National Association of Environmental Professionals

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2025 ANNUAL NEPA REPORT

of the

National Environmental Policy Act Working Group

of the

National Association of Environmental Professionals

Submitted to

NAEP Board of Directors

Edited and compiled by

Charles P. Nicholson, NEPA Working Group Chair

With contributions by

P. E. Danko, Piet and Carole deWitt, James Gregory, Melanie Hernandez, Mike Mayer, Charles P. Nicholson, and Fred Wagner

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This report reviews National Environmental Policy Act document submittals and statistics, legislation, and litigation for calendar year 2025. The purpose of this report is to document the status of National Environmental Policy Act compliance and perspectives during the reporting year. We welcome reader comment and inquiry to naep@naep.org.

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Acronyms and Abbreviations

APA Administrative Procedures Act
APHIS Animal and Plant Health Inspection Service
BLM Bureau of Land Management
BOEM Bureau of Ocean Energy Management
BOR Bureau of Reclamation
CE Categorical Exclusion
CEQ Council on Environmental Quality
CFR Code of Federal Regulations
DOE Department of Energy
DOI Department of Interior
EA Environmental assessment
EIS Environmental impact statement
EO Executive Order
EPA Environmental Protection Agency
ESA Endangered Species Act
FAA Federal Aviation Administration
FEMA Federal Emergency Management Agency
FERC Federal Energy Regulatory Commission
FHWA Federal Highway Administration
FONSI Finding of No Significant Impact
FRA Federal Railroad Administration
FTA Federal Transit Administration
FWS U.S. Fish and Wildlife Service
GSA General Services Administration
H.R. House Resolution
HUD Department of Housing and Urban Development
MARAD Maritime Administration
MDA Missile Defense Agency
NAEP National Association of Environmental Professionals
NEPA National Environmental Policy Act
NHPA National Historic Preservation Act
NNSA National Nuclear Security Agency
NOA Notice of Availability
NOAA National Oceanic and Atmospheric Administration
NOI Notice of Intent
NPS National Park Service
NRC Nuclear Regulatory Commission
NRCS Natural Resources Conservation Service
OSM Office of Surface Mining Reclamation and Enforcement
ROD Record of Decision
S. Senate
STB Surface Transportation Board
TVA Tennessee Valley Authority
USA United States Army
USACE U.S. Army Corps of Engineers
USAF United States Air Force
USFS U.S. Forest Service
USMC – United States Marine Corps
USN United States Navy

1. Introduction

Dennis Peters, REM[1]
NAEP President 2025–2027

The National Association of Environmental Professionals (NAEP) is pleased to present its 2025 National Environmental Policy Act (NEPA) Annual Report. In addition to serving as a benefit to NAEP members, this report is submitted to the Council on Environmental Quality (CEQ) and shared with federal agency liaisons with whom our members collaborate to advance the legislative purpose of NEPA and promote continuous improvement in environmental review and analysis.

This eighteenth Annual NEPA Report reflects NAEP's mission to serve as the interdisciplinary organization dedicated to advancing the highest standards of ethics and professional excellence in the environmental field. Our members represent both the public and private sectors and are committed to promoting sound decision-making that considers environmental, social, and economic impacts.

The primary purpose of this report is to support continuous improvement in environmental impact assessment through a retrospective review of the year's developments in NEPA implementation. The review examines environmental impact statement (EIS) numbers and completion timelines, legislative and regulatory developments affecting NEPA implementation, and key U.S. Circuit Courts of Appeal decisions that will shape future environmental reviews. Judicial, legislative, and administrative actions influence the NEPA practice every year, and 2025 was certainly no exception.

Preparation of this report is possible only through the invaluable contributions of dozens of active members of the NEPA Working Group and the report authors recognized herein. On behalf of NAEP members and affiliate chapter members across the United States, I extend special thanks to NEPA Working Group Chair Chuck Nicholson, whose skillful leadership has guided both the development of this report and the Working Group's monthly meetings throughout the year. Chuck and other Working Group members also make significant contributions through webinars, training workshops, and presentations of highly anticipated content at the NAEP Annual Conference and Training Symposium. I would also like to thank P. E. Danko, Piet and Carole deWitt, James Gregory, Melanie Hernandez, Mike Mayer, and Fred Wagner for their substantial contributions to this report.

NAEP Working Groups foster professional networking, collaboration, and information sharing in technical disciplines of interest to our members. In addition to the NEPA Working Group, NAEP currently supports nine other active Working Groups, which are listed at naep.org. We encourage all NAEP members to become involved in one or more of these groups and to *Be Connected* with fellow environmental professionals.

[1] Principal Environmental Manager, Haley & Aldrich, Inc., dpeters@haleyaldrich.com

2. The NEPA Working Group in 2025

Charles P. Nicholson, PhD[2]
Chair, NAEP NEPA Working Group

The mission of the NAEP NEPA Working Group is to improve environmental impact assessment as performed under NEPA.

The NEPA Working Group is pleased to present this eighteenth annual report. The 2025 Annual NEPA Report of the National Environmental Policy Act Working Group (Annual NEPA Report) contains summaries of many of the latest developments in NEPA as well as the NEPA Working Group's activities in 2025.

The Annual NEPA Report is prepared and published through the initiative and volunteer efforts of members of the NAEP's NEPA Working Group. The NEPA Working Group supports NEPA practitioners through monthly conference calls, networking opportunities, educational opportunities, outreach with CEQ, and projects such as this NEPA Annual Report. Many of the developments in NEPA described below were discussed during the monthly meetings of the NEPA Working Group. Highlights of 2025 activities and monthly meetings included:

- Discussion of CEQ's recission of its NEPA procedures and issuance of guidance
- Discussion of revised NEPA procedures issued by departments and agencies
- Review and discussion of the categorical exclusion adoption process and categorical exclusion rulemaking and adoptions by agencies
- An update by CEQ staff on the results of the E-NEPA study
- Review of many of the U.S. Circuit Court of Appeals decisions on NEPA cases described elsewhere in this report as well as several U.S. District Court decisions on NEPA cases
- Discussion of the Supreme Court decision in the *Seven County Infrastructure Coalition v. Eagle County* NEPA litigation
- Discussion of selected recently filed NEPA lawsuits
- Review of interesting Notices of Intent (NOIs) to prepare EISs and recently released draft and final EISs
- Review of exemptions from NEPA
- Participation in NAEP webinars on NEPA topics

The NEPA Working Group has approximately 150 active members. We hold monthly conference calls in which we discuss emerging developments in NEPA such as new regulations, guidance, legislation, court rulings, projects, and studies. Monthly conference calls are normally held at 2:30 p.m. (Eastern) on the second Wednesday of each month, and all NAEP members are welcome to participate. To be added to

[2] Questions concerning this report should be directed to:
Charles P. Nicholson, PhD, PO Box 402, Norris, TN 37828-0402; cpnicholson53@gmail.com

the NEPA Working Group email list and call reminders, go to https://www.naep.org/working-groups and follow the instructions to join a listserv (i.e., working group). NAEP membership is required.

3. NEPA Highlights in 2025

Charles P. Nicholson, PhD[3]
Chair, NAEP NEPA Working Group

2025 was another eventful year in the evolution of the National Environmental Policy Act and its associated compliance processes.

The year began with the reinauguration of President Trump and his immediate issuance of multiple executive orders addressing energy and environmental issues. These included ordering agencies to review and revise their procedures to expedite the approval of various actions, particularly those related to energy and mining. In response to one of these orders, as well as three recent court rulings on CEQ's authority to issue regulations, in late February CEQ rescinded its NEPA regulations (40 CFR 1500-1508) and issued guidance to agencies on implementing NEPA and revising their agency-specific NEPA procedures. This recission eliminated, unless required by a statute other than NEPA, all public involvement requirements except the requirement for public scoping for an environmental impact statement in Section 107 of NEPA. This includes the issuance of a draft EIS for public review.

Also in response to the executive orders, including the declaration of a national energy emergency, the Secretary of Interior is April issued alternative arrangements for NEPA compliance for specific energy (excluding wind and solar) and critical mineral actions. Under these arrangements, EAs could be completed in 14 days and EISs could be completed within 28 days of publication of the Notice of Intent. By the end of 2025, a handful of projects had been reviewed under this expedited process.

On May 29, the Supreme Court issued a unanimous decision in the *Seven County Infrastructure Coalition v. Eagle County*, the first NEPA case to be decided by the Supreme Court since the 2004 *Department of Transportation v. Public Citizen* decision. The *Seven County* decision overturned a D.C. Circuit Court of Appeals decision on the scope of a NEPA review, particularly over the analysis of upstream and downstream environmental effects. The ruling declared that the analysis of such effects is not required when they do not have a "reasonably close causal relationship" to the proposed action and under the authority of the lead agency. The Supreme Court also admonished district courts and circuit courts of appeals to give deference to agencies on the content and level of detail in environmental reviews. By the end of 2025, this consequential ruling had been cited in several circuit court of appeals and district court NEPA decisions.

In late June and early July, several departments and agencies issued revised NEPA procedures. Some of these actions included the recission of department- or agency-specific NEPA regulations and the reissuance of procedures as guidance. Some departments also eliminated bureau- or subunit-specific NEPA procedures and consolidated them into department-level procedures. Most of the revised procedures closely followed CEQ's guidance and template. The revised procedures prioritized the timely

[3] PO Box 402, Norris, TN 37828; cpnicholson53@gmail.com
Any opinions and conclusions in this article are those of the author and do not represent those of HDR, Inc.

completion of EAs and EISs and aside from public involvement during EIS scoping, agencies had discretion on whether to involve the public during the NEPA process.

Interest in permitting reform legislation, including changes to NEPA, remained high in the new 119th Congress with 166 bills addressing NEPA in some manner introduced in 2025. These included 105 unique substantive bills. Several bills proposing major changes to NEPA were debated in committee and a few passed one chamber of Congress. Only three substantive bills, all with limited scope, were enacted into law. Most notable is a provision in H.R. 1, popularly known as One Big Beautiful Bill (Public Law No. 119-21), that added a new Section 112 to NEPA authorizing a project sponsor to receive an expedited EA or EIS by paying 125 percent of the estimated cost of the NEPA review. By the end of 2025 it was unclear whether any project sponsors were utilizing this process.

160 EISs were issued in 2025 with equal numbers of draft and final EISs. This total, the lowest in decades, reflects a continued long-term decline in EIS numbers. Whether there was a corresponding increase in the number of EAs issued in 2025 is difficult to determine, given the lack of a centralized database or repository of EAs. The average preparation time of final EISs has also continued to decrease to an average of 1,107 (3.0 years) for the final EISs issued in 2025. The revisions to CEQ's former NEPA regulations since 2020 setting a two-year time limit for preparing EISs, as well as a similar requirement in the 2023 amendments to NEPA, have no doubt contributed to this decrease. Almost half of the final EISs issued in 2025 were completed within two years of the issuance of their Notice of Intent. This proportion will likely increase in the future, aided by agencies' ability to not issue a draft EIS for public comment.

U.S. Courts of Appeal issued 26 substantive rulings in NEPA litigations during 2024. Federal agencies prevailed in 19 (81 percent) of the cases, did not prevail in three cases, and prevailed on one NEPA claim but not the other NEPA claim(s) in three cases. The District of Columbia Circuit Court of Appeals November ruling in *Marin Audubon Society v. Federal Aviation Administration* was particularly noteworthy. Although the FAA lost this case, the court went further to rule that CEQ did not have the authority to issue regulations on the implementation of NEPA. Also of note was the U.S. Supreme Court agreement to review *Seven County Infrastructure Coalition v. Eagle County, Colorado*, the first NEPA litigation to reach the Supreme Court since the court's *Department of Transportation v. Public Citizen* ruling. *Seven County Infrastructure* was argued on December 10, 2024.

4. Just the Stats

James Gregory[4]

In 2025, Notices of Availability (NOAs) for 172 environmental impact statements (EISs) were published in the *Federal Register*. Twelve of the NOAs were for adoptions of final EISs, and these are not included in this assessment. Thus, there were 160 NOAs for draft and final EISs published in 2025. Of the published notices, 80 were listed as draft EISs (including revised and supplemental draft EISs) and 80 were final EISs (including supplemental final and one third supplemental final EIS). Information regarding these documents was downloaded from the US Environmental Protection Agency's (EPA) online EIS database, available at: https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search. The database contains links to the EISs and EPA's comment letters for EISs on which they commented.

4.1 EISs Published in 2025

The 160 EISs published in 2025 were notably less than the number EISs published in 2024 (221, 61 fewer EISs or about a 28 percent decrease from 2024), but about the same number published in 2023. Table 4-1 presents a summary of the total number of EISs published by year for the past 10 years. 2025 had the fewest EISs published in the past decade, during which time the number of EISs published has shown variability, ranging from a high of 323 in 2018 to a low of 160 in 2025.

Table 4-1. EISs published 2016—2025.

Year	Number of EISs Published
2025	160
2024	221
2023	162
2022	185
2021	186
2020	254
2019	219
2018	323
2017	257
2016	312

4.2 EISs Published in 2025 by Agency and Department

Thirty-four agencies published at least one EIS in 2025, and two agencies published at least 15 EISs (Table 4-2). The Nuclear Regulatory Commission was the agency that published the most EISs in 2025 (18, four more than it published in 2024). The Bureau of Land Management (16), Federal Energy Regulatory Commission (14), US Army Corps of Engineers (14), Tennessee Valley Authority (11), and the US Air Force (11) were the agencies that published more than 10 EISs in 2025.

[4] James Gregory, Jacobs, 2020 SW 4th Avenue, Suite 300, Portland, OR 97201-4973; james.gregory@jacobs.com

Five non-federal agencies with delegated NEPA authority (California Department of Transportation, California High-Speed Rail Authority, New York City Department of Housing Preservation and Development, Texas Department of Transportation, and Utah Department of Transportation) published EISs in 2025.

Table 4-2. Draft and final EISs published in the *Federal Register* in 2025 by lead agency.

Lead Agency	Number of EISs
Nuclear Regulatory Commission	18
Bureau of Land Management	16
Federal Energy Regulatory Commission	14
U.S. Army Corps of Engineers	14
Tennessee Valley Authority	11
United States Air Force	11
Federal Highway Administration	9
Forest Service	7
General Services Administration	5
United States Army	5
United States Navy	5
National Marine Fisheries Service	4
Natural Resource Conservation Service	4
Office of Surface Mining Reclamation and Enforcement	4
Federal Transit Administration	3
Fish and Wildlife Service	3
Animal and Plant Health Inspection Service	2
Bureau of Ocean Energy Management	2
Bureau of Reclamation	2
Department of Commerce	2
Department of Energy	2
New York City Department of Housing Preservation and Development	2
Surface Transportation Board	2
Texas Department of Transportation	2
Utah Department of Transportation	2
California Department of Transportation	1
California High-Speed Rail Authority	1
Federal Aviation Administration	1

Lead Agency	Number of EISs
Federal Emergency Management Agency	1
Missile Defense Agency	1
National Highway Traffic Safety Administration	1
National Nuclear Security Administration	1
U.S. Coast Guard	1
United States Marine Corps	1
Total	160

In 2025 five departments[5] --Energy, Defense, Interior, Transportation, and Agriculture -- were responsible for 69 percent of all EISs published. These are the same five departments that together published the majority of EISs in 2024. Figure 4-1 shows the EISs by department, with the departments responsible for publishing large numbers of EISs broken out separately.

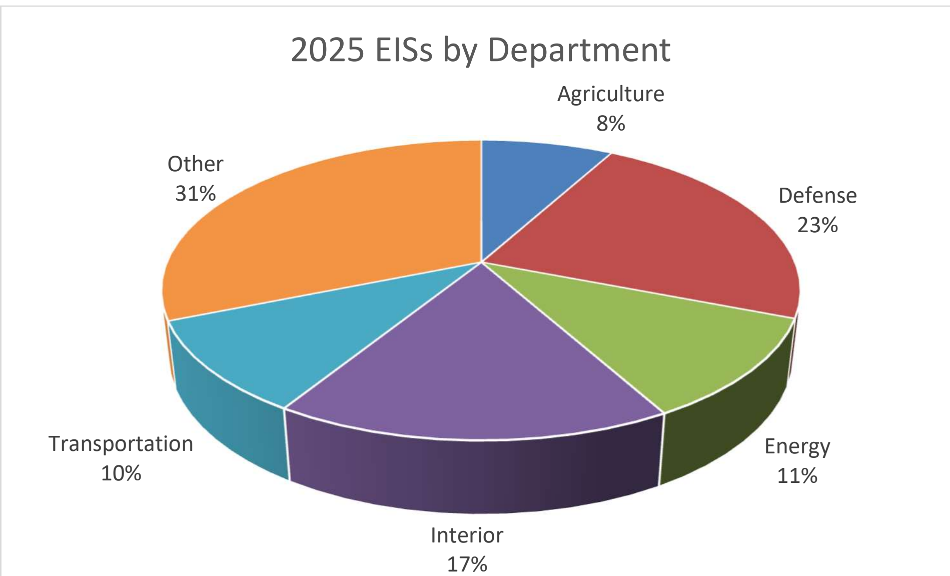

Figure 4-1. Draft and final EISs published in 2025 by department.

4.3 Geographic Distribution of EISs Published in 2025

The geographic breakdown of draft and final EISs by state and territory is shown in Table 4-3. For EISs listing a single state or territory, California and Texas had the most EISs (12 each). Twenty-two EIS listed multiple states. Three EISs were listed as regulatory, national, or programmatic.

[5] EISs published by non-federal agencies with delegated authority were counted as "other agencies".

Table 4-3. Draft and final EISs published in 2025 by state and territory.

State/Territory	Number of EISs	State/Territory	Number of EISs
California	12	Michigan	2
Texas	12	Minnesota	2
Alabama	9	New Mexico	2
Arizona	7	South Carolina	2
Wyoming	7	Wisconsin	2
Hawaii	6	Arkansas	1
Illinois	6	Colorado	1
Oregon	6	Connecticut	1
Tennessee	6	Guam	1
Nevada	5	Iowa	1
New York	5	Kansas	1
Utah	5	Massachusetts	1
Louisiana	4	Maine	1
Alaska	3	Mississippi	1
Florida	3	North Dakota	1
Montana	3	Ohio	1
North Carolina	3	Oklahoma	1
Washington	3	Trust Territories[6]	1
Georgia	2	Virginia	1
Idaho	2	Programmatic/Regulatory/ National	3
Maryland	2	Multiple States	22
		Total	160

[6] This EIS was for an action in the Commonwealth of the Northern Mariana Islands.

5. Preparation Times for Environmental Impact Statements Made Available in Calendar Year 2025

Piet deWitt and Carole deWitt[7]

5.1 Summary

In 2025, all agencies combined established the lowest annual average final EIS preparation time since 1997. The number of draft EISs issued in 2025 was also the lowest since 1997. In addition, federal agencies also established a new high percentage of final EISs prepared in two years or less from the publication of their Notices of Intent.

5.2 EIS Numbers

Adoptions

In 2025, six agencies adopted 11 final EISs. The National Oceanic and Atmospheric Administration (NOAA) made four adoptions (including two on offshore wind energy projects), and the Department of Energy (DOE) adopted three Nuclear Regulatory Commission (NRC) EISs on license renewals for nuclear facilities.

From 1997 through 2025, federal agencies adopted an average of 6.6 ± 5.0 (average ± one standard deviation) per year. The number of EISs adopted each year has trended slightly upward throughout our study period at an average rate of +0.44 adoptions per year with a coefficient of determination (R^2) of 0.56. In the years 2000 and 2005 no adoptions were recorded. The highest number of adoptions, 20, occurred in 2023.

Draft EISs

In 2025, 27 agencies made available 81 draft and draft supplemental EISs. This is the lowest number of draft EISs made available in a year since 1997. The U.S. Army Corps of Engineers made 9 of these EISs available. The Federal Energy Regulatory Commission (FERC) and the NRC each made 8 EISs available. 13 agencies made one draft EIS available during the year.

For the period 1997 through 2025, the average number of draft EISs made available per year was 207 ± 77. The last year in which the number of draft EISs equaled or exceeded 207 was 2011. The highest number of draft EISs made available was 320 in 2003. For the period 1997 – 2025 the average number of draft EISs being made available in a year has decreased at an average rate of -8.2 drafts per year (R^2 = 0.82). Since 2003, the peak year, the average rate of decrease is -11.7 drafts per year (R^2 = 0.97).

Final EISs

In 2025, federal agencies made 81 final EISs available to the public. These included 13 final supplemental EISs and one third final supplemental EIS. NRC made 10 of these final EISs available, BLM made 9 final EISs available, and FERC made 6 final EISs available. Ten agencies made one final EIS available during 2025.

[7] Piet and Carole deWitt, 12 Catamaran Lane, Okatie, SC 29909; pdewitt0815@gmail.com and cdewitt0613@gmail.com

5.3 Draft EISs Preparation Times

Three draft supplemental EISs in our 2025 population had no Notice of Intent (NOI) and were removed from our population. Our sample for determining preparation times therefore includes 78 EISs. The annual average draft EIS preparation time for all agencies combined in our sample was 923 ± 1,267 days (2.5 ± 3.5 years) [See "ALL" in Table 5-1]. The 2025 average is 242 days longer than the 2024 average of 681 days (1.9 years) and 272 days longer than the lowest average of 651 days (1.8 years) observed in 2023. The 2025 average is also 321 days (0.9 years) shorter than the 2019 average of 1,244 days (3.4 years).

Table 5-1. Preparation times in calendar days for draft and draft supplemental EISs made available in calendar year 2025.

Agency	# DEISs	% Total	Mean	StDev	Median	Minimum	Maximum
ALL	78	100	**923**	1,267	506	72	7,612
APHIS	1	1.3	**1,400**				
BLM	7	9.0	**517**	304	428	189	1,134
BOR	2	2.6	**1,483**	807	1483	912	2053
DOE	1	1.3	**763**				
FAA	1	1.3	**455**				
FEMA	1	1.3	**900**				
FERC	8	10.3	**228**	116	214	72	360
FHwA	7	9.0	**1,818**	2,573	814	458	7,612
FRA	1	1.3	**6,840**				
FTA	2	2.6	**891**	755	891	357	1,425
FWS	1	1.3	**1,171**				
GSA	1	1.3	**178**				
HUD	1	1.3	**445**				
MARAD	1	1.3	**1,569**				
NNSA	1	1.3	**875**				
NOAA	2	2.6	**447**	491	447	100	794
NRC	8	10.3	**515**	510	326	126	1,537
NRCS	3	3.8	**901**	636	595	477	1,632
STB	1	1.3	**357**				
TVA	4	5.1	**601**	112	580	504	742
USA	1	1.3	**364**				
USACE	8	10.3	**1,077**	1,127	649	389	3,774
USAF	7	9.0	**596**	589	478	106	534
USFS	4	5.1	**1,150**	972	116	305	2,261
USMC	1	1.3	**4,467**				
USN	3	3.8	**604**	440	407	296	1,108

Note: s.d. = standard deviation; Med = median; Min = minimum; Max = maximum

For the period 1997 through 2025, annual average draft EIS preparation times for all agencies combined increased at an average rate of +3.4 days per year (R^2 = .04). For the period 2019 through 2025 the annual average decreased at an average rate of -57.0 days per year (R^2 = 0.39).

2025 draft EIS completion percentages for the 0-to-1-year and 1-to-2-year intervals were higher than the 1997 through 2024 averages percentages but were lower than the highest percentages (See Table 5-2). 2025 completion percentages in the 18-to-19-year and 20-to-21-year intervals were higher than the previous highs for those intervals.

Table 5-2. A comparison of 2025 draft and draft supplemental EIS completion rates with the average completion rates for the period 1997 through 2024.

