



REGULATORY ROUNDUP

NATURAL RESOURCE USERS LAW & POLICY CENTER

REGULATORY ROUND-UP

Issue 12 – July/October 2024

Quick Topics: Federal Rulemaking and Case Law

Climate Change

[The U.S. Global Change Research Program](#) (USGCRP) “seeks public input on the development of the [First National Nature Assessment](#) (NNA1 see Engagement tab). This is a unique opportunity for scientists and experts across the country to shape the first U.S. assessment of how nature is changing and how it matters to our lives.

- You can submit technical inputs for NNA1 on an ongoing basis through the [USGCRP Public Contribution System](#).
- Public engagement: USGCRP and authors are hosting a virtual public engagement events. These events will foster greater awareness of the NNA1 and will include a combination of information sharing, Q&A, and breakout sessions for collaborative discussions. Attendees can expect a high-level overview of the NNA1 and opportunities to provide input on the annotated outline.”
 - **In person opportunities to comment (see [engagement tab link](#) for other locations):**
Tempe, Arizona November 15, 2024, 12:15 PM - 2:15 PM MST
Location: Arizona State University, Great Hall (RM 101) at Armstrong Hall
See Directions, [Parking](#) and [Transportation](#) Information and [Register Here](#).
 - **Virtual opportunities to comment by topic area:**
Nature and Cultural Heritage in the U.S. November 6, 2024, 7:00 PM – 8:00 PM ET [Registration Link](#)
Bright Spots in Nature in the U.S. November 8, 2024, 11:00 AM – 12:00 PM ET [Registration Link](#)

Chevron Revisited

Chevron Deference. According to the National Agriculture Law Center’s *The Feed*, “Senator Mike Rounds (R-SD) is [asking the Government Accountability Office](#) to conduct a study to determine which regulatory disputes in the agriculture industry have been settled via the doctrine of *Chevron* deference. Senator Rounds believes that *Chevron* deference “disproportionately impacted rural states” as sectors such as agriculture, mining, and energy development have become increasingly subject to agency regulation. Senator Rounds has requested a study into the impact of *Chevron* deference to help lawmakers better navigate a post-*Chevron* world.”



FDA Food Safety Modernization Act (FSMA) Revisited

[The Final Rule Additional Traceability Records for Certain Foods](#) compliance deadline is Jan. 20, 2026. According to FDA, “the final rule is a key component of FDA’s New Era of Smarter Food Safety Blueprint and implements [Section 204\(d\) of the FDA Food Safety Modernization Act \(FSMA\)](#). At the core of this rule is a requirement that persons subject to the rule who manufacture, process, pack, or hold foods on the [Foods Traceability List](#), maintain records containing **Key Data Elements (KDEs)** associated with specific **Critical Tracking Events (CTEs)**; and provide information to the FDA within 24 hours or within some reasonable time to which the FDA has agreed.” See also [eCFR Subpart S](#) and the FDA Food Traceability Resources Walkthrough [Video](#).

In partnership with the Reagan-Udall Foundation (RUF) and FDA held roundtable discussions on the new rule with industry groups. See the [RUF summary report on the roundtable discussions](#). See the Reagan-Udall Foundation hosted public meeting [recording](#) to further review insights from the roundtable discussions and provide an opportunity for public feedback regarding the rule. Industry groups have also created a Food Industry FSMA 204 Collaboration aimed at increasing awareness and sharing resources for implementing the FDA’s food traceability rule. Check these sites for more information [The Produce Traceability Initiative](#), [The Food Industry Association](#).

Agriculture

[FDA Human Foods Program](#). FDA reorganized its food regulatory arm into the Human Foods Program (HFP). According to the National Agriculture Law Center (NALC), “HFP has centralized its risk management activities into three main areas: Microbiological Food Safety, Food Chemical Safety, and Nutrition. The agency plans to issue lead levels guidance in infants and young children foods, promulgate a final rule on ‘*healthy*’ food labels, and propose a new rule aimed at nutrition labels on the front of packages. Additionally, FDA intends to cooperate with other federal agencies in an effort to further nutritional research. The research will focus on the connection between processed foods and negative health effects. To learn more about the proposed “healthy” definition, click [here](#) to read NALC article *Focus on Food: the Proposed ‘Healthy’ Rule and the White House Conference*.”

[ARS USDA researchers have found that “grazing can be a valuable tool](#), that is currently underutilized, for achieving desired management outcomes in the sagebrush and likely other ecosystems. Improper grazing can generate severe negative consequences; therefore, successful application of grazing to achieve desired outcomes will require careful attention to plant community response and balancing management objectives with community constraints” (Davies et al. 2024).

