BREAKTHROUGH INSTITUTE

THE PROCEDURAL HANGOVER:

HOW NEPA LITIGATION OBSTRUCTS CRITICAL PROJECTS

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WHO WE ARE

The Breakthrough Institute is a global research center that identifies and promotes technological solutions to environmental and human development challenges.

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INTRODUCTION

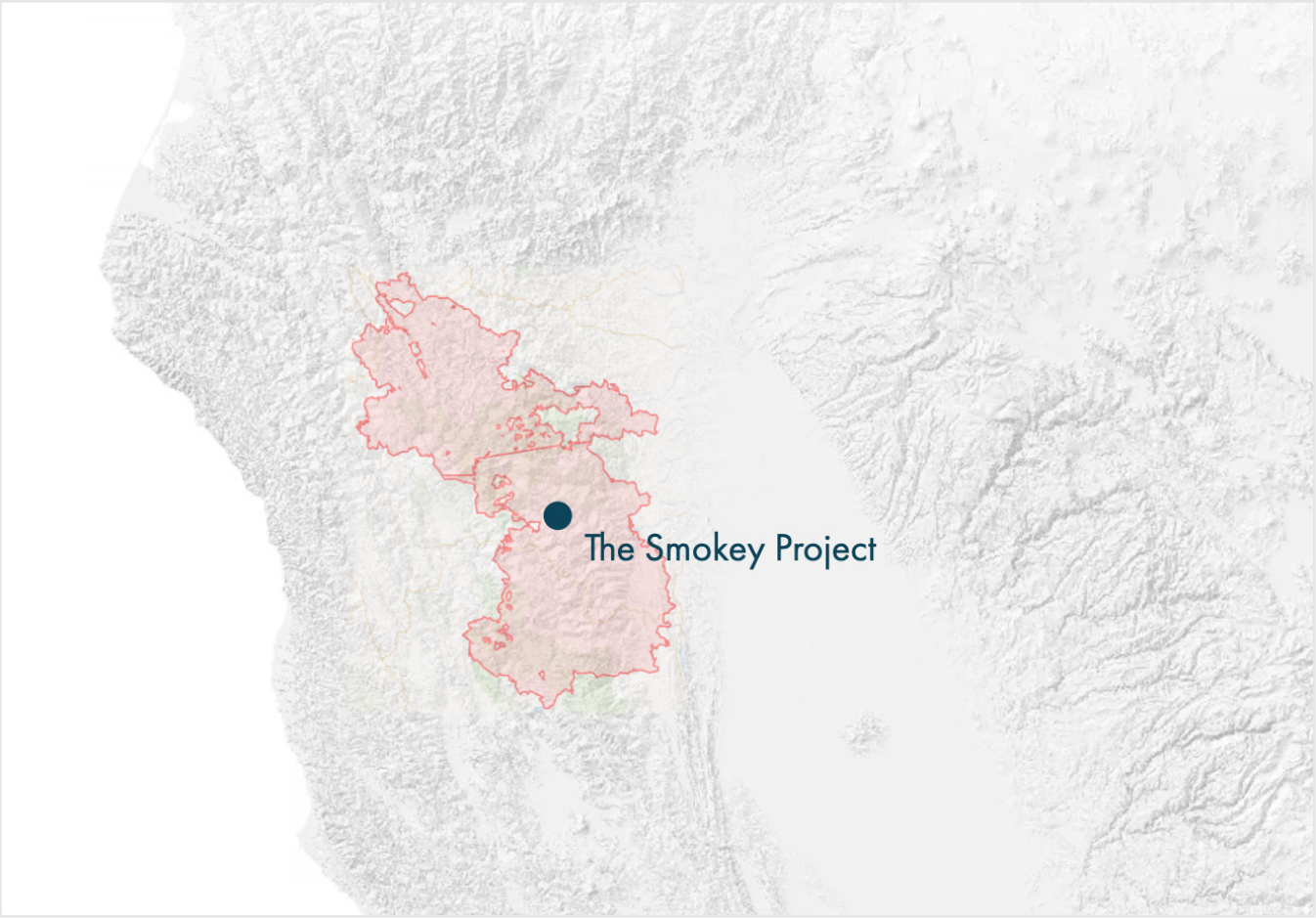
In 2012, the U.S. Forest Service, in collaboration with private landowners and the Glenn County Resource Conservation District, finalized permitting paperwork under the National Environmental Policy Act (NEPA) to pursue the Smokey Project. The Smokey Project was a forest management project which aimed to perform about 7000 acres worth of treatment to mitigate wildfire risk in the Mendocino National Forest, due west of Chico, California.

The initial plan was to perform commercial thinning on 933 acres, prescribed fire and mechanical thinning on 3326 acres, precommercial thinning on 400 acres, and improve wildlife habitat on 1678 acres. Their original Environmental Assessment received a Finding of No Significant Impact (FONSI) in their original NEPA decision.

But before the project could proceed, the U.S. Forest Service—the most common agency defendant in legal claims under NEPA—was sued by Conservation Congress, an environmental organization based in Montana, claiming that the project did not comply with NEPA, the Endangered Species Act (ESA), and the National Forest Management Act (NFMA). Conservation Congress argued that the project failed to perform the due diligence to protect the Northern Spotted Owl, a species listed as "threatened" under the ESA, and therefore the agency's "Finding of No Significant Impact' was "arbitrary and capricious."

The initial lawsuit, first launched in September of 2013, was litigated for three and a half years, before the Eastern District Court of California ruled in February of 2017 that the Forest Service and their partners did, indeed, fail to comply with NEPA's standards by "failing to take a hard look" and "failing to develop a reasonable range of alternatives" in assessing the project's impact on the Northern Spotted Owl's habitat. The court ordered an injunction on the project until the Forest Service provided supplementary information clarifying the project.

The Forest Service and their partners obliged and the court ruled in March of 2018 that the Smokey Project was no longer considered in violation of NEPA, thus dissolving the injunction. Conservation Congress appealed the decision, but the Ninth Circuit Court ruled in June of 2019 that the Forest Service did not violate NEPA.



But before the project could begin in earnest, the August Complex Fire—the largest fire in California's history—erupted, and burned over the entirety of the Smokey Project designated land. The August Complex burned over 1 million acres, likely destroying large swaths of old-growth forest, impinging on Northern Spotted Owl habitat, and threatening biodiversity.

The August Complex Fire, along with a number of other fires that burned in California and Oregon in the late summer and fall of 2020, produced a smoke gall that traveled as far as Sweden, and was a key contributor to the "orange skies days" in the Bay Area in early September.

It's impossible to determine the degree to which the delay of the Smokey Project's 7000 acres of hazardous fuels reduction meaningfully contributed to the August Complex Fire. But, by delaying the project for years, Conservation Congress likely did more damage to the natural habitat of the Northern Spotted Owl than any amount of Forest Service intervention could have. The fuels reduction steps could have dramatically reduced the impact of the fire, better maintained the ecosystem for more species, and protected the area of the forest designated by the project.

The Smokey Project is emblematic of the complicated and circuitous delay and obstruction imposed on major infrastructure projects by NEPA and related environmental regulation. We highlight this project because forest management projects account for the bulk of lawsuits under NEPA, as the analysis in this report will make clear. However, we also single out the Smokey Project because it illustrates the moral hazard at play in NEPA litigation. Plaintiffs regularly sue federal agencies intending to alter, delay, or cancel major infrastructure projects, putatively in the name of environmental protection. But these lawsuits often result in precisely the opposite: obstructing or delaying efforts to deploy low-carbon power generation, construct long-distance transmission lines, execute fuels reduction projects on public grasslands and forests, and complete projects meant to protect landscapes, lower greenhouse emissions, and enable energy abundance.

