

# ***THE NEW NEPA: SEVEN COUNTY INFRASTRUCTURE COALITION V. EAGLE COUNTY***

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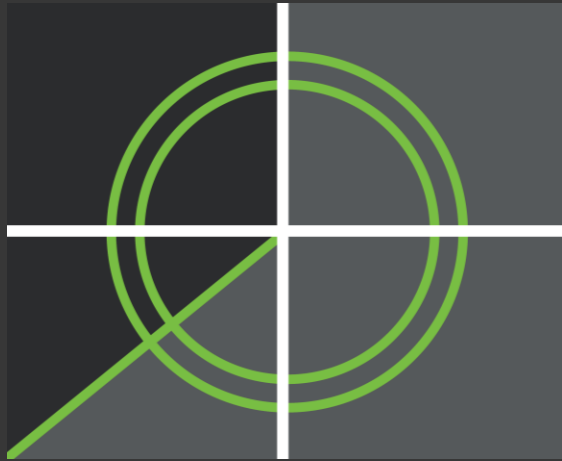
# What is NEPA?



- NEPA is the National Environmental Policy Act of 1970
- NEPA predates other, more substantive environmental laws
- NEPA is *procedural*—its primary requirement is that agencies prepare a “detailed statement” that:
  - catalogues environmental effects of the “proposed agency action” and
  - compares the effects of a “reasonable range of alternatives”



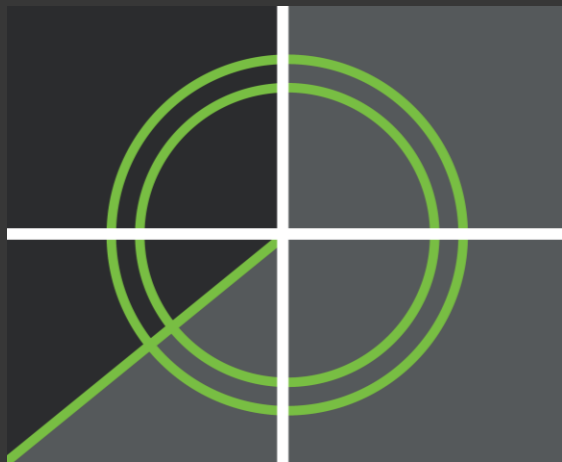
## ■ THE UINTA BASIN



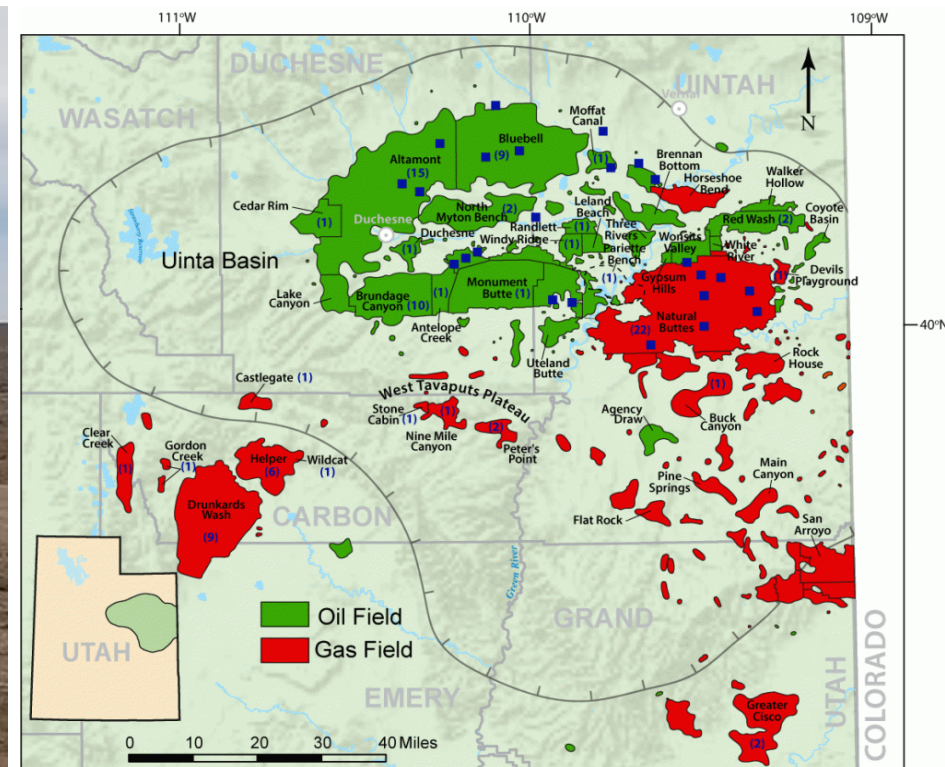
Background  
The Isolated Empire

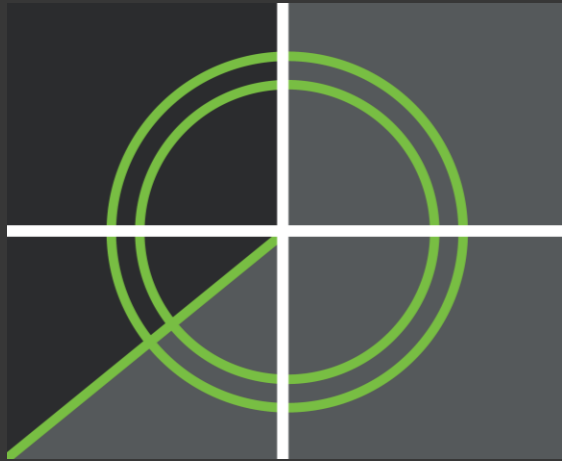


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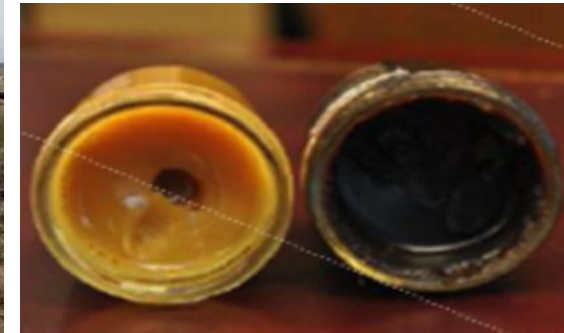
Background  
The Isolated Empire





