Nos. 25-5185, 25-5189, 25-5197

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARIZONA MINING REFORM COALITION, et al., Plaintiffs-Appellants

v.

UNITED STATES FOREST SERVICE, et al., Defendants-Appellees,

and

RESOLUTION COPPER MINING, LLC, Intervenor-Defendant-Appellee.

Appeal from the United States District Court for the District of Arizona
Nos. 2:21-cv-68, 2:21-cv-122, 2:25-cv-2758 (Hon. Dominic W. Lanza)

AMICUS BRIEF OF NATIONAL ASSOCIATION OF MANUFACTURERS and CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

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SAN CARLOS APACHE TRIBE, Plaintiff-Appellant

v.

UNITED STATES FOREST SERVICE, et al., Defendants-Appellees,

and

RESOLUTION COOPER MINING, LLC, Intervenor-Appellee

GOUYEN BROWN LOPEZ, et al., Plaintiffs-Appellants

v.

UNITED STATES OF AMERICA, et al., Defendants-Appellees,

and

RESOLUTION COPPER MINING, LLC, Intervenor-Appellees

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INTERESTS OF AMICI CURIAE[1]

The National Association of Manufacturers is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs 13 million people, contributes more than $2.9 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic system to thrive. The National Association of Manufacturers is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the U.S.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters

[1] This brief is filed without leave of the Court because the parties in each of the three captioned cases consented to its filing. No counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Amici's members operate in many industries that directly and indirectly depend on federal permits and other federal actions subject to review under the National Environmental Policy Act—better known as NEPA. Delays and obstacles to agency decisionmaking caused by NEPA litigation hurt permit applicants and other businesses subject to agency regulation. Such delays and obstacles also have major downstream impacts on energy, infrastructure, and supply chains that amici's members rely on.

Amici filed amicus briefs supporting the petitioners in *Seven County Infrastructure Coalition v. Eagle County* and welcomed the Supreme Court's announcement of a "course correction of sorts" to "bring judicial review under NEPA back in line with the statutory text and common sense." 145 S. Ct. 1497, 1514 (2025). Amici file this brief to oppose Appellants' efforts to misinterpret and narrow that decision. The arguments that Appellants advance would undercut the plain meaning and vital importance of *Seven County*, which gave federal agencies clear discretion to implement NEPA more efficiently, and gave federal courts clear instruction to defer to the informed discretion of those agencies.

INTRODUCTION

Before the U.S. Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County*, 145 S. Ct. 1497 (2025), lower-court cases interpreting the National Environmental Policy Act were a mess. Some courts applied NEPA "aggressive[ly]," leading to "overly intrusive (and unpredictable) review." *Id.* at 1511. Others were "more restrained." *Id.* In *Seven County*, the Supreme Court closed the door on intrusive judicial review by reiterating that NEPA is a "*purely procedural statute*" that "imposes no *substantive* constraints on the agency's ultimate decision to build, fund, or approve a proposed project." *Id.* at 1511 (emphasis in original). As a result, "[t]he bedrock principle of judicial review in NEPA cases can be stated in a word: Deference." *Id.* at 1515.

This reset on judicial review in NEPA cases does not suit Appellants. They bring a host of challenges to a long and technically detailed Environmental Impact Statement for a large and technically sophisticated mine. To win, they seek to confine *Seven County* to its facts, undermining its central principle of "substantial deference to the agency." *Id.* at 1512.

But the era of enlisting federal courts to delay or block projects is over. *Seven County* was not a fact-specific decision; it announced a "course correction" for judicial review under NEPA. *Id.* at 1514. The Court rued the growth of NEPA from "a 1970 legislative acorn" into "a judicial oak that has hindered infrastructure development under the guise of just a little

more process." *Id.* (cleaned up). So it chopped that tree down, stressing that NEPA was not intended "to give citizens a general opportunity to air their policy objections to proposed federal projects," *id.* at 1518, nor judges a chance "to hamstring new infrastructure and construction projects," *id.* at 1514.

Appellants seek to do just that here—deploy NEPA to stop a critical mine project to which they object. This Court should reject the invitation.