Completion Interval in Years from NOI	2025 Completion Percentage	1997 -2024			
		Average Completion Percentage	Standard Deviation	Lowest Completion Percentage (Year)	Highest Completion Percentage (Year)
0 to 1	32.1	27.1	6.8	13.9 (2013)	38.8 (2021)
1 to 2	29.5	28.6	4.6	20.4 (2021)	39.0 (2023)
2 to 3	15.4	16.5	2.6	12.0 (1999)	22.5 (2012)
3 to 4	9.0	9.7	2.7	4.9 (2023)	15.3 (2018)
4 to 5	5.1	6.0	2.2	0.0 (2023)	9.4 (2010)
5 to 6	2.6	3.8	1.8	0.0 (2023)	7.9 (2005)
6 to 7	1.3	2.9	1.4	0.0 (2022)	5.1 (2015)
7 to 8	0.0	1.6	0.96	0.0 (2024)	4.9 (2023)
8 to 9	0.0	1.2	0.95	0.0 (4 years)	4.2 (2017)
9 to 10	0.0	1.0	0.77	0.0 (4 years)	2.9 (2019)
10 to 11	1.3	0.38	0.55	0.0 (16 years)	2.0 (2014)
11 to 12	0.0	0.42	0.46	0.0 (10 years)	1.7 (2015)
12 to 13	1.3	0.30	0.51	0.0 (15 years)	2.5 (2013)
13 to 14	0.0	0.20	0.46	0.0 (21 years)	2.1 (2019)
14 to 15	0.0	0.28	0.42	0.0 (16 years)	1.7 (2017)
15 to 16	0.0	0.16	0.36	0.0 (20 years)	1.7 (2017)
16 to 17	0.0	0.03	0.09	0.0 (25 years)	0.4 (2002)
17 to 18	0.0	0.01	0.06	0.0 (26 years)	0.3 (2003)
18 to 19	1.3	0.03	0.12	0.0 (25 years)	0.5 (2012)
19 to 20	0.0	0.03	0.13	0.0 (26 years)	0.7 (2016)
20 to 21	1.3	0.07	0.20	0.0 (25 years)	0.7 (2 years)

In 2025, 11 agencies produced 25 draft and draft supplemental EISs (32.1% of our sample) in one year or less from the dates of their NOIs. The leading producers of these EISs were the FERC (8) and the NRC (5). For the period 1997 – 2025, federal agencies have produced an average of 27.4 ± 6.8% of their draft EISs available in one year or less from publication of their NOIs. The highest average, 38.8%, occurred in 2021, and the lowest average, 13.9%, occurred in 2013.

5.4 Final EIS Preparation Times

In 2025, federal agencies made 81 final EISs available to the public. Three final supplemental EISs had no NOI and were eliminated from our sample. The remaining 78 final EISs had a mean total preparation time of 1,107 ± 783 days (3.0 ± 2.1 years) [see ALL in Table 5-3]. The 2025 average is the lowest annual average preparation time for all agencies combined in our record. The 2025 average is 59 days shorter than the previous low of 1,166 days (3.2 years) observed in the year 2000. The 2025 average is 757 days (2.1 years) shorter than the longest average of 1,864 days (5.1 years) in 2016, and 494 days (1.4 years) shorter than the average for 2024. For the period from 1997 through 2025, linear regression finds an average increase in final EIS preparation times of +17.0 days per year (R^2 = 0.40).

Table 5-3. Preparation times in calendar days for final and final supplemental EISs made available in calendar year 2025. See the Acronyms and Abbreviations list on page ii for abbreviations of agencies not mentioned in the text.

			NOI to Draft EIS			Draft EIS to Final EIS			NOI to Final EIS				
Agency	**n**	**%**	**Mean**	**s.d**	**Med**	**Mean**	**s.d.**	**Med**	**Mean**	**s.d.**	**Med**	**Min**	**Max**
ALL	78	100	**694**	419	539	**412**	488	252	**1,107**	783	817	234	3,832
APHIS	1	1.3	**576**			**245**			**821**				
BLM	9	11.5	**462**	231	398	**204**	88	210	**886***	799	542	438	2,947
BOEM	2	2.6	**414**			**364**			**478***	310	478	259	697
DOE	1	1.3	**763**			**189**			**952**				
FERC	6	7.7	**818**	478	730	**264**	75	273	**1,081**	510	961	521	1,695
FHwA	7	9.0	**872**	385	808	**851**	955	399	**1,723**	1012	1,207	735	2,209
FTA	1	1.3	**1,130**			**1,162**			**2,292**				
FWS	2	2.6	**325**	180	325	**529**	361	529	**853**	181	853	725	981
GSA	4	5.1	**461**	127	466	**194**	72	189	**655**	195	655	424	886
HUD	1	1.3	**445**			**91**			**536**				
MDA	1	1.3	**539**			**273**			**812**				
NOAA	3	3.8	**1,032**	213	914	**334**	57	301	**1,366**	269	1,215	1,206	1,677
NRC	10	12.8	**486**	424	343	**168**	87	140	**654**	451	527	234	1656
NRCS	1	1.3	**415**			**112**			**527**				
OSM	3	3.8	**904**			**126**			**850***	174	837	683	1,030
STB	1	1.3	**357**			**147**			**504**				
TVA	5	6.4	**433**	190	504	**157**	24	161	**629**	195	645	409	924
USA	3	3.8	**766**	485	539	**373**	140	364	**1,139**	512	1,057	673	1,687
USACE	7	9.0	**970**	435	1,054	**638**	375	808	**1,627**	717	1,919	626	2,401
USAF	5	6.4	**602**	474	478	**231**	91	182	**833**	562	653	309	1,466
USFS	3	3.8	**1,479**	438	1,249	**1,721**	487	1,848	**3,200**	739	3,381	2,387	3,832
USN	2	2.6	**634**	382	634	**557**	302	557	**1,191**	684	1,191	707	1,674

Note: n = number of EISs in sample; s.d. = standard deviation; Med = median; Min = minimum; Max = maximum

The draft EISs for the 2025 finals EISs required an average of 694 ± 419 days (1.9 ± 1.2 years) to complete. The 2025 average was the lowest we have recorded and was 44 days shorter than the previous low average of 738 days (2.0 years) observed in 1998. The 2025 average was also 335 days (0.9 years) shorter that the 2024 average of 1,029 days (2.8 years).

The time to prepare 2025 final EISs from their drafts averaged 412 ± 488 days (1.1 ± 1.3 years). This average was the second shortest average in our record; 23 days shorter than the average for the year 2000 (389 days). The 2025 average was 196 days (0.54 years) shorter than the highest average, 608 days

(1.7 years) recorded in 2018 and 159 days (0.44 years) shorter than the 2024 average of 571 days (1.6 years).

The Fiscal Responsibility Act of 2023 amended the NEPA by requiring agencies to complete their final EISs in two years unless the EIS-preparing agency formally extends the deadline. In 2025, 47.4% of the final EISs made available were completed within a period of two years from the publication of their NOIs. This is the highest percentage we have measured. The previous high percentage, 42.6%, occurred in 2001. The lowest completion percentage was 16.4% in 2015, and the highest percentage was 42.6% in 2001. In 2025, 15 agencies made at least one final EIS available that was completed in two years or less (Table 5-4).

Table 5-4. Final EISs issued in 2025 with preparation time of two years or less.

Agency	Total FEISs	Two years or less	
		Number	Percentage
Bureau of Land Management	9*	6	66.7
Bureau of Ocean Energy Management	2*	1	50.0
Federal Energy Regulatory Commission	6	4	66.7
Fish and Wildlife Service	2	1	50.0
General Services Administration	4	4	100.0
Housing & Urban Development Department	1	1	100.0
Nuclear Regulatory Commission	10	9	90.0
Natural Resources Conservation Service	1	1	100.0
Office of Surface Mining	4*	1	25.0
Surface Transportation Board	1	1	100.0
Tennessee Valley Authority	6	4	66.7
U.S. Air Force	4	4	100.0
U.S. Army	3	1	33.3
U.S. Army Corps of Engineers	7	2	28.6
U.S. Forest Service	2	1	50.0

*Includes final EISs prepared under abbreviated "alternative arrangements"

On January 20, 2025, the President declared a national energy emergency and directed agencies to exercise any lawful emergency authorities available to facilitate energy related projects. In response, the DOI on April 23, 2025 instructed its agencies with energy-related responsibilities to adopt "alternative arrangements" to comply with the NEPA for fossil fuel and critical mineral projects. The alternative arrangements included eliminating the draft EIS and completing the final EIS within 28 days of the issuance of the NOI.

On July 5, 2025, following the February 2025 rescission of CEQ's procedures for implementing NEPA, the Department of the Interior published an interim final rule in the *Federal Register* that largely rescinded its previous regulations for implementing NEPA. The new rule narrowed public participation requirements in the EIS process by only requiring public comment on the NOI and making the preparation and release a draft EIS for public review and comment discretionary.[8]

In 2025, three Department of the Interior agencies released six final EISs that were prepared under "alternative arrangements." In each case, the responsible agency eliminated the draft EIS and completed the final EIS from the NOI. These three agencies are identified in Tables 5.3 and 5.4.

[8] Revised NEPA procedures issued by other agencies in 2025 contained the same provisions.

Federal agencies established a new high completion rate for the 1-to-2-year interval (See Table 5-5). The 2025 completion percentage displaced the previous high of 30.3% established in the year 2000.

Table 5-3. A comparison of 2025 final and final supplemental EIS completion rates with averages for the period 1997 through 2024.

Completion Interval in Years from NOI	2025 Completion Percentage	1997 - 2024			
		Average Completion Percentage	Standard Deviation	Lowest Percentage (Year)	Highest Percentage (Year)
0 to 1	5.1	7.3	3.8	0.7 (2018)	16.3 (2022)
1 to 2	42.3	22.5	5.0	13.7 (2015)	30.3 (2000)
2 to 3	20.5	18.7	2.7	15.2 (2008)	24.7 (2023)
3 to 4	7.7	13.2	3.0	8.1 (2022)	19.5 (2019)
4 to 5	10.3	9.9	2.3	5.7 (2024)	16.4 (2012)
5 to 6	2.6	7.1	2.1	2.6 (2023)	10.6 (2011)
6 to 7	7.7	5.7	2.3	0.0 (2021)	10.7 (2006)
7 to 8	0.0	4.0	1.5	1.5 (2000)	7.0 (2013)
8 to 9	1.3	3.5	1.8	1.3 (2002)	7.7 (2021)
9 to 10	2.6	2.1	1.4	0.0 (2 years)	6.0 (2015)
10 to 11	1.3	1.6	1.0	0.4 (3 years)	3.8 (2014)

6. NEPA Legislation in 2025

Charles P. Nicholson, PhD[9]

6.1 Introduction

The 119th Congress convened on January 3, 2025, with a 53-47 Republican majority in the Senate and a 220-215 Republican majority in the House of Representatives. Bipartisan interest in NEPA and permitting reform was high but, as described below, the scope of NEPA legislation enacted in 2025 was limited.

During 2025, 166 bills were introduced that contained the phrase "National Environmental Policy Act" and/or addressed the NEPA review process. The number of NEPA bills is within the 139—203 range of NEPA bills introduced during the first year of the four previous Congresses and only a few more than the 163 bills introduced in 2023. Republicans introduced 115 bills, Democrats introduced 50 bills, and 1 bill was introduced by an Independent. 103 of the NEPA bills were introduced in the House and 63 were introduced in the Senate. 39 of the 166 bills were identical or very similar bills introduced in both chambers, leaving a total of 127 unique NEPA bills. Several of these bills are not considered substantive for purposes of this report because they did not propose any changes to NEPA compliance processes. After accounting for duplicate bills introduced in both chambers, a total of 105 bills is considered substantive and unique and described below.

Following the description of the three substantive bills that became law, the descriptions of proposed legislation are categorized by topic. Many of these bills address broader topics than NEPA and related permitting; this report focuses on the NEPA topics in the bills.

6.2 Legislation Enacted in 2025

H.R. 1 is titled "**An act to provide for reconciliation pursuant to title II of H. Con. Res. 14**" and better known as **One Big Beautiful Bill**. It was enacted as Public Law No. 119-21. While this lengthy bill primarily addresses budget issues, it contains two items addressing NEPA compliance processes. It rescinds unallocated environmental review implementation funds appropriated by the 2022 Inflation Reduction Act to facilitate the environmental review process for surface transportation projects. More substantively, it also amends NEPA by adding a new Section 112 on Project Sponsor Opt-In Fees for Environmental Reviews. This section authorizes a project sponsor to submit a description of a project that would require an EA or EIS to CEQ. Within 15 days, CEQ will provide the project sponsor with the anticipated cost of the EA or EIS. After payment of 125 percent of the anticipated preparation cost for the lead agency to prepare the EA or EIS, or 125 percent of the anticipated cost for the lead agency to supervise the sponsor's preparation of the EA or EIS, the EA will be completed within 180 days of the date of the payment and the EIS will be completed with 1 year of publication of the Notice of Intent.

S. 1071, the **National Defense Authorization Act for Fiscal Year 2026** and enacted as Public Law 119-60, amends the Deepwater Port Act of 1974 by changing the lead agency for NEPA compliance for deepwater port facilities from the Coast Guard to the Maritime Administration and requires the

[9] PO Box 402, Norris, TN 37828; cpnicholson53@gmail.com
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Secretary of Transportation to issue any necessary regulations regarding the NEPA process as soon as practicable. The change does not apply to previously submitted applications. The same NEPA provisions were included in **H.R. 3838**, the **Streamlining Procurement for Effective Execution and Delivery and National Defense Authorization Act for Fiscal Year 2026**, a proposed alternative version of S. 1071.

S.J.Res. 89 and **H.J.Res. 130**, **A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Bureau of Land Management relating to "Buffalo Field Office Record of Decision and Approved Resource Management Plan Amendment"** was signed into law on December 11, 2025 as Public Law 119-51. This joint resolution under the Congressional Review Act declares that the 2024 BLM record of decision and plan amendment which were subsequently determined to be a rule, have no effect. The plan amendment would have reduced the area of public lands available for coal leasing.

6.3 Proposed Legislation

This section summarizes substantive bills introduced but not enacted during 2025. Seven of these bills were passed by the House and two were passed by the Senate. An additional 14 were reported by committee. Much of this action occurred late in the year.

NEPA Regulations and Procedures

S. 2296, an alternative version of the enacted **National Defense Authorization Act for Fiscal Year 2026** (see S. 1071, above), requires the Secretary of Defense to rescind all DOD NEPA directives and replace them with a new department-wide directive ensuring compliance with all requirements under NEPA as amended by the Fiscal Responsibility Act. This measure was not included in S. 1071.

S. 2659, the **504 Credit Risk Management Improvement Act of 2025**, requires the Administrator of the Small Business Administration to, within 180 days, issue rules clarifying NEPA compliance for an eligible certified development company receiving assistance under 15 U.S.C. 695 et seq..

NEPA Streamlining

H.R. 6163, the **Determination of NEPA Adequacy Streamlining Act**, amends Section 108 of NEPA on programmatic NEPA documents to state that completion of a new EA or EIS is not necessary when the proposed action and its impacts are substantially the same as those addressed in an existing EA or EIS. If the action is not substantially the same, the lead agency may modify the existing EA or EIS to address the new action. The modified EA or EIS must be publicly available as a new EA or EIS.

S. 3278, the **Streamlining Modeling for Advanced, Rapid Transportation (SMART) Infrastructure Act of 2025**, directs the Secretary of Transportation, in coordination with CEQ and other agencies, to establish guidelines for integrating digital twin technology into the permitting process and to establish a pilot program using the technology for at least 10 transportation projects. The Secretary is also directed to develop, in coordination with CEQ, the Environmental Protection Agency and the Secretary of Commerce, an e-NEPA portal for covered transportation projects. The Secretary must also reduce NEPA compliance timelines by at least 25 percent compared to existing averages. The Interactive Federal Review Act (S. 1430 and **H.R. 3634**) similarly requires the use of an interactive, cloud-based platform and digital models for at least 10 highway projects.

The **ePermit Act**, **H.R. 4503**, was passed by the House on December 9. It directs CEQ in consultation with the Federal Permitting Improvement Steering Council **a**nd other agencies to develop mandatory standards for data related to environmental reviews and to develop and maintain a unified interagency data system including a common, interactive authorization portal. The portal design shall be consistent with the recommendations in the 2024 CEQ E-NEPA report to Congress.

H.R. 2318, **the Electronic Permitting Modernization Act**, requires the Secretary of Interior to develop an electronic permitting system consistent with the priorities in Section 110 (E-NEPA) of NEPA.

H.R. 1820, the **Federal Lands Amplified Security for the Homeland (FLASH) Act**, requires the Secretaries of Interior and Agriculture, in consultation with the Secretary in Homeland Security, to comply with NEPA on the required construction of roads and security fencing on federal border lands.

H.R. 280, the **Combating Obstruction Against Leasing (COAL) Act of 2025**, requires the Secretary of Interior to publish a draft environmental assessment of a qualified application and to grant the application as soon as practicable. It also nullifies Interior Secretarial Order 3338 issued in January 2016.

The **Improving Interagency Coordination for Pipeline Reviews Act**, **H.R. 3668**, passed the House on December 12, 2025. It requires FERC, as lead agency for natural gas pipeline approvals, to designate participating agencies in the NEPA review. Participating agencies must give deference to FERC on the scope of the review. Agencies that choose not to participate are prohibited from conducting a supplemental NEPA review unless such review is legally necessary and contains information not available during FERC's review. FERC is also prohibited from considering comments or other information submitted by non-participating agencies for the FERC NEPA review.

H.R. 5576, the **Enhancing Geothermal Production on Federal Lands Act**, states that specified geothermal exploration activities are not major federal actions under NEPA. It also requires the Secretary of Interior to identify geothermal leasing priority areas on federal lands where geothermal energy development is not excluded in a land use plan or by other law. Within one year, the Secretary must prepare a supplement to any final programmatic EIS for geothermal leasing. No additional NEPA analysis is required for subsequent geothermal leasing actions in the identified priority areas for at least a 10-year period unless there are substantial new circumstances or information.

S. 904, the **Livestock Disaster Assistance Improvement Act of 2025**, waives the 30-day public comment period required by NEPA on applications to enact drought emergency measures for agricultural production or grazing on federal land. It also authorizes the Secretary of Interior to rely on NRCS NEPA reviews of such measures.

The **Fix Our Forests Act, H.R. 471**, was introduced in mid-January and promptly passed a few days later in a bipartisan vote. A similar version was passed by the House in the previous 118th Congress. It requires the designation of fireshed management areas on public lands and establishes a strike team within the Department of Agriculture to assist with the NEPA reviews and consultations for fireshed management projects. A publicly available fireshed registry website would include the status of NEPA reviews and permitting for fireshed management projects. Other parts of the bill addressing categorical exclusions and judicial review are described below. The very similar **S. 1462** **Fix Our Forests Act** contains most of the same NEPA provisions as H.R. 471.

S. 2015 and **H.R. 3889**, the **National Prescribed Fire Act of 2025**, encourages increased use of prescribed fire on National Forest System and BLM land through, among other things, the development of landscape-scale prescribed fire plans prepared pursuant to NEPA. Following completion of the plans, subsequent decisions do not need additional NEPA review.

H.R. 2301, **To promote the development of renewable energy on public land, and for other purposes**, directs the Secretary of Interior to review and update the 2005 BLM programmatic EIS on wind energy development, the 2008 BLM programmatic EIS on geothermal leasing, and the 2012 BLM programmatic EIS on solar energy development. The Secretary is required, subject to certain exceptions, to issue the NOI for an EIS determined necessary within 180 days of notifying the applicant that the application for a right-of-way is complete.

The **Marine Energy Technologies Acceleration Act**, **H.R. 5692**, requires the Secretary of Energy, in coordination with FERC, BOEM, NOAA, and USACE, to develop within one year recommendations for efficient permitting processes, including compliance with NEPA, for marine energy projects. Marine energy projects include energy from waves, tides, and currents, thermal, salinity, and pressure gradients, and free-flowing water in streams and man-made channels.

H.R. 978, the **Superior National Forest Restoration Act of 2025**, requires that the NEPA review for a mine plan of operations within Superior National Forest be completed within 18 months and any supplemental reviews be completed within 6 months.

H.R. 3654, the **Tribal Emergency Response Resources Act (TERRA Act)**, requires the Secretary of Interior and applicable Indian tribe to establish a schedule for the NEPA review to not exceed one year to the maximum extent practicable. The consideration of the no action will have a presumption of negative impacts on the Indian Tribe. The tribe can petition a federal court over the failure of a participating agency to meet an applicable deadline described in a coordinated project schedule. The court can then set a new schedule not to exceed 90 days from the date of the court order.

H.R. 4669, the **Fixing Emergency Management for Americans (FEMA) Act of 2025**, establishes a unified interagency review process for compliance with NEPA, as well as with NHPA. It also requires that a FEMA- or state-prepared EIS have a comment period on a draft of the EIS for at 45 to 60 days.

The **Water Agency and Transparency Enhancement Review (WATER) Act**, **H.R. 6639**, requires the Secretaries of Interior and Commerce to identify all ongoing or potential major water-supply and storage projects in California for which they have responsibilities under NEPA and designate a federal official to coordinate each agency's NEPA compliance responsibilities. The federal official is then to identify regulatory hurdles that unduly burden each project and develop a proposed plan to suspend, revise, or rescind regulatory hurdles not necessary to protect the public interest or comply with the law.

H.R. 6640, the **Build Now Act**, requires that the environmental review for a federal permit for Central Valley Project enhancement projects be completed within one year of submission of the permit application.

H.R. 6644, the **Housing for the 21st Century Act** directs the Secretary of Housing and Urban Development and Secretary of Agriculture to enter into a memorandum of understanding to evaluate applicable categorical exclusions for housing projects and develop a process for lead agency designation and streamline the adoption of EISs and EAs for jointly funded housing projects. The **Streamlining Rural Housing Act of 2025, S. 2423** and **H.R. 4989**, contains the same provision and includes the formation of a stakeholder advisory group to consult on the implementation of the memorandum.

The **Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act of 2025**, **S. 1541**, adds "maritime industry" to the list of covered projects in Title 41 of the Fixing Americas Surface Transportation Act.

H.R. 3742, the **Offshore Energy Modernization Act of 2025**, appropriates $50 million to BOEM and $45 million to NOAA for the development of programmatic environmental documents, hiring of personnel, and other measures to facilitate permitting and review of offshore renewable energy projects.

H.R. 5227, the **Unleashing Low-Cost Rural AI Act**, directs the Secretary of Energy to study the impact of artificial intelligence and data center site growth on US energy supply resources, including means to expedite their review under NEPA, including generation and transmission assets.

S. 2176, the **NNSA Infrastructure Improvements Act of 2025**, requires the Administrator of the National Nuclear Security Administration to annually report to Congress on the status of NEPA reviews for certain infrastructure investments.

NEPA Assignment / Delegation

H.R. 6491 and **S. 3284**, the **Streamline Transit Projects Act**, amends 49 USC 53 to authorize the Secretary of Transportation to assign qualifying transit agencies to assume responsibility for categorical exclusion determinations.

The **Better Use of Intergovernmental and Local Development for (BUILD) Housing Act**, **H.R. 4810** and **S. 2391**, authorizes the Secretary of Housing and Urban Development to allow the state or local government unit to assume NEPA responsibilities, as described in 42 U.S.C. 3547, for certain housing assistance funds.

S. 2651, the **Renewing Opportunity in the American Dream (ROAD) to Housing Act of 2025**, authorizes tribes to assume NEPA responsibilities for certain housing-related special projects. This authority was previously granted to states and local government units. The similar House version, **H.R. 6644**, the **Housing for the 21st Century Act**, and **S. 2296**, an alternative version of the enacted **National Defense Authorization Act for Fiscal Year 2026** (see S. 1071, above), contain similar provisions.

H.R. 4669, the **Fixing Emergency Management for Americans (FEMA) Act of 2025**, authorizes the assignment of NEPA responsibilities for disaster recovery projects to states and requires the FEMA Administrator to promulgate rules for the assignment within 180 days.

The **Water Authority and Timely Environmental Review (WATER) Act of 2025**, **U.S. 3316**, authorizes qualifying states to assume Section 404 and Section 10 permitting responsibilities, along with associated NEPA compliance responsibilities.