# Background

## Uinta Basin Crude



**700B bbl**

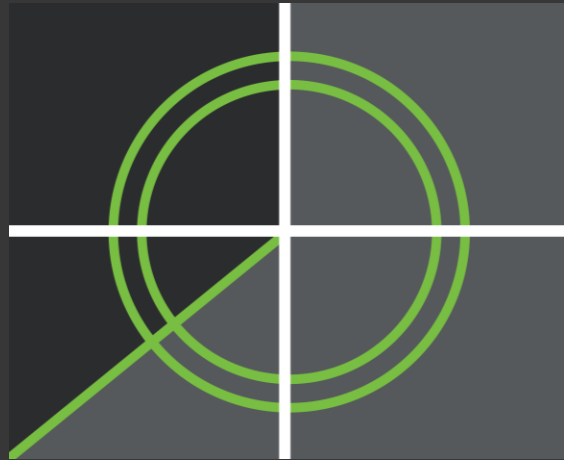


**resource**  
**8,000 tons frac sand**  
**per well**



# Background Uinta Basin Crude





# Background Uinta Basin Crude



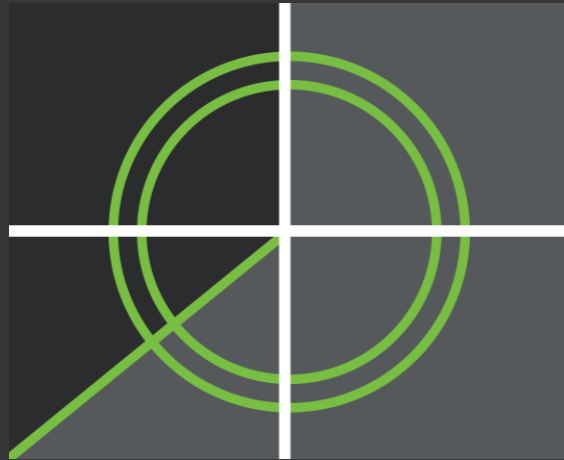
## Current: 90,000 bbl/day



80,000 bbl/day trucked to Salt Lake City  
Refineries



10,000 bbl/day trucked to Price River  
Terminals, for Rail



# Background Uinta Basin Crude



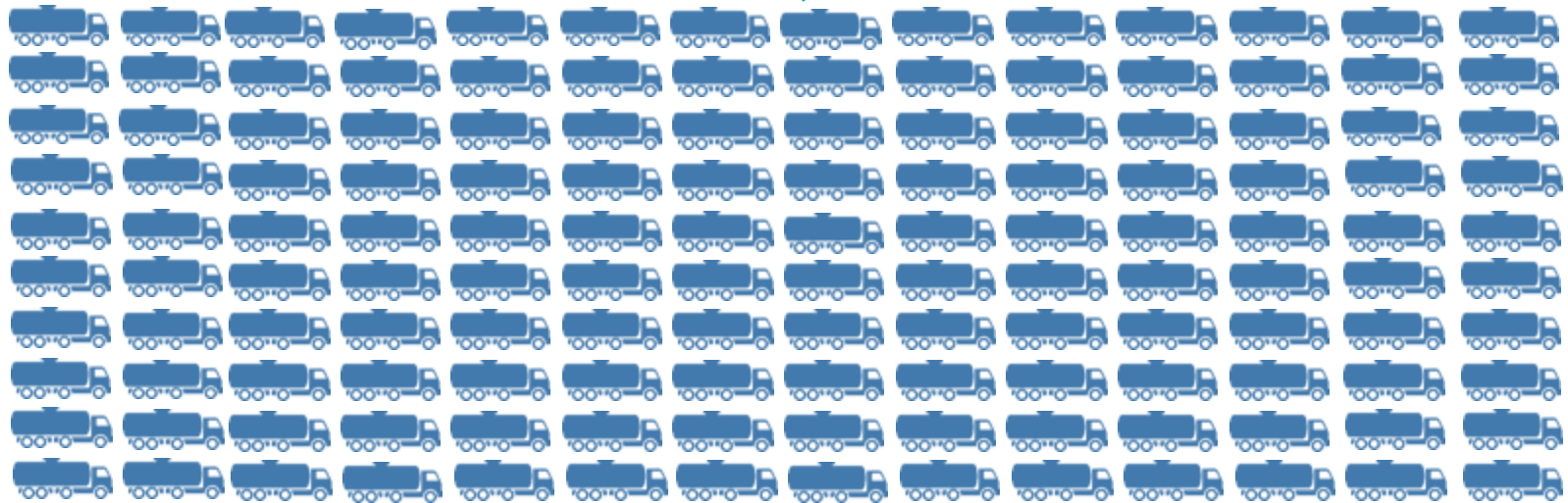
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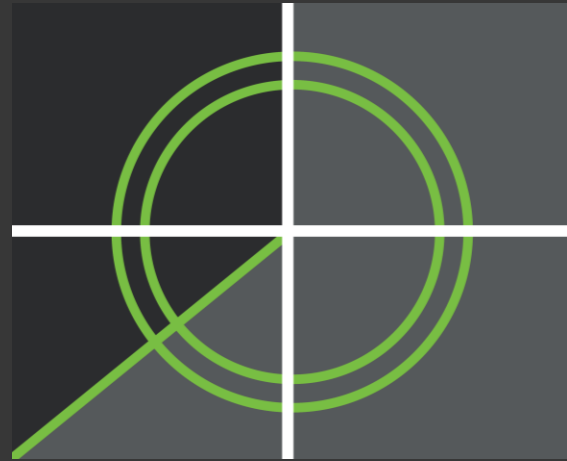


