an expanded set of obligations for agencies.

This caselaw — alongside CEQ's NEPA implementing rules — has added requirements that deepen and broaden agencies' NEPA reviews.[14] While those requirements have in many cases improved the quality of agency decision-making and furthered the statute's goals,[15] they have also caused frustration from project proponents—including projects that further sustainability and environmental protection. In response, Congress passed and President Biden signed amendments to NEPA in 2023 that shortened the length and timeline for NEPA review for many projects. Even so, calls for deeper reform have continued to come from across the political spectrum.[16]

The Supreme Court decided *Eagle County* against this backdrop. The decision emphasizes the deferential arbitrary and capricious standard of review that courts must use when reviewing agency factfinding, explains a range of aspects of NEPA reviews where that standard applies, and sets out a hybrid legal-factual framework for deciding how far agencies must go in analyzing the expected effects of their actions. The Court's formulation for this framework is based on the project before an agency. The opinion makes clear that an agency must analyze the effects of the proposed project before that agency, but need not analyze the effects of other projects "separate in time and place," nor analyze effects of

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[11] *Eagle County*, 145 S. Ct. at 1516.
[12] *Kleppe v. Sierra Club*, 427 U.S. 390, 421 (1976) (Marshall, J., concurring in part and dissenting in part).
[13] *Id.*
[14] Judge Henderson summarized her view of court's "dramatic[]" expansion of NEPA's requirements in a decision issued just after *Eagle County*. *Appalachian Voices v. FERC*, No. 24-1150, 2025 WL 1600153, at *14 (D.C. Cir. June 6, 2025) (Henderson, J., concurring).
[15] *See* 42 U.S.C. § 4331.
[16] *See* David E. Adelman, Sommer Engels, Andrew Mergen & Jamie Pleune, *Dispelling the Myths of Permitting Reform and Identifying Effective Pathways Forward*, 55 Envtl. L. Rep. 10038, 10038 n.3 (2025).

"separate projects" that "fall outside the [agency's] authority and would be initiated, if at all, by third parties."[17]

The question of whether an agency has authority over a separate project is a legal one: in this case, the Court held that the Board did not have authority to regulate oil drilling, production, or refining, so the effects of those activities were effects of separate projects outside of the Board's control and thus outside the required scope of the Board's EIS for the proposed rail line.[18] But questions of how far a project extends and what projects are "separate in time and place" and thus fall outside of NEPA's requirement are factual, and courts will defer to agencies' answers to them.[19] The Court also emphasized that judges must defer to agency determinations regarding the "length, content, and level of detail of the resulting EIS," as well as the assessment of feasible alternatives, though these issues were not explicitly raised in this case.[20]

Importantly, *Eagle County*'s focus on the separateness of *projects* does not empower agencies to ignore all upstream or downstream *effects*. The Court's opinion also explains that although indirect effects need not be considered if they stem from a "separate project [that] breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project,"[21] distant or temporally-removed effects from the project at hand, like "run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas" may still be within NEPA's required scope.[22] But, crucially, the decision makes clear that courts should defer to agencies "about where to draw the line" as to which effects to include or exclude from their NEPA reviews.[23] Under this deferential standard, agencies also have the option to expand their analyses beyond the minimum required if they choose.

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[17] *Eagle County, 145* S. Ct. at 1515.
[18] *Id.* at 1516. The court also flagged that as a common carrier the railroad line would not be able to decline to transport certain types of freight; this lent additional support to the holding that the Board need not have analyzed the effects of the use of those products on the environment. *Id.* at 1518 n.6.
[19] *Id.* at 1517.
[20] *Id.* at 1513.
[21] *Id.* at 1516.
[22] *Id.* at 1515.
[23] *Id.* at 1513. While the *Eagle County* decision was unanimous, Justice Sotomayor (joined by Justice Kagan and Justice Jackson), wrote separately to explain her reasoning. Justice Sotomayor's concurrence would have adopted a two-step analysis for deciding whether an agency's consideration of environmental effects was sufficient: First, courts assess whether an agency has authority under its organic statute to modify or reject a proposed action–if an agency may not modify or reject an action because of certain environmental concerns, it need not address those concerns in a NEPA review. Second, courts apply the arbitrary and capricious standard of review to an agency's decision that impacts are too attenuated to warrant consideration. *Id.* at 1523 (Sotomayor, J., concurring). Justice Sotomayor explains that she would have decided the case at the first step because the Board lacked the authority to reject the railroad line application to prevent the harmful effects of the "products transported on the proposed railway." *Id.* at 1519. Although Justice Sotomayor explicitly criticized the majority for "unnecessarily grounding its analysis largely in matters of policy," *id.*, her analysis reflects a shared frustration with NEPA's expansive interpretation.