Litigation under NEPA has long been understood to impose costly delays, bureaucratic gridlock, and government dysfunction, all yielding deleterious procedural effects on major beneficial infrastructure investments. However, due mainly to the limited availability of data and records of legal proceedings, the extent and scope of these effects remain poorly documented. While this report makes a significant contribution, it does not offer a comprehensive catalogue. A more complete and transparent record of NEPA litigation is essential to informing effective and accountable permitting policy. In 2024, the Breakthrough Institute published a major review of NEPA litigation at the U.S. Appellate Court level. That report analyzed 387 NEPA cases brought between 2013 and 2022. This report expands our original analysis to include over 1,400 cases filed in U.S. District and Circuit Courts.

These are the major findings of our analysis:

- **Infrastructure projects spent years in litigation under NEPA.** The median project in this dataset spent 1 year and 7 months in legal proceedings following a court challenge. However, a meaningful subset (7% of projects) remained in litigation for more than 6 years, reflecting a long tail of extended delays.

- **Judges tended to defer to agency decisions under NEPA.** Only 26% of rulings in our dataset found a legal flaw in the agency's review and issued a remedy requiring the agency to revise or redo its analysis.

- **Projects in this dataset typically faced their first NEPA challenge less than 6 months after receiving a final agency approval.** The overwhelming majority of NEPA lawsuits are filed well within the six-year judicial review window allowed by the Administrative Procedure Act.

- **Environmental nonprofits were responsible for the bulk of NEPA lawsuits.** NGOs were involved in 75% of judgments in our study. One group appeared in 28% of energy project-related rulings, and three groups were represented in 48% of wildfire risk reduction decisions.

- **Forest management projects attracted more NEPA litigation than any other project type.** Litigation added over two years to the review process for all forest management projects in our dataset. In nearly one in four rulings on hazardous fuels reduction efforts in fire-prone areas, courts issued an injunction or vacatur that halted project activities.
- **Energy projects across fuel types faced prolonged legal uncertainty.** Regardless of outcome, energy projects spent a median of 3 years between final agency approval and final court decision, some taking decades to resolve.
- **Projects undergoing more complex environmental review appeared more frequently in court.** Although full Environmental Impact Statements accounted for just 1% of NEPA reviews, they represented 37% of District Court and 42% of Circuit Court rulings.
- **NEPA litigation rarely advanced environmental justice efforts.** Fewer than 6% of rulings in our dataset cited a challenge to an environmental justice analysis or argued that one should be conducted.

Study Design

This study examines the patterns of NEPA challenges brought by plaintiffs before both the District and Circuit Courts from 2013 to 2022. We compiled and reviewed an exhaustive list of over 2,000 District-level judicial opinions that referenced NEPA filed between 2013 and 2022 using the legal research platform Westlaw.

Cases that did not contain substantive NEPA claims were excluded, and relevant variables were systematically coded for the remaining opinions. This rigorous screening process reduced the dataset to 1,435 District rulings. Subsequently, these judicial opinions were integrated with the corresponding dataset of Circuit court rulings that we compiled for a previous study.

A few methodological limitations are important to note.[1] This analysis is descriptive rather than causal. It identifies patterns in the types of projects and claims that reach court, but it does not isolate the underlying drivers of litigation and legal outcomes. Also, the dataset includes only cases that resulted in written judicial opinions and excludes those resolved through settlement, dismissal, or other alternative means. As a result, it may disproportionately reflect more contentious or uncertain disputes while being unable to assess instances of strategic avoidance of NEPA review. Additionally, in the absence of comprehensive federal tracking of all NEPA analyses (EAs, EISs, and CEs), we cannot determine what proportion of NEPA reviews result in litigation.

DESCRIPTIVE STATISTICS

Litigation record

On average, 144 case decisions were filed per year in District Courts and 39 decisions were filed per year in the Circuit Court of Appeals between 2013 and 2022. However, these figures do not provide a complete picture of NEPA litigation, as an increasing number of claims are adjudicated by quasi-judicial Administrative Law Judges instead of federal district courts and then are appealed to higher courts. NEPA is the most litigated environmental statute in the United States. One study found that between 1976 and 2009, NEPA touched nearly 33% of all cases filed at the appellate level.[2]

Project impact

To better contextualize and measure the impact of NEPA litigation, we grouped opinions by the project they cited. For example, courts issued six opinions on the Tule Wind Project. On average, 151 projects were disputed for NEPA violations each year, with 82% receiving two or fewer decisions. By contrast, 5% were issued five or more rulings. The Central Valley Project received 18 judicial opinions, the most of any project in our dataset.

Venue

Consistent with previous studies, our analysis shows that 53% of district-level NEPA judgements and 48% of appellate judgements were filed in the Ninth Circuit Court of Appeals, representing the Western United States. This mirrors the findings of Adelman and Glicksman, who documented a nearly identical trend between 2001 and 2015.[3] When looking at the Ninth Circuit's broader caseload, the Ninth Circuit consistently heard slightly under one-fifth of all new cases filed nationwide between 2013 and 2022 and slightly more than one-fifth of all new civil federal appellate cases in the same time period.[4]

As the nation's largest circuit in terms of land area, population, litigation volume, and number of federal judges, the Ninth Circuit naturally processes a disproportionately high number of cases.[5] Most importantly, the Ninth Circuit oversees a region that contains nearly half of all federally managed public lands, necessitating frequent NEPA reviews and, consequently, a higher volume of related litigation.

Although some suggest that plaintiffs choose to file cases in the Ninth Circuit due to its perceived liberal ideological leanings, Our data do not show that challengers enjoy significantly better odds

of success there.[6] The percentage of favorable outcomes for challengers (29%) is not dramatically higher in the Ninth than in other circuits, such as the Sixth (29%) or the Fourth and Tenth (28%). This contrasts with findings from Adelman and Glicksman that plaintiffs were twice as likely to succeed in the Ninth Circuit between 2001 and 2015. These more recent patterns indicate that the Ninth Circuit's reputation as an outlier in NEPA outcomes may no longer hold, at least regarding raw success rates. Still, outcome statistics alone provide an incomplete picture. Differences across circuits may emerge more clearly in the reasoning courts apply, the remedies they issue, or how they engage with agency justifications, factors not captured by win rates alone. And regardless of the likelihood of success, the perception that the Ninth Circuit is more likely to deliver more favorable outcomes can impact a plaintiff's calculations of where to file.

Agency burden

The agencies responsible for the largest share of public lands—the U.S. Forest Service and Bureau of Land Management—remained the agencies defending their NEPA review (or lack thereof) most frequently.

Overlap with other laws

Reforming judicial review procedures under NEPA would mitigate, but not resolve, the broader challenges of America's fragmented environmental review and permitting system. NEPA alone rarely stops development on a project outright. Its impact is amplified when paired with more substantive statutes. At the District level, nearly half of the judgments are for challenges citing alleged violations beyond just NEPA. Specifically, 24% of judgements for NEPA claims also cited violations of the Endangered Species Act, 15% claimed National Forest Management Act violations, and 9% included claims under the National Historic Preservation Act. These overlapping statutory claims heighten legal risk and delay, and demand complex interagency coordination.