10,000 bbl/day trucked to Price River  
Terminals, for Rail



140,000 bbl/day Immediate Demand at Gulf





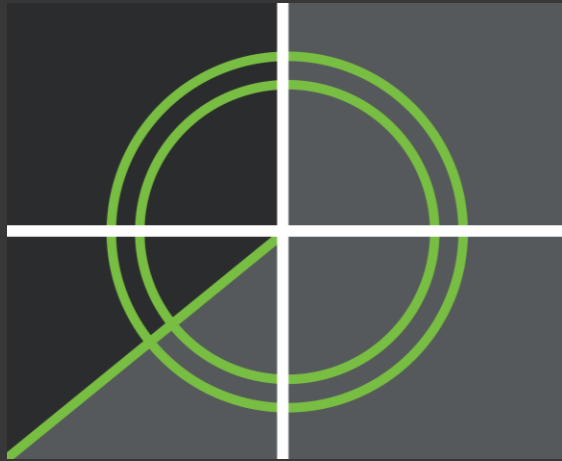
## Background Transportation

### ■ WHY NOT A PIPELINE?



- ❗ Waxy crude – technically challenging for pipeline
- ❗ Pipelines don't haul frac sand
- ❗ Public opposition to huge growth in truck traffic
- ❗ Pipeline route runs through world-class petroglyph/pictograph area

## ■ UINTA BASIN RAILWAY (UBRY)



### Background Transportation



Economic  
Development



Sustainable  
Communities



Quality  
of Life

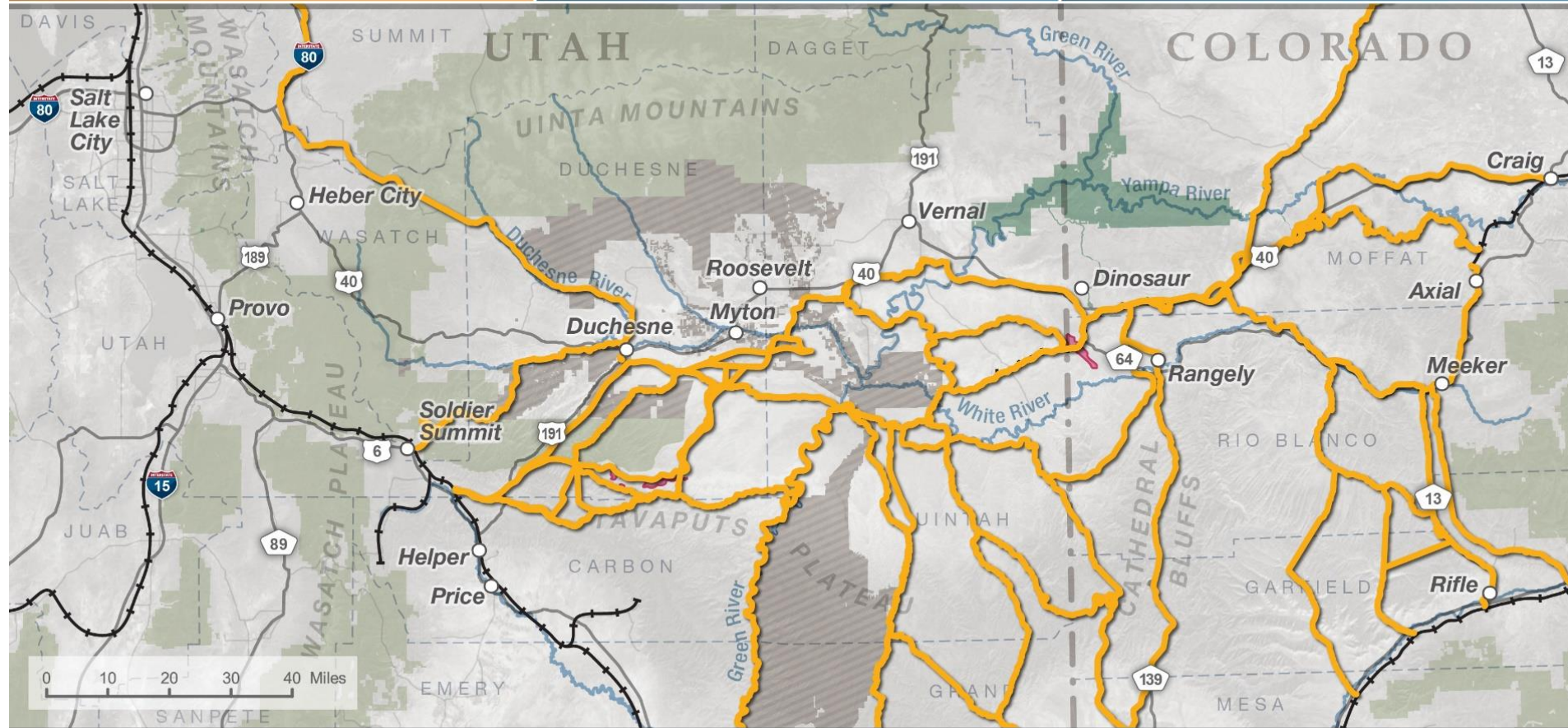
- ✓ Solves the long-standing freight transportation challenges in the region by connecting to the national railway network
- ✓ Safe and cost-effective solution enables economic stability, sustainable communities and enriched quality of life