ARGUMENT

Appellants are challenging the denial of their motions for preliminary injunction. This Court must therefore decide, among other things, Appellants' chances of success on the merits. In deciding Appellants' NEPA challenges, the Court should properly apply *Seven County*, which dooms those claims.

I. *Seven County* requires "substantial deference" to agencies' assessments of environmental effects and alternatives.

Seven County was the Supreme Court's first major NEPA case in over 20 years. In the interim, NEPA review had strayed far afield from "the level of deference demanded by the statutory text and th[e Supreme] Court's cases." *Seven Cnty.*, 145 S. Ct. at 1513. "[O]verly intrusive (and unpredictable)" judicial review had not only "slowed down or blocked many projects," it had "caused litigation averse agencies to take ever more time and to prepare ever longer EISs for future projects." *Id.* at 1513. In *Seven County*, the Court set NEPA review back on track.

A. *Seven County* was a NEPA "course correction," not a case-specific error correction.

The Court's decision in *Seven County* is clear up front about what the Court was doing and why. After more than fifty years of judicial review in NEPA cases, the Court explained, "some courts have assumed an aggressive role in policing agency compliance," while others "have adopted

a more restrained approach." *Seven Cnty.*, 145 S. Ct. at 1511. The upshot was "continuing confusion and disagreement in the Courts of Appeals over how to handle NEPA cases." *Id.* Mending such divisions in the lower courts is among the prime reasons the Court grants review. *See* S. Ct. R. 10(a). And so it was in *Seven County*: "In light of th[at] continuing confusion and disagreement," the Court "th[ought] it important to reiterate and clarify the fundamental principles of judicial review" in NEPA cases, including "the central principle"—"deference." *Seven Cnty.*, 145 S. Ct. at 1511.

Appellants resist this plainly stated principle. As they see it, *Seven County* "restor[es] deference to agencies" when it comes to the "*indirect* effects of a project, but leaves in place law requiring full analysis of *direct* effects …." San Carlos Br. at 18 (emphases in original). To them, "the facts of *Seven County*" confine the decision to questions of indirect impacts. *Id.* at 19; *see id.* ar 39–40. In other words, Appellants think the decision extends no further than error correction over the assessment of upstream and downstream effects. *Id.* Thus, while they briefly concede that "certain language in *Seven County*" could be adverse to them, Appellants argue that the bulk of Ninth Circuit NEPA precedent remains "untouched." *Id.* at 40–41.

From start to finish, *Seven County* rebuts Appellants' contentions. The Court did not decide *Seven County* for error correction. It took the case because some lower courts had "transformed" NEPA "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." *Seven Cnty.*, 145 S. Ct. at 1513. As a result, NEPA review was causing "[d]elay upon delay" such that "fewer projects ma[d]e it to the finish line," or even "to the starting line." *Id.* at 1513–14. After all, what project proponent wants to invest in a new idea when "overly intrusive (and unpredictable)" judicial review looms? *Id.* at 1513. NEPA review across the board was increasing project costs, which inevitably meant "fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like"—not to mention "fewer jobs." *Id.* at 1514.

The Supreme Court stepped in to "course correct[]" this trend, observing that "Congress did not design NEPA for *judges* to hamstring new infrastructure and construction projects." *Id.* (emphasis in original). *Seven County* hammered home that NEPA is a "purely procedural statute," "not a substantive roadblock," *id.* at 1507, and reset the role of a court in reviewing whether an agency's EIS complied with NEPA. The decision

focused on *how* NEPA review works, as applied to the sorts of effects an agency should consider, not simply the contours of an EIS. Any arguments that cabin the decision to the scope of an EIS, rather than the broader role of the courts in reviewing NEPA decisions, must be rejected out of hand.

B. *Seven County* specifically requires deference to agency effects analysis.

Having missed the big-picture message in *Seven County*, Appellants also get the specifics wrong. In their view, "the Supreme Court did not alter the scope of NEPA review required for the *direct* impacts of agency action." San Carlos Br. at 40. They take that to mean that courts should dig deep into agency explanations, looking for "superior analyses" that the agency failed to adopt. *Id. Seven County* says just the opposite.

