AFTER CUMULATIVE EFFECTS: *SEVEN COUNTY*, KEYSTONE XL, AND NEPA'S SHRINKING HORIZON

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Had it been decided a decade earlier, the U.S. Supreme Court's 2025 decision in *Seven County Infrastructure Coalition v. Eagle County*[1] would have narrowed the environmental review requirements for one of the most consequential proposed energy infrastructure projects in U.S. history—the Keystone XL pipeline.[2] The decision's core holding—that agencies need not analyze environmental effects of "separate projects" outside their regulatory authority[3]—directly addresses the most contested elements of the Keystone pipeline's supplemental environmental impact statements (EISs) over a 10-year period[4]: upstream tar sands extraction, downstream Gulf Coast refining, and end-use combustion emissions.[5]

Under *Seven County*'s framework, at least two of the three supplemental EISs required for Keystone XL would have been fundamentally circumscribed,[6] if not entirely foreclosed.[7] The 2014 final supplemental EIS's life-cycle greenhouse gas (GHG) analysis would have been optional rather than legally required. The court-ordered 2018-2019 supplemental EIS, mandated after Judge Brian Morris found National Environmental Policy Act (NEPA)[8] violations including failure to analyze cumulative GHG effects,[9] would almost certainly have been foreclosed by the Court's instruction that agencies need not analyze excluded life-cycle effects or end-use combustion that occur in "projects separate in time or place" and outside the agency's regulatory authority.[10] In that counterfactual world, the U.S. Department of State's role in recommending or issuing a presidential permit for the border-crossing segment would have been substantially more insulated from GHG-based challenges, not because the permit itself was beyond review, but because *Seven County* would have sharply narrowed the legally required scope of the underlying environmental analysis.[11]

Beyond these specific procedural consequences, *Seven County* reorients NEPA's scope, curtailing cumulative effects analysis by redefining it through a jurisdictional lens, and departs from *Robertson v. Methow Valley Citizens Council*'s[12] information-forcing mandate. For fossil fuel infrastructure projects where the most significant environmental impacts occur upstream or downstream from the infrastructure itself, *Seven County* severely constrains climate change-related impact analysis. The U.S. Court of Appeals for the District of Columbia (D.C.) Circuit has already applied *Seven County* to explicitly abrogate *Sierra Club v. Federal Energy Regulatory Commission (Sabal Trail),* its 2017 precedent requiring downstream combustion emissions analysis for natural gas pipelines.[13]

1. 605 U.S. 168 (2025).
2. U.S. Department of State, Final Supplemental Environmental Impact Statement for the Keystone XL Project (2014) (DOE/EIS-0433-S1) [hereinafter 2014 SEIS]. *See also* U.S. Department of State, *Keystone XL Pipeline Project*, https://www.state.gov/keystone-xl-pipeline (last visited Dec. 20, 2025).
3. *Seven Cnty.*, slip op. at 13 (describing the decision as providing "a course correction" for lower court NEPA jurisprudence that had expanded NEPA's scope beyond what the statute requires).
4. 2014 SEIS, *supra* note 2 (Executive Summary). *See also* Indigenous Env't Network v. U.S. Dep't of State, 347 F. Supp. 3d 561, 565 (D. Mont. 2018) (documenting project timeline).
5. *Seven Cnty.*, slip op. at 3 ("NEPA requires agencies to focus on the environmental effects of the project at issue," not "the environmental effects of projects separate in time or place . . . .").
6. The distinction matters, because the Court's framework does not categorically prohibit such analysis—it renders it optional. As Justice Brett Kavanaugh explained, agencies may choose to analyze effects outside their regulatory authority but are not required to do so. *Id.* at 21. This permissive framework is precisely what would have undermined the legal compulsion driving the Keystone 2014 and 2018-2019 supplemental EISs. *Cf. Indigenous Env't Network*, 347 F. Supp. at 591-602 (ordering supplemental analysis based on precisely the type of cumulative effects reasoning that *Seven County* now renders discretionary).
7. *See Seven Cnty.*, slip op. at 15-21 (holding that the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit erred in requiring the agency to address environmental effects of upstream and downstream projects "separate in time or place" from the railway).
8. 42 U.S.C. §§4321-4370h.
9. *Indigenous Env't Network*, 347 F. Supp. at 573.
10. *See Seven Cnty.*, slip op. at 15-17 (distinguishing permissible analysis of indirect effects from impermissible requirements to assess environmental impacts of separate projects outside the agency's regulatory authority); *see also* Andrew Brady et al., *Seven County Infrastructure Coalition v. Eagle County: Top Points*, DLA Piper (June 6, 2025), https://www.dlapiper.com/en/insights/publications/2025/06/supreme-court-nepa-review (explaining that agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority, including separate oil extraction and refining operations).
11. *See Indigenous Env't Network*, 347 F. Supp. at 591-602 (vacating State's 2017 record of decision and presidential permit based in part on failures to analyze cumulative GHG emissions and to explain its reversal on climate analysis); *Indigenous Environmental Network v. Department of State*, 132 Harv. L. Rev. 2368, 2372-76 (2019) (describing how Keystone XL litigation leveraged NEPA-based climate arguments against State's analysis).
12. 490 U.S. 332 (1989).
13. Sierra Club v. Federal Energy Regul. Comm'n (*Sabal Trail*), 867 F.3d 1357, 1374 (D.C. Cir. 2017) (requiring FERC to quantify downstream GHG emissions from natural gas combustion); Town of Weymouth v. Federal Energy Regul. Comm'n, No. 17-1135, 2018 WL 6921213, at *1 (D.C. Cir.