# ROUTE SELECTION

**29** Routes  
EVALUATED

**8** Routes  
SHORT LISTED

**3** Routes for EIS  
CONSIDERATION



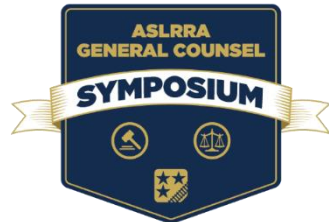
Tribal Land    US Forest Service Land    National Park Service Land    Environmentally Sensitive Areas    NORTH





## INITIAL SCREENING

- 29 identified routes were screened to determine if they fulfilled the criteria established in Section I
- 26 of these routes were previously identified by UDOT in 2014
- Three additional routes were identified by HDR in December 2018 and January 2019



Route Alternative	Natural and Built Environment Affects	Constructability and Operational Feasibility	Not Substantially Duplicative
1 Echo Canyon	X		
2 Indian Canyon	✓	✓	✓
3 Sowers Canyon	✓	X	
4 Minnie Maud Canyon-Sowers Canyon	✓	X	
5 Argyle Canyon-Sowers Canyon	✓	X	
6 Nine Mile Canyon-Wells Draw	✓	X	
7 Nine Mile Canyon-Upper Green River Canyon	X		
8 Green River Canyon	X		
9 Thompson Canyon	✓	X	
10 Segoe Canyon	✓	X	
11 Westwater-Seep Ridge	✓	✓	X
12 Mack	✓	✓	✓
13 Mack-Evacuation Creek	✓	X	
14 Mack-Park Canyon	✓	X	
15 Douglas Pass	✓	X	
16 Wamsutter	✓	X	
17 Craig City	✓	✓	X
18 De Beque	✓	X	
19 Parachute-Piceance Creek	✓	X	
20 West Rifle	✓	✓	✓
21 Parachute-Rio Blanco Pass	✓	X	
22 East Rifle	✓	✓	✓
23 Newcastle	✓	X	
24 Axial-Meeker	✓	✓	X
25 Westwater	✓	✓	✓
26 Cisco	✓	X	
Avintaquin Canyon	✓	✓	✓
Wells Draw	✓	✓	✓
Craig	✓	✓	✓

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## SCREENING RESULTS

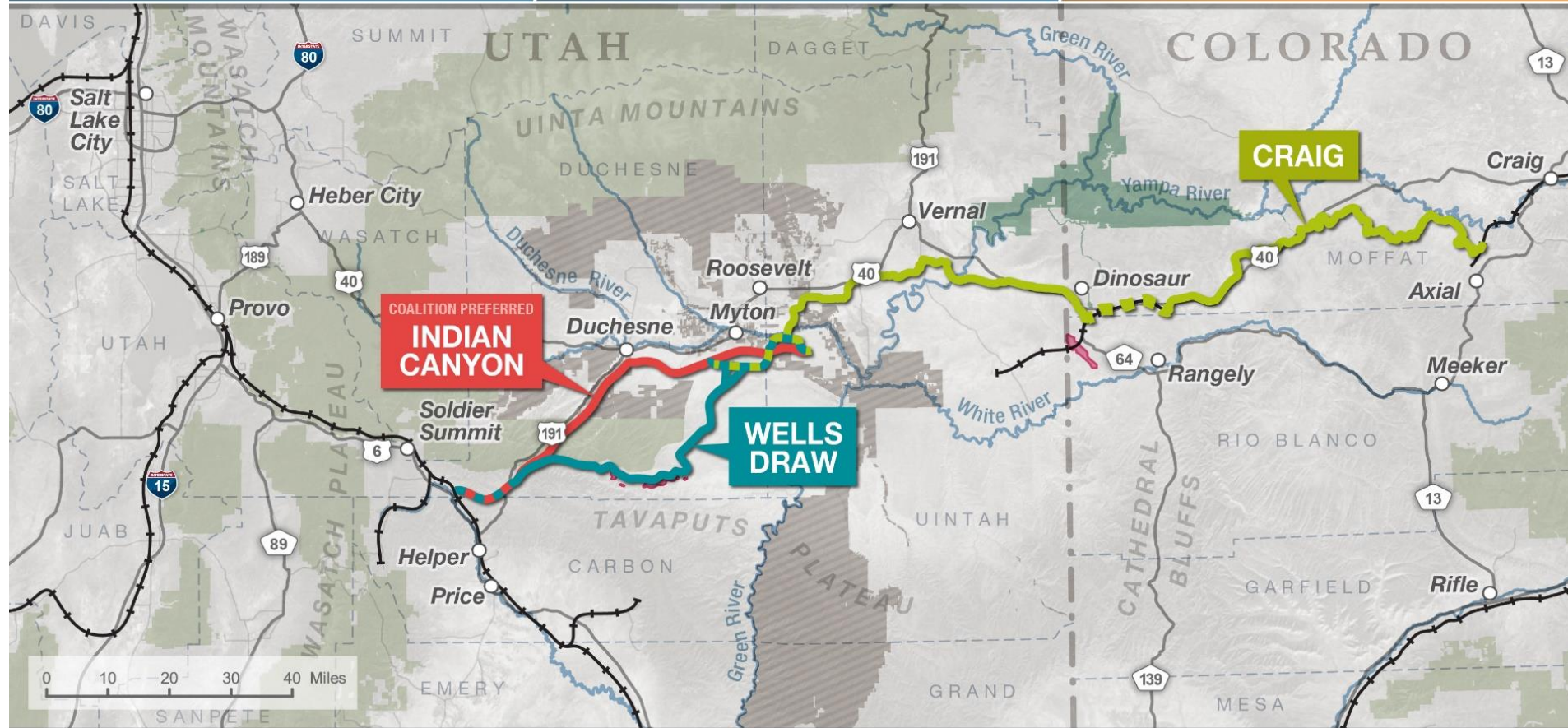
Route	Land Ownership (acres)			Parks, Refuges and Recreational Areas (acres)	Number of Waterbody Crossings	Wetlands (acres)	Wetland Banks (acres)	Number of Historic Properties	Limiting soils (Prime Farmland) <sup>a</sup>
	Federal	State	Tribal						
Indian Canyon	3,620	950	2,230	2,850 <sup>b</sup>	157	200	0	1	1,016
Craig	19,880	3,900	0	520	171	160	0	0	2,515
Wells Draw	13,570	2,000	0	620	300	235	0	3	3,375
Avintaquin Canyon	3,760	418	5,420	355	185	310	0	1	1,135
East Rifle	20,480	1,523	0	600	375	561	.16	5	13,775
West Rifle	22,360	2,480	0	1,910	370	776	.16	5	13,270
Mack	18,622	2,336	0	461	260	326	.16	2	7,580
Westwater	22,480	4,700	0	1,866	287	252	0	2	6,660