Future regulatory and statutory changes to NEPA may eclipse (or amplify) *Eagle County*

The impact of the Court's decision depends on many variables, which we discuss in this section. The decision comes at a time when the Trump administration is making significant changes to how NEPA is implemented through agency rules. Congress is also considering changes to NEPA that would exempt certain projects' NEPA reviews from judicial scrutiny. Agencies may also agencies change their approach to their NEPA reviews in response to *Eagle County*'s holding about the required scope of analyses of projects' environmental effects.

The Trump administration has substantially altered NEPA's regulatory scheme under which rules issued by CEQ harmonized agencies' NEPA processes across the federal government. President Trump rescinded the executive order authorizing CEQ to issue those rules, and then CEQ unilaterally withdrew all of its rules implementing NEPA via an interim final rule published on February 25, 2025.[24] Most federal agencies also have their own agency-specific NEPA implementing rules, which supplement CEQ's. In the absence of CEQ's NEPA implementing rules, federal agencies are bound by their own rules, many of which are decades-old and conflict with the statutory text of NEPA as amended in 2023.

CEQ has since issued guidance to federal agencies, directing them to promulgate updated NEPA implementing rules, using the 2020 rules finalized under the first Trump administration as a model.[25] The guidance urges agencies to take a narrow approach to identifying actions that trigger NEPA review, to prioritize review of documents prepared by project sponsors (rather than by the agencies themselves), to seek public comment only when required by law, to narrow the their analyses of effects, and to avoid discussing the environmental justice implications of proposed actions.[26]

The Department of the Interior has also announced a new dramatically accelerated NEPA procedure for projects related to the "energy emergency" that President Trump declared in January[27] (which has since been challenged in litigation[28]). Interior's opt-in procedure directs the agency to complete an EIS in just 28 days, rather than the two years ordinarily allowed, and directs limited opportunities for public comment.

At the same time, Congress is weighing, as part of the "One Big Beautiful Bill Act" that passed in the US House in May 2025, a new pay-to-play NEPA scheme. Project proponents could pay the federal government to prepare an environmental assessment (EA) or EIS; the resulting NEPA document would be insulated from administrative or judicial review, and a resulting record of decision could not be challenged based on any alleged issue with the

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[24] Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10,610 (Feb. 25, 2025).
[25] Memorandum for Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act (Feb. 19, 2025), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf, citing 85 Fed. Reg. 43304 (July 16, 2020).
[26] *Id.*
[27] Exec. Order No. 14,156, 90 Fed. Reg. 8433 (Jan. 20, 2025).
[28] *State of Washington, et al. v. Trump, et al.*, No. 2:25-cv-00869 (W.D. Wash. 2025).

NEPA document.[29] The Senate Environment and Public Works Committee initially released proposed reconciliation bill text that was very similar to the House version,[30] but has now proposed a version eliminating the exception from judicial or administrative review provision.[31] As of this writing, the prospects of the bill as a whole and this section in particular are uncertain.

Eagle County confirms a highly deferential approach from courts at the same time that these major regulatory and potential statutory changes are shifting how agencies will approach their NEPA reviews. The decision's emphasis on the "significant deference" owed to agency factfinding echoes earlier decisions and the Supreme Court's trend of ruling in favor of agencies and against environmental groups in NEPA cases.[32] While the deference embraced in *Eagle County* is deep and expansive, the decision does not overrule precedent describing a court's role in making a "searching and careful"[33] review to ensure that agencies have taken a "hard look" at environmental effects.[34] Still, after this decision, courts will likely be reticent to second-guess agency decisions about the proper depth or breadth of their NEPA reviews regarding a particular project. However, it's unclear if or how *Eagle County* will affect judicial review of agencies' forthcoming NEPA implementing rules in which they are likely to adopt a narrower view of the analysis required by the statute.