Categorical Exclusions

H.R. 168, the **Targeted Operations to Remove Catastrophic Hazards (TORCH) Act**, directs the Secretary of Agriculture to develop a categorical exclusion for high priority hazard tree activities. The application of the categorical exclusion is subject to consideration of extraordinary circumstances. The bill also categorically excludes, without consideration of extraordinary circumstances, the development and implementation of specified vegetation management, facility inspection, and operation and maintenance plans for electric utility line rights-of-way and increases the acreage limit for categorically excluded collaborative restoration projects under Section 603(c)(1) of the Healthy Forests Restoration Act.

The **Emergency Fuel Reduction Act of 2025**, **S. 395**, amends Section 104 of the Healthy Forests Restoration Act of 2003 to categorically exclude hazardous fuel reduction projects on federal land where there is a risk to adjacent non-federal land and where fuel reduction would benefit threatened and endangered species. It does not mention consideration of extraordinary circumstances.

H.R. 179, the **Proven Forest Management Act of 2025**, categorically excludes forest fuel reduction activities on National Forest System land not exceeding 10,000 acres, including not more than 3,000 acres of mechanical thinning, that is developed in cooperation with local governments and other impacted parties and consistent with the relevant forest plan. The evaluation of extraordinary circumstances is not mentioned.

S. 140, the **Wildfire Prevention Act of 2025**, directs the Secretary of Agriculture to develop a categorical exclusion for high-priority hazard tree activities not exceeding 3,000 acres subject to consideration of extraordinary circumstances.

The **Fix Our Forests Act**, **H.R. 471**, categorically excludes various forest management activities in designated fireshed management areas as well as vegetation management and operation and maintenance activities on electric utility line rights-of-way on specified public lands.

H.R. 2709, the bipartisan **Save Our Sequoias Act**, categorically excludes specified protection projects and reforestation and rehabilitation activities, subject to consideration of extraordinary circumstances.

H.R. 4041, **To exempt certain forest management activities in Yosemite National Park from requirements of section 102 of the National Environmental Policy Act of 1969, and for other purposes**, categorically excludes fuel removal and reforestation activities in Yosemite National Park.

The **Streamlining Thermal Energy through Advanced Mechanisms (STEAM) Act**, **H.R. 1077**, amends the Energy Policy Act of 2005 to categorically exclude certain geothermal exploration and development activities in areas where drilling has occurred within the previous five years or where geothermal development was considered in a land use plan or NEPA review approved within the previous five years.

H.R. 4068, the **Streamlining NEPA for Coal Act**, requires the Secretary of Interior to identify and report to Congress on existing and potential categorical exclusions, including those of other agencies, that could further coal production and export.

S. 2968, the **Outdoor Americans with Disabilities Act**, declares that the closure of certain roads and establishment of certain new roads on National Forest System and Department of Interior lands is categorically excluded, subject to consideration of extraordinary circumstances.

S. 896 and **H.R. 5639**, the **Co-Location Energy Act**, directs the Secretary of Interior to determine whether the issuance of a permit for solar or wind energy-related actions on federal lands not subject to an existing federal energy lease under the Mineral Leasing Act or Geothermal Steam Act can be categorically excluded.

H.R. 4660 and **S. 2390**, **Unlocking Housing Supply Through Streamlined and Modernized Reviews Act**, directs the Secretary of Housing and Urban Development to establish categorical exclusions for other housing-related activities involving rehabilitation of existing buildings and new construction.

The **HOME Reform Act of 2025**, **H.R. 5798**, categorically excludes actions related to infill housing projects, property acquisition for affordable housing, rehabilitation projects, and new construction projects of 15 units or less. The very similar **H.R. 5878**, also named the **HOME Reform Act of 2025**, contains the same NEPA language. **S. 2296**, an alternative version of the enacted **National Defense Authorization Act for Fiscal Year 2026** (see **S. 1071**, above), in a section on housing assistance allows Indian tribes to assume NEPA responsibilities for HUD housing actions under 42 U.S.C. 3547 and also categorically excludes several housing-related actions including infill housing and modifications to existing buildings.

In contrast to other bills categorically excluding actions, **H.R. 381**, the **LNG Public Interest Determination Act of 2025**, terminates the existing DOE categorical exclusion B5.7 on export of natural gas and associated transportation of natural gas by marine vessel.

NEPA Exemptions / Not Major Federal Action

The following bills declare that specified actions are either not major federal actions under NEPA or are exempt from NEPA requirements. Some of these bills also exempt the action from compliance with Section 7 of the ESA, the National Historic Preservation Act, and Section 404 of the Clean Water Act.

H.R. 676, **To exempt Federal actions related to energy and mineral activities on certain Federal lands from the requirements of the National Environmental Policy Act of 1969**, for authorization of exploration, development, and production or extraction of oil, gas, and coal under the Mineral Leasing Act and of critical minerals under the Mining Law of 1872 on land open to mineral entry.

The **Harnessing Energy At Thermal Sources (HEATS) Act**, **H.R. 5587**, for the issuance of a permit for geothermal exploration and production on non-federal surface estate where the federal ownership of the subsurface estate is less than 50 percent.

H.R. 5576, the **Enhancing Geothermal Production on Federal Lands Act**, for specified geothermal exploration activities.

S. 378, the **Expediting Hazard Mitigation Assistance Projects Act**, for FEMA actions of specified property acquisition, structure demolition, and relocation projects when, in consultation with state and local officials, FEMA has considered the recovery process, potential serious environmental issues, and other factors.

H.R. 4669, the **Fixing Emergency Management for Americans (FEMA) Act of 2025**, for certain facility repair or replacement actions in declared disaster areas provided they are in the same location as the original facility.

H.R. 731, the **Green Tape Elimination Act of 2025**, for specified hazardous fuel reduction activities on federal land for a 10-year period.

Five bills exempt various Housing and Urban Development actions related to housing. These are **H.R. 4660** and **S. 2390**, the **Unlocking Housing Supply Through Streamlined and Modernized Reviews Act;** H.R. 6327, the **Rural Housing Regulatory Relief Act**; **S. 2651**, the **Renewing Opportunity in the American Dream (ROAD) to Housing Act of 2025**; **H.R. 6644**, the **Housing for the 21st Century Act**; and **H.R. 5085**, **To exempt Federal actions related to the construction of infill housing from the requirements of the National Environmental Policy Act of 1969, and for other purposes**.

S. 2440, **A bill to direct the Secretary of Agriculture to convey certain National Forest System land located in Franklin County, Mississippi, and for other purposes**, declares that compliance with NEPA is not required for the transfer of 311 acres of National Forest System land in Mississippi to a state agency. It was reported by committee.

The **Star-Spangled Summit Act of 2025**, **S. 2417** and **H.R. 4684**, for the issuance of a special use permit for actions related to a flagpole on National Forest System land.

S. 3383, the **Unlocking Native Lands and Opportunities for Commerce and Key (UNLOCK) Economic Developments Act of 2025**, for Secretary of Interior approval of Tribal regulations on the granting of rights-of-way on Tribal land.

H.R. 1555, the **Bureau of Land Management Mineral Spacing Act**, for oil and gas exploration and production on non-Federal surface estate where the U.S. owns less than half of the subsurface mineral estate.

S. 2173, the **For Sale Act of 2025**, and **S. 3091** and **H.R. 6675**, the **Disposing of Inactive Structures and Properties by Offering for Sale And Lease (DISPOSAL) Act**, for the mandated sale of certain federal buildings.

S. 2226, the **Necessary Environmental Exemptions for Defense Act**, for Department of Defense actions that are certified to be directly related to countering the threat of the Chinese Communist Party.

The **Infrastructure Project Acceleration Act**, **H.R. 2783**, amends Section 106(a) of NEPA by adding that actions that are the subject of a state or tribal environmental review statute that the lead agency determines is functionally equivalent to NEPA are exempt from NEPA.

H.R. 775, the **No Net Gain in Federal Lands Act of 2025**, for the conveyance of federal land to states in order to meet a not net gain requirement.

H.R. 1897, the **ESA Amendments Act of 2025**, for the issuance of incidental take permits under Section 10(a) of the ESA.

S. 2342, the **Intelligence Authorization Act for Fiscal Year 2026**, amends Section 106 of NEPA to state that the President can waive NEPA requirements for certain intelligence community actions related to the collection of foreign intelligence or covert actions.

S. 2975, the **Pipeline Integrity, Protection, and Enhancement for Leveraging Investments in the Nation's Energy (PIPELINE) Safety Act of 2025**, for the establishment of a pipeline testing program by the Secretary of Transportation.

S. 1541, the **Shipbuilding and Harbor Infrastructure for Prosperity and Security (SHIPS) for America Act of 2025**, declares that certain payments from the newly established Maritime Security Trust Fund and some shipbuilding financial incentives are not major federal actions under NEPA.

As in recent past sessions of Congress, multiple bills were introduced or reintroduced that declare that various actions regarding wireless and other communication facilities are not major federal actions under NEPA. Most of these bills also declare that the actions are not undertakings under the National Historic Preservation Act. These bills are:

- H.R. 2289, the **Proportional Reviews for Broadband Deployment Act**, for certain actions involving modification of existing wireless towers or base stations.
- H.R. 1541, the **Wireless Broadband Competition and Efficient Deployment Act**, for installation of a collocated personal wireless service facility at an existing such facility and modification to such facility.
- H.R. 5273, the **Broadband Competition and Efficient Deployment Act**, for placement or modification of a telecommunications service facility on an existing support structure.
- H.R. 5264, the **Streamlining Permitting to Enable Efficient Deployment (SPEED) for Broadband Infrastructure Act of 2025**, for certain new communications facilities that replace existing facilities and the grant of easement for a communication facility on federal property where there is an existing easement for another communications or utility facility.
- H.R. 4211, the **Brownfields Broadband Deployment Act**, for deployment or modification of a communication facility on a brownfield site.
- H.R. 5358, the **Timely Replacement Under Secure and Trusted for Early and Dependable (TRUSTED) Broadband Networks Act**, for removal and replacement of certain communications equipment.
- H.R. 2298, the **Reducing Barriers for Broadband on Federal Lands Act of 2025**, for certain broadband infrastructure projects on a road right-of-way other than an interstate highway.
- H.R. 3960, the **Connecting Communities Post Disasters Act of 2025**, for replacement or improvement of certain communication facilities in a declared disaster area.
- H.R. 1655, the **Wildfire Communications Resiliency Act**, for replacement of damaged communications facilities within declared major disaster areas.
- H.R. 5318, the **Reducing Antiquated Permitting for Infrastructure Deployment (RAPID) Act**, for certain small personal wireless service facilities.
- H.R. 2817, the **Coastal Broadband Deployment Act**, for the deployment or modification of a communications facility entirely within a floodplain.

Multiple bills were also again introduced that declared that the execution of certain tribal water rights agreements are not major federal actions under NEPA. Subsequent actions to implement the agreements are subject to NEPA. Most of the Senate versions of these bills were reported by committee.

- S. 562 and H.R. 1322, the **Rio San José and Rio Jemez Water Settlements Act of 2025**.
- S. 563 and H.R. 1323, the **Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2025**.
- S. 564 and H.R. 1444, the **Zuni Indian Tribe Water Rights Settlement Act of 2025**.
- S. 565 and H.R. 1324, the **Navajo Nation Rio San José Stream System Water Rights Settlement Act of 2025**.
- H.R. 5935, the **Agua Caliente Band of Cahuilla Indians Water Rights Settlement Act**.
- S. 689, the **Tule River Tribe Reserved Water Rights Settlement Act of 2025**.
- S. 953 and H.R. 2025, the **Northeastern Arizona Indian Water Rights Settlement Act of 2025**.
- S. 241 and H.R. 907, the **Northern Montana Water Security Act of 2025**.

Judicial Review

S. 109, the **Offshore Energy Security Act of 2025**, declares that litigation under NEPA over an offshore oil and gas lease sale shall not affect the validity of the lease. If the environmental review is found to have violated NEPA, the court cannot vacate the lease and must remand the matter to the Secretary of Interior to resolve the violation.

S. 1355, the **Revising and Enhancing Project Authorizations Impacted by Review (REPAIR) Act of 2025**, sets a 120-day statute of limitations for an initial claim for judicial review. If the court rules in favor of the plaintiff, the default remedy is to remand the authorization to the applicable agency and the court cannot vacate or enjoin the authorization unless the authorization presents an imminent and substantial danger to human health or the environment. If the authorization is vacated or enjoined, the project sponsor and agency must each submit a remediation proposal to the Federal Permitting Improvement Steering Council who will review the proposal within 60 days. The bill also amends NEPA by adding a Section 112 on Judicial Standing which states that there is no judicial right of action under NEPA or the Administrative Procedure Act related to the approval of an authorization for a project that uses an environmental review.

The **Protect LNG Act of 2025**, S. 1901 and H.R. 3592, prohibits a court from setting aside or vacating the approval of a covered LNG facility after the court finds a violation of NEPA or the Natural Gas Act and instead requires that the matter be remanded to the agency to resolve the violation. Judicial review must occur in the U.S. Court of Appeals for the circuit in which the covered facility is located, and the court must give the complaint expedited review. Claims for judicial review must be filed within 60 days of agency final action.

H.R. 471, the **Fix Our Forests Act** establishes a 120-day statute of limitations for claims for judicial review of fireshed management projects as well as conditions under which the court can vacate or enjoin the action or remand the matter.

S. 140, the **Wildfire Prevention Act of 2025**, allows a unit of local government or tribe to intervene in litigation over a qualified forest management project.

The **Superior National Forest Restoration Act of 2025**, **H.R. 978**, declares that the issuance of mineral leases and prospecting permits within Superior National Forest is not subject to judicial review.

S. 1485, the **North American Energy Act**, requires that a petition for judicial review of a final action under the act, including an action under NEPA, be filed in the U.S. Court of Appeals for the circuit in which the applicant is located or in the U.S. Court of Appeals for the District of Columbia. The petition must be filed within 60 days of the final agency action.

H.R. 2783, the **Infrastructure Project Acceleration Act**, prohibits judicial review of federal and assigned state actions related to priority manufacturing projects.

H.R. 3231, the **American Energy Act**, prohibits a court from enjoining or preventing a lease sale under the Mineral Leasing Act on NEPA grounds if the bids for the sale have been opened.

Scope of Review

The **Action Versus No Action Act**, **H.R. 184**, limits the scope of EAs and EISs on forest management actions on certain public lands developed through collaborative processes to the proposed action and no action alternatives. The analysis of the no action alternative must address its effects on forest health, loss of life and property, habitat diversity, wildfire, insect, and disease potential, and timber production, as well as associated economic and social factors.

The **Department of the Interior, Environment, and Related Agencies Appropriations Act, 2026**, **H.R. 4754**, requires the preparation of an EIS for non-federal oil or gas operations within the Big Cypress National Preserve.

H.R. 3927, the **Nationwide Permitting Improvement Act**, amends the CWA at 33 U.S.C. 1344 by adding that NEPA requirements for the reissuance of a nationwide 404 permit are satisfied by preparing an EA.

H.R. 3898, the **Promoting Efficient Review for Modern Infrastructure Today (PERMIT) Act**, declares that NEPA requirements for the issuance of a Section 404 general permit are satisfied by the preparation of an EA (the normal practice).

H.R. 381, the **LNG Public Interest Determination Act of 2025**, amends the Natural Gas Act to require natural gas exports to be authorized by the Secretary of Energy instead of FERC and considered a major federal action under NEPA. Any authorization must follow a public interest determination that considers climate change and GHG emissions, the effect on domestic natural gas price, and disproportionate impacts on rural, low-income, minority, and other vulnerable communities. The DOE impact assessment must quantify full lifecycle GHG emissions, the social cost of GHG emissions, and effects on clean energy alternatives.

The **Malheur Community Empowerment for the Owyhee Act**, S. 1942, directs the Secretary of Interior to analyze at least one alternative to provide operational flexibility in livestock grazing in the NEPA review of a grazing permit/lease on public land in Malheur County, Oregon.

Miscellaneous

S. 2444 and H.R. 4714, the **End Polluter Welfare Act of 2025**, repeals sections 106 through 112 of NEPA and amends Section 102(c) by eliminating the changes made by the Fiscal Responsibility Act.

While the **Studying NEPA's Impact on Projects (SNIP) Act**, H.R. 573 and S. 1191, has no direct effect on NEPA compliance processes, it amends Section 201 of NEPA to require CEQ to annually report to Congress on lawsuits alleging violations of NEPA, page counts including average, median, and trends for completed EISs, EIS preparation costs, and timelines including average, median, and trends for completed EISs. The reports are to be publicly available with the data disaggregated by sector.

H.R. 1997, the **Productive Public Lands Act**, requires the Secretary of Interior to reissue nine 2024 BLM records of decision and associated resource management plans with different preferred alternatives.

H.R. 230, **To prohibit the implementation of the Approved Resource Management Plan Amendment for the Buffalo, Wyoming Field Office of the Bureau of Land Management,** was introduced in early January. The joint Congressional Review Act resolution S.J.Res. 89/H.J.Res. 130 passed and signed by the President in December, had the same effect.

H.R. 3061, the **Bringing Reliable Investment into Domestic Gulf Energy (BRIDGE) Production Act of 2025**, declares that the January 2023 BOEM FEIS on Gulf of Mexico oil and gas lease sales 259 and 261 meets all NEPA requirements for specified lease sales.

The **Coast Guard Authorization Act of 2025**, H.R. 4275 and S. 524, transfers lead agency authority for deepwater ports from the Coast Guard to the Maritime Administrations. This transfer was included in S. 1071, the **National Defense Authorization Act for Fiscal Year 2026**, enacted as Public Law No. 119-60.

7. NEPA Case Law—2025

P.E. Danko, Esq. [10]

Melanie Hernandez, Esq.

Fred Wagner, Esq.

This paper reviews decisions on substantive NEPA cases issued by federal courts in 2025 and explains the implications of the decisions and their relevance to NEPA practitioners.

7.1 Introduction

In 2025, the U.S. Courts of Appeals issued 32 substantive decisions involving implementation of the National Environmental Policy Act (NEPA) by federal agencies. The 32 cases involved six different departments and one independent agency. Overall, the federal agencies prevailed in 22 of the cases, did not prevail in 3 cases, and prevailed on one NEPA claim but not the other NEPA claim(s) in 6 cases, with a total prevail rate of 71 percent (81 percent if the partial cases are included). The U.S. Supreme Court issued one NEPA opinion in 2025 in which the federal agency prevailed. Opinions from the U.S. District Courts were not reviewed.

For comparison purposes, Table 7-1 shows the number of U.S. Court of Appeals NEPA case decisions issued in 2006 – 2025, by circuit. The D.C. Circuit Court of Appeals tied with the Ninth Circuit, both issuing 11 decisions, greatly exceeding those in the other circuits and accounting for 72% of the 2025 cases. The 32 decisions issued in 2025 is above the 2006 – 2024 annual average of 23 decisions per year. Figure 7-1 illustrates the states covered by each circuit court.

7.2 Statistics

Federal agencies prevailed in 71 percent (81 percent if the partial opinions are included) of the substantive NEPA cases brought before the U.S. Courts of Appeals.

The Federal Energy Regulatory Commission (FERC) was the defendant in the largest number of cases with 8 cases. The Department of Agriculture (USDA) (Animal and Plant Health Inspection Service [APHIS], U.S. Forest Service [USFS]) was a defendant in 7 cases. The Department of War (DOW)[11] (United States Army Corps of Engineers, Department of the Navy), and the Department of the Interior (DOI) (Bureau of Land Management [BLM]) were each involved in 5 cases. The Department of Transportation (DOT) (Federal Aviation Administration [FAA], and the Pipeline and Hazardous Materials Safety Administration [PHMSA]) were each involved in 3 cases. The Surface Transportation Board was

[10] Questions about this paper should be directed to: P.E. Danko, Esq., Environmental Attorney, Hudson Danko Eng'r, LLC, pam@hudsondanko.com; Melanie Hernandez, Esq., Environmental Attorney, Co-Founder, Scout, 169 Saxony, Suite 214, Encinitas, CA 92024, melanie.hernandez@scoutenv.com; Fred Wagner, Esq., Principal Environmental Regulatory Advisor, Jacobs, fred.wagner@jacobs.com.

[11] Formerly, the Department of Defense.

Table 7-1. Number of U.S. Courts of Appeals NEPA opinions, by year and circuit

U.S. Courts of Appeals Circuits													
	1st	**2nd**	**3rd**	**4th**	**5th**	**6th**	**7th**	**8th**	**9th**	**10th**	**11th**	**D.C.**	**TOTAL**
2006					3		1	1	11	6		1	23
2007	1				1				8	2		3	15
2008	1	1	1					2	13	3	1	2	24
2009	1	3	1	2	1	1		1	13	2		2	27
2010		1				2	1	1	12	4	1	1	23
2011	1		1						12				14
2012	2	1	2	3	1		1		12	3	2	1	28
2013	2			2		1	1		9	2	1	3	21
2014				2		5			10	2		3	22
2015	1					1			6	2		4	14
2016				2		1	1		14	1	1	7	27
2017		1	1		1				13	1		8	25
2018			1	3	2	1			16		3	9	35
2019				1			1	1	9	2	1	6	21
2020		1			1	1			19		2		24
2021	1	1		2			1		6	2		5	18
2022				2		1	1		15	2	1	5	27
2023				1	2		2	1	12	3	1	3	25
2024	1				1		1		10	3		10	26
2025				**1**	**2**			**1**	**11**	**2**	**3**	**11**	**32**
TOTAL	11	9	7	21	15	14	11	8	231	42	17	84	471
Proportion of total	**2%**	**2%**	**2%**	**5%**	**3%**	**3%**	**2%**	**2%**	**49%**	**9%**	**3%**	**18%**	**100**

involved in two cases. The Department of Energy (DOE) and the Department of Homeland Security (DHS) were each involved in 1 case.

FERC prevailed in all of its 8 cases. The USDA prevailed in 3 of its 7 cases (in 2 cases the USDA did not prevail but partially prevailed in the remaining 2 cases). The DOW prevailed in all but 1 of its 5 cases.[12] The DOI prevailed in 2 of its 5 cases (in 1 case the DOI did not prevail but partially prevailed in the remaining 2 cases). The DOT prevailed in 2 of its 3 cases. The Surface Transportation Board prevailed in both of its cases. Both DOE and DHS prevailed in each of their cases.