# ROUTE SELECTION

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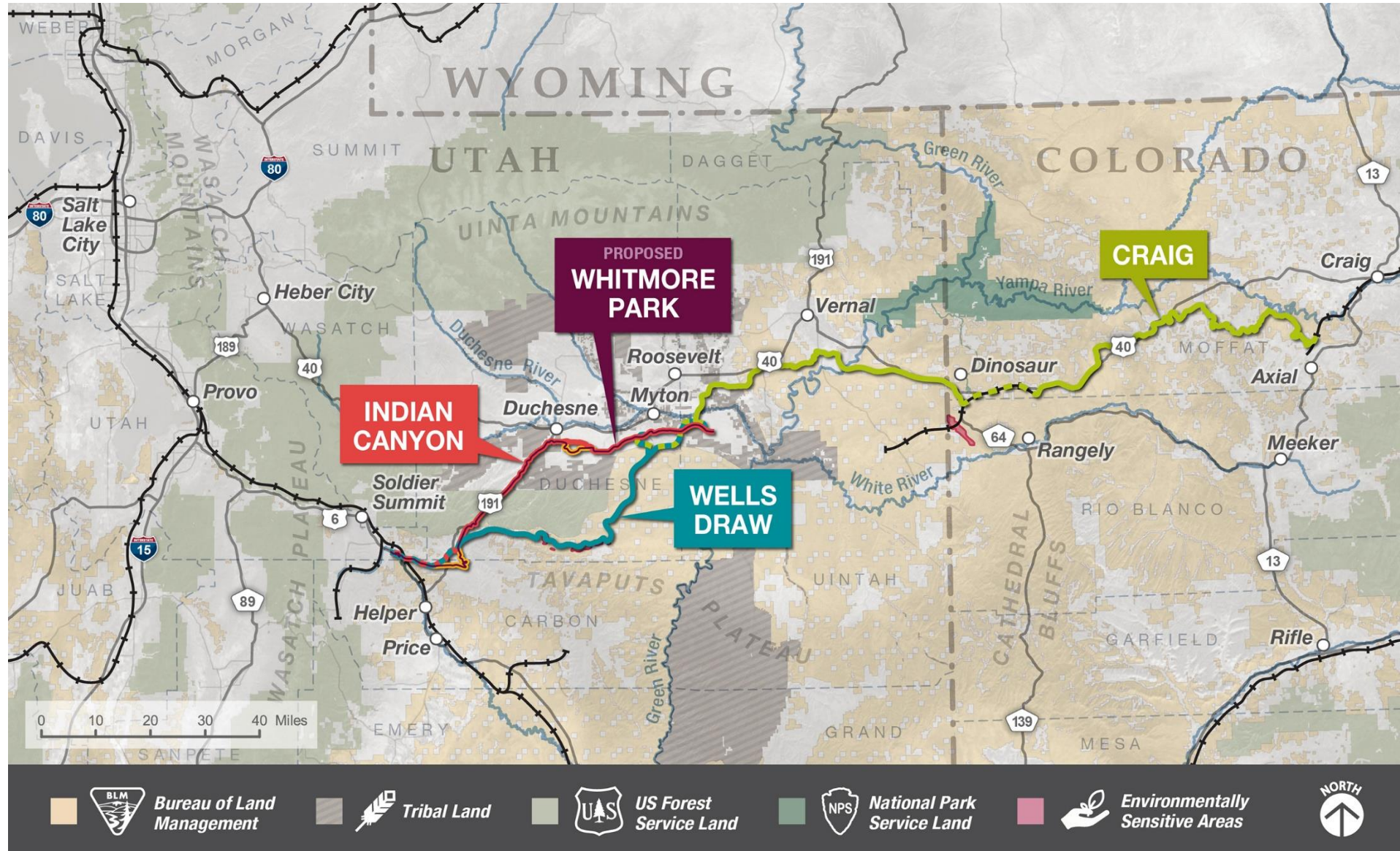
COALITION PREFERRED  
**INDIAN CANYON**