The text of NEPA requires agencies to prepare a "detailed statement" cataloguing an action's environmental effects. 42 U.S.C. § 4332(C). "But what details," the Court wonders rhetorically, "need to be included in any given EIS?" *Seven Cnty.*, 145 S. Ct. at 1512. The Court answers that question by directing judges to the agency: "The agency is better equipped to assess what facts are relevant to the agency's decision than a court is." *Id.* Thus, the agency's "discretion" in choosing how detailed a report to make "should not be excessively second-guessed by a court." *Id.* The same point applies to an agency's analysis of what Appellants call "direct impacts"

(and *Seven County* just calls "impacts"). "[T]here too, an agency exercises substantial discretion." *Id.*

Take this case. Appellants put forward experts who have identified "material factors" that they say were not adequately studied in the agency's EIS. San Carlos Br. at 32, 42, 44. Of course, the agency made different choices regarding the scope and content of the EIS. This is precisely the scenario in which *Seven County* calls for "substantial deference" to agency discretion, not "just a little more process." 145 S. Ct. at 1512, 1514. Under the governing case law, if an agency is making "speculative assessments or predictive or scientific judgments," then "a reviewing court must be at its 'most deferential.'" *Id.* at 1512 (quoting *Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 103 (1983)).

Glossing over these rules and downplaying *Seven County*, Appellants suggest that this case is different because the agencies disregarded the "best available evidence and analysis." San Carlos Br. at 40. They seem to draw this idea from *San Luis & Delta-Mendota Water Authority v. Locke*, 776 F.3d at 971 (9th Cir. 2014). *See* San Carlos Br. at 2 n.1. But *Locke* predates *Seven County*, and the "best available science standard" discussed in *Locke* is specific to the Endangered Species Act and its implementing rules. 776 F.3d at 995. NEPA is a statute different in kind. As the Court explained in *Seven County*, "NEPA was the first of several landmark

environmental laws enacted by Congress in the 1970s. Subsequent statutes included the Clean Air Amendments of 1970, the Clean Water Act of 1972, and the Endangered Species Act of 1973, among others." *Seven Cnty.*, 145 S. Ct. at 1507. But "[u]nlike those later-enacted laws," NEPA "imposes no substantive environmental obligations or restrictions." *Id.* NEPA is a purely procedural statute: "[A]n agency's only obligation is to prepare an adequate report." *Id.* No more.

C. *Seven County* specifically requires deference to agency alternatives analysis.

Appellants also claim that the NEPA review here is "deficient" because it omits alternative mining techniques that are "'technically' and 'physically feasible'" and would allow vast quantities of copper "to be 'profitably mined.'" Lopez Br. at 53 (quoting 4-EIS-F-3–5, 1-EIS-50). But they never mention *Seven County*'s discussion of alternatives analysis. That discussion, properly considered, defeats Appellants' claims.

Seven County is clear that the same agency judgments that merit judicial deference in "assessing the relevant impacts" of a project also support deference to agency analysis of "alternatives." 145 S. Ct. at 1512. That includes the agency's identification of alternatives and the question of whether those alternatives are "really feasible." *Id.*

Appellants seem to think that deference is not warranted here because the agency has admitted that the alternatives left out of its review were

"'technically' and 'physically feasible.'" Lopez Br. at 53 (quoting 4-EIS-F-5); *see id.* at 4, 24, 45 (same). But feasibility under NEPA involves more than just technical and physical feasibility. NEPA's plain text says that an EIS should include "a reasonable range of alternatives … that are technically and *economically* feasible, and meet the purpose and need of the proposal." 42 U.S.C. § 4332(C)(iii) (emphasis added). Add that statutory instruction to *Seven County*'s holding that agencies enjoy "substantial discretion" in deciding whether alternatives qualify as feasible, 145 S. Ct. at 1512, and it becomes clear that believing an alternative is *technically* or *physically* feasible is not enough for a judge to mandate its inclusion in an EIS. Here, for example, the agency found that Appellants' preferred alternative was "not economically feasible and would be unreasonable." FEIS at 50. That judgment is an exercise of agency discretion that, under *Seven County*, deserves deference from a court. 145 S. Ct. at 1512.

