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NEPA Infrastructure Projects

The firm has been actively involved in the development of permitting and National Environmental Policy Act (NEPA) compliance strategies for clients engaged in major infrastructure projects, including advising with respect to a broad range of cutting edge legal issues that arise under NEPA. Steptoe attorneys also assist clients with compliance with related federal statutes that are often intertwined with the NEPA process, including the National Historic Preservation Act, the Endangered Species Act, Section 404 of the Clean Water Act (wetlands), and the Clean Air Act Conformity Requirements. Firm attorneys have advised and litigated on issues involving the permitting of a wide variety of domestic and international projects, including the scope of review required under NEPA and associated statutes. Steptoe attorneys are experienced in working with consultants and agency personnel in the preparation of applications for Presidential Permits from the Department of State, as well as permits from the Coast Guard, Forest Service, Corps of Engineers, the Surface Transportation Board, and other federal agencies. In addition, the firm has extensive experience in NEPA litigation, both at the federal district court and appellate levels.

The firm also has experience in advising clients engaged in infrastructure projects on eminent domain issues which often arise in connection with projects undertaken by railroads, pipelines and utilities. Steptoe attorneys have particular experience in addressing issues that arise at the intersection of federal regulatory law, including preemption issues, and state eminent domain laws.

The following is a representative list of Steptoe & Johnson's experience in the application of NEPA and eminent domain law to major energy and transportation infrastructure projects, as well as a list of representative matters involving wetlands issues.

Energy

The firm has been actively involved in major energy projects that have been subjected to environmental review. Steptoe attorneys have significant experience in guiding clients through the NEPA process in connection with such projects. Among other matters, Steptoe attorneys:

- Led the litigation team in the major environmental suit regarding construction of the Trans Alaska Pipeline System, and were principally involved in dealing with issues concerning the adequacy of the draft and final environmental impact statements, dealing with a large body of engineering and other consultants who were engaged in the effort.

NEPA Infrastructure Projects

- Represent a major pipeline company in connection with its planned construction of cross-border pipelines between the US and Canada. Firm attorneys were actively engaged in handling various permitting work before the Department of State, US Forest Service, US Army Corps of Engineers and other agencies and in advising with respect to the preparation of an Environmental Impact Statement and in connection with agreements concerning the identification and protection of Native American and other cultural resources. Firm attorneys are currently defending the issuance of permits in a federal court case.
- Successfully represented the applicants/interveners in a NEPA challenge to the Secretary of the Interior's decision to permit oil and gas leasing in a 4.6 million acre planning area within the National Petroleum Reserve-Alaska.
- Serve as lead counsel on a NEPA environmental impact statement for a \$1 billion mining project for Exxon Minerals Company, the largest environmental impact statement ever produced in Wisconsin.
- Intervened on behalf of applicants in a NEPA challenge to the United States Army Corps of Engineers' permit decision for a significant oil development project in Northern Alaska, where they we successfully obtained summary judgment before the US District Court for the District of Alaska. Plaintiffs appealed to the Ninth Circuit, but dropped the appeal after briefing was complete.
- Successfully represented a developer/defendant in a complex NEPA case in the US District Court for the District of Columbia concerning a land exchange between the developer and the National Park Service. When the land exchange was challenged by a competing developer, we succeeded in having the case dismissed on standing at the District Court. Successfully resolved the case in 2001 while appeal was pending in the DC Circuit.
- Represent an entity that is planning to construct gasification facilities that would use coal or petroleum coke to produce synthetic natural gas, and capture/sequester carbon dioxide. Steptoe attorneys have assisted the client in its dealings with the Department of Energy and in preparation of environmental documents that address a wide range of issues, including greenhouse gas emissions.

NEPA Infrastructure Projects

- Represent an entity that is planning to construct several Ocean Thermal Energy Conversion (OTEC) projects to generate electric power. Steptoe attorneys are assisting with federal regulatory issues, including NEPA, at the National Oceanic and Atmospheric Administration (NOAA) and the Department of Energy.

Transportation

The firm has significant experience in addressing the environmental aspects of major rail and other transportation proceedings, including application of NEPA, and has been extensively involved in preparing Environmental Impact Statements and other environmental documents in connection with major transportation infrastructure projects. Steptoe has also been engaged in advising clients on eminent domain issues, Endangered Species Act compliance, wetlands impacts, and Native American consultations. For example, Steptoe attorneys:

- Counsel a railroad in its efforts to build a new 120 mile line in Montana. Steptoe handled the environmental and regulatory review of this controversial, and now approved, project by the Surface Transportation Board, while also working with a variety of other federal and state agencies interested in various aspects of the project. Steptoe has worked closely with consultants in the preparation of the Environmental Impact Statement and in addressing, among other issues, Native American cultural resources, air quality and biological resources. Steptoe has also counseled this client on eminent domain and federal preemption issues. Steptoe attorneys are now working with the federal agency to defend its decision in the US Court of Appeals for the Ninth Circuit.
- Worked with a bridge company in connection with the planned construction of two new international highway bridges between the United States and Canada. These matters involved working with various regulatory agencies and with others on permitting and on the preparation of environmental documents.
- Represented an entity in connection with its effort to obtain federally-recognized railroad status for a short rail line and intermodal facility that it purchased and in connection with the related environmental review of its project. Successfully defended the railroad against local government efforts to take its property through eminent domain and also successfully defended the sufficiency of the environmental review before the US Court of Appeals for the Sixth Circuit.

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- Assist a major aggregate firm in its successful efforts to achieve STB approval of a controversial project to build a railroad line in Texas. This work has involved not only transportation regulatory issues, but also extensive work with consultants and STB staff in the preparation of Draft, Supplemental and Final Environmental Impact Statements and with the Texas Historical Commission on certain unique cultural resources issues. Steptoe attorneys are engaged in the defense of the environmental work before the US Court of Appeals for the Fifth Circuit.
- Represented a major US railroad in a successful railroad acquisition proceeding that required federal agency approval and the preparation of an environmental impact statement. Steptoe attorneys worked extensively with consultants and agency staff on the complex EIS that was issued in connection with the transaction. That work was focused on addressing the concerns of cities and towns that would be impacted by the transaction and achieving settlements with them relative to their environmental concerns about noise, safety and other impacts from rail operations.

Wetlands

Steptoe attorneys have broad experience in handling wetlands matters under section 404 of the Clean Water Act. Our attorneys regularly provide advice on complying with section 404, and have represented clients in cases challenging the government's jurisdiction over wetlands in several cases, including:

- A successful administrative appeal of a jurisdictional determination by the US Army Corps of Engineers over wetlands on a site in Alaska.
- Successfully represented a developer in state court litigation involving wetlands in Richmond, Virginia.
- Extensive work with the Corps of Engineers on the impacts to wetlands of rail and pipeline construction projects.

[Click here to e-mail the NEPA Infrastructure Projects team with questions or comments.](#)