**WELLS DRAW**

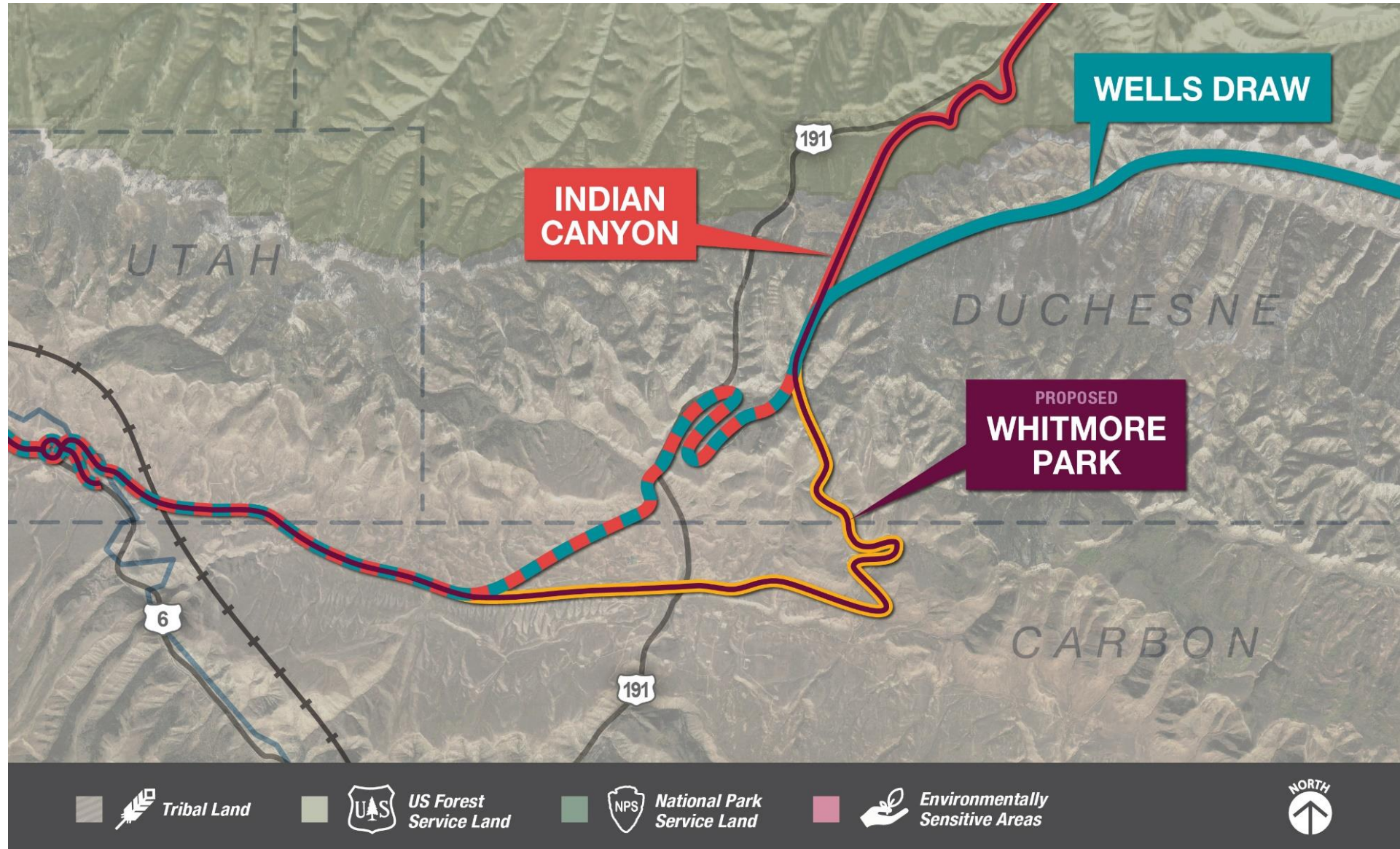
**CRAIG**



# NEW PROPOSED ROUTE – WHITMORE PARK



# EMMA PARK AREA



## ■ IMPACT CATEGORIES TO BE ANALYZED



- Public Safety
- Transportation Systems
- Air Quality and Climate Change
- Noise and Vibration
- Land Use
- Recreation
- Biological Resources
- Socioeconomics
- Cultural and Historical Resources
- Water Resources
- Visual Resources
- Geology and Soils
- Environmental Justice

# ■ PERMITTING ACTIONS TO DATE – MEETINGS WITH RESOURCE AGENCIES



US Army Corps of Engineers®



- USACE
- Utah DWR
- USFW
- USFS

- Ute Tribe Natural Resources
- Utah SHPO
- EPA Region 7

- Utah Sage Grouse Working Group
- BLM
- SITLA
- PLPCO
- UDOT



## ■ PERMITTING ACTIONS TO DATE

- ✓ Class III Cultural Survey
- ✓ Biological Resources Survey
- ✓ Aquatic Resources Survey
- ✓ Waters of the US (and State) Survey
- ✓ Alignment Potential Impacts Minimization
- ✓ Mitigation Strategies Development
- ✓ Section 106 Programmatic Agreement
- ✓ USFWS Section 7 Consultation/ Biological Assessment
- ✓ USACE 404 Permit Application (404b1 and mitigation on- and off- site)
- ✓ USEPA/UDWQ 401 Certification
- ✓ Utah Stream Alteration Permit Coordination