Federal agencies are already implementing *Seven County* to limit the scope of environmental review[14]—a shift that accelerated dramatically after the Donald Trump Administration's February 2025 rescission (effective April 11) of all Council on Environmental Quality (CEQ) NEPA regulations, which eliminated the binding regulatory framework that had previously embodied NEPA's cumulative effects mandate.[15] This regulatory rescission leaves the NEPA statute, the Supreme Court's interpretation of it, and individual agency procedures as the governing framework.

This Comment advances three linked claims: (1) that *Seven County* replaces NEPA's foreseeability-based "hard look" with a jurisdictional screen[16]; (2) that this substitution erodes cumulative effects analysis as required by NEPA and historically implemented by CEQ; and (3) that the doctrine is outcome-determinative for fossil fuel infrastructure where consequential effects occur outside the permitting agency's organic authority.

The analysis first examines *Seven County*'s authority-bounded holding and its conflict with the cumulative effects mandate. The April 2025 regulatory rescission demonstrates that this is no longer merely a doctrinal conflict but a structural decoupling: without binding CEQ guidance, agencies must now choose between the statute's traditional cumulative effects requirement and *Seven County*'s jurisdictional limitation—a choice that increasingly favors the latter.

I. *Seven County*'s Authority-Bounded Rule

Justice Brett Kavanaugh's 5-3 majority opinion articulated what the Court called a "course correction" for NEPA's scope.[17] The central holding declares that "NEPA requires agencies to focus on the environmental effects of the project at issue" and does not require analysis of "upstream and downstream projects that are separate in time or place" from the action under review.[18] More fundamentally, the Court held that NEPA does not require an agency to analyze environmental effects that it lacks statutory authority to prevent or regulate, even if those effects are foreseeable consequences of the action.[19]

The Court invoked tort law's proximate causation doctrine, finding that "the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project."[20] It explicitly rejected the D.C. Circuit's application of NEPA requiring the Surface Transportation Board (STB) to analyze upstream oil production and downstream combustion impacts from a proposed rail line connecting Utah oil fields with Gulf Coast refineries. That move marks a significant departure from NEPA's traditional emphasis on "reasonably foreseeable" indirect effects, to a jurisdictionally bounded inquiry.[21] The majority reasoned that the STB "does not regulate oil drilling, oil wells, oil and gas leases, or oil refineries,"[22] and therefore analyzing effects from those separate activities was outside NEPA's scope.[23]

Two specific principles from *Seven County* bear directly on how the decision would have transformed Keystone XL's NEPA requirements. First, the Court established that factual foreseeability does not equal legal responsibility under NEPA: effects from separate projects "may be factually foreseeable, but that does not mean that those effects are relevant to the agency's decisionmaking process or that it is reasonable to hold the agency responsible for those effects."[24] This directly undermines the reasoning that had required the State Department to analyze Alberta tar sands extraction simply because the Keystone XL pipeline would transport that crude. The fact that increased pipeline capacity makes tar sands development more economically viable was considered foreseeable under pre-*Seven County* doctrine; the Court now holds such foreseeability insufficient to trigger NEPA analysis.

Second, the Court held that agency authority limits define NEPA's boundaries. The majority stated that where an agency "has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect."[25] The STB's railroad permitting authority does not extend to regulating the commodities transported or the extraction and refining activities occurring at either end of the rail line. Similarly, the State Department's cross-border pipeline permit authority extends only to approving the

Dec. 27, 2018) (unpublished) (upholding FERC's NEPA analysis after it quantified downstream emissions); Vecinos Para el Bienestar de la Comunidad Costera v. Federal Energy Regul. Comm'n, 6 F.4th 1321, 1332-33 (D.C. Cir. 2021) (faulting FERC for failing adequately to contextualize climate impacts of liquefied natural gas facilities); Sierra Club v. Federal Energy Regul. Comm'n, No. 24-1099, 2025 WL 4235891 (D.C. Cir. Sept. 30, 2025) (holding that *Seven County* abrogated *Sabal Trail*'s requirement to analyze downstream combustion emissions).