Below we discuss specific issues we'll be tracking as agencies publish new NEPA documents and rules.

Segmentation, cumulative effects, and analytical gaps

Eagle County potentially blurs the lines between "separate projects" and unlawful "segmentation," where an agency divides one project into smaller projects to artificially minimize the anticipated environmental effects.[35] More generally, the decision raises questions about the extent to which agencies are required to consider the cumulative effects of their actions, i.e. the way their actions, when added to other past, present, and reasonably foreseeable future actions, will affect the human environment.

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[29] One Big Beautiful Bill Act, H.R. 1, 119th Cong. §§ 80151, 80152 (2025).
[30] U.S. Senate Committee on Environment & Public Works, *Chairman Capito Releases EPW Budget Reconciliation Text* (June 4, 2025), https://www.epw.senate.gov/public/index.cfm/2025/6/chairman-capito-releases-epw-budget-reconciliation-text.
[31] U.S. Senate Committee on Environment & Public Works, *Chairman Capito Releases Updated EPW Budget Reconciliation Text* (June 25, 2025), https://www.epw.senate.gov/public/index.cfm/2025/6/chairman-capito-releases-updated-epw-budget-reconciliation-text.
[32] *See, e.g.*, *Kleppe*, 427 U.S. 390; *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519 (1978); *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223 (1980); *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council., Inc.*, 462 U.S. 787 (1983); *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 776 (1983).
[33] *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989).
[34] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).
[35] *See, e.g.*, *Kleppe*, 427 U.S. at 410 ("when several proposals [] that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together"); *Friends of Animals v. U.S. Fish and Wildlife Serv.*, 28 F.4th 19 (9th Cir. 2022) (requiring permits to have "independent utility"). Agencies' own NEPA rules may also include explicit prohibitions on segmentation. *See, e.g.*, 23 C.F.R. pt. 771.111(f) (FHWA's rules requiring agencies' NEPA documents to assess a project's "logical termini," ensure the project has "independent utility" and does "not restrict consideration of alternatives").

From 1978 to 2020, and again from 2022 through 2024, CEQ required, and several courts affirmed, agencies to consider certain cumulative impacts of proposed actions. However, CEQ's new guidance to agencies directs agencies to avoid the concept of "cumulative" impacts as they develop their own revised NEPA implementing rules.[36] *Eagle County* calls into question whether courts will require this analysis where NEPA implementing regulations do not. In *Eagle County*, the Court points to NEPA's "textual emphasis" on the "proposed project," suggesting that a cumulative effects analysis, which considers the effects of other projects, could be outside the statute's requirements. Notably, the Court states, without evidence, that agencies need not focus on the environmental effects of separate projects because those upstream and downstream effects will be subject to analysis by other agencies conducting their own NEPA (or state equivalent) reviews.[37] However, the Court does not address the likelihood that more projects, or parts of projects, will be exempt from NEPA review if Congress or agencies limit the statute's reach.

Taken together, *Eagle County* and forthcoming changes to agencies' NEPA implementing rules could result in a piecemeal approach that prevents comprehensive understanding of a project's environmental effects and creates significant information gaps, particularly if the Trump administration issues rules limiting agencies' regulatory jurisdiction. These analytical gaps will most likely mask cumulative pollution impacts in overburdened communities and thus not consider future harm to people who are exposed to public health risks from multiple sources.

Agencies' public engagement efforts

On April 8, 2025, CEQ issued a draft template for agencies' revised NEPA rules. Though CEQ's prior guidance urged agencies to mirror CEQ's 2020 implementing rules, the April 8 template included novel provisions. Notably, the template urges agencies to significantly restrict public comment on NEPA scoping and draft documents, even as compared to the 2020 rules.

These proposed changes are significant because, under *Eagle County*, courts likely have limited authority to scrutinize whether the agency provided the public adequate notice or engaged in public comment. Without this judicial check, agencies will have no external incentive to hold comment periods or integrate comments into their decision-making, jeopardizing NEPA's core democratic functions and agencies' ability to improve projects based on public feedback.

Notably, the Court in *Eagle County* describes NEPA as "a procedural cross-check,"[38] minimizing the statute's role in helping hold agencies publicly accountable for their

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[36] Memorandum for Heads of Federal Departments and Agencies: Implementation of the National Environmental Policy Act (Feb. 19, 2025), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/CEQ-Memo-Implementation-of-NEPA-02.19.2025.pdf.