More generally, choosing a "reasonable range of alternatives" is part of an agency's "broad latitude to draw a 'manageable line'" in its NEPA reviews. *Seven Cnty.*, 145 S. Ct. at 1513 (quoting *Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004)). Without the freedom to draw such a line, a NEPA review for a large project like this one can easily get out of hand. Indeed, most NEPA reviews have done just that. In recent years,

the average length for an EIS has grown to over 660 pages and a quarter exceed 748 pages—plus an additional 1,000 pages of appendices.[2]

The Court in *Seven County* recognized this fact, emphasizing that "overly intrusive" judicial review had "caused litigation-averse agencies to take ever more time and to prepare ever longer EISs for future projects." *Id.* at 1513. Agencies must draw lines. And an agency "assessing significant effects and feasible alternatives" under NEPA "invariably" must "make a series of fact-dependent, context-specific, and policy-laden choices about the depth and breadth" of its EIS. 145 S. Ct. at 1513. Such choices are for the agency to make, not judges. "Courts should afford substantial deference and should not micromanage those agency choices so long as they fall within a broad zone of reasonableness." *Id.*

II. *Seven County* requires agencies to review "the project at hand," not other projects regulated by other agencies.

Appellants next complain that the agency erred by not "considering the impacts of other activities in the area that will cumulatively add to the impacts" of the proposed mine. AMRC Br. at 53. The "other activities" that Appellants have in mind primarily include a "planned community" housing development that they say would use the same aquifer as the

[2] See White House Council on Environmental Quality, Length of Environmental Impact Statements (2013-2018) at 1, 3 (June 12, 2020), https://perma.cc/F8FL-M3YS.

mine. *Id.* at 52. They describe the mine's impacts as "directly connected to and cumulative of" the impacts from this other, separately permitted development. *Id.* at 56.

Seven County rebuts this argument in at least two ways. First and most important, *Seven County* holds that "the textually mandated focus of NEPA is the 'proposed action'—that is, the project at hand—not other future or geographically separate projects that may be built (or expanded) as a result of or in the wake of the immediate project under consideration." 145 S. Ct. at 1515. That holding kneecaps Appellants' "other activities" argument. NEPA simply "does not require the agency to evaluate" the effects of "a possible future project" like the one flagged by Appellants. *Id.* Indeed, *Seven County* specifically calls out "a housing development that might someday be built" as an example of a "separate project" that falls outside NEPA's scope. *Id.* at 1515–16. And even when "[t]he effects from a separate project may be factually foreseeable," as Appellants suggest they would be here, it is not "reasonable to hold the agency responsible for those effects." *Id.* at 1516.

Second, beyond the sheer unreasonableness of forcing an agency to consider effects that are separate in time or place from "the project at hand," *Seven County* (like *Public Citizen* before it) draws a bright line around agency jurisdiction: "[A]gencies are not required to analyze the effects of

projects over which they do not exercise regulatory authority." *Id.*; *see Public Citizen*, 541 U.S. at 770. The "other activities" that concern Appellants here are being conducted on Arizona State Trust Lands, not Forest Service lands. AMRC Br. at 52. The Forest Service thus lacks regulatory authority over those activities. That alone is enough under *Seven County* to exclude those activities from the scope of the Forest Service's NEPA review. As the D.C. Circuit has just explained, *Seven County* requires the conclusion that separately regulated actions cannot be "connected actions." *Sierra Club v. FERC*, – F.4th –, 2025 WL 2779345, at *6 (D.C. Cir. Sept. 30, 2025).

III. *Seven County* aims to end NEPA's use as a blunt tool of project opponents.

The Supreme Court in *Seven County* restored the balance that Congress originally struck in passing NEPA. For decades, NEPA arguments like the ones Appellants are advancing here have thwarted infrastructure and construction projects across the country. The seeming simplicity of "just a little more process" belied the cost that additional procedural requirements can and do impose on federal projects, policies, and permits. More process turned into a decisional sludge that showed up in the U.S. economy as deadweight cost. As the Supreme Court put it, NEPA's "modest procedural requirement" had become "a blunt and haphazard tool employed by project opponents"—not because more process added real

value, but because more process could "stop or at least slow down" new projects. *Seven Cnty.*, 145 S. Ct. at 1513.