[12] *See* Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force, 128 F.4th 1089 (9th Cir. 2025), *cert. granted sub nom. Dep't of Air Force v. Prutehi Guahan*, No. 25-579 (U.S. Mar. 9, 2026)

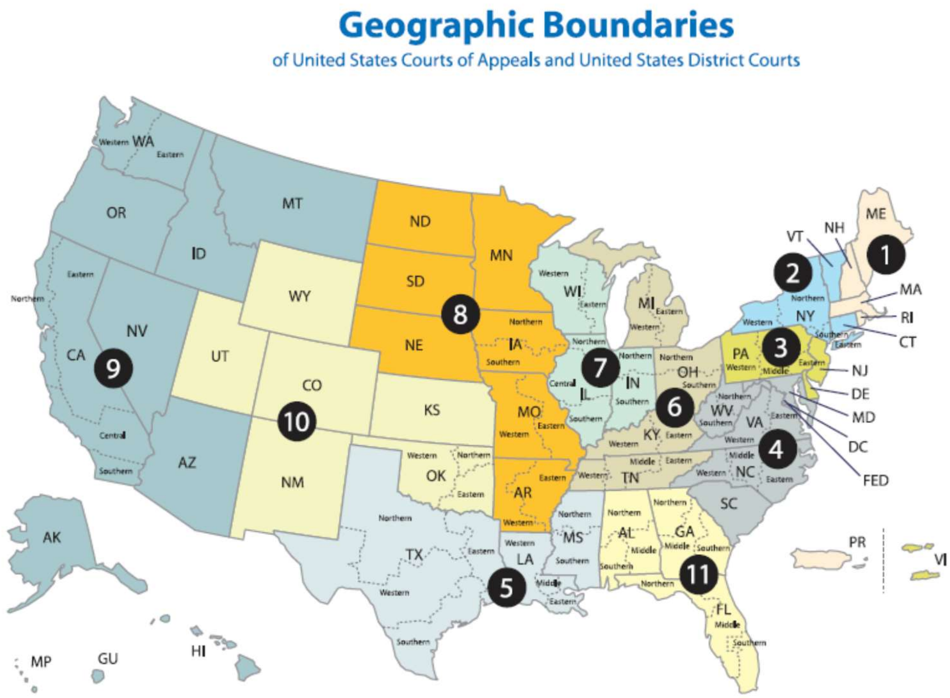

Figure 7-1. Map of U.S. Circuit Courts of Appeal

Of the 32 substantive cases, 2 cases involved a categorical exclusion (CE), 15 cases involved environmental assessments (EA), 12 cases involved environmental impact statements (EIS), 1 case involved a Determination of NEPA Adequacy (DNA)[13], and 2 cases involved the lack of NEPA documents or involved federal action challenges, and 1 case (as reported in footnote 2) did not have a majority NEPA holding in its interlocutory appeal[14], but contained a strong dissent involving a substantive NEPA claim. For those cases involving CEs, the agency prevailed in both; for EAs, the agency prevailed in 9 cases, did not prevail in 2 cases, and partially prevailed in 4 cases (73% agency success rate if partial cases counted, otherwise 60%); and for EISs, the agencies prevailed in 10 cases, and partially prevailed in 2 cases (92% success rate if partial cases counted, otherwise 83%).

<u>Post *Seven County* Statistics</u>

The Supreme Court of the United State's May 29, 2025 opinion in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168, 145 S.Ct. 1497 (2025) (described in more detail below) is the most significant court ruling in a NEPA case in many years. Thirteen Circuit Court opinions were issued in 2025 after the *Seven County* ruling. Most of these courts cited the *Seven County* opinion although the extent and manner that the *Seven County* opinion affected the 13 opinions varied. Agencies were

[13] One case involved both an EA and a Determination of NEPA Adequacy (DNA), and in that case the agency prevailed on some claims but did not prevail in other claims.

[14] An interlocutory order or decree is one which only decided an intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on the merits. BLACKS LAW DICTIONARY 815 (6th ed. 1990).

successful in all but one of these cases (in one case the agency did not prevail, and in another partially prevailed) of the 13 cases[15] (92% agency success rate, 96% if partial cases are counted):

1. *Appalachian Voices v. Fed. Energy Reg. Comm'n*, 139 F.4th 903 (D.C. Cir. 2025) (Agency Prevailed)

2. *Coalition to Stop CPKC v. Surface Transp. Board*, No. 23-1165, 2025 WL 1720672 (D.C. Cir. Jun. 20, 2025) (Agency Prevailed)

3. *Center for Biological Diversity v. U.S. Bureau of Land Mgm't*, 141 F.4th 976 (9th Cir. 2025) (Agency Partially Prevailed)

4. *American Wild Horse Campaign v. Raby*, 144 F.4th 1178 (10th Cir. 2025) (Agency Prevailed)

5. *Sierra Club. v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. 2025) (Agency Prevailed)

6. *Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep't of Interior*, 153 F.4th 748 (9th Cir. 2025) (holding that agency did not prevail in its consideration of a land exchange but not discussing NEPA in the interlocutory appeal; Circuit Judge Bumatay, dissenting, would have upheld the land exchange, and the strongly opined it complied with NEPA, citing to *Seven County*) *Not counted for statistical purposes.

7. *Cascadia Wildlands v. U.S. Bureau of Land Mgm't,* 153 F. 4th 869 (9th Cir. 2025) (Agency Prevailed)

8. *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (Agency Prevailed)

9. *Badger Helicopters v. Fed. Aviation Admin.,* 154 F. 4th 902 (8th Cir. 2026) (Agency Prevailed)

10. *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n,* 157 F.4th 674 (5th Cir. 2025) (Agency Prevailed)

11. *Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec*., No. 25-12873, 2025 WL 2598567 (11th Cir. Sept. 4, 2025)

12. *American Whitewater v. U.S. Forest Serv*., 2025 WL 2945591 (9th Cir. Oct. 17, 2025) (Agency Prevailed)

13. *Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs*, No. 24-14171 (11th Cir. Oct. 20, 2025) (Agency Prevailed)

[15] The statistics do not include the *Shoshone-Bannock* case because it did not contain a substantive NEPA ruling by the majority, however, the dissent relies on *Seven County* in its opinion that underlying NEPA analysis by the lower court was flawed.

Sector Statistics

The sectors addressed in the court opinions, and the number of cases addressing each sector are listed below. Note that many cases involved multiple sectors.

Land Management – 10
Energy (Gas) – 10
Transportation (Rail) - 3
Energy (Oil) – 2
Energy (Oil and Natural Gas) – 2
Transportation (Aviation) – 2
Construction –2
Energy (Hydroelectric) – 1
Defense - 1
Utility – 1
Security – 1

7.3 Trends

The following relates some trends and interesting conclusions from the substantive 2025 cases.

Alternatives Considered: Nine cases involved challenges to the sufficiency of the alternatives considered, and the courts upheld the agencies' selection of the preferred alternative in each case except for one.

- *Citizens Action Coal. of Indiana, Inc. v. Fed. Energy Reg. Comm'n*, 125 F.4th 229 (D.C. Cir. 2025) (upholding FERC's rejection of petitioner's preferred expanded range of alternatives because they would not satisfy the purpose of transporting natural gas to the applicant, and rejecting petitioner's argument that non-gas alternatives be considered as part of the baseline no-action alternative)

- *American Whitewater v. Fed. Energy Reg. Comm'n*, 125 F.4th 1139 (D.C. Cir. 2025) (holding that FERC reasonably concluded that removal of the dams was infeasible for a variety of practical and environmental reasons and did not need to be considered as part of the reasonable range of alternatives)

- *North Cascades Conserv. Council v. U.S. Forest Serv.,* 136 F.4th 816 (9th Cir. 2025) (concluding that the USFS sufficiently analyzed viable alternatives because they considered in depth both a no-action alternative and a proposed action alternative and discussed eleven other alternatives rejected from detailed study, including North Cascades Conservation Council's preferred "natural succession" alternative)

- *Center for Biological Diversity v. U.S. Bureau of Land Mgm't*, 141 F.4th 976 (9th Cir. 2025) (upholding BLM's use of a "full field development" standard to guide its alternatives analysis, and finding that the agency had a rational basis for structuring its review around full development of the leases but finding that BLM failed to adequately explain why the final approved alternative deviated from that standard)

- *American Wild Horse Campaign v. Raby*, 144 F.4th 1178 (10th Cir. 2025) (rejecting American's Wild Horse Campaign's argument that BLM failed to adequately consider alternatives and concluding that BLM evaluated a reasonable range of alternatives, including different gather methods, levels of removal, and management strategies such as fertility control)

- *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (upholding FERC's definition of the no-action alternative and concluding that FERC reasonably presumed that TVA's natural gas generating plant would be built regardless of whether the pipeline in question was ever approved)

- *Badger Helicopters v. Fed. Aviation Admin.,* 154 F. 4th 902 (8th Cir. 2026) (rejecting petitioners' contention that the agencies did not include alternatives that would have adjusted the flight routes or altitudes from the current flight operations because they considered and rejected including other alternatives like those preferred by petitioners)

- *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (5th Cir. 2025) (upholding the agency's admittedly brief analysis of the no-action alternative because FERC provided a resource-by-resource analysis of the existing state of each resource (i.e., the baseline) and how the project would impact that *status quo* citing to *Seven County*)

- *American Whitewater v. U.S. Forest Serv.,* No. 24-6402, 2025 WL 2945591 (9th Cir. Oct. 17, 2025) (holding that the USFS analyzed a reasonable range of alternatives in the Project's EA and agreeing with the USFS' choice to prioritize safety in framing the Project's purpose and need even if it ultimately narrowed the range of alternatives that the agency considered)

Connected Actions (Segmentation): Four cases involved allegations that the agency segmented the action by not including connected actions.

- *Okeelanta Corporation v. U.S. Army Corps of Eng'rs*, 132 F.4th 1320 (11th Cir. 2025) (holding that the Corps reasonably defined the scope of its NEPA analysis by focusing on the effects of the permitted project rather than broader regional activities, and emphasizing that NEPA requires agencies to evaluate impacts that are proximately caused by the federal action, not speculative or attenuated effects that depend on independent decisions by third parties)

- *Sierra Club. v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. 2025) (refusing to order FERC to consider the impacts of a potentially related state facility as part of its NEPA review, because FERC was not the authorizing agency for that state facility, and that the action was not "federalized" for purposes of NEPA review)

- *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (rejecting Sierra Club's allegations that FERC failed to consider impacts of the natural gas generating plant as a "connected action" because FERC lacked jurisdiction over the development of the gas plant, using the reasoning set out by *Seven County*)

- *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (5th Cir. 2025) (finding that FERC drew a reasonable line when it declined to assess the impacts of replacement compressors as potential "connected actions" because the replacements were not two phases of a single action, but "separate, independent projects" which was a reasonable "manageable line" for FERC to draw)

Remedies: Three cases involved appeals that considered the appropriate remedy, and in all three cases, the courts did not vacate the underlying actions.

- *Montana Wildlife Federation v. Haaland*, 127 F.4th 1 (9th Cir. 2025) (applying the *Allied-Signal, Inc. v. U.S. Nuclear Regulatory Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) factors, and holding that the disruptive consequences of vacating the leases outweighed the seriousness of the agency's procedural errors because the violations in Idaho were more limited in scope and could be remedied without undoing the lease sales)

- *Marin Audubon Society v. Federal Aviation Admin.*, 129 F.4th 869 (D.C. Cir. 2025) (stating succinctly that vacatur without any stay of the mandate would have the effect of putting the prevailing parties in a worse position vis-à-vis the protections at issue than if they had not brought their challenge)

- *City of Port Isabel v. Fed. Energy Reg. Comm'n*, 130 F.4th 1034 (D.C. Cir. 2025) (remanding the orders to FERC without vacatur because the court weighed the traditional *Allied-Signal* factors, and found the errors identified in this matter were not so "fundamental" because of the extensive record of NEPA analyses for the underlying projects, and concluding that those errors did not justify throwing the projects and the planning supporting those projects into disarray)

Assessment of Impacts*:* Twenty-two of the cases examined one or more challenges to assessment of impacts. The courts tended to focus on the deference afforded to the agency when they upheld the impact assessment, especially in the post-*Seven County* decisions.

Categorical Exclusion (CE): Only one case scrutinized the application of CEs to projects; the other categorical exclusion case involved a remedy determination only. *See Marin Audubon, infra*.

- *Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs*, No. 24-14171 (11th Cir. Oct. 20, 2025) (rejecting Plaintiffs' argument that the Corps could not apply the categorical exclusion to projects of a particular size, explaining that the governing regulation allows such streamlined review where the agency determines the project is minor, and has no significant environmental impacts)

Reasonably Foreseeable Impacts*:* Twenty-one cases considered challenges to assessment of impacts, including direct, indirect, and other reasonably foreseeable impacts, as well as cumulative impacts in cases adjudicated prior to the recission of the CEQ implementing regulations.

- *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 605 U.S. 168, 145 S.Ct. 1497 (2025) (defining a reasonable range of effects to consider those close in time and place to the project action, including certain closely interrelated indirect effects. In sum, an agency is provided the discretion to draw "manageable lines" regarding the appropriate scope of

NEPA review that will perform the statute's intended function – to inform the public and the agency's decision-maker)

- *Citizens Action Coalition of Indiana, Inc. v. Fed. Energy Reg. Comm'n*, 125 F.4th 229 (D.C. Cir. 2025) (rejecting arguments concerning the adequacy of FERC's greenhouse gas emission analysis and use of various social cost of carbon measures; the court held that FERC was not required to label potential emissions as "significant" or "non-significant" because it found that FERC thoroughly analyzed project emissions in the EIS and therefore did not have to place a label on the nature of those impacts)

- *Sierra Club. v. U.S. Dep't of Transp.,* 125 F.4th 1170 (D. C. Cir. 2025) (agreeing with Sierra Club that agency's decision not to prepare an EIS was arbitrary and capricious because it failed to take a hard look at how the LNG Rule would affect public safety)

- *South Carolina Coastal Conserv. League v. U.S. Army Corps of Eng'rs, Charleston Div.,* 127 F.4th 457 (4th Cir. 2025) (rejecting Plaintiffs' argument that the agencies were required to conduct site-specific surveys rather than assume species presence because NEPA does not require agencies to gather additional data where the available information is sufficient to support a reasoned analysis)

- *Healthy Gulf v. Fed. Energy Reg. Comm'n*, 132 F.4th 544 (D.C. Cir. 2025) (holding that FERC properly concluded that it could not reasonably predict certain upstream greenhouse gas impacts because it did not know "whether transported gas would come from new or existing production")

- *Indigenous Peoples of the Coastal Bend v. U.S. Army Corps of Eng'rs*, 132 F.4th 872 (5th Cir. 2025) (disagreeing with the contention that the Corps did not conduct a sufficient cumulative impacts analysis under NEPA, and explaining that NEPA does not require agencies to engage in exhaustive or speculative analysis)

- *Sierra Club v. U.S. Dep't of Energy,* 134 F.4th 568 (D.C. Cir. 2025) (holding that the agency reasonably determined that the environmental impacts of downstream emissions in foreign countries were too speculative to require detailed analysis under NEPA; rejecting Sierra Club's argument that the agency was required to quantify downstream emissions impacts)

- *WildEarth Guardians v. U.S. Dep't of Agric. Animal and Plant Health Inspection Serv. Wildlife Servs.*, 135 F.4th 717 (9th Cir. 2025) (holding the agency's EA did not provide adequate explanations to demonstrate the agency took a hard look at the scientific uncertainty presented to it; the court emphasized that a core NEPA obligation is to meaningfully engage with contrary scientific viewpoints, regardless of agency opposition or study location)

- *North Cascades Conservation Council v. U.S. Forest Serv.,* 136 F.4th 816 (9th Cir. 2025) (agreeing with Plaintiff's contention that the EA was insufficient under NEPA because it did not discuss the cumulative effects of the original Twisp Restoration Project in combination with the Midnight Restoration Project (which was added after a fire in the interim period but before the Final EA was published) since that project was "reasonably foreseeable")

- *WildEarth Guardians v. U.S. Forest Serv.*, 137 F.4th 1068 (10th Cir. 2025) (holding that the agency did not address the cumulative impacts of the Wishbone Allotments on neighboring herds despite acknowledging the existence of those herds in the EA)

- *Center for Biological Diversity v. U.S. Bureau of Land Mgm't*, 141 F.4th 976 (9th Cir. 2025) (finding that the agency complied with NEPA in its analysis of downstream greenhouse gas emissions by estimating emissions from reasonably foreseeable future development within the cumulative effects section of the SEIS, and in doing so, the agency adequately considered both indirect and cumulative impacts)

- *American Wild Horse Campaign v. Raby*, 144 F.4th 1178 (10th Cir. 2025) (disagreeing with petitioners' claim that the agency ignored the environmental impacts of the potential of increased grazing, and ruling that that "when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project.")

- *Cascadia Wildlands v. U.S Bureau of Land Mgm't*, 153 F.4th 869 (9th Cir. 2025) (holding that BLM took the requisite "hard look" at environmental impacts under NEPA, and found that the agency adequately analyzed the project's effects on marbled murrelet habitat, including potential edge effects and habitat modification)

- *Sierra Club. v. Fed. Energy Reg. Comm'n*, 145 F.4th 74 (D.C. Cir. 2025) (rejecting claims that the agency should have considered a broad scope of indirect upstream effects of the proposed pipeline, because the claims ran "headlong" into the Supreme Court's "course correction" in *Seven County*)

- *Sierra Club v. Fed. Energy Reg. Comm'n*, 153 F.4th 1295 (D.C. Cir. 2025) (upholding agency's downstream greenhouse gas emission analysis because the agency properly considered the reduction of emissions related to the planned retirement of the coal-fired plant in addition to potential emissions from the new natural gas generating plant)

- *Badger Helicopters v. Fed. Aviation Admin.,* 154 F. 4th 902 (8th Cir. 2026) (agreeing with the agencies' choice of flight data chosen for impact assessment because it relied on reliable data, which was in the agencies' view, "the most accurate and current data available during the period that the Plans were being drafted")

- *Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n*, 157 F.4th 674 (5th Cir. 2025) (rejecting claims that the agency did not adequately consider the safety risks of the proposed expansion project when it discussed incremental safety risks and mitigation; the agency followed the DOT's safety standards, and considered the proposed compressor station's remote location, and the Fifth Circuit found under *Seven County*, this was sufficient)

- *Central Oregon Wild Horse Coalition v. Vilsack*, No. 23-4260, 2025 WL 25696 (9th Cir. Feb. 3, 2025) (rejecting the Coalition's contentions that the agency did not consider each of the CEQ's ten "intensity" factors for assessing significance as part of its FONSI)

- *Western Watersheds Project v. Washington*, No. 23-3872, 2025 WL 457098 (9th Cir. Feb. 11, 2025) (holding that because the agency considered the relevant factors and "provided a convincing statement of reasons" explaining why the Stateline Project's effects were expected to be insignificant, it did not violate NEPA when it decided not to issue an EIS)

- *Center for Biological Diversity v. U.S. Forest Serv.,* No. 23-2882, No. 23-2886, No. 23-3146, 2025 WL 586358 (9th Cir. Feb. 24, 2025) (agreeing with the Center for Biological Diversity that because the agency's analysis of baseline conditions was premised on unsupported assumptions that unauthorized roads use is sporadic and temporary, and that ineffective barriers and road closures would be promptly repaired, the agency's "failure to explain [these] baseline assumption[s] frustrated [its] ability to take a 'hard look'" at the effects of unauthorized road use)

- *Coalition to Stop CPKC v. Surface Transp. Board*, No. 23-1165, 2025 WL 1720672 (D.C. Cir. Jun. 20, 2025) (rejecting five claims regarding the assumptions underlying the Board's impact analysis relating to train speeds, average train length (by overweighting passenger trains compared to freight trains), freight train length, the flow of train and vehicular traffic, and the lack of pertinent field studies, and ruling that the Board reasonably considered the risk of increased pedestrian/train strikes caused by potentially higher train traffic)

Each of the substantive 2025 NEPA cases, organized by federal agency, is summarized below. Unpublished cases are noted (7 of the 32 substantive cases in 2025 were unpublished). Although such cases may not have precedential value depending on the court, they can be of value to NEPA practitioners.

7.4 Details of Cases

Each of the substantive 2025 NEPA cases, organized by federal agency, is summarized below. Unpublished cases are noted (7 of the 32 substantive cases in 2025 were unpublished). Although such cases may not have precedential value depending on the court, they can be of value to NEPA practitioners.

2025 NEPA CASE
U.S. SUPREME COURT

SURFACE TRANSPORTATION BOARD

Seven County Infrastructure Coalition v. Eagle County, Colorado, 605 U.S. 168, 145 S.Ct. 1497 (2025) (hereinafter, "*Seven County*")

Agency prevailed.

Issues: Scope of impact assessment; standard of judicial review; role of NEPA in agency decision-making process

Sector: Transportation (Rail)

Facts: In 2020, the Seven County Infrastructure Coalition (Seven County) applied to the Surface Transportation Board (STB) for approval of an 88-mile railroad line connecting Utah's oil-rich Uinta Basin to the national freight rail network, facilitating the transportation of crude oil to refineries along the Gulf Coast. STB prepared a full EIS and technical reports totaling over 3,600 pages. Analysis included assessment of upstream and downstream environmental impacts and a range of feasible alternatives. EIS review potential effects of development of "waxy crude oil," which would be transported on the new rail line, safety issues resulting from the potential increase in rail traffic beyond the Uinta Basin in Utah, and potential GHG emissions.

Petitions challenging the adequacy of the STB's EIS action were filed in the D. C. Circuit by a Colorado county and several environmental organizations. The D. C. Circuit found numerous NEPA violations, holding primarily that the STB impermissibly limited its analysis of the environmental effects from upstream oil drilling and downstream oil refining projects. For instance, the STB did not assess the potential air quality and environmental justice effects of refining the waxy crude oil in facilities as far away as Louisiana. The D.C. Circuit concluded that those effects were "reasonably foreseeable" and that the EIS should have analyzed a broader range of upstream and downstream impacts. Based on the deficiencies it found in the EIS. The court vacated both the EIS and the Board's final approval of the new rail line. Seven County filed a Petition for Certiorari Review.

The Supreme Court unanimously reversed the D.C. Circuit and vacated the ruling for further consideration consistent with the ruling.

Decision: The Supreme Court held that the D. C. Circuit failed to afford the STB the substantial judicial deference required in NEPA cases and incorrectly interpreted NEPA to require the STB to consider the environmental effects of upstream and downstream projects that are separate in time or place from the proposed rail line.

Justice Kavanaugh, writing for the Court, held that it was time for a "course correction" to bring Administrative Procedures Act (APA) judicial review under NEPA "back in line with the statutory text and common sense." The Court stressed repeatedly that lower courts should defer to the informed discretion and reasonable choices made by an agency concerning the scope and contents of an EIS. In so ruling, the Court also held that review of an agency's EIS is NOT the same as review of the agency's action concerning the project itself. The Court reiterated prior rulings that NEPA is a "procedural statute, acting as a "cross-check, not a substantive roadblock. The goal of the law is to inform agency decision-making, not to paralyze it." In a now oft-quoted conclusion, the Court stated that "[t]he bedrock principle of judicial review in NEPA cases can be stated in a word: Deference."

In addition to reinforcing the appropriate standard of review, the Court defined the reasonable scope of analysis. If an action may lead to construction of or increased use of a separate project, an agency need not consider the effects of that separate project. The Court found that the STB had no regulatory authority over separate projects, such as new resource development or the building/operation of refineries in Louisiana. "NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects."

The Court generally defined a reasonable range of effects to consider those close in time and place to the project action, including certain closely interrelated indirect effects. In sum, an agency is permitted to draw "manageable lines" regarding the appropriate scope of NEPA review that will perform the statute's intended function – to inform the public and the agency's decision-maker.

In conclusion, the Court held: "Plaintiffs' policy objections to this 88-mile Utah railroad may or may not be persuasive. But 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."

2025 NEPA CASES
U.S. COURTS OF APPEALS

U.S. DEPARTMENT OF AGRICULTURE

WildEarth Guardians v. U.S. Dep't of Agric. Animal and Plant Health Inspection Serv. Wildlife Servs., 135 F.4th 717 (9th Cir. 2025)

Agency did not prevail.

Issues: Proposed Action, Impact Assessment

Sector: Land Management

Facts: Environmental conservation organizations (collectively, WildEarth) brought action against the Animal and Plant Health Inspection Service, Wildlife Services (APHIS-WS) challenging its issuance of an EA and FONSI under NEPA, which authorized predator damage and conflict management program in Wilderness Area and Wilderness Study Areas (BLM lands) in Nevada.

As a matter of background, the USDA's APHIS-WS provides predator damage management (PDM) services in Nevada to protect privately owned livestock from predators and, less often, to protect public safety. The agency makes recommendations for reducing depredation of livestock and provides operational assistance. It conducts PDM at the request of both public and private property owners. In conducting its PDM operations, Wildlife Services uses a variety of lethal and non-lethal methods.

The current case is another challenge with a history that began in 2012, when WildEarth filed a lawsuit alleging that continued reliance on a 1994 programmatic EIS for PDM in Nevada violated NEPA. The parties settled that suit in 2016. As part of the settlement, APHIS-WS agreed to cease all PDM activities in Nevada Wilderness and Wilderness Study Areas until it completed a new NEPA analysis for the Nevada PDM Program (but could continue PDM in the rest of Nevada).