Document type

At the District level, nearly the same percentage of judgements cited challenges to Environmental Assessments (EAs) (40%) as Environmental Impact Statements (EISs) (37%). However, at the Circuit level, EISs were cited as the subject in a slightly greater share of judgements (42%) than EAs (35%). The complex and precedent-setting nature of EIS litigation creates greater scrutiny at higher judicial levels and helps explain why they may be more likely to be appealed.[7] Although these figures are similar, they do not mean that EISs and EAs face equal litigation risk. Data are limited on the number of each type of environmental review document published annually, but a widely cited estimate from a 2014 Government Accountability Office report suggests that approximately 95% of NEPA documents are Categorical Exclusions (CEs), 4% are EAs, and only 1% are EISs.[8] Although this estimate is rough, it suggests that EISs are the most prone to litigation.

Only 26% of judgments in our database ruled that an agency violated NEPA

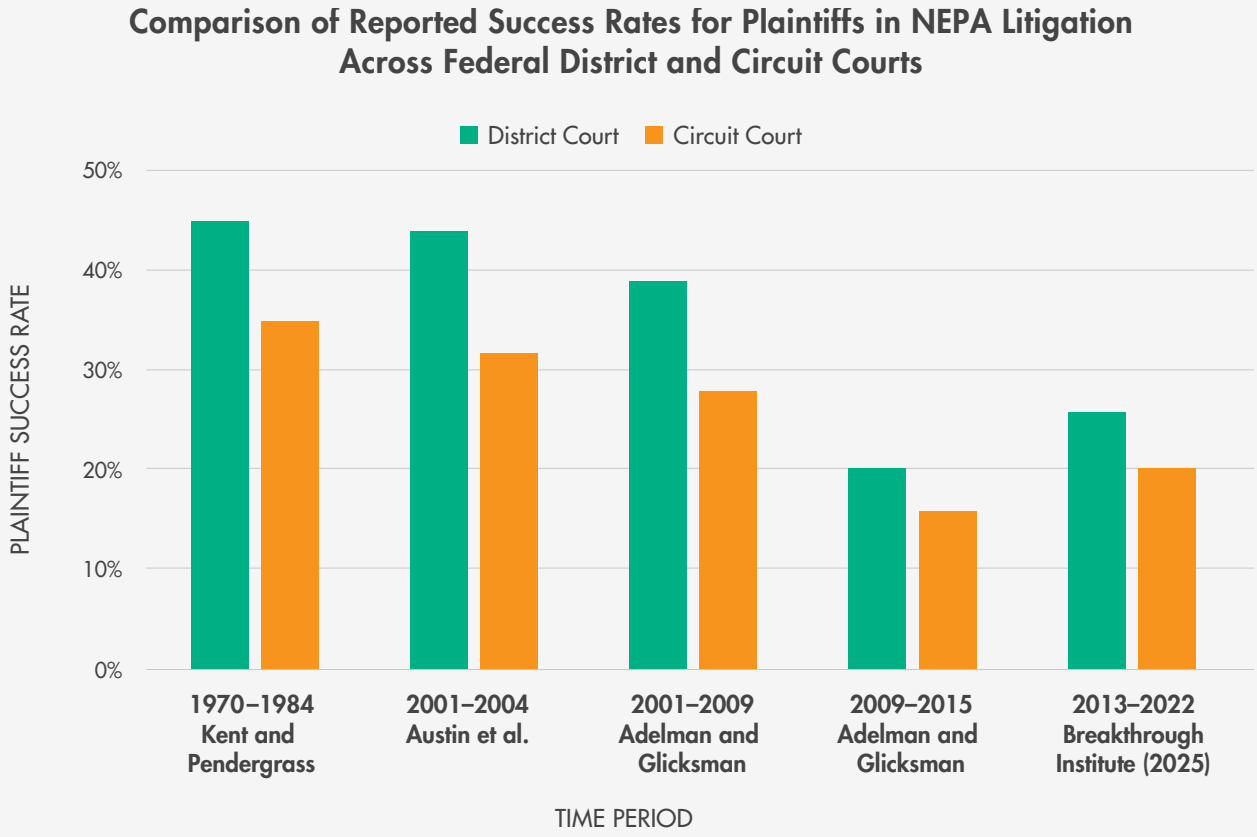
Although this comparatively low rate of adverse judgments suggests that agencies typically meet their procedural obligations, the persistence of NEPA litigation merits assessment. Litigation continues not necessarily because agencies frequently fail to comply with procedure, but because litigation has become structurally embedded in NEPA implementation. As Robert Kagan describes, *American adversarial legalism* creates incentives for ongoing procedural scrutiny independent of agency error.[9] Although the pressure of litigation may have improved the robustness of environmental review, the obligation—real or perceived—to produce increasingly extensive and airtight analyses is itself part of the problem. Agencies now routinely expend substantial resources on procedural rigor to mitigate litigation risk, contributing to delays without corresponding improved environmental outcomes.[10]

Success rates in NEPA lawsuits offer a partial window into how courts respond to challenges under environmental law. Under the Administrative Procedure Act (APA), agency actions challenged under NEPA are generally upheld unless deemed "arbitrary or capricious," a high threshold that recognizes agency expertise. When an agency wins a NEPA lawsuit, it generally means the court has confirmed its analysis was legally sound. When a plaintiff succeeds, the court has typically identified a flaw in the agency's NEPA procedures. However, success rates reflect only the subset of disputes that make it to judgment—often cases with uncertain outcomes. As such, success rates are not a direct measure of judicial rigor or effectiveness, but they provide a baseline for observing how NEPA claims fare once they reach court.

Our data suggest that when NEPA cases go to trial, agency decisions are overwhelmingly upheld. At the District level, 61% of judgments favored agencies, with no favorable outcome for either party in 11% of judgments. At the Circuit level, agencies saw favorable decisions in 80% of judgments. This means challengers only garnered a favorable outcome in 26% of judicial opinions issued in both District and Circuit courts in this period. Further, 68% of projects in our dataset did not garner a single affirmative NEPA judgment for the plaintiffs. However, this figure is lower than for more general APA claims, where agency decisions are affirmed in estimations as high as 76% of judgments.[11]

This trend isn't new. A handful of other studies have measured the success rate of NEPA lawsuits in past time periods (See Figure). Although each study, including ours, had different methodologies, comparing the results provides valuable insight.

Plaintiffs appear less successful in court now than when NEPA was first conceived. Notably, according to Adelman and Glicksman, plaintiffs won less often during the Obama Administration than during our study period. This is likely due to presidential and judicial politics.[12]



Data compiled from Kent and Pendergrass (1970–1984), Austin et al. (2001–2004), Adelman and Glicksman (2001–2009; 2009–2015), and the Breakthrough Institute (2025).

As we cautioned above, our dataset does not include NEPA cases that were settled out of court. We cannot quantify the number of cases settled, so these findings should not be misconstrued. Still, the data suggest that, among cases that do proceed to court, agencies often win.

In 74% of District Court rulings that found deficiencies in an agency's NEPA review, the court ordered a remedy that paused the project

When the court finds an agency's NEPA review deficient, it may issue a range of remedies. Some of those remedies halt the project and others require further action from the agency that leads to real-world delays. Clarifying how these outcomes differ is critical for understanding how NEPA litigation shapes project timelines. Our dataset provides key insights into how courts apply these remedies at the District level.

Injunctions

An injunction halts a project temporarily or permanently. Nearly half (46%) of District Court rulings in our dataset stemmed from complaints that sought injunctive relief. Yet even among the 28% of rulings where challengers prevailed on the NEPA claim, a judge issued an injunction in slightly greater than one in four (28%) of those rulings. Overall, fewer than 10% of rulings resulted in an injunction. This highlights that courts infrequently impose remedies to halt project development in response to procedural violations of NEPA.

Remand with vacatur

In our dataset, 13% of District Court judgments resulted in a remand with vacatur. This remedy nullifies the agency's NEPA analysis and requires the agency to correct identified deficiencies. Under the Administrative Procedure Act (APA), the governing statute for NEPA litigation, courts must "set aside"—i.e., vacate—agency actions found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Vacatur is the default legal mechanism by which deficiencies are remedied.