14. *See Sierra Club*, 2025 WL 4235891, at *5 (rejecting challenge to Cumberland pipeline approval and holding that *Seven County* abrogated *Sabal Trail*'s requirement to analyze downstream emissions); Sierra Club v. Federal Energy Regul. Comm'n, No. 24-1199, slip op. at 7-9 (D.C. Cir. Aug. 1, 2025) (same); Transcontinental Gas Pipe Line Co., LLC, 192 F.E.R.C. ¶ 61,184, at para. 108 (2025) (explaining that after *Seven County*, FERC need not analyze environmental effects outside its jurisdiction); East Tenn. Nat. Gas, LLC, 192 F.E.R.C. ¶ 61,153, at paras. 23, 28 (2025) (similar); *see also* Brady et al., *supra* note 10 (advising clients that agencies may now "permissibly exclude[ ]" upstream and downstream effects from NEPA scope).
15. *See* Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025); *cf.* Revision of National Environmental Policy Act Implementing Procedures, 90 Fed. Reg. 29676 (July 3, 2025) (reflecting agencies' implementation of revised NEPA review procedures in the absence of binding CEQ regulations).
16. *See* Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168, slip op. at 13-17 (2025) (holding that even where effects may be "factually foreseeable," NEPA does not require analysis when the agency lacks statutory authority over the separate action producing those effects).
17. *Id.* at 13 ("A course correction of sorts is appropriate to bring judicial review under NEPA back in line with the statutory text and common sense.").
18. *Id.* at 3, 8.
19. *Id.* at 17 ("Where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect.").
20. *Id.* at 17.
21. 40 C.F.R. §1508.8 (1978) (defining indirect effects as "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable").
22. *Seven Cnty.*, slip op. at 17.
23. *See id.* at 17-18.
24. *Id.* at 17.
25. *Id.* at 17 (citing Department of Transp. v. Public Citizen, 541 U.S. 752, 770 (2004)).

physical infrastructure, not to regulating Canadian oil production or domestic refining operations. The Court's reasoning would apply with equal force: just as the STB lacks authority over "oil drilling, oil wells, oil and gas leases, or oil refineries," the State Department lacks authority over Alberta tar sands extraction and Gulf Coast petroleum processing.

Justice Sonia Sotomayor's concurrence reached the same result through a narrower discretion rationale: "NEPA requires consideration of environmental impacts only if such consideration would result in information on which the agency could act."[26] Together, the majority and concurrence make expanded cross-jurisdictional analysis permissive rather than mandatory: courts cannot require agencies to analyze effects outside their regulatory authority, even if agencies may choose to do so.

II. Cumulative Effects Doctrine: From CEQ Regulation to Agency Discretion

A. The Regulatory Framework and the April 2025 Rescission

One of the most profound consequences—and one fundamentally at odds with NEPA's statutory text—is that *Seven County* by definition curtails cumulative effects analysis, even though the Court never explicitly acknowledges doing so. This problem becomes especially acute in light of the Trump Administration's 2025 rescission of all CEQ NEPA regulations.[27] Before that rescission, the conflict between *Seven County* and binding CEQ cumulative effects doctrine was clear and irreconcilable. With CEQ's regulatory authority eliminated and agencies operating under nonbinding guidance, the jurisdictional narrowing that *Seven County* permits now operates in practice as the default.

The doctrinal critique that follows reflects the analytical framework that governed NEPA for 47 years—a framework that *Seven County* renders optional, and Trump's regulatory action renders irrelevant. Understanding this conflict illuminates what *Seven County* accomplished: shifting cumulative effects analysis from a mandatory disclosure requirement to a discretionary exercise bounded by agency self-defined jurisdiction.

The 2020 CEQ regulations—in effect when the STB prepared its EIS, and governing NEPA practice through April 10, 2025—defined cumulative effects as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions *regardless of what agency* (Federal or non-Federal) or person undertakes such other actions."[28]

The phrase "regardless of what agency . . . undertakes such other actions" directly contradicts *Seven County*'s jurisdictional limitation. If the executive branch intended cumulative effects analysis to be bounded by regulatory authority, it would not have directed agencies to consider effects of actions by other agencies and nonfederal actors. The *Seven County* decision effectively removed "regardless of what agency" out of the regulation—and by extension, out of NEPA's cumulative effects mandate.