Citation

Davies, K. W., Boyd, C. S., Bates, J. D., Svejcar, L. N., & Porensky, L. M. (2024). Ecological benefits of strategically applied livestock grazing in sagebrush communities. *Ecosphere*, 15(5), e4859. <https://doi.org/10.1002/ecs2.4859>

[U.S. Cropland abandonment study \(Xie et al. 2024\)](#). This mapping effort “highlights the long-term dynamic nature of agricultural land use and its relation to various competitive pressures and land use policies in the United States” from 1986 to 2018. Of the croplands identified, “53% (6.5 Mha) changed to grassland and pasture, 18.6% (2.28 Mha) to shrubland and forest, 8.4% (1.03 Mha) to wetlands, and

4.6% (0.56 Mha) to non-vegetated lands. Notably, some croplands – “19.6% (2.41 Mha) were enrolled in the Conservation Reserve Program (CRP) as of 2020.” The total abandonment by state assessment shows Arizona had 83,000 hectares abandoned, a change of 9.1%. As of 2024 with the increase to [multiple CRP opportunities](#), numbers have grown nationally to a total of 24.8 million acres (10 Mha).

Citations

Xie, Y., Spawn-Lee, S. A., Radeloff, V. C., Yin, H., Robertson, G. P., & Lark, T. J. (2024). Cropland abandonment between 1986 and 2018 across the United States: Spatiotemporal patterns and current land uses. *Environmental Research Letters*, 19(4), 044009. <https://iopscience.iop.org/article/10.1088/1748-9326/ad2d12>

Maguire, K., Tanner, S. J., Winikoff, J. B., and Williams, R., (2024). [Utility-scale solar and wind development in rural areas: Land cover change \(2009–20\)](#). (Report No. ERR-330). U.S. Department of Agriculture, Economic Research Service.

Energy

[Federal Energy Regulatory Commission Includes Tribal Engagement Requirement to Transmission Siting Rule](#). “The new rule includes a Landowner Bill of Rights, codifies an Applicant Code of Conduct as one way for applicants to demonstrate good faith efforts to engage with landowners in the permitting process, and directs applicants to develop engagement plans for outreach to environmental justice communities and Tribes.” The revised rule is a response to concerns for when FERC’s jurisdiction is triggered, how state siting decisions are considered by FERC, and what the scope is of the Applicant Code of Conduct, the Landowner Bill of Rights as well as the analysis of climate impacts.

Geologic Carbon Sequestration

[US Forest Services Land Uses; Special Uses; Carbon Capture and Storage Exemption proposed rule \(88 FR 75530\)](#). Although comments are closed and this rule has not been finalized, it does beg the question; *where is the potential for this new land use for our radar in Arizona forests, if the final rule goes forward?* This type of use requires EPA permitting under the [Underground Injection Control Program](#) Class VI injection wells under the Safe Drinking Water Act. In Arizona this is considered a *geologic carbon sequestration* project covered in [Ariz. Admin. Code § 18-9-J656](#) establishing the criteria and standards for this type of underground injection. [The Arizona Geologic Survey](#) at the University of Arizona has prepared [assessment maps](#) that may be of interest through the CUSP West (Carbon Utilization and Storage) Partnership an initiative of the Department of Energy.

One assessment map that has [least to highest potential for Arizona](#) (scroll to the bottom of the webpage), shows some high potential areas within the Tonto, Coronado and Apache Sitgreaves National Forests as well as other locations in Arizona.

Other general resources:

Murthy, A. (2024). [The Evolving Legal Landscape for Geologic Carbon Sequestration in the United States—Climate Law Blog](#). Sabin Center for Climate Change Law.

Mining

[Hualapai Indian Tribe v. Haaland et al., case number 3:24-cv-08154](#), in the U.S. District Court for the District of Arizona. See also ([Amicus Curiae State Of Arizona](#)). The [court has ordered the preliminary injunctive relief](#) requested.