Despite its procedural framing, vacatur is among the most disruptive outcomes in NEPA litigation. It halts project development until the agency completes additional review, often without clear direction from the court on the scope of the vacatur or whether any activity may proceed in the interim. The result is significant delay, legal uncertainty, and added cost.

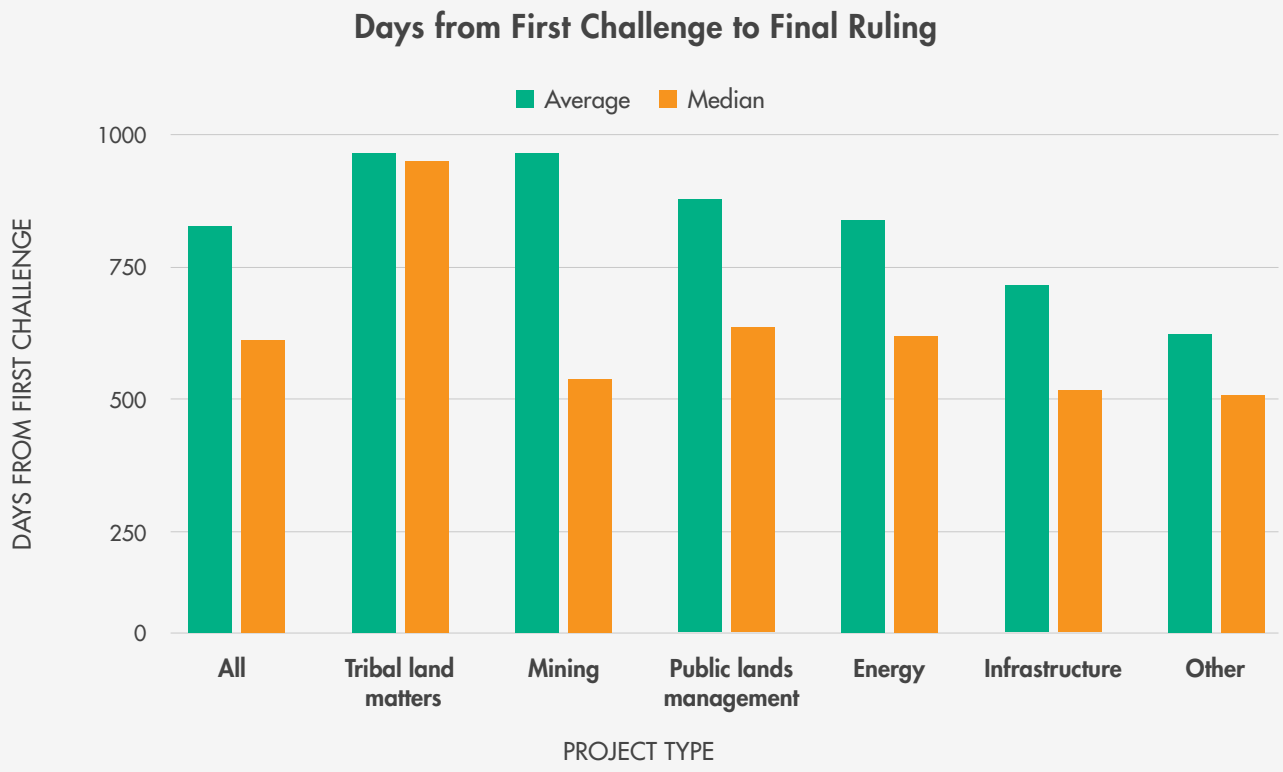
Yet in most cases, vacatur changes little beyond the paperwork. The agency revises its analysis, reissues the same decision, and the project moves forward, often years later. Among the 28% of rulings in which challengers prevailed on a NEPA claim, 39% resulted in a remand with vacatur. It is the most common remedy when courts find error, even though it rarely alters the project's ultimate approval.

Remand without vacatur

Remand without vacatur appeared in just 6% of District Court judgments in our dataset. In these cases, the court identifies a legal deficiency in the agency's NEPA analysis but allows the existing approval to remain in place while the agency corrects the issue. Theoretically, this remedy permits the project to proceed during the remand period. In practice, however, courts rarely provide clear guidance affirming that continuation is allowed, and developers often face heightened risk perceptions from investors, permitting authorities, or agency counsel. As a result, even without a formal pause from the courts, remand without vacatur can still stall a project. For this reason, we treat all remands, whether or not paired with vacatur, as agency losses and potential sources of disruption.

The median project was disputed for 1 year and 7 months

Many of the projects we evaluated encountered sustained legal opposition, with cases generating multiple rulings across extended timelines. We found that 34% of projects faced various judgments in the District Court, and 20% were issued at least one judgment upon appeal. This pattern of successive litigation often extends project delays well beyond the duration of any individual ruling, making it essential to assess litigation timelines at the project level rather than merely measuring the lifespan of individual judgments. Doing so reveals that our dataset's median project was disputed in court for 1 year and 7 months, with a meaningful subset of outliers (7% of projects) remaining in litigation for more than 6 years.



The consequences of this prolonged litigation stretch beyond the courtroom. Years of uncertainty can snowball into financial and logistical instability.

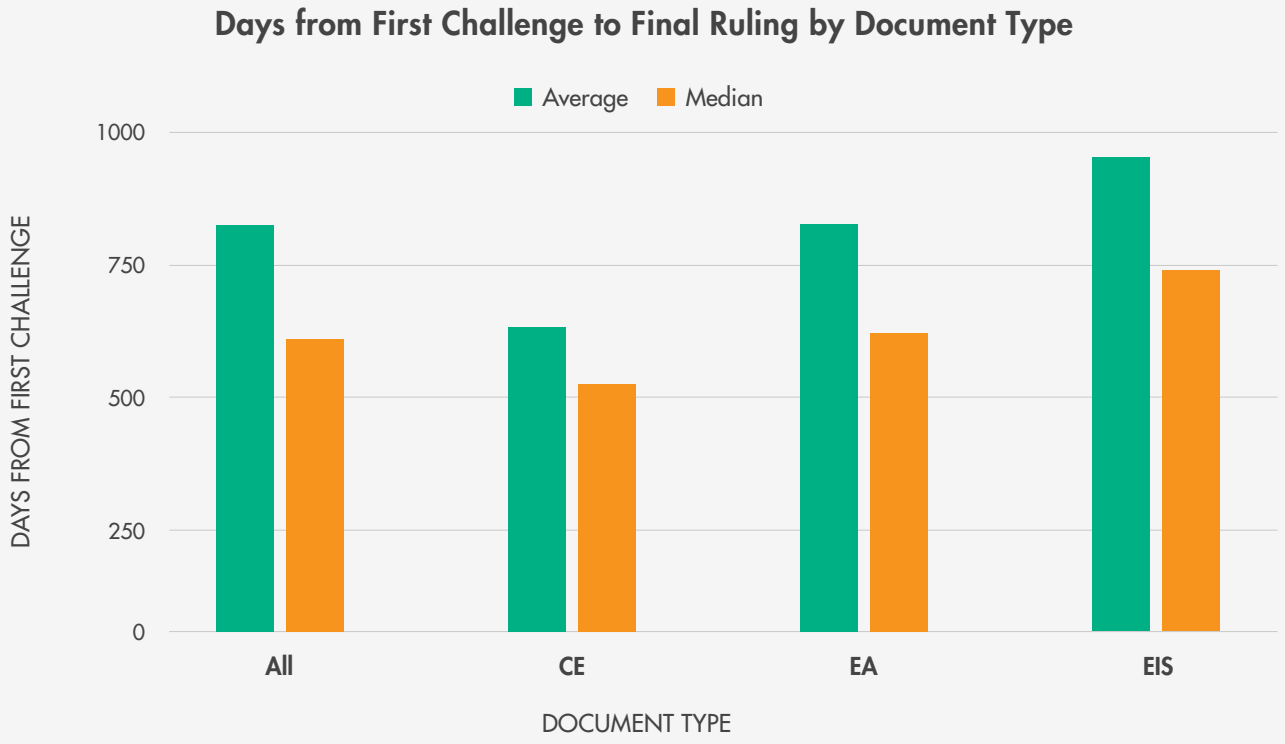
In the best-case scenarios, projects proceed with development during litigation until a judge determines otherwise. That was the case with the Surry-Skiffes Creek-Whealton Transmission Line in Virginia, which was completed during nearly 2 years of NEPA litigation.[13] However, both developers and federal agencies are often too risk-averse to charge ahead with lawsuits pending. When NEPA lawsuits are filed before the project can start, the project sponsors may elect to postpone rather than risk sinking resources into an endeavor that may never materialize.