This "regardless of what agency (Federal or non-Federal) or person" clause has deep roots in CEQ's pre-2020 cumulative impacts framework; after CEQ's 2020 rule repealed the stand-alone "cumulative impact" definition, it was reinstated in the Joe Biden CEQ's regulations and carried forward through the 2024 Phase 2 rule implementing the Fiscal Responsibility Act NEPA amendments.[29] However, on February 25, 2025, the Trump Administration published an interim final rule rescinding all CEQ NEPA regulations effective April 11,[30] based on President Trump's January 20 Executive Order No. 14154, Unleashing American Energy, which also rescinded President Jimmy Carter's 1977 Executive Order No. 11991,[31] the source of CEQ's asserted regulatory authority for decades.

The rescission leaves federal agencies without binding definitions of cumulative effects. CEQ's accompanying February 2025 memorandum on NEPA implementation explicitly instructs agencies to analyze "reasonably foreseeable effects" of proposed actions "consistent with section 102 of NEPA, which does not employ the term 'cumulative effects,'" signaling regulatory intent to narrow cumulative effects analysis toward the *Seven County* model: effects bounded by foreseeability and agency jurisdiction, not by aggregative logic.[32]

By establishing that agencies need not analyze effects outside their regulatory authority, *Seven County* created doctrinal cover for elimination of the "regardless of what agency" mandate. The analysis that follows examines the pre-April 2025 regulatory framework not as archival history, but as evidence of what the U.S. Congress and the executive branch understood NEPA's cumulative effects requirement to mean—a meaning now abandoned by loss of regulation but not by statute.

26. *Id.* at 8-9 (Sotomayor, J., concurring).
27. 90 Fed. Reg. 10610 (rescinding "all iterations" of CEQ's NEPA implementing regulations, citing President Trump's rescission of Executive Order No. 11991 as removing CEQ's statutory authority to issue binding regulations).
28. 40 C.F.R. §1508.7 (1978); CEQ, Considering Cumulative Effects Under the National Environmental Policy Act 8-9 (1997), https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-ConsidCumulEffects.pdf.
29. *See* 40 C.F.R. §1508.7 (2019) (defining "cumulative impact" using "regardless of what agency (Federal or non-Federal) or person . . . ."); repealed by Update to the Regulations Implementing the Procedural Provisions of NEPA, 85 Fed. Reg. 43304 (July 16, 2020) (repealing 40 C.F.R. §1508.7); *see also* 40 C.F.R. §1508.1(g)(3) (2022) (restoring "cumulative effects" with the same "regardless of what agency . . ." clause); National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442, 35575 (May 1, 2024) (codified at 40 C.F.R. §1508.1(i)(3)) (retaining that clause); Fiscal Responsibility Act of 2023 (BUILDER Act), Pub. L. No. 118-5, §321, 137 Stat. 10, 38 (June 3, 2023).
30. 90 Fed. Reg. 10610.
31. Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025) (revoking Executive Order No. 11991 (1977), which had delegated rulemaking authority to CEQ under NEPA).
32. Memorandum from Katherine R. Scarlett, Chief of Staff, CEQ, to Heads of Federal Departments and Agencies re: Implementation of the National Environmental Policy Act 5 (Feb. 19, 2025).

The *Seven County* decision accomplishes this transformation by collapsing "effects" into "jurisdiction." Before *Seven County*, NEPA effects analysis was causal rather than jurisdictional—the threshold question was whether an effect constituted a reasonably foreseeable consequence of the agency action.[33] After *Seven County*, the threshold question becomes whether the agency regulates the activity producing the effect. That shift collapses the distinction between NEPA's informational function and the agency's regulatory power, subordinating disclosure to jurisdiction.[34] This reorientation undermines NEPA's anti-segmentation principle,[35] which was designed to prevent agencies from avoiding comprehensive environmental review by artificially dividing projects—instead of physical segmentation, agencies will now use jurisdictional segmentation to the same effect.[36]

For Keystone XL specifically, the 2014 supplemental EIS analyzed how the pipeline's capacity, when combined with the Alberta Clipper pipeline's capacity, would contribute to cumulative GHG emissions. This system-level impact analysis—precisely the type *Seven County* forecloses—becomes optional under the authority-bounded framework. Under *Seven County*, agencies need not aggregate effects from separate projects outside their jurisdiction, foreclosing the logic used to assess market-inducing infrastructure. The 2014 supplemental EIS estimated that tar sands crude produces approximately 17% more life-cycle GHG emissions per barrel than average U.S. crude, yet this analysis would have been optional under *Seven County*.[37]

Before the 2025 regulatory rescission, the conflict between *Seven County* and binding CEQ doctrine was irreconcilable. Now, that conflict is moot—regulation no longer enforces cumulative effects analysis, leaving only the NEPA statute and *Seven County*'s interpretation of it. In this post-regulatory landscape, the doctrinal stakes are higher, not lower. What was previously a conflict between a Supreme Court decision and agency regulation is now a conflict between a Supreme Court decision and statutory interpretation—a debate the Court essentially decided by holding that regulatory authority, not statutory consequences, defines NEPA's scope.