[37] Both the majority and concurrence rest on the idea that the Board's EIS need not assess the downstream effects of future oil and gas development because those effects would be "subject to the approval processes of other federal, state, local, and tribal agencies." *Eagle County*, 145 S. Ct. at 1509. *See also id.* at 1524 (Sotomayor, J., concurring) ("Unlike the Board, meanwhile, other entities do have authority 'to approve oil and gas development projects' and to regulate the effects of refining.") (citing Brief for Federal Respondents 19).

[38] *Id*. at 1507.

decisions and ensuring agencies make informed decisions when weighing multiple competing interests. As Justice Sotomayor notes in her concurrence, "[NEPA's] requirement to prepare a 'detailed statement' is an 'action-forcing' requirement [that] serves dual purposes, ensuring both that an agency considers a project's environmental consequences before deciding whether to approve it, and rendering the agency publicly accountable for environmental harms it decides to tolerate."[39] Reducing NEPA to a check-the-box exercise, she argues, undercuts the statute's core purpose, namely that "'that environmental concerns be integrated into the very process of [agency] decision-making.'"[40]

By comparison, the majority rejects NEPA's public-facing function: "Neither the language nor the history of NEPA suggests that it was intended to give citizens a general opportunity to air their policy objections to proposed federal actions. The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements."[41] However, this characterization ignores evidence demonstrating that, when done well, public comment helps improve project timelines and outcomes. For example, reviews of major renewable energy projects show how early engagement with impacted communities, including Tribal Nations, helps avoid future delays and improve project outcomes for both the community and the project proponent. Conversely, short circuiting these processes can extend project timelines, increase project costs, and even trigger cancellation–the same issues the Court purports to rectify with its decision in this case.[42]

Potential impacts on Tribal Nations and Section 106 consultation

The Trump administration has already signaled its intent to significantly reduce public comment periods under NEPA. Recently, the Department of the Interior announced that it had completed an EA for a uranium and vanadium mine in Utah using Interior's new "alternative procedures" for "energy emergency" projects under which the agency will issue an EA in as few as 14 days (currently NEPA allows agencies up to a year to prepare an EA). The agency cited the energy emergency for its decision not to seek public comment on the project.[43] Although this EA predates *Eagle County*, it is part of a broader trend to greenlight certain infrastructure projects at the expense of transparency, analysis of environmental and other effects, and consideration of public input to inform the design of those projects.

Narrowing the scope of NEPA documents and shrinking public comment opportunities may have a particular impact on Tribal Nations. Under Section 106 of the National Historic Preservation Act (NHPA), federal agencies are required to engage in formal consultations with federally recognized Tribes when a proposed project or action might affect historic properties, including Tribal sacred places.[44] Historically, agencies have integrated their NEPA

[39] *Id.* at 1521 (Sotomayor, J., concurring).
[40] *Id.* (citing *Andrus v. Sierra Club*, 442 U.S. 347, 350 (1979)).
[41] *Id.* at 1518 (internal quotation marks omitted).
[42] *See* Adelman, Engels, Mergen & Pleune, *supra* note 16, at 100347–48.
[43] Velvet-Wood Mine Plan of Operations Modification Environmental Assessment, at 63 (May 23, 2025), https://eplanning.blm.gov/public_projects/2038403/200653122/20134556/251034536/Velvet-Wood%20Mine%20EA-FONSI-DR_20250523_Signed.pdf (citing 36 C.F.R. § 800.12(b)(2)).
[44] 54 U.S.C. § 306108; 36 C.F.R. pt. 800.

and NHPA obligations to provide for more streamlined review of a single project,[45] and current rules implementing Section 106 state that agencies can use NEPA documents to satisfy their Section 106 obligations if they notify the relevant Tribal officer in advance and the documents satisfy certain regulatory criteria.[46]

Interior's EA supporting the approval of the Utah uranium-vanadium mine provides an important clue for how agencies may implement Section 106 going forward. Interior relied on Trump's energy emergency declaration to significantly curtail Section 106 consultation for the mine, limiting Tribal Nations to a seven-day comment period. Of the Tribal Nations who commented, they all expressed concerns over the energy emergency procedures and the project's likely impacts, but the agency did not respond to those concerns.[47] Under current agency guidance, these energy emergency procedures will apply to all projects related to fossil fuel and critical mineral development, including leasing, production, transportation, and refining.[48] The guidance also includes a template for project proponents to request curtailing Section 106 consultation consistent with the energy emergency.[49]

Notably, the majority's opinion in *Eagle County* does *not* suggest that courts should defer to agencies as to whether an EIS satisfies other statutory obligations, including under Section 106. However, given the historical integration of agencies' NEPA and NHPA obligations, shortened NEPA reviews may also lead to abbreviated NHPA processes as well.