Similarly, projects still in early development stages may opt to pause voluntarily, recognizing that continuing construction during litigation may lead to greater financial losses in the long term. According to Leah Pilconis, General Counsel for the Associated General Contractors of America, such delays create extensive uncertainty, impede hiring and ordering materials, and ultimately inflate project costs due to inflation and material shortages. By prolonging construction timelines, these legal battles also disrupt the industry's ability to deliver safe, high-quality projects that benefit communities.[14]

As litigation drags on and the burden of uncertainty compounds, financial sponsors may grow reluctant to commit capital to a project with an unresolved legal status. In the worst-case scenarios, this can lead to total project abandonment. Large-scale energy and infrastructure projects are particularly vulnerable and more likely to face cancellation due to litigation.[15] The Cape Wind Project in Massachusetts is a stark example. Despite prevailing in each lawsuit brought against the project, extensive litigation resulted in the developer losing financial backing.[16] In summary, protracted uncertainty from litigation can threaten projects, regardless of the ultimate verdict in a case. This reality underscores that even when agencies ultimately win in court, the process itself can impose crippling delays, inflate costs, deter investment, and, in some cases, prevent vital infrastructure projects from ever coming to fruition.

Disputes against EISs took longer to resolve than other kinds of NEPA documents

Legal disputes involving EISs took significantly longer to resolve compared to EAs and CEs. We note, though, these categories are not mutually exclusive, as a small number of disputes challenged multiple documents.



This disparity can be attributed to two primary factors:

- **The Complexity of EISs:** By design, EISs are the most thorough and intricate of all NEPA reviews, requiring extensive analysis of environmental impacts, public engagement, and detailed consideration of alternatives. The sheer volume of data and analysis within an EIS makes it more vulnerable to legal challenges, as opponents can contest multiple aspects of the review process. This complexity can translate into prolonged legal disputes.

- **The Nature of Projects Requiring EISs**: EISs are most often conducted for large-scale, novel, or controversial projects. Such projects inherently attract more opposition from stakeholders, which can lead to a greater number of legal challenges. Given their often contentious nature, these disputes can involve multiple parties and require extensive court deliberation, further extending resolution timelines.

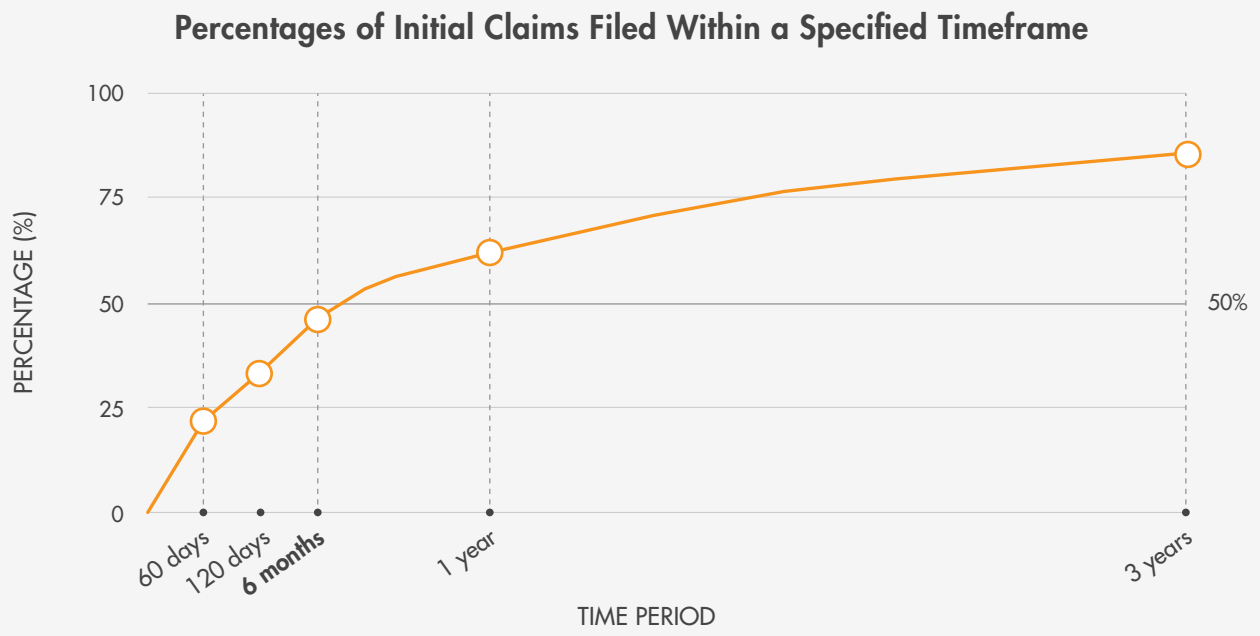
Nearly half of the projects in this dataset faced their first NEPA challenge less than 6 months after receiving a finalized analysis.

A focal point of NEPA reform discussions is often the judicial review window. Under the APA, plaintiffs have six years to file a NEPA claim against a project after documentation of final agency action is issued. That six-year timeline generates prolonged uncertainty for project developers and corresponding concerns for policymakers. In response, several reform proposals have suggested shortening the window to anywhere from a few years to as little as 60 days.[17]

However, until now, little data have been available on how quickly NEPA lawsuits are typically filed; without empirical evidence, proposed reforms risk being either too restrictive or too lenient. This analysis helps bridge that gap.

The median project with a traceable EA or EIS had just over 6 months (194 days) from the issuance of a Record of Decision (ROD) or Finding of No Significant Impact (FONSI) until the filing of the first lawsuit.[18]

These percentages reflect the share of initial challenges, as in the first case filed against a project.



NGOs were plaintiffs in 75% of court-issued judgments

NEPA litigation is not a tool readily accessible to the average American. Instead, it is primarily utilized by activist organizations with specialized legal and regulatory expertise. The data reflect this dynamic: NGOs were plaintiffs in 75% of all court-issued judgments, 72% of Circuit Court judgments, and 75% of District Court judgments. This is consistent with findings from Adelman and Glicksman, who found that two-thirds of NEPA cases filed between 2001 and 2015 were filed by environmental organizations[19].

Although individuals represented the second-largest share of plaintiffs, they were named as plaintiffs in just 23% of all filings. Tellingly, over half of the judgments (55%) accompanying that subset of filings were for suits in which the individuals were co-plaintiffs alongside NGOs. Individuals likely often serve a strategic function in these cases, i.e., helping NGOs establish standing rather than leading litigation efforts independently.