This shift transfers gatekeeping authority from centralized NEPA doctrine to agency-specific procedures—each of which agencies are now revising (or implementing for the first time) to "expedite and simplify" permitting under Executive Order No. 14154's directive to prioritize "efficiency and certainty" over comprehensive review. This reorientation cannot be reconciled with NEPA §101, which explicitly directs federal policy toward evaluating "presently unquantified environmental amenities and values" in conjunction with economic and technical considerations.[38]

Cumulative effects—by definition involving incremental, interactive, and emergent impacts across multiple actions—represent precisely the type of unquantified environmental amenities Congress instructed agencies to consider. An interpretation limiting analysis to effects within regulatory control transforms this command into a dead letter for the vast majority of federal projects with system-level environmental consequences. The 2025 regulatory rescission amplifies this problem: without binding CEQ guidance requiring cumulative analysis across agencies, individual agencies will now develop their own standards, creating incentive for race-to-the-bottom jurisdictional minimalism consistent with *Seven County*.[39]

B. NEPA § 101 and Its Statutory Mandate for System-Level Analysis

Section 101 is not decorative language—it constitutes enacted federal policy that courts have long recognized as interpretive of §102's procedural mandates.[40] Congress directed federal policy toward preventing "damage to the environment and biosphere"—harm that emerges from aggregated and interacting actions over time.[41] If NEPA's goals include long-range, intergenerational, systemic environmental protection, then its procedural mechanisms must encompass cumulative effects.

The Court's refusal to engage with §101's text constitutes a failure of textualism. By allowing the limitations of the Interstate Commerce Act to silence the "continuing responsibility" of §101, the *Seven County* Court violates the canon against surplusage, effectively repealing §102(1).[42]

33. *See* Richard J. Lazarus, *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtain*, 100 Geo. L.J. 1507, 1515-20 (2012) (discussing NEPA's traditional focus on causal relationships).
34. *See* Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) ("[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process."); *id.* at 351 ("Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed—rather than unwise—agency action.").
35. *Id.* at 349; Marsh v. Oregon Nat. Res. Council, 489 U.S. 750, 771 (1989).
36. *See* 40 C.F.R. §1508.25(a)(1) (requiring analysis of "connected actions" that are "closely related" and should be discussed in the same impact statement); Delaware Riverkeeper Network v. Federal Energy Regul. Comm'n, 753 F. 3d 1304, 1313-14 (D.C. Cir. 2014) (discussing NEPA's anti-segmentation principle).
37. *See* 2014 SEIS, *supra* note 2, at 4.14-22.
38. *See* 42 U.S.C. §4332(2)(B); *see also id.* §4331(b)(1) (declaring federal policy to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations").
39. *See* Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 Harv. L. Rev. 1131, 1137-38 (2012) (describing structural incentives that encourage agencies to narrow their regulatory responsibilities absent centralized standards).
40. *See* 42 U.S.C. §4331(b) (declaring a continuing federal responsibility to "use all practicable means" to improve and coordinate federal plans and programs to prevent environmental degradation and long-range ecological damage); *see also id.* §4332(1) (directing that "the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter"); Environmental Def. Fund, Inc. v. Corps of Eng'rs, 470 F.2d 289, 297 (8th Cir. 1972) (holding that §101 creates judicially enforceable substantive rights, a view later narrowed but highlighting the section's interpretive weight).
41. 42 U.S.C. §4321.
42. *Id.* §4331(b). *See* Corley v. United States, 556 U.S. 303, 314 (2009) (stating the surplusage canon principle that "a statute should be construed so that effect is given to all its provisions" (citing Hibbs v. Winn, 542 U.S. 88, 101 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction §46.06 (rev. 6th ed. 2000))); *see also* TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) ("It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no

By tying effects analysis to agency regulatory authority rather than environmental consequence, the decision effectively severs §102 from §101[43]—treating NEPA as a narrow procedural checklist while ignoring Congress' explicit concern with cumulative, long-range harms. From a statutory-interpretation perspective, this represents a profound, unwarranted departure from NEPA's textual command, not merely its regulatory implementation.