An early indication of Eagle County's intersection with regulatory changes

In the immediate aftermath of *Eagle County*, we are already seeing how the decision intersects with Trump administration policies to restrict NEPA reviews and fast-track projects consistent with the administration's priorities. Similar to the uranium and vanadium mine discussed above, the Department of the Interior used its new dramatically accelerated NEPA procedure for energy emergency projects to super-speed the NEPA review for the proposed expansion of Bull Mountains coal mine in Montana, issuing the final EIS and record of decision simultaneously. The agency used this accelerated process even though all the coal produced from the mine will be exported to Japan and South Korea, rather than used domestically.[50]

In the EIS for the mine expansion, released in early June 2025 (rather than the predicted early-2026 timeline for release under ordinary procedures), the agency states that the EIS contains "significantly more analysis than is required under NEPA" given the *Eagle County*

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[45] 36 C.F.R. pt. 800.8(c). As of this writing, the Advisory Council on Historic Preservation is revising its Handbook for Integrating NEPA and Section 106. *NEPA and NHPA: A Handbook for Integrating NEPA and Section 106*, Adv. Council on Historic Preservation (last visited June 6, 2025), https://www.achp.gov/digital-library-section-106-landing/nepa-and-nhpa-handbook-integrating-nepa-and-section-106.

[46] 36 C.F.R. pt. 800.8(c)(1).

[47] Velvet-Wood Mine Plan of Operations Modification Environmental Assessment, at 63 (May 23, 2025).

[48] Acting Asst. Sec. Adam Seuss, *Emergency Process for Section 106 Compliance: Using the Emergency Provisions to Comply with Section 106 of the National Historic Preservation Act in Response to the National Energy Emergency* (April 23, 2025), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-procedures-section-106-compliance-2025-04-23-signed_1.pdf.

[49] *Id.*

[50] Final Environmental Impact Statement and Record of Decision: Bull Mountains Mine No. 1 (June 5, 2025), https://www.osmre.gov/sites/default/files/inline-files/BullMtn_Final_FEIS-and-ROD_06052025.pdf.

decision.[51] The EIS states, for example, that the agency did not have to analyze the effects of burning the coal from the expanded mine, because "the Department has no control" over "the combustion of coal," and those effects are too "attenuated in time and geography" to warrant analysis.[52]

Interior's invocation of *Eagle County* in this EIS shows how the agency views the case as limiting the scope of effects it was required to consider, and is likely indicative of how agencies will now approach their NEPA obligations, particularly regarding energy extraction projects. We expect agencies to validate this approach in their forthcoming NEPA implementing rules. The EIS and mine expansion approval will likely be subject to legal challenges, and we will track how courts review the Bull Mountains EIS in light of *Eagle County* and these novel NEPA procedures.[53]

Eagle County highlights persistent protection gaps in environmental law

The Court's decision in *Eagle County* seeks to solve NEPA's growth from a "legislative acorn [] into a judicial oak that has hindered infrastructure development under the guise of just a little more process."[54] Justice Kavanaugh also takes issue with NEPA plaintiffs generally, arguing that NEPA has become "a blunt and haphazard tool employed by project opponents (who may not always be entirely motivated by concern for the environment) to try to stop or at least slow down new infrastructure and construction projects."[55] Many of the procedural requirements environmental and community-based plaintiffs have relied on are the product of caselaw and agency rules, both of which are vulnerable to changing interpretations by courts (as in this case) or regulatory whiplash from changing administrations.