NEPA litigation is also disproportionately driven by a small subset of NGOs. Just ten organizations were responsible for 35% of all cases. The concentration is more pronounced within specific project

categories. For instance, the Sierra Club was the primary plaintiff in 28% of energy-related cases. Similarly, Alliance for the Wild Rockies and the Center for Biological Diversity accounted for 24% of all litigation against public lands management decisions. These groups, notably, had higher-than-average success rates.

Ultimately, this concentration of cases among a select group of well-resourced organizations challenges the widespread perception that NEPA's legal process broadly facilitates public participation. While the statute's public comment provisions offer a formal avenue for input, meaningful access to judicial review remains limited to organizations with the resources, legal expertise, and institutional capacity to sustain complex, multi-year litigation. These groups often present themselves as advocates for the public interest, but their interventions typically reflect the priorities of a narrow, self-selecting constituency, not necessarily out of bad faith, but because the structure of litigation inherently favors well-funded institutional actors.

Environmental justice issues were raised in only 6% of rulings

NEPA is often described as an important protection for environmental justice communities. One environmental advocate told Forbes that NEPA is a "vanguard for environmental justice communities," and that tampering with it was "almost akin to tampering with Social Security."[20] In Congress, Democrats opposed to NEPA reform have often echoed a similar sentiment, emphasizing its role in ensuring marginalized communities have a voice in environmental decision-making.[21,22]

However, very few cases formally related to environmental justice have actually made it to the District Court. Fewer than 6% of judgments in our dataset cited either a challenge to an environmental justice analysis or claimed that one should have been conducted, a total of 107 decisions against 71 projects between 2013 and 2022.

One reason for the low number of occurrences is that NEPA and its regulations have historically lacked explicit environmental justice provisions. Although Executive Order 12898 (February 11, 1994) directed agencies to "make achieving environmental justice part of [their] mission",[23] it did not amend NEPA or its regulations, define environmental justice, or create legally enforceable obligations. In practice, the order was largely ignored, and agencies adopted inconsistent approaches.[24] It wasn't until the Biden administration, through Executive Order 14096 (April 21, 2023) and the Council on Environmental Quality's Phase 2 NEPA regulations (2024), that environmental justice became a coordinated policy priority within the NEPA process. However, these reforms fall outside our study period and have since been revoked by executive order[25] or vacated by a federal court.[26]

Even with recent efforts to embed explicit environmental justice mandates into NEPA, NEPA's core function would remain unchanged: it is a procedural law, not a substantive one. Unlike other environmental statutes that set limits on pollution or establish penalties for violations, NEPA does not regulate outcomes—it regulates process. Winning a NEPA lawsuit most often results in more studies and paperwork. Analyses of federal environmental justice strategies demonstrate that advocacy organizations— and agencies— prioritize Title VI of the Civil Rights Act or state-level environmental justice statutes over NEPA, as these laws provide more potent legal remedies and enforcement mechanisms to address social inequities.[27, 28] Thus, the low rate of environmental justice claims in NEPA litigation likely reflects the statute's procedural limits. NEPA requires agencies to assess potential impacts but does not mandate mitigation, nor does it offer a clear legal basis for requiring agencies to act on environmental justice concerns.

ISSUE SPOTLIGHT
PUBLIC LANDS

While energy projects often dominate discussions about NEPA reform, the most significant share of court opinions in our dataset involved public lands management. Since NEPA is triggered when the federal government takes action, it's unsurprising that most litigation concerns how public land is managed.

Litigation record: Between 2013 and 2022, courts issued 781 judicial opinions targeting 453 distinct projects, ranging from grazing allotments and species management to timber harvests and wildfire risk reduction projects.

Outcomes: Plaintiffs received a favorable outcome in only 28% of District and 19% of Circuit judgments.

Remedies: At the District Court level, 14% of rulings resulted in a remand with vacatur, and 11% issued an injunction. Taken together, 23% of decisions on public lands projects were remedied by a court-ordered pause in development.

Overlap with other laws: In District Courts, many NEPA rulings were issued alongside claims under other statutes—most commonly the Endangered Species Act (31%) and the National Forest Management Act (30%)—highlighting the legal complexity of statutory review for public lands.

Plaintiffs: NGOs were plaintiffs in a staggering 84% of this dataset's public lands management claims leading to judgment. Furthermore, a small subset of nonprofit organizations represented a large share of the plaintiffs. The 10 most litigious groups were involved in nearly half (48%) of these decisions.

Timeline: For all projects in our dataset, more than 50% of the initial challenges were filed within 6 months of the analysis being finalized for projects that had been issued an EA or an EIS. The median public lands management did not deviate far from the overall trend, with 50% of initial challenges filed just over 6 months after the analysis was finalized.

ISSUE SPOTLIGHT

HAZARDOUS FUELS REDUCTION

Wildfire prevention has become a national priority as the United States faces an increasing number of catastrophic wildfires, exacerbated by climate change, overgrown forests, and prolonged droughts. Forest managers and fire scientists widely agree that hazardous fuels reduction, through controlled burns and mechanical thinning, is essential to reducing wildfire severity. Despite broad scientific consensus on the benefits of fuels reduction, a small subset of environmental NGOs believe that hazardous fuels reduction does more harm than good and have sued under NEPA to achieve corresponding policy objectives. However, our data shows that most lawsuits against hazardous fuels reduction projects are unsuccessful, reinforcing concerns that litigation can be used as a dangerous delay tactic.

Litigation record: Between 2013 and 2022, courts issued 172 rulings on NEPA claims against 105 hazardous fuels reduction projects.

Outcomes: 27% of these judgments were advantageous to the challenging party, meaning that the majority did not result in a direct material change to the project.

Remedies: At the District level, 23% of judgments resulted in remand with vacatur or injunction. In effect, nearly one in four rulings on hazardous fuels management projects imposed a court-ordered halt to all project activities.

Overlap with other laws: In District Courts, 44% of rulings were issued alongside Endangered Species Act claims, and 59% were issued alongside National Forest Management Act claims.

Plaintiffs: NGOs were plaintiffs in 97% of opinions on claims challenging hazardous fuels reduction projects, while just three organizations were plaintiffs in over half (54%) of rulings.

Timeline: For the hazardous fuels reduction projects with traceable ROD/FONSIs, the median time to file an initial complaint was 5 months, slightly faster than the 6-month median across all projects in the dataset. For the median project addressing hazardous fuels in fire-prone areas, litigation lasted 1 year and 9 months from the first case filing to the last case closing. However, a meaningful subset (7% of projects) remained in litigation for over 6 years, reflecting a long tail of extended delays. One project was tied up in court for nearly a decade.

ISSUE SPOTLIGHT
ENERGY

When it comes to energy projects, plaintiffs were equal-opportunity obstructionists, using NEPA lawsuits to challenge almost every major energy source and technology.

Litigation record: 423 rulings were issued against 210 projects. On average, 33 projects were challenged at both the District and Circuit levels per year.

Outcomes: Judges ruled in favor of plaintiffs' arguments in 38% of District Court opinions and 32% of Circuit Court opinions, marginally higher than average for the whole dataset.

Remedies: District Courts issued either a remand with vacatur or an injunction in 24% of rulings. Overall, the court ruled in favor of the challenger in nearly 40% of judgments. Among those, 63% resulted in a project-halting remedy, either a remand with vacatur or an injunction, indicating that when challengers succeed, courts are more likely than not to require a full stop to project activity.

Overlap with other laws: 22% of judgments on energy cases were concurrently filed with ESA claims.