C. *Departure From* Robertson v. Methow Valley Citizens Council

The Supreme Court's 1989 decision in *Robertson* established that NEPA's purpose is informed decisionmaking, and that agencies must analyze effects even when they lack authority to impose mitigation.[44] Justice John Paul Stevens' opinion for a unanimous Court emphasized NEPA's disclosure function as distinct from regulatory authority,[45] explaining that the statute "does not mandate particular results, but simply prescribes the necessary process"—a process centered on disclosure and consideration of environmental consequences regardless of whether the agency possesses legal power to prevent them.[46]

Robertson held that agencies must analyze mitigation measures in an EIS even though NEPA does not require agencies to adopt those measures. That analysis serves an informational function separate from the agency's control authority. The U.S. Forest Service in *Robertson* had to analyze mitigation for downhill skiing impacts, even though it lacked authority to require the private ski resort operator to implement mitigation measures. *Seven County* reverses this foundational disclosure logic—where *Robertson* held that lack of mitigation authority does not excuse lack of analysis, *Seven County* holds that lack of regulatory authority excuses lack of analysis entirely.

For Keystone XL, this departure has direct significance. Under *Robertson*'s framework, the State Department would have been required to analyze upstream tar sands extraction and downstream combustion impacts as foreseeable consequences of the pipeline permit, even while acknowledging the Department lacks authority to regulate Canadian resource development or domestic fuel consumption. The analysis serves an informational function—allowing the Secretary of State to understand the full environmental context (direct, indirect, and cumulative impacts) when making the national interest determination and allowing the public to understand the aggregate climate implications.

Seven County acknowledges NEPA's procedural character, yet *provides no principled explanation* for why procedural disclosure obligations should be bounded by substantive regulatory authority. Though public disclosure does not compel control, the absence of control should not preclude public disclosure. This transforms NEPA from an information-forcing statute into a jurisdiction-bounded one, reversing *Robertson*'s core holding that disclosure obligations exist independent of control authority.

III. The Keystone XL Counterfactual: What *Seven County* Would Have Made Optional

The Keystone XL pipeline required three complete EISs between 2008 and 2019, each driven substantially by demands to analyze environmental consequences outside the State Department's direct regulatory authority. The first critical supplemental analysis, the 2014 final supplemental EIS, became the central battleground for an unprecedented legal question: whether NEPA required the State Department to analyze GHG emissions from tar sands extraction, refinery processing, and end-use combustion when approving a border-crossing pipeline.

The 2014 supplemental EIS's defining feature was its exhaustive life-cycle GHG analysis, consuming significant portions of the 3,600-page document.[47] That life-cycle analysis examined three categories of effects that *Seven County* would now classify as beyond NEPA's scope: (1) upstream emissions from oil sands extraction (finding that oil sands crude produces 17% more life-cycle GHG emissions than average U.S. crude); (2) downstream emissions from Gulf Coast refinery processing; and (3) downstream emissions from end-use combustion of refined products. The supplemental EIS also quantified direct project emissions from pipeline construction and operations (e.g., pumping), which would remain within NEPA's core "effects of the action" analysis.[48]

The document estimated total gross life-cycle emissions at approximately 147 million metric tons of carbon dioxide equivalent annually for the pipeline's 830,000 barrels-per-day capacity.[49] The State Department conducted extensive market analysis to determine whether the pipeline would enable incremental tar sands production, or merely displace other transport methods such as rail[50]—a distinction aimed

clause, sentence, or word shall be superfluous, void, or insignificant." (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001)).

43. *See, e.g.*, Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n, 449 F.2d 1109, 1112-13 (D.C. Cir. 1971) (treating §101 as an operative policy standard guiding interpretation of §102's procedural duties).
44. Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349-50 (1989).
45. *Id.* at 349-51.
46. *Id.* at 350 ("NEPA itself does not mandate particular results, but simply prescribes the necessary process. If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.").
47. 2014 SEIS, *supra* note 2.
48. *Id.* at 4.14-22 (estimating total gross life-cycle emissions at approximately 147-168 million metric tons of carbon dioxide equivalent annually for the pipeline's full 830,000 barrels-per-day capacity, with considerable uncertainty depending on crude slate assumptions and displacement effects); *id.* at 3.10-15 (comparing Western Canadian Sedimentary Basin crude oil life-cycle GHG intensity with U.S. average crude).
49. *Id.* at 3.10-58 (table showing total annual life-cycle GHG emissions).
50. *Id.* at 1.4-1 to 1.4-12.

at isolating emissions causally attributable to the pipeline's approval from emissions that would occur regardless.[51]

This 2014 analysis would be substantially constrained under *Seven County*'s framework. *Seven County*'s regulatory authority test would have categorically excluded the three pillars of this life-cycle analysis—upstream extraction, refinery processing, and end-use combustion—because each occurs in a "separate project" outside the State Department's regulatory authority.[52] The supplemental EIS would have been stripped of its market analysis linking pipeline capacity to GHG production growth, reducing the overall analysis to a comparatively minuscule amount of GHG emissions from direct effects—just emissions from pipeline construction and pumping operations.