# What did the Surface Transportation Board do?



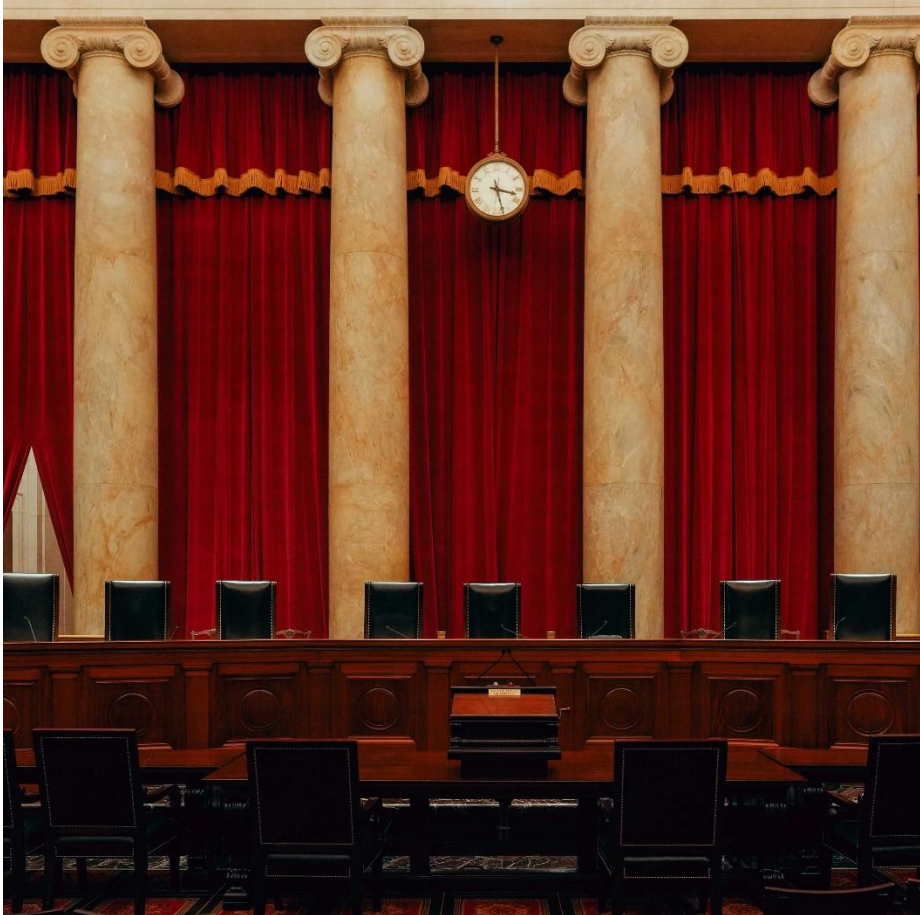
- The Board has exclusive jurisdiction to approve construction of new rail lines (and a statutory presumption in favor of such approval)
- Before deciding whether to approve the UBRy, the Board prepared a 3600-page Environmental Impact Statement
- Given guidance at the time, the Board did a “full burn” GHG analysis
- The Board approved construction of the UBRy in December 2021

# What happened in the D.C. Circuit?

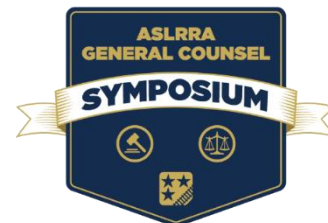
- *No challenges* to rail project impacts in Utah
- Opponents of the project—environmental groups and Eagle County, Colorado—argued that upstream, downstream, and downline impacts were foreseeable
- The D.C. Circuit held that the STB should have done more with upstream oil drilling in Utah, downline spills in Colorado, and downstream oil refining in Louisiana, etc.



# Why did the Supreme Court hear the case?



- The Supreme Court hears about 1% of the cases that are presented to it.
- To win review, you usually need both a “circuit split” and an important national issue
- Here, courts outside the DC Circuit put more limits on NEPA review
- NEPA is also the most-litigated environmental statute—the delays that it caused affected industries across the country



# What larger problem did the Supreme Court see?

“overly intrusive (and unpredictable)” judicial review

“litigation averse agencies” take “more time” in NEPA review



# What did the Court do in *Seven County*?

- D.C. Circuit is reversed, 8-0
- “NEPA is a procedural cross-check, not a substantive roadblock.”
- Too much “speculation and consultation and estimation and litigation.”
- “A course correction”: NEPA should not “hinder[]” projects with “just a little more process.”

Cite as: 605 U. S. \_\_\_\_ (2025)

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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, [pio@supremecourt.gov](mailto:pio@supremecourt.gov), of any typographical or other formal errors.

## SUPREME COURT OF THE UNITED STATES

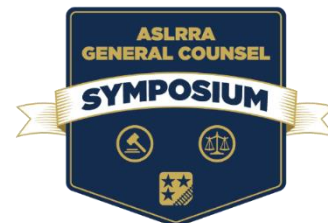
No. 23–975

SEVEN COUNTY INFRASTRUCTURE COALITION,  
ET AL., PETITIONERS *v.* EAGLE COUNTY,  
COLORADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[May 29, 2025]

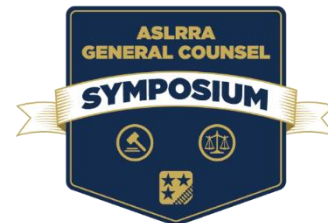
JUSTICE KAVANAUGH delivered the opinion of the Court.