Plaintiffs: NGOs were plaintiffs in 73% of all NEPA judgments, as sole filers or co-filers. In contrast, only 19% of judgments stemmed from suits filed by individuals, most of whom (62%) filed in coordination with other parties. The Sierra Club appeared most frequently as a plaintiff in nearly 28% of energy-related rulings.

Timeline: For energy projects that had been issued an EA or an EIS, the median time to file an initial challenge was 8 months after the environmental analysis was finalized. The median project remained in litigation for 1 year and 8 months. However, a meaningful subset (nearly 8% of energy projects) remained in litigation for 5 years and 6 months, reflecting a long tail of extended delay. One project was tied up in legal disputes for decades.

Environmental justice: Our dataset cites environmental justice in 10% of District Court rulings and just 4% of Circuit Court rulings. In total, 35 rulings addressed environmental justice claims spanning 22 separate projects, underscoring that some projects faced multiple environmental justice-related challenges. The Dakota Access Pipeline alone was the subject of seven such rulings.

ISSUE SPOTLIGHT

ZERO-CARBON ENERGY VS. FOSSIL ENERGY

NEPA's impact on zero-carbon energy development is one of the reform debates' most politically charged issues. In our dataset, relatively few NEPA judgments involved zero-carbon energy projects. We cannot assess whether these projects are over- or underrepresented in litigation, due to a lack of comprehensive data on the total number of zero-carbon energy proposals subject to NEPA. Several factors may contribute to their more limited appearance in our data. Many zero-carbon energy projects avoid NEPA review by siting on private land and proceeding without being classified as a "major federal action."

In comparison, fossil fuel infrastructure, particularly pipelines and other linear projects, more frequently triggers NEPA review due to its geographic scale and reliance on federal approvals. For this report, we did not include transmission infrastructure in our calculations for zero-carbon energy. However, transmission projects often trigger NEPA and remain a significant barrier to expanding domestic energy infrastructure. The relatively small number of zero-carbon energy cases in our dataset likely reflects how frequently these projects fall outside NEPA's scope, not a lower degree of exposure to litigation risks when NEPA does apply.

Of note, the economics of zero-carbon energy deployment shifted drastically in recent years, leading to more deployment.[29] In addition to cost decreases for wind and solar, the Inflation Reduction Act (IRA) was enacted in 2022, offering generous subsidies for clean energy sources. A post-IRA analysis would likely capture a much larger share of zero-carbon energy related litigation. Although IRA's clean energy tax credits generally don't trigger NEPA directly[30], they catalyze large-scale projects more likely to require federal permits. Also, the Bipartisan Infrastructure Law (BIL), also known as the Infrastructure Investment and Jobs Act (IIJA), was enacted in November 2021, near the end of our study period. BIL authorized federal grants and direct spending across sectors, including roads, bridges, electric vehicles, broadband, cybersecurity, water infrastructure, and grid resilience, with a significant portion directed toward zero-carbon initiatives. Unlike IRA's tax credits, which don't provide a NEPA trigger, BIL's grants-based funding constitutes a "major federal action," making funded projects subject to environmental review even if carried out by state or local entities.

Litigation record: Our dataset includes 423 energy-related NEPA challenges, covering 210 distinct projects. Fossil fuel projects accounted for the majority, making up 66% of all energy projects that received at least one ruling. 17% of rulings were for challenges to zero-carbon energy projects, and 6% were for challenges to transmission lines.

Outcomes: Plaintiffs received favorable judgments in 25% of challenges to zero-carbon energy projects, compared to 38% of rulings concerning fossil fuel projects.

Remedies: District Courts issued a remand with vacatur or injunction in 26% of judgments arising from fossil energy projects. In comparison, 21% of district-level judgments on zero-carbon energy cases were for a remand with vacatur or injunction. Although fossil and zero-carbon energy rulings show similar overall rates of project-halting remedies, outcomes diverge sharply once courts find a NEPA violation.

Among the 24% of rulings where challengers prevailed on a NEPA claim against a zero-carbon energy project, 90% led to either an injunction or remand with vacatur. In contrast, when plaintiffs prevailed against a fossil energy project (40%), courts imposed a project-halting remedy in only 66% of cases.

Overlap with other laws: At the District Court level, 22% of judgments involving fossil fuel projects and 17% of those involving zero-carbon energy projects also addressed claims under the Endangered Species Act.

Plaintiffs: A larger share of fossil fuel rulings (74%) stemmed from NGO-led challenges than from zero-carbon energy rulings (59%). By contrast, individuals were involved in a much higher share of zero-carbon energy rulings (36%) than fossil fuel ones (12%). Interestingly, the Sierra Club appeared more frequently than any other organization across both sectors, participating in 33% of fossil fuel rulings and 10% of zero-carbon energy ones. This underscores a well-documented trend in which local groups often drive opposition to zero-carbon energy developments while national groups drive opposition to fossil fuel projects.[31,32]

Plaintiff	Count as Plaintiff against Zero-Carbon Project	% of Zero-Carbon Project Opinions
Sierra Club and local chapters	8	10%
State of South Carolina	8	10%
Protect Our Communities Foundation	7	9%
Backcountry Against Dumps	6	8%
Californians for Renewable Energy	5	6%

Plaintiff	Count as Plaintiff against Fossil Fuels Project	% of Fossil Fuel Project Opinions
Sierra Club and local chapters	93	33%
Center For Biological Diversity	61	22%
WildEarth Guardians	57	20%
Natural Resources Defense Council	25	9%
Defenders of Wildlife	24	9%

Timelines: Timelines are challenging to interpret precisely, since our dataset reflects individual court rulings and does not have complete case dockets, meaning multiple judgments may be tied to a single legal challenge. That said, the median time between initial filing and judgment for zero-carbon energy rulings was about three months longer than for those involving fossil fuels. For projects with a traceable ROD or FONSI, challengers filed suit 13 months after permit issuance for zero-carbon energy projects, compared to 16 months for fossil fuel projects. Across these same projects, litigation introduced an average of 41 months of legal uncertainty for zero-carbon energy development and 52 months for fossil fuel development.

Energy type	Average length of case	Median length of case	Average days to first case for projects with a traceable ROD/FONSI	Median days to first case for projects with a traceable ROD/FONSI	Average from ROD/FONSI to close of last case	Median from ROD/FONSI to close of last case
Fossil fuel	505	414	732	334	6391	1275
Zero-carbon energy	655	498	417	285	1273	1086

Environmental justice: About 10% of fossil fuel judgments cited environmental justice issues, while about 7% of zero-carbon energy judgments cited environmental justice issues.

Document type: A greater share of zero-carbon energy rulings involved challenges to an EIS (61%) compared to fossil fuel rulings, where only 34% challenged an EIS.

Limitations and Value of Analysis

While this study draws on one of the most comprehensive datasets of NEPA litigation assembled to date, we acknowledge several significant limitations. The dataset is subject to selection bias. Our data include only written judicial opinions issued by federal District and Circuit Courts. We do not capture cases settled out of court, dismissed on procedural grounds without a published opinion, or resolved through alternative dispute mechanisms. As a result, the analysis likely overrepresents more contentious, legally uncertain disputes, cases that were seen as close calls, or that raised novel legal questions.

In addition, this analysis cannot speak to the full scope of NEPA activity during the study period. Because there is no centralized federal record of Environmental Assessments (EAs), Environmental Impact Statements (EISs), or Categorical Exclusions (CEs) issued between 2013 and 2022, we are unable to determine how often environmental reviews actually lead to litigation. The findings here reflect only the small share of projects that reached court, not the much larger universe of NEPA reviews completed without legal challenge.