The U.S. Environmental Protection Agency and environmental organizations—including the Sierra Club, Natural Resources Defense Council, and Indigenous Environmental Network—challenged the draft document's treatment of these effects, arguing that the State Department systematically underestimated upstream emissions and downstream impacts on overburdened Gulf Coast communities.[53] But these challenges rested on the legal theory that *Seven County* has now rejected—that NEPA's informational mandate extends to foreseeable consequences regardless of agency regulatory boundaries.

More important, the 2018 federal court order required cumulative analysis of Keystone XL and the Alberta Clipper pipeline expansion together, examining system-level climate impacts that only become visible through cumulative effects analysis.[54] Under *Seven County*, that court-ordered cumulative effects analysis would itself be foreclosed because the lead agency regulates only one of the two projects.

The 2019 remand EIS, completed in response to Judge Morris' order, provided all three categories of supplemental analysis.[55] But under *Seven County*'s framework, the cumulative effects analysis mandate would have been eliminated. Without the mandate to analyze cumulative tar sands development enabled by both pipelines, the State Department could not have found significant climate impacts, potentially foreclosing the entire EIS remand.

Environmental organizations challenging Keystone XL systematically demanded analysis of three cumulative effects categories that *Seven County* now places outside NEPA's mandatory scope. Their legal strategy rested on *Sabal Trail*, the 2017 D.C. Circuit decision holding that the Federal Energy Regulatory Commission (FERC) must analyze downstream combustion emissions from transported natural gas.[56] These arguments formed a coherent legal theory: if an agency approves infrastructure that enables a chain of environmental consequences from extraction through end-use combustion, NEPA requires analyzing that entire causal chain.

Seven County dismantles this template entirely. The Court's holding that agencies need not analyze effects from separate projects outside their regulatory authority directly rejects the causal chain reasoning environmental challengers deployed. In short, *Seven County* would have exempted the three distinct categories of environmental effects that were so central to the pipeline's decade-long NEPA reviews and continuing public policy debates.

IV. Three Categories of Exempted Effects Under *Seven County*

Under *Seven County*'s framework, each non-pipeline stage of the Keystone XL fuel cycle would be treated as a "separate project" outside the State Department's regulatory authority, making life-cycle analysis discretionary rather than mandatory.

A. Upstream: Alberta Tar Sands Extraction

Under *Seven County*'s framework, Alberta tar sands extraction constitutes a "separate project" because the State Department lacks regulatory authority over Canadian resource development. The State Department's cross-border permit authority extends only to the pipeline infrastructure, not to Canadian extraction decisions. Although increased pipeline capacity makes tar sands development economically viable—creating a but-for causal relationship—*Seven County* holds such foreseeability insufficient. The magnitude of impacts is substantial: the 2014 supplemental EIS estimated that tar sands crude produces approximately 17% more life-cycle GHG emissions per barrel than average U.S. crude,[57] yet this analysis would have been optional under *Seven County*.

B. Downstream: Refinery Operations

Under *Seven County*'s framework, downstream refining constitutes a separate project because the State Department does not regulate petroleum refining. Although the pipeline delivers crude, necessitating refining, the lack of regulatory jurisdiction over refineries exempts downstream impacts from mandatory NEPA review. The 2014 supplemental EIS identified specific Gulf Coast refineries with capacity to process tar sands crude, analyzing localized environmental justice-focused air quality impacts. Again, *Seven County* would negate this analysis had it been operative.

51. *Id.* at 1-12 to 1-15 (Market Analysis section).
52. *See* Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168 (2025).
53. *See, e.g.*, Letter from Cynthia Giles, Assistant Administrator, U.S. EPA, to Jose W. Fernandez, Assistant Secretary, U.S. Department of State (Apr. 22, 2013) (commenting on draft supplemental EIS and recommending life-cycle GHG analysis); Indigenous Env't Network v. U.S. Dep't of State, 347 F. Supp. 3d 561, 572 (D. Mont. 2018) (summarizing plaintiffs' challenges to the 2014 SEIS).
54. *Indigenous Env't Network*, 347 F. Supp. 3d at 578-79, 590 (finding NEPA violations for failure to analyze cumulative GHG impacts and remanding for supplemental review).
55. U.S. Department of State, Final Supplemental Environmental Impact Statement for the Keystone XL Project (Dec. 30, 2019) (DOE/EIS-0433-S3).
56. Sierra Club v. Federal Energy Regul. Comm'n (*Sabal Trail*), 867 F.3d 1357, 1374 (D.C. Cir. 2017).
57. 2014 SEIS, *supra* note 2, at 4.14-22, 4.14-37 to -40.