In 2019, APHIS-WS released a draft EA that examined impacts of its PDM program in Nevada and the anticipated impacts of returning PDM to Wilderness and Wilderness Study Areas. In July 2020, APHIS-WS released a final EA.

Decision: First, WildEarth claimed that APHIS-WS failed to examine PDM services in the relevant geographic context to adequately evaluate the environmental impacts of the agency's proposed action, specifically at the local scale.

The Ninth Circuit discussed that the EA's description of the federal lands where the proposed PDM actions will occur was internally inconsistent. Serious ambiguity concerning the inclusion or exclusion of just one of the federal land designations at issue—Areas of Critical Environmental Concern—changes the geographic scope of the PDM program by over 1.4 million acres. The court opined that a clear disclosure of geographic areas where PDM may be conducted is essential to ensuring that the public is both informed and able to participate meaningfully in the NEPA process. "By leaving the public guessing where APHIS-WS proposes to conduct PDM, the agency vitiated NEPA's purpose because it deprived the public of the ability to evaluate the impacts of the agency's proposed actions." The court also found that APHIS-WS did not adequately explain its decision not to analyze local impacts in addition to its statewide assessment."

WildEarth argued that APHIS-WS should have prepared an EIS rather than an EA due to the significance of the proposed impacts. WildEarth claimed that the EA was inadequate in its assessment of impacts for three issues: (1) public health and safety risks from lead shot and cyanide use; (2) impacts on unique and sensitive areas, specifically Wilderness Areas and Wilderness Study Areas; and (3) consideration of scientific studies that raised substantial uncertainty about the effectiveness of lethal predator control.

The Ninth Circuit sustained WildEarth's claims. On the topic of public health and safety, the court observed that the EA failed to address whether the 600 pounds of lead ammunition anticipated to be used for PDM would result in a concentrated introduction of lead into the environment. Likewise, the court rejected APHIS-WS response to concerns about M-44 cyanide ejector devices. With respect to impacts to unique areas, the court opined that any impacts to nearby unique areas weigh in favor of ordering an EIS, regardless of the severity of the impact.

Finally, the court examined that APHIS-WS selected some older studies to support its position on lethal PDM and cited internal government audits that demonstrate it follows its own policies, but it did not engage with the contrary, more recent studies. The court emphasized that a core NEPA obligation is to meaningfully engage with contrary scientific viewpoints, regardless of agency opposition or study location.

In sum, based NEPA violations, the Ninth Circuit vacated the EA and FONSI and remanded to the district court to enter an order directing the agency to determine whether to prepare a new EA or an EIS.

North Cascades Conservation Council v. U.S. Forest Serv., 136 F.4th 816 (9th Cir. 2025)

Agency prevailed on all NEPA claims but one.

Issues: Public Participation, Alternatives, Impact Assessment, Cumulative Impacts

Sector: Land Management

Facts: An environmental conservation group, North Cascades Conservation Council (NCCC), brought action alleging the USFS approved a restoration project, the Twisp Restoration Project (TRP), covering 24,140 acres of forest land within the Okanogan-Wenatchee National Forest, without fully complying with NEPA.

The TRP area lies in a portion of the Forest managed by the USFS under a 1989 land and resources management plan. The TRP is a restoration strategy to make the forest more resilient in the face of wildfire, insect outbreaks and habitat decline. The project proposes treatments including logging and thinning, protecting riparian habitat, creating and preserving wildlife habitat, and treating areas of the forest closest to residential areas to reduce fire intensity and increase access for firefighters.

Development of the TRP began in June 2019, following the completion of a landscape evaluation that identified the need for restoration. The TRP initially focused on a 79,682-acre area of the Methow Valley Ranger District. In November 2019, a scoping letter was sent to 362 individuals, groups, and agencies describing the proposed project, scheduling a public open house, and inviting comments on the proposal. After receiving responses, including a response from NCCC, the USFS issued a Draft EA in October 2020.

In August 2021, between the close of the Draft EA comment period and the release of the Final EA, the Cedar Creek Fire burned through areas of the Forest originally included in the TRP area. In response, the USFS revised the proposed project to omit areas potentially affected by the fire, created a separate 50,000-acre Midnight Restoration Project for the fire-damaged area, and explained those revisions in a virtual public meeting in January 2022. The USFS released the Final EA in April 2022 without a comment period, and issued the FONSI in July 2022.

Decision: The opinion began with the statement, "all judges supporting the continuation of life on our planet need to be sensitive to environmental considerations . . . The case before us involves competing interests of logging and environmental interest groups. [The court] point[s] out that there is a practical distinction between, on the one hand, logging for the sake only of harvesting timber, and, on the other hand, thinning trees in a forest for the purpose of promoting a healthier and more resilient forest, better able to suppress or to weather the tidal wave of wildfires afflicting the country."

NCCC claimed that the USFS was required under NEPA to reopen the comment period following the changes made to the TRP in response to the Cedar Creek Fire. The court disagreed, stating that changes made in response to the Cedar Creek Fire—namely the reduction in size of the TRP by 69%, and the ensuing changes to temporary haul roads and haul routes necessitated by the reduced size—are not substantial changes triggering a requirement to repeat the public comment process under NEPA.

Next, NCC argued the USFS relied upon an overly narrow statement of "purpose and need" in the EA and did not consider a reasonable range of alternatives. However, the court rejected NCC's contention that the UFFS failed to consider a reasonable range of alternatives. The court concluded that USFS sufficiently analyzed viable alternatives under NEPA, by analyzing in depth both a no-action alternative and a proposed action alternative and including a discussion of eleven other alternatives rejected from detailed study, including NCCC's preferred "natural succession" alternative. Because NCCC did not provide sufficient detail to determine what a natural succession alternative would involve, the court concluded that the USFS that the was not obligated under NEPA to consider it.

NCCC argued that the USFS inadequately addressed direct, indirect, and cumulative effects by (1) relying on condition-based management and maximum effects analysis and (2) failing to address the related Midnight Restoration Project. The court disagreed with both contentions, reasoning that the TRP is small and has been extensively mapped, concluding that there were sufficient details to satisfy NEPA (but noted it was a close call).

NCCC argued the cumulative impacts analysis of the TRP in combination with the Midnight Restoration Project was insufficient. Here, the court agreed with NCCC that the USFS is required to analyze the Midnight project and any cumulative impacts, since that project was "reasonably foreseeable."

The court remanded the case to determine what the USFS needs to do to remedy the deficiency in its environmental analysis and whether, "in light of its revised cumulative effects analysis, an in-depth environmental impact statement (EIS) is necessary."

WildEarth Guardians v. U.S. Forest Serv., 137 F.4th 1068 (10th Cir. 2025)

Agency prevailed on one NEPA claim but did not prevail on other NEPA claims.

Issues: Impact Assessment, Cumulative Impacts

Sector: Land Management

Facts: Conservation groups (WildEarth) brought action under NEPA against the USFS, challenging the agency's decision to open new domestic sheep grazing allotments (the Wishbone Allotments) in the Rio Grande National Forest in Colorado that also had herds of Rocky Mountain bighorn sheep.

The USFS' decision to open the Wishbone Allotments in the Rio Grande National Forest in 2017 followed two previous decisions in 2013 and 2015 to vacate larger grazing allotments which the USFS determined posed an unacceptable risk to bighorn sheep populations. Those decisions relied on the "risk of contact model (RCM), a modeling tool the USFS uses to determine the likelihood a grazing allotment will risk domestic sheep coming into contact with bighorn sheep. In contrast to previous decisions, the USFS' 2017 decision authorizing the Wishbone Allotments eschewed the results of the risk of contact model—which again predicted a high risk of contact—and asserted that outside factors such as the geography of the allotments, the length of the bighorn sheep grazing season, and the use of best management practices by herders would mitigate the risk.

Contact between domestic sheep and bighorns is dangerous because of deadly pathogens, specifically, *Mannheimia haemolytica*, that domestic sheep carry and transmit to bighorn sheep. Once a wild sheep is infected through contact with a domestic sheep, they carry that pathogen back to their herd and even to other herds, which can lead to catastrophic results. The USFS has explained that in the Rio Grande National Forest, "four bighorn sheep herds are still experiencing lingering effects . . . of past disease events dating back to the mid 1990's."

In November 2017, the USFS released the Final EA for the Wishbone Allotments, reiterating its conclusion that local factors merited downgrading the RCM's risk from high to moderate, and the USFS released a Decision Notice/FONSI in March 2018.

Decision: WildEarth argued the USFS failed to take a hard look at the environmental impacts to bighorn sheep herds in creating the Wishbone Allotments by (1) arbitrarily downgrading the RCM result from high to moderate using "local factors," (2) overstating the effectiveness of project design criteria, (3) failing to consider the cumulative environmental impacts to neighboring bighorn herds, and (4) by not using the best available science.

The Tenth Circuit rejected the USFS' logic that the RCM should be used in conjunction with on-the-ground specifics. In. doing so, the court criticized the USFS, stating that the USFS did not identify any scientific support that the model's results can be changed using local factors.

The court then considered there was no scientific support for the idea that project design criteria can successfully separate bighorn sheep from domestic sheep where the RCM predicts a high risk of contact. The court held that in the absence of any science or data suggesting that project design criteria could become effective in combination with other features such as spatial or temporal separation, the USFS's reliance on untethered "logic" alone was insufficient to satisfy NEPA's "hard look requirement.

WildEarth argued that the USFS violated NEPA in creating the Wishbone Allotments for the additional reason that it failed to take a hard look at threats to bighorn sheep besides the three herds closest to the Wishbone Allotments. The Tenth Circuit agreed, holding that the USFS did not address the cumulative impacts of the Wishbone Allotments on neighboring herds despite acknowledging the existence of those herds in the EA as well as the high risk to their survival generated by a disease interval of thirty-two-years or less.

However, the Tenth Circuit rejected WildEarth's contention that by using only Colorado's Parks and Wildlife's preliminary telemetry data and not requesting additional data before releasing a final decision, the USFS missed most of the relevant data before rendering its decision creating the Wishbone Allotments. The court reasoned that because of the deference given to agencies in determining which methodologies and science to rely on, and because the USFS did use the data available to it, the USFS was not required under NEPA to wait for the full study.

The Tenth Circuit reversed the district court's decision and remanded the case to determine the appropriate remedy.

Central Oregon Wild Horse Coalition v. Vilsack, No. 23-4260, 2025 WL 25696 (9th Cir. Feb. 3, 2025)

Agency prevailed.

Issue: Impact Assessment

Sector: Land Management

Facts: A non-profit organization and certain of its members and individuals (collectively, the Coalition) challenged the USFS' decision to approve the Ochoco Herd Management Plan, alleging various NEPA violations in its EA.

Decision: The Coalition argued that the USFS violated NEPA by failing to take a "hard look" at the available data regarding the herd's genetics. The court examined that the USFS relied on two genetic studies of the herd—among other evidence—and the Coalition simply quibbles with the methodology and results from those studies. It found the USFS provided a reasonably thorough discussion of the risks associated with the herd's genetics and probable consequences. *League of Wilderness Defs. Blue Mountains Biodiversity Project v. Allen*, 615 F.3d 1122, 1130 (9th Cir. 2010).

The Ninth Circuit rejected the Coalition's contentions that the USFS did not consider each of the CEQ's ten "intensity" factors for assessing significance as part of its FONSI and that an EIS, rather than an EA, should have been reviewed. First, the court did not agree with the Coalition that the project was "highly controversial." 40 C.F.R. § 1508.27(b)(4) (2019). It found the USFS "considered and addressed the existing literature in its [EA] and provided reasoning for its conclusions," stating, that "[m]ere opposition to an action does not create a controversy within the meaning of NEPA regulations."

The court then found that the USFS reasonably concluded that the "possible effects" of the Plan were not "highly uncertain" and do not "involve unique or unknown risks." 40 C.F.R. § 1508.27(b) (5) (2019). The risks to the herd's unique genetics were not "highly" uncertain, as the USFS' genetic plan was consistent with recommendations in the National Research Council's report and BLM's Handbook, genetic studies of the herd, and advice from multiple experts, and was consistent with its prior introduction of new mares to the herd.

The court finally found that the USFS' decision was not precedential, *see* 40 C.F.R. § 1508.27(b)(6) (2019), because the Plan is "highly specific to the project and the locale," *Barnes v. U.S. Dep't of Transp.,* 655 F.3d 1124, 1140 (9th Cir. 2011), and the Plan does not have a binding effect on future actions, *Anderson v. Evans*, 371 F.3d 475, 493 (9th Cir. 2004).

The Ninth Circuit affirmed lower court's summary judgment in favor of the agency.

Western Watersheds Project v. Washington, No. 23-3872, 2025 WL 457098 (9th Cir. Feb. 11, 2025)

Agency prevailed.

Issues: Impact Assessment, Cumulative Impacts

Sector: Land Management

Facts: Environmental organizations (collectively, Western Watersheds) appealed the district court's grant of summary judgment in favor of the USFS, finding that USFS' EA and FONSI took a hard look at the environmental impacts of the Stateline Project, which reauthorized livestock grazing on allotments in the Apache-Sitgreaves and Gila National Forests.

Decision: Western Watersheds argued that the USFS did not take a hard look at the effects of the proposed livestock grazing on the Mexican gray wolf, particularly regarding livestock-related wolf removals and prey displacement. The Ninth Circuit disagreed, stating that the record showed that the USFS considered these issues (as well as other factors relevant to the project's effect on the Mexican gray wolf) and reasonably concluded that the proposed grazing was not likely to adversely affect the subspecies.

The Ninth Circuit also rejected Western Watershed's argument that the USFS failed to take a hard look at the cumulative effects of past and future removals (both within and outside of the project area) on the genetic diversity of the Mexican gray wolf population, because there is no evidence the Stateline Project was likely to cause removals. It discussed that Western Watershed did not show that a loss of genetic diversity due to removals was a potential cumulative impact of the project. *See Ctr. for Env't L. & Pol'y v. U.S. Bureau of Reclamation*, 655 F.3d 1000, 1009 (9th Cir. 2011) (explaining that the party challenging an EA's cumulative impacts analysis has the initial burden to show 'the potential for cumulative impact).

The Ninth Circuit affirmed the lower court's grant of summary judgment in favor of the agency.

Center for Biological Diversity v. U.S. Forest Serv., No. 23-2882, No. 23-2886, No. 23-3146, 2025 WL 586358 (9th Cir. Feb. 24, 2025)

Agency Prevailed on some NEPA claims but did not prevail on remaining NEPA claim.

Issue: Impact Assessment

Sector: Land Management

Facts: The appeal, which involved consolidated cases, concerned the Black Ram Project in the Kootenai National Forest and its effects on the grizzly bear. The Center for Biological Diversity, Yaak Valley Forest Council, and WildEarth Guardians (collectively, CBD) along with consolidated plaintiffs Alliance for the Wild Rockies and Native Ecosystems Council (collectively, AWR), brought claims against the USFS alleging various violations of NEPA for its EA/FONSI.

Decision: The Ninth Circuit reversed the lower's court's opinion that the USFS made a mistake in relying on stale grizzly bear population data to establish the environmental baseline for its FEA. The Ninth Circuit noted that the updated population data showed a potential improvement for grizzly bears. The data the agency relied on estimated the population between 55 to 60 bears in 2017, whereas the 2021 estimate was 60 to 65 bears. The Ninth Circuit reasoned that the newer data would not have altered the USFS' analysis or decision, and CBD failed to articulate any way in which public participation could have been materially affected.

When it came to unauthorized road use within the project area, the Ninth Circuit agreed with the lower court that unauthorized road use must be included in road density calculations and that the USFS did not provide clear data on that.

The Ninth Circuit agreed and affirmed the district court's grant of summary judgment to AWR on its claim. Under NEPA, an agency's "assessment of baseline conditions 'must be based on accurate information and defensible reasoning.' " *Great Basin Res. Watch v. Bureau of Land Mgmt.*, 844 F.3d 1095, 1101 (9th Cir. 2016). It found the USFS' analysis of baseline conditions was premised on unsupported assumptions that unauthorized roads use is sporadic and temporary, and that ineffective barriers and road closures would be promptly repaired. The USFS' "failure to explain [these] baseline assumption[s] frustrated [its] ability to take a 'hard look'" at the effects of unauthorized road use. *Great Basin Res. Watch.,* 844 F.3d at 1104.

"Given the uncertainty as to the extent of ineffective closures and chronic unauthorized road use, it is impossible to discern actual, baseline motorized access conditions." As such, the agency can't determine whether the project complies with the access standards in the Kootenai National Forest Plan. The Ninth Circuit held that the USFS had violated the NEPA by not taking a "hard look" at unauthorized road use.

The Ninth Circuit affirmed in part, reversed in part, and remanded.

American Whitewater v. U.S. Forest Serv., No. 24-6402, 2025 WL 2945591 (9th Cir. Oct. 17, 2025)

Agency prevailed.

Issues: Alternatives, Impact Assessment.

Sector: Land Management

Facts: Non-governmental organizations (American Whitewater) argued that the USFS violated NEPA when it approved projects to cut down trees burned by wildfires on National Forest land in 2020 and 2021 based on the published EAs (collectively, the EA).

Decision: The Ninth Circuit held that the USFS analyzed a reasonable range of alternatives in the challenged Project's EA. American Whitewater admitted the purpose and need statement itself was not unreasonably narrow.

The court agreed that the USFS' choice to prioritize safety in framing the Project's purpose and need was reasonable, even if it ultimately narrowed the range of alternatives that the agency considered. *See, e.g., City of Carmel-By-The-Sea v. U.S. Dep't of Transp*., 123 F.3d 1142, 1155-57 (9th Cir. 1997). The Ninth Circuit reasoned that even though the USFS only considered two alternatives in detail— the action and no action— the Ninth Circuit historically and repeatedly upheld similar NEPA reviews as long as the agency did not fail to consider a reasonable alternative. *Earth Island Inst. v. U.S. Forest Serv*., 87 F.4th 1054, 1065 (9th Cir. 2023). Here, the USFS adequately explained why other alternatives were unreasonable because they were inconsistent with the Project's purpose and need.

The Ninth Circuit rejected the contention that the USFS improperly tiered to the agency's "Hazard Tree Guidelines." These guidelines were "not substantive," and the agency properly incorporated them by reference under 40 C.F.R. § 1501.12. The court agreed with the USFS' approach in citing these guidelines, providing an independent description of their content, and linking to a public webpage containing the guidelines in their entirety.

The Ninth Circuit held that the USFS took a hard look at the Project's likely impacts, including impacts on wildlife, including the northern spotted owl. The USFS' extensive discussion in both the EA itself and the incorporated wildlife analyses demonstrates that the USFS provided a "reasonably thorough discussion of the significant aspects of [the Project's] probable environmental consequences" on wildlife.

The USFS also took a "hard look" at the Project's cumulative effects. "[T]he determination of the extent and effect of [cumulative impact] factors ... is a task assigned to the special competency of the appropriate agencies." *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998) (second alteration in original). The Ninth Circuit discussed that American Whitewater did not demonstrate that the USFS' determination that the Project would lead to only minor or negligible cumulative effects was unreasonable.

Finally, the court upheld USFS's reliance on a specialist report and its underlying data, to support its impact analysis involving impacts to rivers protected by the Wild and Scenic Rivers Act, even if it did fail to provide adequate reference to that report within the EA during public availability periods.

DEPARTMENT OF ENERGY

Sierra Club v. U.S. Dep't of Energy, 134 F.4th 568 (D.C. Cir. 2025)

Agency prevailed.

Issues: Impact Assessment (Indirect Impacts (Upstream/Downstream)

Sector: Energy (Natural Gas)

Facts: Environmental organizations challenged the U.S. Department of Energy's (DOE) authorization of a large-scale project to export liquefied natural gas (LNG) from Alaska's North Slope to foreign countries without free trade agreements. The project required approvals from both the Federal Energy Regulatory Commission (FERC), which authorized the construction and operation of the export facilities, and DOE, which authorized the export of natural gas under the Natural Gas Act.

FERC prepared an extensive EIS, approximately 1,500 pages in length, analyzing the environmental impacts of constructing and operating the project, including impacts to wetlands, wildlife, water resources, and climate. DOE adopted FERC's EIS and initially approved the export authorization. After a change in administration and issuance of executive orders, DOE conducted additional review and prepared a supplemental EIS that further evaluated greenhouse gas emissions and climate impacts associated with the project.

In its supplemental analysis, DOE considered the potential downstream environmental impacts of exporting LNG, including greenhouse gas emissions resulting from the combustion of exported gas in foreign countries. DOE concluded that, due to significant uncertainties in global energy markets and the extent to which LNG exports might displace other energy sources, it could not reliably determine the magnitude of those downstream impacts.

Plaintiffs challenged DOE's approval under NEPA, arguing that the agency failed to adequately analyze and quantify the environmental impacts of downstream emissions and improperly treated those impacts as too speculative.

Decision: The D.C. Circuit denied the petitions for review, concluding that DOE complied with NEPA and did not act arbitrarily or capriciously.

First, the court held that DOE reasonably determined that the environmental impacts of downstream emissions in foreign countries were too speculative to require detailed analysis under NEPA. The court explained that NEPA requires agencies to evaluate reasonably foreseeable environmental effects, but does not require analysis of impacts where the causal chain is uncertain or dependent on complex market forces. Here, DOE found that global energy market dynamics, substitution effects, and consumption patterns made it impossible to reliably predict whether LNG exports would increase or decrease overall greenhouse gas emissions. The court concluded that this determination was supported by substantial evidence and reflected a permissible exercise of agency expertise.

Second, the court rejected Plaintiffs' argument that DOE was required to quantify downstream emissions impacts. The court explained that NEPA does not mandate quantification in all circumstances, particularly where the underlying data and modeling are subject to significant uncertainty. Because DOE adequately explained why it could not draw definitive conclusions regarding the magnitude of climate impacts, its analysis satisfied NEPA's requirements.

Third, the court emphasized that relevant impacts must be reasonably foreseeable and sufficiently causally connected to the federal action. The court agreed with DOE that emissions resulting from the ultimate use of exported LNG in foreign countries depended on numerous independent variables, including foreign policy decisions, market demand, and substitution among energy sources, and therefore were not reasonably foreseeable in a manner that would require detailed NEPA analysis.

Finally, the court noted that DOE properly relied on and adopted FERC's EIS, which had already been upheld as compliant with NEPA in prior litigation, and declined to revisit those issues.

DEPARTMENT OF HOMELAND SECURITY

Friends of the Everglades, Inc. v. U.S. Dep't of Homeland Sec., No. 25-12873, 2025 WL 2598567 (11th Cir. Sept. 4, 2025)

Agency prevailed.

Issue: Major Federal Action

Sector: Construction

Facts: On January 6, 2023, Florida Governor Ron DeSantis declared a state of emergency, directing state law enforcement agencies and other state agencies to "take necessary actions" to protect Floridians from the impacts of mass illegal migration into the State. Within the first two months of 2023, U.S. Customs and Border Protection had encountered over 460,000 persons attempting entry along the Southwest Border. Governor DeSantis declared that this heightening immigration crisis was overburdening local law enforcement and creating danger for Floridians.

On June 23, 2025, the Florida Division of Emergency Management (FDEM) used its emergency powers to commandeer the Dade-Collier Training and Transition Airport to build a detention-and-deportation facility for illegal immigrants aka "Alligator Alcatraz." Before FDEM assumed control of the airport, it was a small but bustling working airport which included flights from multi-engine planes, business jets, private helicopters, and military flights mainly during the day but at night upon request. The airport and site is owned by Miami-Dade County and is located within or directly adjacent to the Big Cypress National Preserve and the Big Cypress Area, a nationally and State protected, and ecologically sensitive area near the Everglades.

Construction of the Facility started immediately to include kitchen facilities, restrooms, housing facilities, portable industrial lighting, and other infrastructure. There were various public statements that the Facility was requested by the federal government and that Florida would be fully reimbursed by the federal government for the costs, Florida had not filed an application for federal funds, nor formal federal funding funds approved.