The findings are descriptive rather than explanatory. While the data reveal patterns in ligation duration, judicial outcomes, and the types of projects that appear in court, we do not attempt to isolate the causes of those outcomes. Many factors, such as legal strategy, public pressure, and agency behavior, shape whether a project ends up in court and how a judge rules.

Despite these constraints, the dataset provides a uniquely detailed view into the litigation process under NEPA. By reviewing more than 1,400 judicial opinions and linking them to specific projects, this study documents real-world timelines, outcomes, and remedies, evidence often missing from policy debates. Grouping rulings by project rather than by individual legal filing makes the finding especially relevant to developers, agencies, and lawmakers who must manage projects across multiple stages of legal exposure.

This work offers a fact-based foundation for evaluating NEPA's litigation landscape and identifying procedural reforms that could improve transparency, efficiency, and environmental outcomes. Although the dataset reflects only a subset of overall NEPA activity, it captures the portion of the process most visible to the courts and most exposed to legal risk, where the potential for delay is highest.

Policy Discussion

In the time this paper was in development, a series of court opinions and Administration actions upended NEPA law. First, multiple courts found that CEQ could not issue binding regulations to guide NEPA implementation.[33] Second, the Trump Administration in turn rescinded all of its NEPA regulations, leaving each agency to craft its own implementing regulations with nonbinding CEQ guidance.[34] And last, the Supreme Court issued a unanimous opinion in *Seven County Infrastructure Coalition v. Eagle County*, narrowing the scope of required EIS analysis and insisting on renewed court deference to agencies.[35] NEPA law is therefore in flux, and the nature and volume of litigation going forward are uncertain.

Our analysis and conclusions are nonetheless pressing and urgent. The problems with NEPA judicial review in this analysis comprise just one category of regulatory problems NEPA created. The criteria for writing and filing reviews themselves can be arbitrary and vary across federal agencies, leading to inconsistencies and dysfunction. This issue may become more acute now that the Administration has directed each agency to devise its own NEPA implementing regulations.

Project developers often expend considerable time and resources engaging the review process as a preemptive measure to avoid future litigation, with environmental outcomes as a secondary concern. NEPA is understood as an "umbrella" procedural environmental law, yet the processes for demonstrating compliance with other laws—the Endangered Species Act, the Clean Water Act, and more—are not integrated in a rational way. The disordered history of NEPA administration gives reason to doubt that such integration is even possible. The problem of the NEPA "invisible graveyard"—the projects that developers forgo to avoid extensive federal environmental review—is widely acknowledged, if difficult to measure.

It is not clear that recent court and regulatory developments have solved these problems. Indeed, some may be made worse; we may face years of uncertainty from litigation questioning individual agencies' divergent new NEPA implementing regulations.

To meaningfully reform NEPA, policymakers must begin by confronting a fundamental truth: the litigation landscape continues to be driven by incentives that reward legal friction over material environmental stewardship.

Most lawsuits brought under NEPA fail—not just in court, but in producing any substantive change to the projects they target. What was intended as a procedural safeguard for environmental protection has, in practice, devolved into a tool for obstruction, wielded to stall development through uncertainty and delay rather than to improve outcomes.

There are a number of measures that policymakers could pursue to mitigate these dysfunctions.

Implement a Fee-Shifting Provision

First, Congress should consider **fee-shifting provisions for unsuccessful litigation.** When plaintiffs lose NEPA lawsuits—and they usually do—they face little consequence, while agencies and developers bear the cost of defending often frivolous or marginal claims. If plaintiffs were required to cover legal expenses when their suits fail, it would greatly diminish the incentive to litigate as a delay tactic. Such a change would discourage system abuse while preserving pathways to raise pressing and genuine environmental concerns, including public comment.

Expanding Categorical Exclusions to Apply to More Projects

Second, Congress should expedite the review process itself. Congress has legislated categorical exemptions in the past[36] and should consider expanding the types of projects that qualify.

Deter Predatory Use of the Courts by Frequent Litigants

Third, practical limits should be placed on access to NEPA litigation for parties without a meaningful stake in project outcomes. Congress can legislate changes constraining access to the courts,[37] including potentially lessening incentives that enable speculative or tactical lawsuits. A means-testing provision, modeled after the Equal Access to Justice Act**,** could limit attorney fee recovery to plaintiffs below a specific size or revenue threshold. This would help discourage suits filed by large environmental organizations, which our analysis identified as the most frequent litigants under NEPA, without raising constitutional concerns about restricting court access. Congress could also impose, or judges could choose to follow, something like the "harmless error" doctrine from Clean Air Act litigation. That could help to bring effect to the Court's opinion in *Seven County*, which sought to prevent the overuse of vacatur or injunctive relief.

Designate a "NEPA Court"

Fourth, Congress should consider designating a single court as the venue for NEPA litigation. This change could promote more consistent and technically informed rulings and help build clearer precedent for complex environmental reviews. Ideally, this court would have the advantages of the D.C. Circuit vis-à-vis Clean Air Act litigation: administrative law expertise, higher litigation costs, and lack of local bias that would create a natural screen for weaker or more speculative claims.

Shorten the Statute of Limitations

Fifth, Congress should consider shortening the window for judicial review. Under the current six-year timeline dictated by the Administrative Procedure Act, projects remain vulnerable to legal challenge long after their environmental reviews are complete. Yet nearly half of all lawsuits in our dataset were filed within just six months of a final NEPA analysis. Reducing the window to six months would reflect the real-world pattern of litigation, minimize developer vulnerability and uncertainty, and promote timely resolution of disputes.

Establish Uniform Implementation Procedures Across Agencies

Finally, Congress must bring coherence and transparency to NEPA litigation. Today, each agency manages its NEPA process differently, and there is no unified, public record of regulatory proceedings or judicial outcomes. This fragmentation obscures oversight and impedes accountability. The Council on Environmental Quality's (CEQ) *NEPA and Permitting Data and Technology Standard*[38] offers a critical foundation by defining common data fields, setting project milestones, and standardizing documents across agencies. However, under current law, CEQ lacks the authority to mandate adoption.[39] To ensure the standard carries binding effect, Congress should require agency compliance and designate a lead entity with the statutory authority to oversee implementation and enforce adherence.

CONCLUSION

Meaningful reforms to the National Environmental Policy Act and to the broader regime of federal environmental and infrastructure permitting require committed action from Congress. However, the problem of adversarial legalism and strategically obstructive delay can also be addressed through other channels. As we demonstrate, courts have considerable discretion over NEPA litigation, and thanks to *Seven County*, they have a renewed mandate to defer to agency analysis. Judges can and should increase agency deference and impose other norms to discourage the filing and extensive litigation of frivolous suits. Lastly, environmental advocates could shift their support from organizations that obstruct infrastructure projects to those that pursue effective governance and efficient investment in American infrastructure.

The debate over NEPA reform is too often mired in ideological tribalism, with decision-makers and thought leaders selectively citing cases to reinforce their preexisting positions. Nowhere is this more evident than in energy policy; a Democrat may highlight the Cardinal-Hickory Creek Transmission Line as an example of NEPA's inefficiencies, while a Republican may point to the Dakota Access Pipeline with the same argument. This polarized framing, however, misses the fundamental issue.

Regardless of the project—whether it's zero-carbon energy infrastructure, transportation networks, or public lands management—federal agencies and project developers must navigate a burdensome and time-consuming NEPA review process to do anything. Fear of that process being challenged in court is enough to drive up the length of environmental reviews and prolong the permitting process. If the federal government is to effectively achieve the policy goals set by either party, the chaos caused by NEPA litigation must be contained. NEPA should remain a mechanism for informed decision-making, not a weapon to stifle progress.

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