C. Downstream: End-Use Combustion Emissions

End-use fuel combustion is the largest life-cycle source, accounting for about 61%-79% of total life-cycle GHG emissions (depending on crude slate),[58] yet the State Department lacked the power to regulate consumer fuel consumption. *Seven County* categorically excludes these emissions as effects of "separate projects." Although combustion is among the most foreseeable consequences of approving a crude oil pipeline, *Seven County* replaces the foreseeability test with an authority-based test: does the State Department regulate consumer fuel consumption? No—therefore, analysis is optional rather than required.

The three exempted effect categories are not isolated but rather integrated components of a single fuel cycle. By classifying each stage as a separate project, *Seven County* allows agencies to fragment life-cycle analysis into jurisdictionally bounded segments, while losing sight of aggregate climate change consequences that emerge only through cumulative system-level effects assessment. This framework creates incentives for agencies to segment impacts by jurisdiction, avoiding comprehensive system-level analysis that previous NEPA doctrine required.

V. The Post-*Loper Bright* Deference Paradox

Seven County's framework sits uneasily alongside *Loper Bright Enterprises v. Raimondo*,[59] decided just one year prior. While *Loper Bright* formally ended *Chevron* deference by mandating independent judicial judgment on statutory ambiguity, *Seven County* effectively resurrects deference by recasting statutory scope determinations as factual findings. The majority distinguished *Loper Bright* by characterizing NEPA scope decisions not as legal interpretations, but as "fact-dependent . . . policy-laden choices" deserving substantial deference.[60]

This distinction, however, collapses under scrutiny. An agency cannot determine that a specific effect is "factually" separate without first interpreting the boundaries of its "regulatory authority" under its organic statute—a classic question of law. By allowing agencies to define NEPA's scope via their own jurisdictional self-limitation, *Seven County* permits the kind of self-serving statutory interpretation that *Loper Bright* purported to eliminate. The result is a two-step deference framework: courts defer to the agency's factual characterization of the project, which effectively insulates the agency's legal interpretation of its own jurisdiction from the independent judgment required by *Loper Bright*.

The D.C. Circuit's September 30, 2025, decision in *Sierra Club v. Federal Energy Regulatory Commission* provides direct evidence of how *Seven County* applies to fossil fuel pipeline reviews. The court explicitly held that *Seven County* "abrogated" *Sabal Trail*, the 2017 precedent requiring downstream combustion emissions analysis for natural gas pipelines.[61] With that precedent eliminated, environmental groups' most potent NEPA arguments on fossil fuel-related projects disappears. The State Department, operating under even narrower statutory authority than FERC, would benefit from identical reasoning.

VI. Conclusion: The Hollowing of NEPA

Keystone XL illustrates the practical stakes of *Seven County*'s jurisdictional turn. When the most consequential environmental harms—upstream production, downstream processing, and end-use emissions—are life-cycle and cumulative, the authority-bounded rule does not merely narrow NEPA's scope, it makes the most important environmental issues legally optional. Without CEQ's regulatory mandate for cumulative effects analysis, individual agencies will now develop their own NEPA procedures, with strong incentives to adopt jurisdictionally minimal standards consistent with *Seven County*—risking conversion of NEPA into a "local impacts only" checklist at precisely the moment when climate change concerns are of utmost importance and least localized.

In a post-*Loper Bright* world, the remaining question is whether courts will treat jurisdictional scope characterization as constrained fact-finding, or instead apply independent judgment to the statutory boundaries agencies invoke to limit required NEPA analysis. For fossil fuel infrastructure where cumulative upstream and downstream effects dwarf direct infrastructure impacts, *Seven County* has fundamentally altered the legal landscape for EISs and public disclosure.

58. U.S. Department of State, *supra* note 55, at 4-89, §4.10.4.3.
59. 603 U.S. 369 (2024).
60. Seven Cnty. Infrastructure Coal. v. Eagle Cnty., 605 U.S. 168, slip op. at 12 (2025).
61. Sierra Club v. Federal Energy Regul. Comm'n, No. 24-1099, slip op. at 13 (D.C. Cir. Sept. 30, 2025) (holding that *Seven County* abrogated the requirement to analyze downstream emissions where FERC lacks authority to regulate end-use).