NEPA

SCOTUS oral arguments for [23-975 *Seven County Coalition v. Eagle County Colorado*](#) will be heard on Tuesday, December 10, 2024. This case asks if the National Environmental Policy Act requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

Background article on the case:

Blevins, J. (2024). *Is a Supreme Court fight over 88-mile Uinta Basin Railway really a battle over NEPA?* The Colorado Sun. <http://coloradosun.com/2024/11/05/uinta-basin-supreme-court-nepa/>

Public Lands (Depts. Interior – BIA, BLM, BR; Agriculture – FS)

[BLM Guidance Established for Public Lands Rule](#). The Public Lands Rule or Conservation and Landscape Health Rule ([89 FR 40308](#)) went into effect June 10, 2024. To engage the public and inform rule implementation BLM intends to form the [Federal Advisory Committee](#) (FAC). The FAC will be modeled after the [Resource Advisory Councils](#) and consist of a broad representation of stakeholders. The following document links listed are guides to the policy direction for rule implementation on various land use issues. BLM states that the documents will be modified and updated as new information or best practices become available. All materials are available on [BLM's website](#) or follow the links below.

- [Instruction Memoranda](#) (IM), [Information Bulletins](#) (IB), and [Manuals](#).
- [Restoration Prioritization & Planning IM](#)
- [Watershed Condition Assessment IM](#)
- [Land Health Standards IM](#)
- [Restoration and Mitigation Leasing IM](#)
- [Areas of Critical Environmental Concern \(ACEC\) Manual](#)
- [Inventory & Monitoring of Ecological Resources Manual](#)
- [Land Use Planning Requirements IB](#)

[The Public Lands Rule Advisory Committee](#) is currently seeking nominations for the 15 member committee. See the link above for nomination requirements and contacts. The nomination period is open until **November 18, 2024**.

To watch . . . several states and industry groups have initiated litigation against the rule . . . four recent lawsuits for vacating the rule based on the reliance of BLM on a categorical exclusion for NEPA compliance and assertion that the rule is at odds with FLPMA's core principles.

[Utah v. Haaland, No. 2:24-cv-00438 \(D. Utah June 18, 2024\);](#)

[North Dakota v. Dep't of the Interior, No. 1:24-cv-124 \(D.N.D. June 21, 2024\);](#)

[Alaska v. Haaland, No. 3:24-cv-00161 \(D. Alaska July 24, 2024\);](#)

[Am. Farm Bureau Fed'n v. U.S. Dep't of the Interior, 2:24-cv-00136 \(D. Wy. July 12, 2024\).](#)

[BLM 2023/2024 Final Solar Programmatic EIS](#) (scroll to document link under Final PEIS/RMPA). The Final Programmatic EIS has identified application lands using elements adjusted from Alternatives 3 and 4 of the Draft Programmatic EIS, requiring that either criterion be met. The description of these requirements are:

- “Lands available are those within 15 miles of existing and planned transmission lines with a capacity of 69 kV or greater or within 15 miles of an existing designated energy corridor, unless otherwise excluded by resource-based criteria. (Increased from 10 miles from transmission lines and decreased from 100 kV from the original Alternative 3.)
- Previously disturbed lands (regardless of transmission proximity) not otherwise excluded would be available for solar applications. BLM has updated the parameters used to identify lands as previously disturbed to better reflect appropriate parameters for arid versus non-arid lands (see Disturbed Lands Appendix K). To ensure further that these lands are properly identified, a design feature (PW-4; consultation with NPS is required for projects within 25-miles of a NPS-managed lands) has also been added that would require verification of disturbed status for projects proposed on disturbed lands more than 15 miles from existing and planned transmission lines.

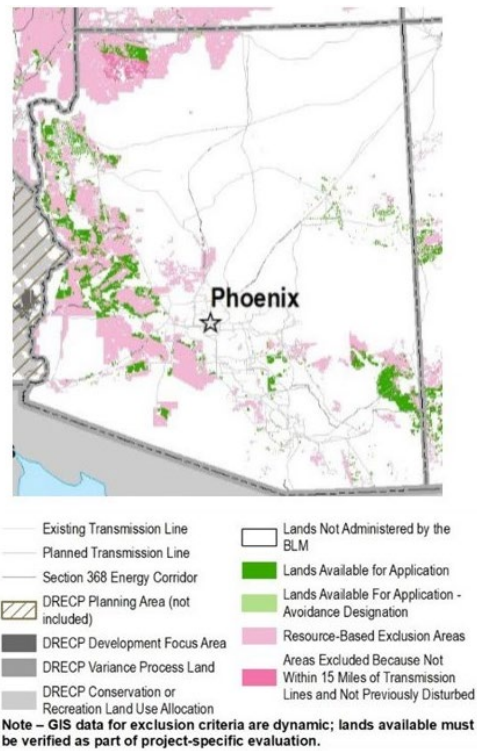
In addition:

- The Proposed Plan includes a land use allocation category of “Avoidance” to identify areas supporting sensitive resources where solar energy project applications would be allowed only if they can demonstrate that they would not disrupt the important functions these areas serve. Two types of lands are designated as avoidance: (1) big game migration corridors (non-high-use); and (2) areas designated as avoidance for solar development in existing BLM land use plans.”