On June 27, 2025, Friends of the Everglades and other plaintiffs filed suit and sought to halt the unlawful construction of the Facility claiming that DHS was required to prepare an EIS before construction. On August 21, 2025, the district court issued a preliminary injunction barring Florida and the U.S. from any additional construction at "Alligator Alcatraz" and ordered the site closed and dismantled within sixty days.

Decision: The Eleventh Circuit paused the district court's preliminary injunction, allowing the project to proceed, and concluded that the federal and state defendants were likely to succeed on appeal for several reasons.

The Eleventh Circuit emphasized that its analysis was guided by recent Supreme Court precedent, explaining that it was "mindful that the Supreme Court intended Seven County to act as a 'course correction' to bring 'judicial review under NEPA back in line with the statutory text and common sense.'" The court further noted the potential for abuse when NEPA is treated as more than a procedural statute, observing that "NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents […] to try to stop or at least slow down new infrastructure and construction projects." Id. at 1513.

First, the court concluded that plaintiffs were unlikely to succeed on their NEPA claim because the construction and operation of the facility did not qualify as a "major Federal action" under NEPA as amended in 2023. The court emphasized that the statute excludes a non-federal action with no or minimal federal funding or with no or minimal federal involvement where a federal agency cannot control the outcome of the project, and it faulted the district court for effectively reading that disjunctive "or" as an "and." In the Eleventh Circuit's view, the absence of any approved or disbursed federal funding was enough to take the project outside NEPA's major-federal-action requirement at this stage. The court stressed that although public officials said Florida would be reimbursed, Florida had not submitted a funding application and DHS/FEMA had not approved any federal award, so there was no legally operative federal funding decision yet.

Second, the court held that plaintiffs were also unlikely to prevail because the alleged failure to prepare an EIS was not, by itself, a reviewable final agency action under the APA. Relying in part on Seven County, the court explained that an EIS is only an input into agency decisionmaking, not the agency action itself. So before plaintiffs could challenge the lack of an EIS, they first had to identify a reviewable major federal action that triggered NEPA in the first place. Because the court concluded there was no such major federal action on this record, it held that the APA claim was likely foreclosed as a matter of law.

This aspect of the decision is useful for NEPA practitioners because it shows the court treating the "major federal action" and "final agency action" inquiries as threshold gates, not merely downstream merits questions.

Third, the court held that the defendants had shown irreparable harm if the injunction remained in place. The court reasoned that the injunction interfered with Florida's asserted emergency response and immigration-enforcement efforts and would limit DHS's ability to detain and remove noncitizens. The court also emphasized that the injunction would require the State to spend an estimated $15 to $20 million to dismantle the facility, only to incur those costs again if the injunction were later lifted.

The court also questioned the district court's decision to order dismantling of the facility through a mandatory preliminary injunction. It explained that, even if NEPA ultimately applied, the more typical interim remedy would have been to halt further construction or use of the facility pending compliance, rather than require the immediate expenditure of public funds to take the site apart.

Finally, the court held that the balance of harms and the public interest weighed in favor of the defendants. The court acknowledged plaintiffs' evidence of environmental harms, including impacts related to light, noise, runoff, habitat, and waste, but concluded those harms were less immediate than the harms identified by the federal and state defendants relating to immigration enforcement and public safety.

The court also noted that the site had long operated as an active airport, which informed its assessment of existing environmental conditions. For NEPA practitioners, this part of the opinion is notable because the court was willing, at the preliminary-injunction stage, to directly weigh asserted environmental harms against operational and public-interest concerns, particularly in light of recent Supreme Court guidance (Seven County) warning against using NEPA as a substantive barrier to agency action.

Dissent: Circuit Judge Jordan provided a lengthy dissent, arguing that the majority failed to properly apply the deferential standards governing review of a preliminary injunction. In his view, the district court reasonably concluded that there was sufficient federal involvement to trigger NEPA and did not abuse its discretion in granting preliminary relief.

Judge Jordan pointed to several indicators of federal involvement supporting the conclusion that the project constituted a major federal action. These included public statements that the facility was requested by the federal government, the expectation that the project would be reimbursed with federal funds, and the coordination between Florida and federal agencies in carrying out the project. In his view, these facts were sufficient, at a minimum, to support the district court's finding that NEPA likely applied.

He further emphasized that the district court reasonably treated the failure to prepare an EIS as a reviewable action and permissibly found that environmental and tribal harms justified preliminary relief. Judge Jordan stressed that appellate courts must defer to a district court's factual findings and balancing of harms unless there is a clear error or abuse of discretion.

He criticized the majority for departing from that standard and substituting its own judgment for that of the district court. As he explained, "[t]he majority, however, essentially ignores the burden borne by the defendants, pays only lip service to the abuse of discretion standard, engages in its own factfinding, declines to consider the district court's determination on irreparable harm, and performs its own balancing of the equities."

U.S. DEPARTMENT OF THE INTERIOR

Montana Wildlife Federation v. Haaland, 127 F.4th 1 (9th Cir. 2025)

Agency prevailed on some NEPA claims, but not on other NEPA claims.

Issues: EA and Determination of NEPA Adequacy (DNA); Public Involvement, Remedy.

Sector: Energy (Oil and Natural Gas))

Facts: Environmental organizations challenged the Bureau of Land Management (BLM) policies governing oil and gas lease sales on public lands containing protected sage-grouse habitat. The dispute involved both procedural and substantive issues: whether BLM provided adequate opportunities for public participation for its EA during environmental review, and whether BLM complied with land use plan requirements to prioritize leasing outside sensitive habitat.

In 2015, BLM amended its resource management plans to promote sage-grouse conservation by requiring prioritization of oil and gas development outside designated habitat. To implement this objective, BLM issued Instruction Memoranda (IM) governing leasing procedures and public participation.

In 2018, BLM revised these policies. One memorandum limited the habitat prioritization requirement to situations where the agency faced a backlog in processing lease nominations. Another significantly shortened or eliminated public comment and protest periods associated with lease sales and NEPA review.

Environmental groups filed suit in Idaho and Montana, alleging that lease sales conducted under the 2018 policies violated NEPA, FLPMA, and the APA. The district courts granted partial summary judgment for plaintiffs, concluding that certain lease sales violated public participation requirements and land use plan consistency, and vacated the challenged policies and lease sales. Federal defendants and intervenors appealed.

Decision: The Ninth Circuit largely affirmed the district courts, holding that BLM violated NEPA, but reached different conclusions as to the appropriate remedy.

First, the court held that BLM violated NEPA's public participation requirements. The court found that BLM eliminated in some instances, and severely shortened in others, opportunities for public comment during NEPA review. In particular, BLM reduced comment periods to as little as 15 days, a significant departure from prior practice. The court concluded that this truncated timeframe was insufficient to allow meaningful public participation, as it limited the ability of stakeholders to review environmental information, conduct site visits, consult experts, and prepare informed comments. While NEPA does not mandate a specific comment period, the court emphasized that agencies must provide a meaningful opportunity for public involvement consistent with NEPA's twin aims of informed decisionmaking and informed public participation. BLM's failure to explain why such shortened timelines were adequate rendered its actions arbitrary and capricious.

The court further held that the Federal Land Policy and Management Act (FLPMA) independently requires public participation in decisions regarding the management of public lands. The court explained that decisions to offer parcels for oil and gas leasing fall squarely within FLPMA's mandate, and therefore BLM had a duty to involve the public to some extent in those decisions. By curtailing protest and comment opportunities without adequate justification, BLM violated both NEPA and FLPMA.

Finally, the court addressed remedy, applying the *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) factors to determine whether vacatur of the lease sales was appropriate. The case involved two separate district court decisions, one from Montana and one from Idaho, arising from different lease sales but consolidated on appeal.

As to the Montana lease sales, the court held that the district court did not abuse its discretion in vacating the leases. The court concluded that the agency's errors were serious, particularly because they undermined core statutory requirements related to public participation and land use plan consistency, and that those errors could have affected the outcome of the leasing decisions. In balancing the seriousness of the errors against the disruptive consequences to leaseholders and government agencies, the court determined that vacatur was appropriate.

As to the Idaho lease sales, however, the court reached the opposite conclusion. Applying the same *Allied-Signal* framework, the court held that the disruptive consequences of vacating the leases outweighed the seriousness of the agency's procedural errors. The court emphasized that the violations in Idaho were more limited in scope and could be remedied without undoing the lease sales.

Accordingly, the Ninth Circuit held that the district court abused its discretion in vacating those leases.

Center for Biological Diversity v. U.S. Bureau of Land Mgm't, 141 F.4th 976 (9th Cir. 2025)

Agency prevailed on all NEPA claims but one.

Issue: Purpose and Need, Alternatives, Impact Assessment (GHG)

Sector: Energy (Oil and Natural Gas)

Facts: The case involved the Willow Project which is an oil and gas venture in American's northern Arctic. BLM approved the Project in 2020, allowing ConocoPhillips Alaska, Inc. to construct infrastructure to produce and transport oil and gas from its leases in Alaska's National Petroleum Reserve. Several environmental groups sued. The district court vacated the approval, holding that BLM violated NEPA by declining to consider reasonable project alternatives in its EIS based on the assumption that ConocoPhillips had the right to extract all possible oil and gas from its leases. The district court also concluded that the 2020 EIS violated NEPA because it did not analyze the effects of Willow's downstream foreign greenhouse gas emissions. The district court vacated the approval, remanded, and instructed BLM to "reassess its alternatives analysis."

BLM then prepared a Supplemental EIS (SEIS) to address the deficiencies identified by the district court. The SEIS evaluated two types of alternatives: alternative components and action alternatives. In developing these alternatives, BLM maintained that any viable action alternative must allow for "full development" of the oil field, which shaped the range of alternatives considered. Although BLM analyzed several action alternatives in the SEIS, the Record of Decision ultimately selected a version of the Project that differed in material respects from the specific alternatives analyzed, including reductions in the number of drill sites and associated infrastructure.

Plaintiffs again challenged BLM's approval, arguing that the revised alternatives analysis remained unlawfully constrained and that the agency failed to adequately analyze the environmental impacts of the selected alternative. The district court upheld BLM's post-remand approval. On appeal, the Ninth Circuit considered whether BLM's SEIS and Record of Decision complied with NEPA's requirements, particularly with respect to the agency's alternatives analysis and its treatment of reasonably foreseeable impacts.

Decision: The Ninth Circuit largely upheld BLM's analysis and approval of the Willow Project, rejecting most of Plaintiffs' claims, but identified a limited deficiency in the agency's alternatives analysis.

First, the court held that BLM complied with NEPA in its analysis of downstream greenhouse gas emissions. By estimating emissions from reasonably foreseeable future development within the cumulative effects section of the SEIS, BLM adequately considered both indirect and cumulative impacts. The court rejected Plaintiffs' argument that BLM was required to perform a more granular or separate analysis, explaining that NEPA requires disclosure of impacts, not precision or a particular methodology. Because BLM quantified emissions and disclosed its assumptions and limitations, its analysis satisfied NEPA's "hard look" requirement.

Second, the court held that BLM did not act arbitrarily or capriciously in selecting mitigation measures under the Naval Petroleum Reserves Production Act. The court explained that the statute grants BLM discretion to balance resource development with environmental protections, and that the agency reasonably considered and incorporated mitigation measures designed to minimize impacts to wildlife, subsistence uses, and surface resources. The court declined to second-guess the agency's policy judgments where the record demonstrated that BLM had considered relevant factors and explained its choices.

Third, the court upheld BLM's use of a "full field development" standard to guide its alternatives analysis, finding that the agency had a rational basis for structuring its review around full development of the leases. However, the court found that BLM failed to adequately explain why the final approved alternative deviated from that standard, requiring further explanation on remand.

A concurring judge agreed with the majority's resolution but emphasized the practical constraints facing agencies in large, complex projects, particularly where lease rights and economic considerations shape the range of reasonable alternatives. The concurrence highlighted the importance of allowing agencies flexibility in refining project alternatives during the NEPA process.

A separate opinion concurred in part and dissented in part, arguing that the majority was too deferential to BLM on certain aspects of its analysis. The opinion suggested that BLM's constraints on the alternatives analysis were overly narrow and that the agency should have more fully evaluated less intensive development scenarios. The dissenting portion reflects an ongoing tension in NEPA cases over how much discretion agencies have in defining project objectives and narrowing alternatives.

American Wild Horse Campaign v. Raby, 144 F.4th 1178 (10th Cir. 2025)

Agency prevailed on its NEPA claims.

Issues: Predecisional, Alternatives, Impact Assessment

Sector: Land Management

Facts: Wild horse advocates challenged the Bureau of Land Management's (BLM) amendments to its regional management plan (RMP) to reduce wild horse population goal in certain herd management areas after private landowner revoked consent for BLM to manage wild horses on its land that was part of checkerboard pattern of public and private land ownership, alleging NEPA violations.

To ensure the BLM amendments to its RMP addressed management issues on the checkerboard, BLM published first a draft EIS and then a Final EIS. The Final EIS and Record of Decision (ROD) explained why BLM believed Alternative D best addresses the Purpose and Need for the RMP Amendment, is technically capable of implementation, and accomplishes a balance of multiple-use values by maintaining a wild horse herd in a portion of the planning area. In its rationale, BLM explained that it could not maintain horse herds in the solid blocks of public land within Great Divide Basin or Salt Creek Wells without constant straying onto private checkerboard land.

Petitioners challenged BLM's decision under NEPA, making three claims: (1) BLM predetermined its decision; (2) BLM failed to properly consider land swaps; and (3) BLM did not consider the environmental impacts of increased grazing.

Decision: The Tenth Circuit affirmed BLM's amendments involving the NEPA challenges, concluding that the agency complied with NEPA.

First, petitioners claimed that BLM predetermined its outcome. They argued that because the RMP Amendments stem from the Grazing Association's revocation and follow the 2012 consent decree, BLM's only goal was to meet the Grazing Association's demands. This argument does not "meet [the] high standard to prove predetermination." *Forest Guardians v. U.S. Fish & Wildlife Serv.,* 611 F.3d 692, 714 (10th Cir. 2010). The court disagreed with the petitioners' argument and held that the petitioners could not show that BLM committed to any outcome before the NEPA process or that the process was somehow deficient.

Second, the court rejected plaintiffs' argument that BLM failed to adequately consider alternatives. Petitioners challenged the EIS's alternatives analysis. They claimed that BLM did not fully consider land swaps—trading checkerboard land to consolidate federal land for wild horse management. BLM explained that it "does not currently have a proposal from a willing party (or group of parties) to a land exchange involving checkerboard lands in the planning area," and even if it did, "a land exchange would entail extensive surveys of millions of acres for mineral value, cultural resources, and potential hazardous materials, which would likely take years to complete and demand extensive agency resources." Citing to *Seven County* the court found that BLM's explanation of why land swaps are infeasible to be reasonable.

Finally, petitioners claimed BLM ignored the environmental impacts of the potential of increased grazing. Citing to *Seven County*, the Court ruled that "when the effects of an agency action arise from a separate project—for example, a possible future project or one that is geographically distinct from the project at hand—NEPA does not require the agency to evaluate the effects of that separate project." The court held that just because the effects were foreseeable, did not mean BLM can be held responsible for these effects.

The Tenth Circuit held that BLM complied with NEPA and took the requisite good faith "hard look."

Shoshone-Bannock Tribes of the Fort Hall Reservation v. U.S. Dep't of the Interior, 153 F.4th 748 (9th Cir. 2025)

Court only discussed NEPA claims in the dissent (finding that BLM's EIS should have been found sufficient).

Issue: Deference

Sector: Land Management

Facts: This case arises from a long-running dispute over a proposed land exchange between the Bureau of Land Management (BLM) and J.R. Simplot Company involving federal land near Pocatello, Idaho. The land, located adjacent to Simplot's phosphate-processing fertilizer plant, is valuable to the company as a site for storing phosphogypsum, a byproduct of fertilizer production, which would allow the plant to continue operating for decades. The land at issue, however, was originally part of the Shoshone-Bannock Tribes' reservation and was ceded to the United States under an 1898 agreement ratified by the Act of 1900, which governs how those lands may be disposed of. Beginning in the 1990s, Simplot proposed a land exchange under which it would convey other parcels to the federal government in return for the federal tract. After years of administrative review, BLM approved the exchange pursuant to the Federal Land Policy and Management Act (FLPMA). The Shoshone-Bannock Tribes then sued the Department of the Interior and BLM, arguing that the Act of 1900 restricts disposal of the ceded lands and does not authorize an exchange of this kind. The district court upheld the land exchange, concluding that BLM had authority under FLPMA. On appeal, however, the Ninth Circuit reversed, holding that the Act of 1900 controls the disposition of the ceded lands and limits BLM's authority to complete the exchange.

Decision: The Ninth Circuit reversed the district court and held that the land exchange was not authorized under the governing statutory framework. The court focused on the interaction between the Act of 1900 and the Federal Land Policy and Management Act (FLPMA), concluding that the more specific provisions of the 1900 Act controlled the disposition of the ceded lands. In particular, the court determined that the 1900 Act limits how those lands may be transferred and does not authorize the type of land exchange approved by BLM. As a result, the court rejected BLM's reliance on its broader authority under FLPMA and held that the agency exceeded its statutory authority in approving the exchange.

In reaching this conclusion, the court emphasized traditional principles of statutory interpretation, including that specific statutory directives govern over more general grants of authority and that agencies must act within the limits Congress has established for particular categories of land. The court declined to defer to BLM's interpretation where it conflicted with the plain structure and purpose of the earlier statute governing the Tribes' ceded lands. Although the majority did not address NEPA, the decision is notable for NEPA practitioners because it reinforces that agency actions must first be grounded in proper statutory authority before NEPA compliance is even reached. In this way, the case serves as a reminder that challenges to federal land management decisions may turn on threshold statutory constraints rather than environmental review alone.

Dissent: Judge Bumatay wrote a lengthy dissent, arguing that the majority failed to afford appropriate deference to the agency's interpretation of its statutory authority and improperly substituted its own judgment for that of BLM.

The dissent addressed NEPA principles more directly, emphasizing that judicial review of agency decisionmaking must remain highly deferential. Citing recent Supreme Court guidance, Judge Bumatay underscored that "deference is our marching order." He explained that NEPA requires only a procedural "hard look" and does not permit courts to second-guess the substance of agency decisions. In his view, BLM's environmental analysis fell within a permissible "zone of reasonableness," and the majority's approach risked turning NEPA into a vehicle for judicial micromanagement and delay of agency action.

Cascadia Wildlands v. U.S Bureau of Land Mgm't, 153 F.4th 869 (9th Cir. 2025)

Agency prevailed.

Issues: Tiering, Impacts (Marbled Murrelets, Scientific Integrity of the data and analysis.

Sector: Land Management

Facts: This case involves a number of administrative actions centering around timber harvesting and wildlife protection in coastal Oregon forests. Plaintiffs challenged BLM's approval of the Big Weekly Elk Forest Management Project (BWE Project), a land management action authorizing certain forms of logging in federally owned Oregon coastal forests.

The BWE Project was implemented pursuant to a broader Resource Management Plan (RMP) and associated EIS, which govern land use allocations and management direction across BLM lands in the region. These programmatic documents establish categories of land use, including areas prioritized for timber production (the "Harvest Land Base") and areas reserved for conservation objectives (such as "Late Succession Reserves"), and include management direction for protected species, including the marbled murrelet. BLM prepared an EA for the site-specific project and issued a FONSI, relying in part on the prior programmatic EIS.

The BWE Project proposes forest management activities on BLM-administered lands in Coos County, Oregon, within 28 miles of the Pacific Coast – land that is already subject to the RMP's land use designations and management direction. The site-specific BWE Project authorizes thinning of forest in the "Late-Successional Reserve" and heavier regeneration harvesting in the "Harvest Land Base", as well as "transportation management actions," such as road construction.

Because the project operates within this layered planning framework, BLM's NEPA analysis incorporated and tiered to prior programmatic decisions, while providing additional project-level analysis of environmental effects.

According to the Plaintiffs, the BWE Project runs afoul of the provisions in the governing land use framework designed to protect the marbled murrelet, a seabird species that depends on mature and old-growth forest habitat. Plaintiffs alleged that BLM violated NEPA by failing to take a "hard look" at the environmental impacts of the project, particularly its effects on marbled murrelet habitat. Plaintiffs argued that the agency failed to adequately analyze site-specific impacts, improperly relied on tiering to broader documents, and did not sufficiently evaluate potential edge effects and other habitat-related impacts.

Decision: The Ninth Circuit affirmed summary judgment in favor of BLM, holding that the agency did not violate the RMP and satisfied NEPA's "hard look" requirement.

First, the court rejected Plaintiffs' argument that the BWE Project violated the governing RMP. Plaintiffs contended that the project was inconsistent with the RMP's management direction for marbled murrelet habitat, particularly within Late-Successional Reserves. The court found that the RMP allows for active forest management, including thinning in reserve areas, so long as such activities are consistent with long-term habitat objectives. The court deferred to BLM's interpretation of its own plan, emphasizing that although the Fish and Wildlife Service (FWS) has expertise in species conservation, the interpretation of a multiple-use land management plan falls within BLM's authority.

As the court explained, "[w]hile FWS may indeed be the expert on murrelet conservation and what is necessary for murrelet recovery, this case involves the interpretation of a land use plan that seeks to balance many different uses, including murrelet conservation. This case does not fall outside the ambit of BLM's expertise simply because the portion of the RMP at issue involves an endangered species that is also regulated by FWS."

The court further found that the relevant murrelet management direction in the RMP was ambiguous, but that BLM's interpretation—limiting the scope of restrictions on modifying nesting habitat—was reasonable. The court explained that ambiguity alone does not resolve the issue; rather, courts must determine whether the agency's interpretation is reasonable and entitled to deference. Here, the court concluded that BLM's interpretation warranted controlling weight, as it reflected a reasonable reading of the RMP and fell within BLM's expertise in administering its own land use plan.

Second, the court held that BLM took the requisite "hard look" at environmental impacts under NEPA.

The court found that the agency adequately analyzed the project's effects on marbled murrelet habitat, including potential edge effects and habitat modification. Although Plaintiffs argued that the analysis was insufficiently detailed and relied too heavily on prior programmatic documents, the court concluded that NEPA permits tiering and that BLM appropriately supplemented the broader EIS with project-specific analysis in the EA.

The court emphasized that NEPA does not require agencies to eliminate uncertainty or conduct the most exhaustive analysis possible, but rather to provide a reasoned evaluation of environmental consequences. Here, BLM acknowledged potential impacts, relied on available scientific evidence, and explained its conclusions. The court declined to second-guess the agency's technical determinations.

Accordingly, the Ninth Circuit held that BLM's approval of the BWE Project was neither inconsistent with the RMP nor arbitrary and capricious under NEPA.

U.S. DEPARTMENT OF TRANSPORTATION

Sierra Club v. U.S. Dep't of Transp., 125 F.4th 1170 (D. C. Cir. 2025)

Agency did not prevail.

Issues: Cumulative Impacts, Connected Actions/ Segmentation, Impact Assessment (Environmental Justice)

Sector: Transportation (Rail); Energy (Natural Gas)

Facts: Environmental organizations (Sierra Club), various state attorney generals, and the Puyallup Tribe of Indians petitioned for review of Pipeline and Hazardous Materials Safety Administration (PHMSA) rule authorizing the transportation of liquefied natural gas (LNG) by rail in approved rail tank cars, asserting that the agency should have conducted an EIS, and alleged certain NEPA deficiencies in the EA.

Decision: Petitioners argued that PHMSA's decision not to prepare an EIS was arbitrary and capricious because it ignored the significant environmental consequences of the LNG Rule. They claimed that PHMSA failed to take a hard look at how the LNG Rule would affect public safety and therefore violated NEPA. In support of their argument, petitioners noted that PHMSA disregarded the checkered safety record of the 120W tank car and ignored the risks of including numerous cars of LNG within a single train without any required speed limit.