# How will judicial review change?

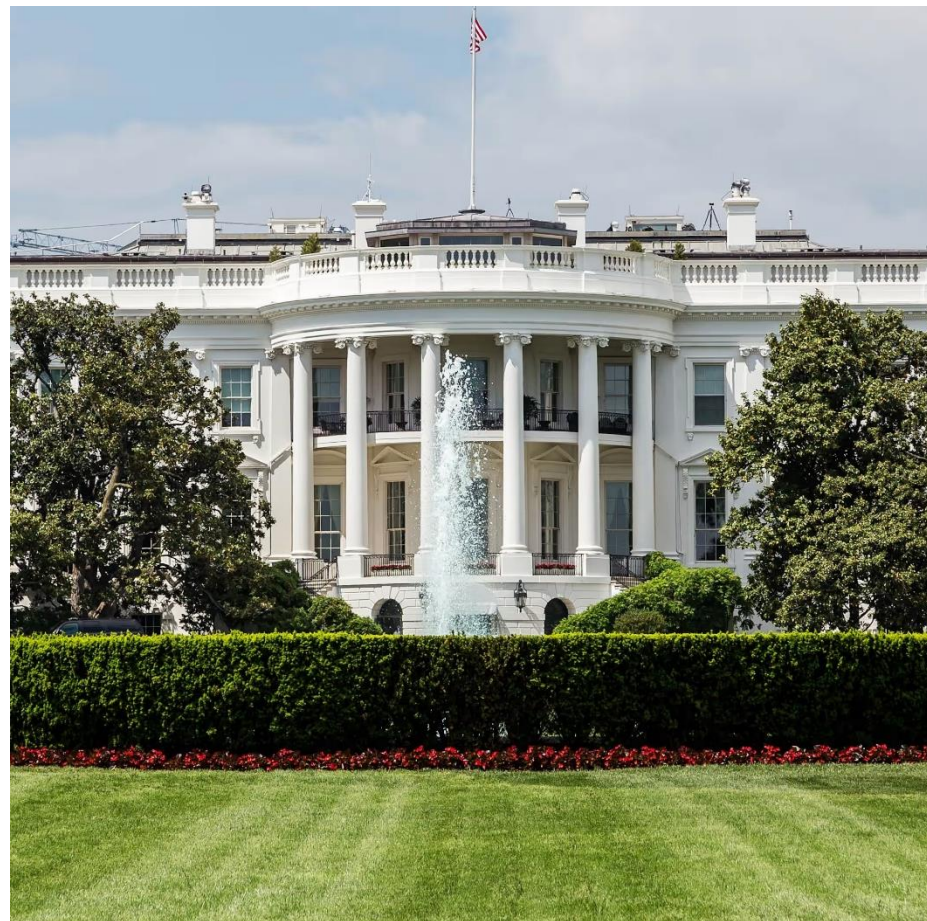


- The “central principle” must be “deference”
- Scope, impacts, and alternatives: Agency decides
- “Brevity should not be mistaken for lack of detail.”
- By statute: 2 years, 150 pages
- Focus on the *final decision*; “an EIS is only one component”



# How will agency process change?

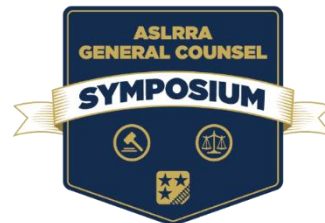
- Timing and page limits
- Freedom to decide “what facts are relevant” to their decision
- No “potential future projects” or “geographically separate projects”
- No projects outside the agency’s “regulatory authority”
- Draw a “manageable line”



# What was the Court's policy message?



- The majority opinion was not limited to the facts of this case
- “NEPA has transformed from a modest procedural requirement into a blunt and haphazard tool employed by project opponents”
- “A 1970 legislative acorn has grown . . . into a judicial oak”



# What just happened?

CLIMATE

## The Supreme Court Just Started a Permitting Revolution

Justice Brett Kavanaugh's decision in the case of *Seven County Infrastructure Coalition v. Eagle County, Colorado* enlists the nation's highest court in the campaign to reform federal environmental enforcement

ROBINSON MEYER JUNE 02, 2025

## Supreme Court scales back a key environmental law in a ruling that could speed development projects

The Supreme Court has backed a multibillion-dollar oil railroad expansion in Utah in a ruling that scales back a key environmental law and could speed development projects around the country

May 29, 2025

## The Supreme Court goes after NEPA

By Nina H. Persh, Hannah Northey, Michael Doyle | 05/29/2025 01:52 PM EDT

Federal agencies do not need to consider "every conceivable environmental" the nation's top court ruled.



## The Supreme Court wants to make it easier to build

The Court's latest decision is a love letter to the abundance agenda.

by Ian Millhiser

May 29, 2025, 2:10 PM EDT



## Supreme Court Curbs Scope of Environmental Reviews

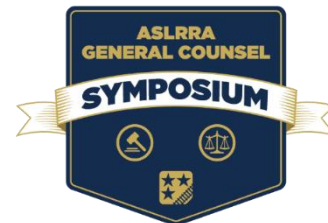
The question for the justices was whether an agency had complied with a federal law by issuing a 3,600-page report on the impact of a proposed railway in Utah.



# What's happening next?



- Following CEQ instructions, agencies are issuing new NEPA procedures
- Key changes from July:
  - Greater emphasis on cat-ex
  - Strict(er) page and time limits
  - Focus on “action at hand”
  - Procedures for applicant-prepared documents



# How will *Seven County* be implemented?

- Easier said than done:  
Experience with *Sackett*
- CEQ and agency guidance is in development
- Knowledge of the rules
- Case-by-case planning
- Help from Washington when needed (and available)
- Prepare for litigation



# QUESTIONS?

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