The plan identifies for Arizona: Designated Avoidance Lands – 11, 131 acres, Total Lands Available for Application - 2,824,982 acres, Total Exclusion Areas - 9,260,877 acres.

Figure 1: Excerpted Map from Figure ES-1. BLM-Administered Lands Excluded and Available for Application in the 11-State Planning Area under the Proposed Plan. [Volume I: Executive Summary](#), (download document zip under title Final PEIS/RMPA). Chapters 1–8, BLM Final Programmatic EIS Utility Scale Solar Energy Development (2024).

The Reasonably Foreseeable Development Scenario by 2045 acres for Arizona: BLM - 198,211; Non-BLM 66,070



[BLM announces \\$17.6 million for monitoring rangelands](#) from IRA funds. “BLM along with NRCS will monitor at 3000 points across 11 western states to identify baseline conditions, assess changes over time and hire capacity for data analysis.” See <https://www.blm.gov/aim> the Assessment, Inventory and Monitoring site for how natural resource condition and trends are assessed and access existing data.

[BLM Arizona Recreation Fee Proposals](#). Comments were due by October 21, 2024. Use the title link to access a GIS storymap with locations and proposed fees. Recreation site and Area Draft business plans can be viewed [here](#). A [video](#) is available about how the fees are used by BLM.

Water

[Agricultural Water: FDA, EPA and U of A joint project](#). This effort has developed an antimicrobial treatment for pathogen reduction in pre-harvest agricultural water. According to the FDA announcement, this included a **University of Arizona - Industry Joint Effort to Register Treatment**. “Using the revised efficacy protocol, industry worked with the University of Arizona to leverage their expertise in taking the steps to successfully register the antimicrobial treatment for use against foodborne pathogens like *E. coli* and *Salmonella* in preharvest water. The University of Arizona also worked through their partnership with FDA to provide feedback on the protocol that has led to [recent updates](#) to optimize the testing parameters, and to provide clarity for future users. developed in collaboration with the **University of Arizona and industry partners**, combats foodborne pathogens like *E.coli* and *Salmonella* in water used to grow crops. Prior to its registration, there was no product to reduce the presence of human pathogens directly. While farmers will not be required to treat agricultural water with the product, the use of treatment will work in alignment with FDA’s latest [rule](#) on agricultural water to reduce the presence of foodborne pathogens in agricultural water.”

Congratulations to Channah Rock for her work in this effort and her recent [2024 Arizona Women of Impact award!](#)

[Proposed Santa Cruz River Urban Wildlife Refuge](#). A coalition of stakeholders (including the University of Arizona) has joined to propose a new Santa Cruz River Urban Wildlife Refuge that spans almost 20 miles of the river. [A new GIS storymap](#) describes the effort. Not only does the river support wildlife but U of A research; for years, the [Bogan Aquatic Ecology Lab](#) as well as other researchers and organizations have been conducting [research and monitoring of its aquatic systems](#), archeology, geomorphology and hydrology as well as water management resources.

Wildfire Management

USDA Forest Service Research analyzed simulated constraints on mechanical fuel reduction treatments in the U.S. wildfire strategy priority landscapes. Three Arizona landscapes were included, Four FRI, Prescott and the San Carlos Apache Tribal Forest Protection areas (FPA). The study simulated six vegetation and policy constraints from least flexible to most flexible to arrive at available area to mechanical thinning. Results for the most flexible scenario 3 were: 62.3% 4FRI, 57.4% Prescott, and 31.9% San Carlos Apache Tribal FPA availability to mechanical thinning. See the supplementary

material Appendix A (see link in 2nd paragraph of Results section) in the online article for more information on Arizona forests.

Woolsey, G. A., Tinkham, W. T., Battaglia, M. A., & Hoffman, C. M. (2024). Constraints on Mechanical Fuel Reduction Treatments in United States Forest Service Wildfire Crisis Strategy Priority Landscapes. *Journal of Forestry*, 122(4), 335–351. <https://doi.org/10.1093/jofore/fvae012>

Arizona State Rulemaking

Wondering how to check on Arizona rulemaking? The [Arizona Administrative Register](#) is released every Friday and published electronically under the authority of ARS § 41-1012. Also check the state agencies web pages examples: [Arizona State Land Department Rulemaking](#), [Arizona Game and Fish Department](#), [Arizona Department of Water Resources](#).