Plaintiffs often rely on NEPA in the absence of other statutory authorities to challenge agencies' failure to assess or remedy cumulative environmental and public health burdens. This overreliance on NEPA, specifically the procedural safeguards created by courts and agencies, highlights the need for new legislation to address these protection gaps in federal environmental law and ensure the federal permitting process enables transparent and informed permitting decisions. These gaps are most obvious in overburdened communities, where local, state, and federal agencies lack explicit authority to address cumulative environmental and public health burdens.

These protection gaps persist in part based on the assumption that a project's upstream or downstream effects are someone else's problem–a myth that permeated the Court's decision in *Eagle County*. Both the majority and concurrence argued that the Board's EIS need not assess the downstream effects of future oil and gas development because those effects would be "subject to the approval processes of other federal, state, local, and tribal

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[51] *Id.* at 1-8.
[52] *Id.* The agency left this "extraneous information" about the "potential indirect effects of non-GHG emission from downstream combustion" in the EIS rather than remove the analysis that had been completed before the *Eagle County* decision. *Id.*
[53] Challenges to this project may also focus on whether the expedited NEPA process for projects responding to the declared "energy emergency" is applicable to this project, where the vast majority of coal is expected to be exported, rather than used for energy production in the United States. *Id.* at 5-7.
[54] *Eagle County*, 145 S. Ct. at 1514.
[55] *Id.* at 1513.

agencies."[56] But most federal environmental laws regulate pollutants on a source-by-source, pollutant-by-pollutant basis. Under President Biden, EPA identified specific provisions under various environmental laws authorizing or requiring the agency to consider cumulative impacts.[57] However, EPA acknowledged federal law often limits those efforts by narrowing agencies' focus to a specific set of pollutants or exposure pathways.[58]

Other efforts by the Biden administration sought to analyze cumulative impacts using screening tools like CEQ's Climate & Economic Justice Screening Tool (CEJST), and tools to inform discretionary enforcement or funding. But those efforts relied on executive authority and most have since been rescinded under President Trump. The Trump administration has also signaled they intend to rescind longstanding regulations under Title VI of the Civil Rights Act authorizing agencies to investigate federally funded activities that entrench historical disparities in pollution burdens, including discriminatory siting and expansion of polluting facilities.[59]

It is worth noting that the same "Kafkaesque"[60] delays the majority bemoans are likely to persist even after *Eagle County*. Empirical assessments of federal permitting timelines find that in the rare instance when a project is significantly delayed under NEPA, those delays are often caused by limited agency capacity combined with inconsistent and overlapping standards.[61] Under the Trump administration, these issues may be exacerbated by significant reductions in agency staff and resources and regulatory uncertainty following CEQ's sudden rescission of its rules implementing NEPA, which in turn is likely to drive more litigation. The new expedited processes for certain projects under Interior's "alternative arrangements" policy and as proposed in the One Big Beautiful Bill Act would likely divert staff attention away from other projects requiring NEPA review, further exacerbating delay.

Yet, there is clear appetite for permitting reform across the political spectrum. *Eagle County* and the dramatic regulatory changes in the works under the Trump administration show that NEPA, standing alone, does not always help the government make decisions that promote sustainability and protect vulnerable communities. The bulk of NEPA's requirements have always been the product of court-imposed requirements or CEQ's government-wide rules. Both the "common law" of NEPA and the regulatory structures and guidance are vulnerable to changing interpretations by courts (as in this case) or regulatory whiplash by an administration focused on prioritizing certain industries or projects.

We will continue to track NEPA implementation on EELP's Regulatory Tracker.

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[56] *Id.* at 1509. *See also id.* at 1524 (Sotomayor, J., concurring).
[57] EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum, EPA (last updated Jan. 2023).
[58] *Id.* at 2.
[59] Restoring Equality of Opportunity and Meritocracy, 90 Fed. Reg. 17,537 (April 28, 2025) (an executive order requiring the Attorney General to identify federal regulations, guidance, or orders, as well as state laws, that impose disparate impact liability). On May 16, the Department of Energy issued a direct final rule to rescind DOE's disparate impact protections under Title VI that will go into effect on July 15 unless the agency receives substantive adverse comments. Rescinding Regulations Related to Nondiscrimination in Federally Assisted Programs or Activities (General Provisions), 90 Fed. Reg. 20,777 (May 16, 2025).
[60] *Eagle County*, 145 S. Ct. at 1513.
[61] *See* Adelman, Engels, Mergen & Pleune, *supra* note 16, at 10048–51.