The D.C. Circuit agreed, and highlighted several concerns with the rule, including the lack of limits on the number of LNG tank cars in a single train and the absence of a speed limit for such trains. PHMSA noted that one company was considering LNG trains with up to 80 cars, raising fears of potentially catastrophic outcomes. During the rulemaking process, environmental groups emphasized that the energy content in 22 LNG tank cars could be equivalent to the atomic bomb dropped on Hiroshima during World War II.

Marin Audubon Society v. Federal Aviation Admin. 129 F.4th 869 (D.C. Cir. 2025)

Parties in joint motion prevailed.

Issues: Remedies

Sector: Transportation (Aviation)

Facts: Environmental organizations (collectively, Marin Audubon) initially petitioned for review of FAA and NPS' approval of air travel management plan governing commercial tourist flights over four national parks without environmental analysis other than a categorical exclusion under NEPA. In Marin Audubon Society v. FAA, 121 F4th 902 (D.C. Cir. 2024), the D.C. Circuit vacated and remanded. Parties filed joint motion for stay of the portion of the opinion holding that the air tour management program must be "set aside."

Decision: The parties requested a stay only of the portion of the opinion holding that the air tour management program must be "set aside." Marin Audubon, 121 F.4th at 918–19. They pointed out that without a stay of the mandate, the prior interim system would be revived on remand while the Agencies comply with our decision. Under that system, "nearly twice as many flights were authorized for two park units and even more for the other two park units," frustrating petitioners' goals to reduce overflights.

Vacating the plan could "thus harm the very places (the park units) and people (petitioners)" that Congress "meant to protect." Id. The original panel granted a stay of the judgment in the case (having previously denied the petitioners request for remand without vacatur). The court explained that in cases like this, in which the party challenging a government regulation for being too lax as opposed to too stringent, a stay may be justified so as not to leave the petitioner in worse condition than before filing suit. In such cases, the D.C. Circuit explained, equitable considerations may justify a stay without compromising the effect of the court's conclusion that the agency action was unlawful.

Judge Srinivasan concurred separately for substantially the same reasons—i.e., that vacatur without any stay of the mandate would have the effect of putting the prevailing parties in a worse position vis-à-vis the protections at issue than if they had not brought their challenge.

Badger Helicopters v. Fed. Aviation Admin., 154 F. 4th 902 (8th Cir. 2026)

Agency prevailed.

Issues: Alternatives, Impact Assessment

Sector: Transportation (Aviation)

Facts: Commercial air tour operators petitioned for review of FAA order, raising NEPA challenges to air tour management plans (ATMP) that FAA and National Park Service (NPS) issued pursuant to Air Tour Management Act that banned all commercial air tours over Mount Rushmore National Memorial and Badlands National Park.

In 2023, federal agencies issued ATMPs for Mount Rushmore National Memorial and Badlands National Park, banning all commercial air tours over the Parks and the area within a half mile of the Parks' boundaries, except for limited authorized purposes. The agencies' final decisions in the EA explained that air tours negatively affected visitor experience, wildlife, and tribal cultural experiences. The agencies thus believed banning air tours best fit the goals of the Parks.

The D.C. Circuit denied the petitions.

Decision: Petitioners argued the agencies violated NEPA by failing to use reliable data, failing to consider a reasonable range of alternatives, and failing to consider aviation safety. The court found that the agencies complied with NEPA's procedural requirements, used reasonable data, considered an adequate range of alternatives, and sufficiently addressed aviation safety concerns.

In the first challenge, petitioners did not challenge the agencies' modeling, but rather the underlying inputs (data from certain years) used for the modeling, specifically the flight operation data and the non-air tour noise from the years 2019 and 2003. Upon, review, the D.C. Circuit held agencies' choice of flight data was reasonable because it relied on reliable data, which was in the agencies' view, "the most accurate and current data available during the period that th[ese Plans were] being drafted." See U.S. Air Tour Ass'n v. FAA, 298 F.3d 997, 1011 (D.C. Cir. 2002). As to the 2003 data uses, the court criticized the petitioners for not contesting the accuracy of the past reports but arguing only that the data is older than they would prefer. The court provided the agencies substantial deference in their NEPA analysis and would not "not micromanage" choices "about the depth and breadth of [their] inquiry."

Petitioners challenged the agencies' determinations that the ATMPs impacted bighorn sheep and peregrine falcons in the Parks. The court disagreed, stating that the agencies did assess impacts to bighorn sheep and that 70% of the sheep in the parks were lost in 2021 due to disease. The agencies noted both species (big hornsheep and peregrine falcons) are susceptible to noise disturbance and that stressors such as air tour noise could impact their populations.

The court rejected petitioners' contention that the agencies failed to consider a reasonable range of alternatives in their EA. The D.C. Circuit discussed and reviewed the agencies' consideration of four alternatives. While the agencies did not include alternatives that would have adjusted the flight routes or altitudes from the current flight operations, they considered doing so and concluded otherwise.

Lastly, the D.C. Circuit did not agree with petitioners' contention that the agencies failed to consider aviation safety relying on 40 C.F.R. § 1501.3(b) (2)(iii) (2020), which required agencies to consider adverse effects on "public health and safety," since they would be implemented against the backdrop of the FAA's "rules governing the operation of aircraft within the United States." See 14 C.F.R. § 91.1.

The court concluded that the agencies' decisions were reasonable and reasonably explained and therefore denied the petitions to vacate the air tour management plans.

U.S. DEPARTMENT OF WAR

South Carolina Coastal Conserv. League v. U.S. Army Corps of Eng'rs, Charleston Div., 127 F.4th 457 (4th Cir. 2025)

Agency prevailed.

Issue: Impact Assessment

Sector: Construction

Facts: Environmental organizations challenged the U.S. Army Corps of Engineers' issuance of a Clean Water Act § 404 permit for a large mixed-use development known as the Cainhoy Project in coastal South Carolina. The project would convert approximately 3,906 acres of forested land, including wetlands, into residential and commercial development, while placing the remaining acreage under conservation protections.

As part of its environmental review, the Corps prepared an EA and issued a FONSI. The Corps also consulted with the U.S. Fish and Wildlife Service (FWS) under the Endangered Species Act regarding impacts to listed species, including the northern long-eared bat (NLEB) and the red-cockaded woodpecker.

During the course of the review, the regulatory status of the NLEB changed from Threatened to Endangered, triggering reinitiation of consultation. Notably, the species had never been observed on the project site and was last documented approximately 8.5 miles away. Rather than conducting site-specific surveys, the project proponents elected to assume the presence of the species, and the FWS accepted that approach, explaining that available surveys could confirm only presence or absence and could not reliably estimate population density or the number of individuals potentially affected.

Because the FWS determined that it was not practical to quantify take in terms of individual bats due to their small size, dispersed habitat, nocturnal behavior, and the likelihood that most impacts would be non-lethal and undetectable, it used a habitat-based surrogate to measure anticipated take. Specifically, the Service defined take in terms of the 3,906 acres of roosting and foraging habitat affected by the project, with reinitiation of consultation triggered if that acreage or associated conditions were exceeded.

The Biological Opinion concluded that, although habitat loss could result in injury or mortality, the impacts would be limited because bats were expected to relocate to the surrounding forested landscape, which included millions of acres of available habitat. The Corps incorporated these findings and mitigation measures into its permit and ultimately concluded that the project would not result in significant environmental impacts requiring preparation of an EIS.

Plaintiffs challenged the Corps' decision under NEPA to rely on an EA rather than preparing an EIS. The district court denied a preliminary injunction, and Plaintiffs appealed.

Decision: The Fourth Circuit affirmed the Corps' approval, concluding that the agency complied with both NEPA and did not act arbitrarily or capriciously.

The court rejected Plaintiffs' argument that the agencies were required to conduct site-specific surveys rather than assume species presence. The court held that the decision to assume presence was reasonable under the circumstances and consistent with a precautionary approach. It further explained that NEPA does not require agencies to gather additional data where the available information is sufficient to support a reasoned analysis. Because the agencies disclosed the uncertainty and explained their methodology, the lack of site-specific survey data did not render the analysis arbitrary or capricious.

Third, the court held that the Corps satisfied NEPA's "hard look" requirement. The court emphasized that NEPA is a procedural statute that requires agencies to consider environmental consequences, not to eliminate all uncertainty or reach particular results. The Corps reasonably relied on the Biological Opinion and incorporated its findings into the EA. The court declined to second-guess the agency's technical judgments where the record demonstrated that the Corps considered the relevant factors, including species impacts and habitat loss, and provided a rational explanation for its conclusions.

Finally, the court upheld the Corps' decision to prepare an EA rather than an EIS. The court concluded that the agency reasonably determined that the project would not result in significant environmental impacts, particularly considering the surrounding available habitat and the mitigation measures imposed. Accordingly, the Corps' issuance of a FONSI was supported by the record.

Indigenous Peoples of the Coastal Bend v. U.S. Army Corps of Eng'rs, 132 F.4th 872 (5thCir. 2025)

Agency prevailed.

Issue: Impact Assessment

Sector: Energy (Oil)

Facts: Two Native American tribes and a Coastal Bend environmental association (Plaintiffs) challenged a construction permit issued by USACE to expand operations at an oil expert terminal on Texas's Gulf Coast. The Moda Ingleside Crude Export Terminal, located in Ingleside, Texas, is currently the largest export terminal by volume in North America, moving roughly 11.6 million barrels per day at the Port of Corpus Christi, the leading U.S. port for oil exports. Seeking to expand the Terminal further, the owner (Enbridge Oil Terminal, LLC) applied for a permit to dredge the seafloor and discharge the dredged material into U.S. waters. The terminal expansion included constructing five new barge docks, adding a 1,700-foot-diameter turning basin, and building a deep-water ship dock.

In 2020, the Corps prepared a 54-page EA and approved the permit. The scope of EA analysis included potential impacts from the structural improvements to the East Basin; the 491-foot bulkhead extension area along the shoreline; the structural improvements and 43-acre dredging footprint in the West Basin; the Sunset Lake seagrass mitigation area, and 50-acre wooded habitat mitigation area along the eastern side of the facility to be preserved.

The Plaintiffs claimed significant damage to seagrasses and wetlands and that the Corps violated NEPA. The district court denied summary judgment for Plaintiffs and granted summary judgment for the Corps, concluding the Corps adequately studied the environmental impacts of the proposed expansion.

Decision: The court upheld the Corps' decision, rejecting Plaintiffs' NEPA challenges and finding that the agency's analysis was neither arbitrary nor capricious.

First, the court addressed Plaintiffs' argument that the Corps' impacts analysis was deficient because it considered only temporary construction and dredging impacts and failed to analyze the long-term, downstream effects of expanded operations, including increased vessel traffic. The court declined to consider this argument, finding that it was forfeited because Plaintiffs did not raise it during the administrative comment period. The court emphasized that NEPA requires parties to present their concerns during the agency's review process so that the agency has an opportunity to address them, and that raising new theories of impact for the first time in litigation is insufficient.

Second, the court rejected Plaintiffs' argument that the Corps' impacts analysis was deficient because it arbitrarily gave weight to project benefits without assessing corresponding costs. To the extent this argument flowed from Plaintiffs' claim regarding increased vessel traffic, the court found it forfeited for failure to raise it during the administrative process. To the extent the argument challenged the Corps' cost-benefit analysis independent of vessel traffic, the court rejected it on the merits.

The court looked to the Corps' NEPA implementing regulations, which provide that the scope of analysis for impacts and alternatives should be consistent with the scope used to evaluate a project's benefits. The court interpreted this requirement narrowly, explaining that the Corps is required to evaluate only those effects proximately caused by the permitted action, even if it discusses broader benefits of the overall project. *Ctr. For Biological Diversity v. U.S. Army Corps of Eng'rs*, 941 F.3d 1288, 1302 (11th Cir. 2019).

Applying that framework, the court found that the Corps properly evaluated costs and benefits within the scope of its Clean Water Act public interest review. The Corps considered economic benefits, including increased energy availability and operational efficiencies, and weighed those benefits against environmental detriments, including impacts to wetlands, based on the administrative record and public comments. The court further explained that even if the Corps discussed broader project benefits, it was not required to evaluate costs at the same breadth under NEPA, because "[b]y using one document to serve many functions, the Corps can limit the scope of its review in one part and expand it in another, as each regulatory task requires." (*Kentuckians for the Commonwealth v. U.S. Army Corps of Engineers*, 746 F.3d 698, 712 (6th Cir. 2014). The court concluded that the Corps' assessment of costs and benefits was consistent with NEPA and was not arbitrary and capricious.

Third, the court rejected Plaintiffs' argument that the Corps failed to adequately assess the Terminal Project's incremental and cumulative impacts. Plaintiffs contended that the Corps' analysis was deficient because it did not fully evaluate the combined effects of the project alongside other past, present, and reasonably foreseeable future actions, including increased industrial activity and vessel traffic in the region.

The court disagreed, finding that the Corps conducted a sufficient cumulative impacts analysis under NEPA. The court explained that NEPA does not require agencies to engage in exhaustive or speculative analysis, but rather to consider cumulative effects to the extent they are reasonably foreseeable and supported by the record. Here, the Corps identified relevant categories of cumulative impacts, including impacts to wetlands, water quality, and surrounding environmental conditions, and evaluated those impacts in light of other activities in the project area. The court also rejected Plaintiffs' argument that the Corps was required to quantify or analyze impacts at a more granular level, emphasizing that NEPA does not mandate a particular methodology so long as the agency's analysis is reasonable and adequately disclosed. The court found that the Corps reasonably relied on available data and its technical expertise in assessing cumulative impacts and provided a sufficient explanation for its conclusions.

Accordingly, the court held that the Corps' incremental and cumulative impacts analysis satisfied NEPA's "hard look" requirement and was not arbitrary and capricious.

Fourth, the court rejected Plaintiffs' argument that the Corps failed to assess cumulative impacts in accordance with the Clean Water Act (CWA). Plaintiffs contended that the Corps' public interest review did not adequately evaluate the combined effects of the project on aquatic resources, including wetlands, in conjunction with other regional activities.

The court found this argument unpersuasive, explaining that Plaintiffs failed to identify any meaningful difference between the cumulative impacts analysis required under the CWA and that required under NEPA in this context. Because the court had already determined that the Corps' cumulative impacts analysis satisfied NEPA's "hard look" requirement, it likewise concluded that the Corps did not act arbitrarily and capriciously in finding that the project complied with the CWA's cumulative impacts requirements.

Fifth, the court rejected Plaintiffs' argument that the Corps failed to adequately analyze the project's climate change impacts. Plaintiffs contended that the Corps' analysis was deficient because it did not fully account for the project's contribution to greenhouse gas emissions and related climate effects, including those associated with increased vessel traffic and downstream operations.

The court found that the Corps' climate analysis satisfied NEPA's requirements. The court explained that NEPA does not require agencies to quantify greenhouse gas emissions or conduct a more detailed climate analysis where the agency has reasonably considered the issue and explained its conclusions. Here, the Corps acknowledged potential climate-related impacts, discussed emissions associated with the project, and explained the limits of its analysis based on available information and the scope of the permitted activity.

The court declined to require the Corps to analyze indirect or downstream emissions beyond those proximately caused by the permitted action, emphasizing that NEPA does not obligate agencies to assess effects that are speculative or outside the agency's control. The court further found that the Corps' qualitative discussion of climate impacts was sufficient, particularly where the record demonstrated that the agency considered the issue and provided a reasoned explanation.

Finally, the court rejected Plaintiffs' argument that the Corps was required to prepare an EIS rather than an EA. Plaintiffs contended that the significance of the project's impacts—including effects to wetlands, increased vessel traffic, and related environmental concerns—triggered the need for an EIS.

The court disagreed, finding that the Corps reasonably concluded that the project would not have significant environmental impacts and therefore appropriately issued a FONSI. The court emphasized that an agency's decision to prepare an EA rather than an EIS is entitled to deference so long as the agency has adequately considered the relevant factors and provided a convincing statement of reasons explaining why the project's impacts are not significant.

Here, the court found that the Corps evaluated the relevant intensity and context factors, considered potential impacts to wetlands, cultural resources, and other environmental concerns, and explained why those impacts would not rise to the level of significance. The court declined to require preparation of an EIS where the agency had identified, disclosed, and reasonably analyzed the potential impacts and supported its FONSI with a reasoned explanation.

Accordingly, the court held that the Corps did not act arbitrarily and capriciously in preparing an EA and issuing a FONSI rather than preparing an EIS.

Prutehi Litekyan: Save Ritidian v. U.S. Dep't of the Air Force, 128 F.4th 1089 (9th Cir. 2025), *cert. granted sub nom.* ***Dep't of Air Force v. Prutehi Guahan***, No. 25-579 (U.S. Mar. 9, 2026)

Agency did not prevail.

Issue: Federal Action (Final Agency Action, Functional Equivalence Exemption)

Sector: Defense

Facts: Nonprofit organization (Prutehi) dedicated to protecting natural and cultural resources in Guam brought action against the Air Force, the Department of Defense (now, Department of War) and their respective Secretaries, alleging failure to comply with NEPA before submitting Resource Conservation and Recovery Act (RCRA) permit renewal application to Guam Environmental Protection Agency (EPA) for disposal of hazardous waste munitions on beach through open burning/open detonation operations (OB/OD).

The Air Force operates Andersen Air Force Base (AAFB) in northern Guam. It has erected an Explosive Ordnance Disposal (EOD) range at Tarague Beach, directly adjacent to the Base. The Air Force uses this range to dispose of "unserviceable ordnance and other pyrotechnic devices," such as "black powder, white/red phosphorus, tear gas, ammunitions, propellants, and [other] explosive materials."

The Air Force has used two methods to destroy hazardous munitions waste at Tarague Beach: OB/OD. Open burning entails placing the waste munitions in a four-foot wide, five-foot-tall "burn kettle," along with wood, roughly ten gallons of diesel fuel, and an ignition device. Open detonation involves placing the waste munitions, an explosive charge, and an igniter into a pit. Under both operations, the igniter is remotely activated from a personnel bunker and the waste munitions are destroyed through burning or explosion. A 2,400 foot-radius safety zone surrounds the active treatment units at Tarague Beach.

The Air Force first received a RCRA permit to conduct OB/ OD operations on Tarague Beach in 1982. Every three years since then, it has applied for a new permit. Guam EPA has granted each permit since it was authorized to do so. While OD operations have occurred under each permit, no OB operations have taken place since at least the early 2000s.

Guam EPA issued the Air Force's most recent RCRA permit in 2018; it was set to expire on September 3, 2021. As the expiration date approached, the agency had to decide whether it would continue OD operations (and potentially restart OB operations) on Tarague Beach or find another way to manage hazardous waste munitions. The Air Force submitted an application for permit renewal in May 2021, reflecting its intention to conduct OB/OD operations at the beach from 2021 to 2024.

On October 15, 2021, Guam EPA issued to the Air Force its Notice of Preliminary Decision that "neither den[ied] nor approve[d]" the Air Force's permit application while Guam EPA continued to review the public comments. In the meantime, with Guam EPA's approval, the Air Force has continued to operate the OB/OD facility on Tarague Beach under the terms of its 2018 permit while its renewal application is pending. *See* 40 C.F.R. § 270.51(d) (authorizing a renewal permit applicant to extend the life of its current permit by filing a timely and complete application to the appropriate RCRA permitting authority).

In 2021, Prutehi filed a complaint alleging that the agencies violated NEPA by submitting a RCRA permit renewal application without preparing an EIS or EA that "(1) takes the requisite 'hard look' at the environmental impacts of the proposed OB/OD operations, (2) considers a reasonable range of alternatives, including the 'no action' alternative, and (3) provides opportunities for public comment on the proposed operations and reasonable alternatives."

The lower court dismissed the complaint and determined that there was no final agency action, so Prutehi's challenge was unripe, and thus there was not a final agency action, as Guam EPA had yet to decide on the permit application. As an alternate ground for dismissal, the district court held that Prutehi failed to state a claim upon which relief could be granted because the Air Force's permit application was not subject to NEPA. The district court relied for this conclusion on the "functional equivalence doctrine," which exempts agency action from NEPA review where another statute imposes environmental review procedures that would be "redundant with" those provided for under NEPA. *See Alabama ex rel. Siegelman v. U.S. E.P.A.*, 911 F.2d 499, 504 (11th Cir. 1990).

<u>Decision</u>: Prutehi appealed the lower court's dismissal on both the determination that there was no final agency action and further argued that the functional equivalence doctrine did not apply.

In a mixed decision, the Ninth Circuit held that the Air Force's decision to apply for a permit was a final agency action and the Air Force was required to comply with NEPA. The court reflected that the permit application "reflected the agency's commitment to a particular location for and method of waste munitions disposal," signifying "the endpoint in its decisionmaking process." This commitment "determined the agency's legal obligations." Thus, the permit application satisfied both prongs of *Bennett v. Spear*, 520 U.S. 154 (1997).

The Ninth Circuit held that NEPA applies, and the action is not functionally exempt based on the RCRA process. The Ninth Circuit in the past recognized "only 'two circumstances' " in which an agency need not comply with NEPA's procedural requirements "in the presence of major federal action and despite an absence of express statutory exemption": (1) "where doing so 'would create an irreconcilable and fundamental conflict' with the substantive statute at issue," and (2) where, "in limited circumstances, a substantive statute 'displaces' NEPA's procedural requirements." *Stand Up for California! v. U.S. Dep't of Interior*, 959 F.3d 1154, 1163–64 (9th Cir. 2020) (*quoting Jamul Action Comm. v. Chaudhuri*, 837 F.3d 958, 963 (9th Cir. 2016)).

Highlighting the differences between NEPA and RCRA (internal decision-making, alternatives, timing of the public reviews), the Ninth Circuit stated that the processes are fundamentally dissimilar in important respects. It distinguished *Alabama ex rel. Siegelman v. U.S. E.P.A.*, 911 F.2d 499, 504 (11th Cir. 1990), stating that the defense agencies are not primarily concerned with environmental questions nor are they agencies whose "*raison d'etre* is the protection of the environment."

In sum, the Ninth Circuit ruled that RCRA is not so similar to NEPA that it renders NEPA review redundant, nor is it so different from NEPA to suggest that Congress did not intend compliance with both statutes.

The Ninth Circuit remanded, reversing the lower court's grant of a motion to dismiss on behalf of the agency.

Dissent: Circuit Judge VanDyke dissented the majority's decision finding the permit application was a final agency action. Judge VanDike emphasized that the agencies have undertaken their OB/OD operations at their Explosive Ordnance Disposal (EOD) range since the early 1980s. As required by RCRA, Defendants first applied for a permit to conduct such operations more than four decades ago—in 1982. To continue implementing their ongoing OB/OD operations, Defendants have applied to renew that same permit every three years, which the Guam EPA has always evaluated and then granted.

Judge VanDyke reasoned that even if the requirement to resubmit an application every three years presents the agency with an opportunity to decide to stop some longstanding activity, that still does not change the status quo from a longstanding and continuous activity to one of inactivity. Construing an intermediate decision point as changing the status quo would mean that any so-called period of inactivity—no matter how small—is a change to the status quo.

Judge VanDyke analogized a similar scenario: to show why this can't be correct, consider a forest ranger who puts gasoline into his truck so that he can continue his longstanding activity of patrolling the forest. That decision point does not change the status quo from patrolling the forest to not patrolling the forest simply because, had the ranger not refueled, he would have been unable to continue patrolling. Similarly, he discussed that the agencies' decision to submit the Permit Application did not change the status quo just because, had the agencies not submitted, they would have had to cease their longstanding OB/OD operations.

In a lengthy dissent, he concluded that the application was not "the culmination of the agencies' decisionmaking process, and it caused no change to the status quo," but was merely "a routine part of implementing a pre-existing operational plan" that the agency had implemented "for decades."

Okeelanta Corporation v. U.S. Army Corps of Eng'rs, 132 F.4th 1320 (11th Cir. 2025)

Agency prevailed.