Amici's members have experienced these NEPA abuses first-hand. In the United States, it takes "10 or 15 years to approve urgently needed projects," while "approval can take a fifth of that time in other countries that still adhere to high standards." Nat'l Ass'n of Mfrs., *Energy Permitting Reform Act Will Help Unlock the Full Potential of Manufacturing Industry, Is Critical for Competing with China* (July 31, 2024), https://bit.ly/4fWANBI. As the Court recognized in *Seven County*, NEPA delays mean meant "fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like." 145 S. Ct. at 1514.

Seven County takes a big step toward solving these NEPA problems, and lower courts are already recognizing it—this Court included. In *Cascadia Wildlands v. U.S. Bureau of Land Management*, this Court upheld a NEPA review by relying on *Seven County*, noting in particular that the "substantial deference" owed to agencies in NEPA reviews "includes deferring to the agency regarding what level of detail is required, what alternatives are feasible, and the scope of the environmental effects that the NEPA document will address." – F.4th –, 2025 WL 2460946, at *23 (9th Cir. Aug. 27,

2025). Thus, "the role that the judicial branch plays in policing NEPA compliance is 'a limited one'" *Id.* (quoting *Seven Cnty.*, 145 S. Ct. at 1515).

The D.C. Circuit has similarly said that "[t]he Supreme Court shut the courthouse door to NEPA nitpicking in the name of causally attenuated indirect effects," *Sierra Club v. FERC*, 145 F.4th 74, 89 (D.C. Cir. 2025), and that "a more probing review" in NEPA cases was "in conflict with NEPA's 'statutory text and common sense,'" *Sierra Club*, 2025 WL 2779345, at *3 (quoting *Seven Cnty.*, 145 S. Ct. at 1514). The Tenth Circuit got the message too. Given the "bedrock principle" of "[d]eference" announced in *Seven County*, it held that NEPA review is "by nature, a narrow review." *Am. Wild Horse Campaign v. Raby*, 144 F.4th 1178, 1191 (10th Cir. 2025). The Eleventh Circuit, in an unpublished opinion granting a stay, went out of its way to discuss *Seven County*, noting "the potential for abuse inherent in judicial treatment of NEPA as something other than a procedural statute." *Friends of the Everglades, Inc. v. Secretary of U.S. Dep't of Homeland Sec.*, 2025 WL 2598567, at *4 (11th Cir. Sept. 4, 2025). The Supreme Court's decision in *Seven County* is meant to stop that abuse.

District courts have similarly been applying *Seven County* to narrow NEPA review. *See, e.g.*, *Yellowstone to Uintas Connection v. Bolling*, No. 4:25-cv-211-DCN, 2025 WL 1928052, at *3 (D. Idaho July 14, 2025); *Wlid Horse Educ. v. U.S. Dep't of Interior*, No. 3:23-cv-568-ART-CSD, 2025 WL

2073994, at *6 (D. Nev. July 22, 2025); *Ky. Heartwood, Inc. v. U.S. Forest Serv.*, No. 6:22-cv-169-REW-HAI, 2025 WL 2345818, at *6 (E.D. Ky. Aug. 13, 2025); *Nat'l Parks Conserv. Ass'n v. U.S. Bureau of Land Mgmt.*, No. 2:24-cv-1434-DJC-CKD, 2025 WL 2495614, at *8 (E.D. Cal. Aug. 29, 2025). Amici trust that as courts continue to correctly apply *Seven County*, safer and speedier NEPA reviews will soon smooth the path for new infrastructure and construction projects. They urge this Court not to put on the brakes.

CONCLUSION

The district court's orders denying a preliminary injunction should be affirmed.

October 6, 2025

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 25-5185, 25-5189, 25-5197

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