Issue: Connected Action (Segmentation)

Sector: Utility

Facts: Okeelanta Corporation challenged the U.S. Army Corps of Engineers' issuance of a Clean Water Act § 404 permit authorizing the construction and operation of a water storage reservoir and associated infrastructure in South Florida. The project was designed to support agricultural operations and regional water management objectives, including water supply, flood control, and water quality improvements. As part of the project, the Corps approved features that would store and treat water, including a Stormwater Treatment Area (STA), which would be used to improve water quality before discharge.

The Corps prepared an EIS evaluating the environmental effects of constructing and operating the reservoir and associated features, including impacts to wetlands, water quality, and surrounding ecosystems. The analysis focused on the direct effects of the permitted project and its reasonably foreseeable impacts.

Plaintiffs argued that the Corps' NEPA analysis was deficient because it failed to adequately consider the indirect and cumulative impacts of related activities, including broader regional agricultural operations and potential future uses of the project infrastructure. In particular, Plaintiffs challenged the Corps' decision not to fully analyze the potential standalone operation of the STA, which they argued could result in additional environmental impacts. The district court upheld the Corps' decision, and Plaintiffs appealed.

Decision: The Eleventh Circuit affirmed the Corps' approval, concluding that the agency complied with NEPA and did not act arbitrarily or capriciously.

First, the court held that the Corps reasonably defined the scope of its NEPA analysis by focusing on the effects of the permitted project rather than broader regional activities. The court emphasized that NEPA requires agencies to evaluate impacts that are proximately caused by the federal action, not speculative or attenuated effects that depend on independent decisions by third parties.

Second, the court rejected Plaintiffs' argument that the Corps failed to adequately consider indirect effects. The court explained that indirect effects must be both reasonably foreseeable and closely connected to the federal action. Here, the Corps reasonably determined that potential downstream impacts associated with future operations were too uncertain and dependent on future decisions to require detailed analysis at this stage. The court specifically addressed Plaintiffs' argument concerning the standalone operation of the STA. It agreed with the Corps that any future decision to operate the STA as an independent or standalone facility would constitute a separate federal action. As such, that potential future operation was not required to be fully analyzed in the current EIS. Instead, the court explained that if and when the Corps approves standalone operation of the STA, that action would be the appropriate subject of a separate NEPA review, including, if necessary, a supplemental EIS.

Third, the court upheld the Corps' cumulative impacts analysis, finding that the agency adequately considered the incremental effects of the project in combination with other past, present, and reasonably foreseeable future actions. The court declined to require a broader regional analysis where the agency had already evaluated cumulative impacts within a reasonable geographic and temporal scope.

Finally, the court concluded that the Corps satisfied NEPA's hard look requirement. The court emphasized that NEPA is a procedural statute and does not mandate particular outcomes, and it deferred to the Corps' technical expertise where the agency considered the relevant factors and explained its conclusions.

***Center for a Sustainable Coast v. U.S. Army Corps of Eng'rs*,** No. 24-14171 (11th Cir. Oct. 20, 2025)

Agency prevailed.

Issue: Impact assessment

Sector: Construction

Facts: Lumar LLC sought to build a 500-square-foot private dock on Fancy Bluff Creek, adjacent to its 82-acre private inholding within Cumberland Island National Seashore along the Georgia coast. The action was limited to dredging and associated construction activities necessary to improve vessel access to accommodate larger vessels. This project implicates primarily four federal statutes: the Rivers and Harbors Act, NEPA, the Cumberland Island National Seashore Act, and the Administrative Procedure Act. Because the Rivers and Harbors Act covers the coastal waters along Cumberland Islands shoreline, Lumar asked the Corps to issue a permit so that the dock project could get underway. The Corps can issue a "letter of permissions" for some Rivers and Harbors Act applications if "in the opinion of the district engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition." The Corps issued a letter of permission for Lumar's dock, concluding that a categorical exclusion applied and that the proposed work would have negligible effects and also consulted with four agencies (FWS, National Marine Fisheries Service (NMFS), National Park Service (NPS), and Georgia Department of Natural Resources (Ga DNR) and none objected to the project.

Environmental groups, including the Center for a Sustainable Coast, challenged the Corps' approval, arguing that the agency failed to adequately evaluate the environmental impacts of the project. Plaintiffs contended that the Corps improperly limited its analysis to the direct effects of dredging and construction and failed to consider the indirect and cumulative impacts associated with increased vessel traffic and expanded facility operations. The district court upheld the Corps' decision, and Plaintiffs appealed.

Decision: The Eleventh Circuit affirmed the Corps' decision, concluding that the agency reasonably relied on a categorical exclusion in issuing a letter of permission and therefore was not required to prepare an EIS.

First, the court held that the Corps reasonably concluded that the dock project was "minor" based on its size, scale, and physical characteristics. The project involved construction of a relatively small private dock designed for recreational use, with minimal intrusion into navigable waters and consistency with other existing docks in the area.

Second, the court held that the Corps reasonably determined that the project would not have a significant impact on environmental values. The Corps evaluated the project across more than two dozen criteria, including soil and water conservation, water and air quality, noise, wildlife impacts, and shoreline effects, and found only negligible impacts. The Corps also required additional safeguards, including consultation with wildlife agencies and an archaeological assessment of potential impacts to historic and cultural resources.

Third, the court held that the Corps reasonably predicted that the project would not encounter appreciable opposition. Given the project's limited scope and the lack of objection from relevant agencies, including the National Park Service, the Corps' conclusion was entitled to deference even if opposition later materialized.

Fourth, the court upheld the Corps' use of the categorical exclusion through the letter of permission process. The court rejected Plaintiffs' argument that the Corps could not apply the categorical exclusion to projects of this size, explaining that the governing regulation allows such streamlined review where the agency determines the project is minor, has no significant environmental impacts, and will not generate appreciable opposition. The court further rejected attempts to limit the categorical exclusion based on comparisons to other excluded activities, concluding that the Corps' interpretation of its regulations was reasonable.

Finally, the court emphasized that NEPA review is highly deferential and requires only that the agency reasonably consider relevant factors and explain its decision. Because the Corps satisfied those requirements, its decision to rely on a categorical exclusion was not arbitrary or capricious.

El Puente v. U.S. Army Corps of Eng'rs, 100 F.4th 236 (D.C. Cir. 2024)

Agency prevailed.

Issues: Cumulative Impact Analysis, Environmental Justice, Impact Assessment (Baseline Data)

Facts: Petitioners—El Puente de Williamsburg, Inc., GreenLatinos, and Earthjustice—brought suit against the U.S. Army Corps of Engineers and the National Marine Fisheries Service (NMFS), challenging the Corps' approval of a dredging project in San Juan Bay, Puerto Rico. The project aimed to deepen existing navigation channels to accommodate larger commercial vessels and dispose of dredged material at an offshore disposal site regulated under the Marine Protection, Research, and Sanctuaries Act.

In 2018, the Corps issued an EA and FONSI. Following criticism of the EA's environmental justice and cumulative impact analysis, the Corps issued a Supplemental EA (SEA) in 2020, which reaffirmed the FONSI. NMFS issued a Biological Opinion (BiOp) concluding that the project was not likely to jeopardize the continued existence of threatened coral species protected under the ESA.

Petitioners alleged violations of NEPA, and the APA, asserting deficiencies in the Corps' analysis of cumulative impacts, environmental justice effects, coral impacts, and alternatives. The district court granted summary judgment to the agencies.

Decision: The D.C. Circuit affirmed. The court held that the Corps took the required "hard look" at environmental impacts under NEPA and that its analysis was neither arbitrary nor capricious.

First, the court upheld the Corps' cumulative impacts analysis. The court found that the agency "reasonably identified the cumulative impacts of the proposed dredging project in light of past, present, and reasonably foreseeable future actions" and that NEPA does not require an agency to combine "every conceivable project into one analysis." *El Puente v. U.S. Army Corps of Eng'rs*, 100 F.4th 236, 250 (D.C. Cir. 2024) (citing *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 757 (2004)). The court rejected petitioners' claim that the Corps improperly excluded the San Juan LNG facility from the cumulative analysis, noting that the record demonstrated the Corps had in fact considered the LNG facility's impacts.

Second, the court found that the Corps' environmental justice analysis complied with NEPA. Although the 2018 EA had employed a limited one-mile radius for the environmental justice review, the 2020 SEA expanded the analysis to include "the entirety of San Juan Bay and a five-mile buffer zone" surrounding the project area. *Id.* at 243. The court concluded that this expanded review was not a post hoc rationalization, stating that "a supplement that addresses concerns previously raised in the record does not constitute an impermissible post hoc justification." *Id.* at 245 (citing *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Third, the court rejected petitioners' claim that the Corps failed to establish an adequate baseline for evaluating coral impacts. The Corps had conducted coral surveys and included enforceable mitigation measures such as pre-construction diver surveys, avoidance buffers around corals, and real-time turbidity monitoring. The court held that these were not vague or speculative: "Mitigation measures can support a FONSI when they are 'integral components of the project' and not speculative." *Id.* at 252 (*quoting Env't Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007)).

Finally, the court held that petitioners forfeited arguments regarding the LNG facility by failing to raise them during the NEPA comment process. Citing *Department of Transp. v. Public Citizen*, the court reiterated that "parties must raise objections during the administrative process to preserve them for judicial review." *Id.* at 254 (citing *Pub. Citizen*, 541 U.S. at 764–65).

In affirming the agency actions, the court stressed that NEPA is a procedural statute, not a substantive constraint: "NEPA ensures that agencies take a hard look at environmental effects, not that they achieve particular environmental outcomes." *Id.* at 249 (*citing Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). Because the Corps followed NEPA procedures, and their decisions were supported by the record, the court affirmed the judgment of the district court.

INDEPENDENT AGENCIES

Citizens Action Coalition of Indiana, Inc. v. Fed. Energy Reg. Comm'n, 125 F.4th 229 (D.C. Cir. 2025)

Agency prevailed.

Issue: Purpose and Need, alternatives analysis, impacts assessment

Sector: Energy (Natural Gas)

Facts: FERC approved the application for a natural gas pipeline to service two new natural gas turbines pursuant to State of Indiana plan to retire a coal-fired facility. FERC declined to act on a petition for rehearing, thereby denying challenges to the pipeline approval.

Decision: The D.C. Circuit denied all claims related to FERC's NEPA analysis in its EIS. First, it held that NEPA did not require FERC to consider non-gas alternatives that are outside of the agency's jurisdiction and would fail to serve the Project's purpose. In this case, a private party (CenterPoint) proposed to "utilize flexible natural gas combustion turbines to support [its] new intermittent renewable resources." Petitioners asked the agency to consider non-gas alternatives and to redefine the project purpose as promoting solar and wind power. The court rejected that theory, holding that FERC could not lawfully define the project purpose so broadly. Its role was to review a pipeline application. FERC properly rejected petitioner's expanded range of alternatives because they would not satisfy the purpose of transporting natural gas to CenterPoint.

Second, and relatedly, the court rejected petitioner's argument that non-gas alternatives be considered as part of the baseline no-action alternative. FERC properly restricted the no-action alternative to the baseline of the Indiana Commission's energy plan and assumptions of what impacts would result if the proposed pipeline were not built.

Third, with respect to the impacts assessment, the court rejected arguments concerning the adequacy of FERC's greenhouse gas emission analysis and use of various social cost of carbon measures. The court upheld FERC's analysis consistent with several other rulings confirming the agency's discretion on using (or not using) the social cost of carbon measure. Finally, the court held that FERC was not required to label potential emissions as "significant" or "non-significant." The court found that FERC has thoroughly analyzed project emissions in the EIS and therefore did not have to place a label on the nature of those impacts.

American Whitewater v. Fed. Energy Reg. Comm'n, 125 F.4th 1139 (D.C. Cir. 2025)

Agency prevailed.

Issues: Alternatives

Sector: Energy (Hydroelectric)

Facts: FERC prepared an EA considering the impacts of a proposed surrender of a hydroelectric project license on the Salmon Fall River between New Hampshire and Maine. Petitioners challenged adequacy of the EA, arguing that two dams from the Project should be removed as a condition of the requested surrender. The project proponent argued that the dams in question were critical for local community water supply and that a local water treatment plant would be adversely affected if the dams were removed. No party challenged whether a full EIS should have been prepared.

Decision: The court held that FERC reasonably concluded that removal of the dams was infeasible for a variety of practical and environmental reasons and did not need to be considered as part of the reasonable range of alternatives. Despite arguments from petitioners that several beneficial impacts from dam removal could result, the court concluded that FERC reasonably credited information from various sources concerning the potential infeasibility of dam removal. Moreover, the court found that FERC was not required to the precise quantification of every potential environmental impact. Here, the court held that FERC properly considered statements from local governments concerning the important functions of the dams in question. Finally, FERC's final Surrender Order and Rehearing Order adequately discussed the benefits and drawbacks of dam removal in detail.

City of Port Isabel v. Fed. Energy Reg. Comm'n, 130 F.4th 1034 (D.C. Cir. 2025)

Agency prevailed in part on the vacatur decision and did not prevail in part on the reconsideration of the merits.

Issue: Remedy/vacatur; intervening regulatory developments

Sector: Energy (Natural Gas)

Facts: The D.C. Circuit previously found substantial procedural NEPA errors in FERC's analysis of agency's reauthorization of two liquified natural gas facilities and an associated pipeline and ordered supplemental review. Project proponents filed a motion for rehearing disputing portions of the initial D.C. Circuit's panel merits analysis and arguing that any errors in FERC's orders did not warrant vacatur.

Decision: The court partially granted the petition, remanding the orders to FERC without vacatur. The court weighed the traditional *Allied-Signal* factors, the seriousness of the deficiencies identified and the disruptive consequences of vacatur. As to the first factor, the panel concluded that unlike a previous ruling ordering vacatur following FERC's failure to prepare any NEPA document, the errors identified in this matter were not so "fundamental" because of the extensive record of NEPA analyses for the underlying projects. The court also revisited the potential practical consequences of vacatur, and when considered in the context of the nature of FERC's procedural errors, concluded that those errors did not justify throwing the projects and the planning supporting those projects into disarray.

Finally, the court declined to revisit its earlier ruling after intervening executive orders were issued reversing some of the underlying policies requiring, for example, consideration of environmental justice impacts. The court acknowledged that the new administration policies would clearly impact FERC's consideration on remand but left it to the agency to address those issues in the first instance.

Healthy Gulf v. Fed. Energy Reg. Comm'n, 132 F.4th 544 (D.C. Cir. 2025)

Agency prevailed.

Issue: Impact assessment

Sector: Energy (Natural Gas)

Facts: FERC prepared an EIS to review the proposal to build and operate two natural gas pipelines in southwestern Louisiana. The EIS found that the project would result in certain adverse impacts, including the potential increase in the concentration of greenhouse gases, but declined to characterize those effects as significant or insignificant. Petitioners challenged the agency's analysis of upstream greenhouse gas emissions, the failure to characterize greenhouse gas emissions impacts, and the agency's failure to consider the project's effects in tandem with the impacts of building an LNG terminal at the end of the proposed pipelines.

Decision: Petitioners alleged that FERC should have made more detailed inquiry into the potential source and location of upstream wells. In a potential preview of *Seven County*, the court held that the project developer "will not drill the gas wells, nor control where others will drill them." The record did not reflect that the pipeline developer had a reasonable ability to predict the sources of natural gas over time.

As in other recent D.C. Circuit rulings, the court rejected claims that FERC should have characterized the total amount of potential greenhouse gas emissions as significant or insignificant. As in other cases, FERC reasonably explained why it did not use the social cost of carbon protocol. Moreover, FERC complied with the then in force CEQ regulations concerning explanations for not applying models to monetize emissions values for NEPA evaluation purposes.

Finally, the court rejected claims that FERC should have considered the impacts of an LNG terminal as a connected action because petitioners failed to raise those arguments in comments on the draft EIS.

Appalachian Voices v. Fed. Energy Reg. Comm'n, 139 F.4th 903 (D.C. Cir. 2025)

Agency prevailed

Issues: Impact assessment, duty to supplement

Sector: Energy (Natural Gas)

Facts: FERC issued a finding of good cause to extend a construction deadline for the Mountain Valley Pipeline, a project that has undergone numerous litigation challenges over many years. Among other challenges, petitioners challenged the agency's failure to consider additional mitigation measures in the EIS for erosion and runoff because of the pipeline project.

Decision: The court held that petitioners failed to present new and substantial evidence that different and additional mitigation measures for the project were necessary to protect soil or aquatic resources. With respect to allegedly new information presented to FERC in the context of the extension request, the court found that the evidence did not justify renewed environmental analysis. Finally, the court held that the project sponsor had not made any substantial changes to the project necessitating supplemental NEPA review. The court viewed the claim as a request to relitigate concerns previously raised when FERC approved the underlying project.

The most interesting part of this decision lies in the strongly worded concurrence by Circuit Judge Henderson. She said: "America was once a nation that built. * * * But one driving factor of our national sclerosis has been lawsuits such as this one." She complained of a "cottage industry" of legal challenges resulting in a "tidal wave of litigation." She complained that plaintiffs don't have to win these lawsuits, they just need to delay the projects long enough to force abandonment of the proposed action. She wrote that the court system had "enabled interest groups to transform the bench into a tool to stymie any new development. It is long past time to correct our mistake."

Arguably, Judge Henderson takes the *Seven County* "course correction" even further than Justice Kavanaugh. She explores the underlying principle of deference but also encourages a more in-depth review of standing requirements and of a court's authority to issue injunctive relief. She concludes: "NEPA was a modest statute meant to inform an agency during its decision-making process. Our deference to the agency should therefore be two-fold: deferential because we are exercising limited "arbitrary and capricious" review of agency action, and deferential because the underlying statute is purely procedural."

Sierra Club v. Fed. Energy Reg. Comm'n, 145 F.4th 74 (D.C. Cir. 2025)

Agency prevailed.

Issue: Purpose and Need; indirect effects/connected actions,

Sector: Energy (Natural Gas)

Facts: Environmental advocacy organization and private citizen petitioned for review of FERC's approval of 1,000-foot natural gas pipeline crossing border with Mexico and declination of jurisdiction over longer upstream connector pipeline running for another 157 miles into rural Texas.

Decision: Court first ruled that FERC did not improperly define the project Purpose and Need in the EIS so narrowly, that there was only one feasible alternative. In this case, FERC was asked to review the needs of the applicant to link one pipeline to another across the Texas-Mexico border. The agency reasonably gave substantial weight to the preferences of the applicant/sponsor in the siting and design of the proposed project. Quoting *Seven County*, the court said that in weighing claims concerning feasible alternatives, a court "must be at [its] most deferential."

Next, the court rejected claims that FERC should have considered a broad scope of indirect upstream effects of the proposed pipeline, as running "headlong" into the Supreme Court's "course correction" in *Seven County*. The court held that FERC reasonably drew a line at declining to review impacts of a connected pipeline and stated that *Seven County* "shut the courthouse door to NEPA nitpicking in the name of causally attenuated indirect effects."

Finally, the court refused to order FERC to consider the impacts of a potentially related state facility as part of its NEPA review. Because FERC was not the authorizing agency for that state facility, that action was not "federalized" for purposes of NEPA review.

Sierra Club v. Fed. Energy Reg. Comm'n, 153 F.4th 1295 (D.C. Cir. 2025)

Agency prevailed.

Issues: Alternatives (No-Action), Impacts (GHG), Connected Actions

Sector: Energy (Natural Gas)

Facts: The Tennessee Valley Authority (TVA) decided to replace a coal-fired power plant with a natural gas plant. Challenge involved FERC's approval of a 32-mile pipeline that would service the new gas plant.

Decision: The court cited to *Seven County*'s principle of deference as an introductory statement prior to its ruling. After a fulsome review of the Supreme Court's principles of APA judicial review of NEPA actions, the court rejected petitioner's claims.

First, the court held that the agency's analysis of downstream greenhouse gas emissions was adequate in its EIS. It upheld FERC's assumption of potential greenhouse gas emissions reductions as a credit in its analysis, resulting from the retirement of an existing coal-fired facility. Based on TVA's representations, the agency properly considered the reduction of emissions related to the planned retirement of the coal-fired plant in addition to potential emissions from the new natural gas plant.

The court also upheld FERC's approach for the length of time it calculated potential emissions from the existing coal-fired facility. Although it stated that FERC could have taken a different analytical approach (meaning reviewing a shorter period), the court would not second guess the agency's choice. And the court summarily rejected petitioner's argument that the emissions estimates should have been aggregated instead of calculated annually.

Second, the court upheld FERC's definition of the no-action alternative. In short, the court concluded that FERC reasonably presumed that TVA's natural gas plant would be built regardless of whether the pipeline in question was ever approved. The court briefly reviewed the potential tension between the no-action (baseline) analysis and the assessment of indirect effects but concluded that the *Seven County* standard indicated it should be at its most deferential when reviewing the exercise of the agency's expertise in framing its impacts assessment.

Finally, the court rejected Sierra Club's allegations that FERC failed to consider impacts of the natural gas plant as a "connected action" because FERC lacked jurisdiction over the development of the plant. Using the *Seven County* conclusion, it was reasonable for FERC to decline to review the impacts of the related development.

In a noteworthy coda to its ruling, the court recounted a portion of the case's oral argument. One of the judges asked the Sierra Club if it believed any of the 60 environmental impact statements prepared by FERC over the past decade were adequate. The attorney could not identify one. The court found that reality inconsistent with the Supreme Court's instructions in *Seven County*. It concluded: "…the era of searching NEPA review is over – or at least it should be."

Gas Transmission Northwest, L.L.C. v. Fed. Energy Reg. Comm'n, 157 F.4th 674 (5th Cir. 2025).

Agency did not prevail in part

Issues: No-action alternative; connected actions; impact assessment

Sector: Energy (Natural Gas)

Facts: Natural gas pipeline company, states of Washington and Oregon, and environmental organization petitioned for review of FERC orders, approving expansion of pipeline that involved Gas Transmission NW, LLC's replacement of, and eventual increase in capacity relating to, three compressor units for its natural gas pipeline system to transport natural gas from Western Canada to Washington, Oregon, and California.

Decision: First, the court upheld the agency's admittedly brief analysis of the no-action alternative in its EIS. FERC provided a resource-by-resource analysis of the existing state of each resource (i.e., the baseline) and how the project would impact that status quo. The court found that under *Seven County,* that was sufficient. Citing to *Seven County*, the court held, "[a]lthough it did not provide much detail, a difference may exist between what an agency should do as a matter of good policy and best practices under NEPA, and what a reviewing court may subsequently order an agency to do under NEPA."

Second, the court found that FERC drew a reasonable line when it declines to assess the impacts of replacement compressors as potential "connected actions." The court held that it was reasonable for FERC to conclude that the replacements were not two phases of a single action, but "separate, independent projects." That was a reasonable, "manageable line" for FERC to draw.

Third, the court rejected claims that FERC did not adequately consider safety risks of the proposed expansion project. The agency discussed incremental safety risks and mitigation resulting from the Department of Transportation's safety standards, as well as the proposed compressor station's remote location. Under *Seven County*, this was sufficient.

Coalition to Stop CPKC v. Surface Transp. Board, No. 23-1165, 2025 WL 1720672 (D.C. Cir. June 20, 2025)

Agency prevailed.

Issues: CEQ Authority to Issue Implementing Regulations, Impact Assessment (Baseline)

Sector: Transportation (Rail)

Facts: The STB prepared an EIS reviewing the proposed merger of Canadian Pacific and Kansas City Southern railroads. The EIS reviewed a wide range of effects, including those related to altered rail operations resulting from the merger, such as passenger-train delays, road crossing delays, and pedestrian safety

Decision: In a per curiam ruling, the D.C. Circuit cited to *Seven County* holding that the STB was entitled to substantial deference in evaluating the EIS and that the court will "not micromanage th[e] agency['s] choices so long as they fall within a broad zone of reasonableness."

The court summarily rejected five disputes regarding the assumptions underlying the STB's analysis. These assumptions related to train speeds, average train length (by overweighting passenger trains compared to freight trains), freight train length, the flow of train and vehicular traffic, and the lack of pertinent field studies. Finally, the court held that the STB reasonably considered the risk of increased pedestrian/train strikes caused by potentially higher train traffic.

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