[The State of Arizona and the USDA Forest Service](#) signed a [Shared Stewardship Agreement](#) to strengthen collaboration between state and federal land management agencies. “The agreement builds on a 2020 Shared Stewardship Memorandum of Understanding, aimed at accelerating the pace and scale of projects like the [Four Forest Restoration Initiative \(4FRI\)](#), and will assist the state and the Forest Service in their continued efforts to address the wildfire crisis in Arizona's high priority “[firesheds](#)” using funding from the Biden-Harris Administration’s Bipartisan Infrastructure Law and Inflation Reduction Act. “This collaboration between state and federal agencies uses a proven and collaborative approach to focus on landscape-scale forest restoration activities that increase resilience of at-risk communities and watersheds across national forests in Arizona. This agreement focuses on restoring fire-adapted ecosystems and reducing the risk of wildfire to communities; identifying, managing and reducing threats to forest and ecosystem health; and fostering economic development strategies that keep working forests productive.”

Funding & Grants Opportunities

Commission for Environmental Cooperation (CEC)

[EJ4Climate Grant Program Now Open: US\\$1.5M Available for Education, Environmental Justice, Climate Adaptation](#). “The CEC established this grant program in 2021 to fund projects that target underserved and vulnerable communities, and Indigenous communities, in Canada, Mexico, and the United States, to prepare them for climate-related impacts. The EJ4Climate Grant Program provides funding directly to community-based organizations and seeks to support environmental justice by facilitating the involvement and empowerment of communities searching for solutions and the development of partnerships to address their environmental and human health vulnerabilities, including those due to climate change impacts.” **Proposals are due by November 14, 2024** and projects will be expected to begin in Spring 2025. [Link](#) for selection criteria, proposal program types and application portal.

Interior

[Bureau of Indian Affairs’ Tribal Electrification Program](#) announced [\\$71 million to electrify homes in 13 Tribal communities](#), helping to close the access-to-electricity gap. This second round of funding

also includes funding for the Navajo Tribal Utility Authority in Arizona, New Mexico and Utah for \$7 million and the Hopi Utilities Corporation in Arizona for \$6 million. “The program provides financial and technical assistance to connect homes in Tribal communities to transmission and distribution that is powered by clean energy; provide electricity to unelectrified homes through zero-emissions energy systems; transition electrified homes to zero-emissions energy systems; and support associated home repairs and retrofitting necessary to install the zero-emissions energy systems. In addition, the program supports clean energy workforce development opportunities.”

[Bureau of Land Management 2025 Annual plan for wild horse and burro gather and fertility control operations in Fiscal Year 2025 builds on progress towards healthy herds and healthy lands](#), The proposed plan works to protect herd and land health across the West.

[Interior Announces \\$236 Million Wildfire Resilience and Recovery Funding](#) . “Acting Deputy Secretary Daniel-Davis made the announcement at Saguaro National Park in Tucson, Arizona, with Mayor Regina Romero and Arizona State Forester and Director Thomas Torres. The state is receiving upwards of \$10 million in this latest allocation, bringing the total funding for wildfire mitigation and recovery in Arizona through the Bipartisan Infrastructure Law to more than \$60 million. ”

USDA

[USDA, Farm Service Agency, Updates to Farm Loan Program](#). On September 25, 2024, the [Enhancing Program Access and Delivery for Farm Loans rule \(FR 2024-16828\)](#) went into effect. This program is “designed to better assist borrowers to make strategic investments in the enhancement or expansion of their agricultural operations.” The rule enhances three areas: 1) for financially distressed borrowers a low interest set aside program, 2) flexible repayment terms, 3) reduction of loan security requirements to enable borrowers to leverage equity.

Education, Online Planning Tools and Webinars

[Arizona Lawyer Apprentice Program](#) (ALAP), help for “Legal Deserts” in rural Arizona. A [2020 American Bar Association study](#) (ABA) found that “two-thirds of all counties (10 of 15) in Arizona have less than one lawyer per 1,000 residents and fewer than any other state.” They termed these “areas a ‘legal desert,’ where access to attorneys is limited and residents have to travel far to find a lawyer for routine legal matters” (ABA 2020). The Arizona Supreme Court in July announced the creation of the [Arizona Lawyer Apprentice Program](#) (ALAP). “Law graduates who have just missed Arizona’s passing score of 270 and made between 260 and 269 on the Uniform Bar Exam the opportunity to become licensed attorneys when they complete a two year apprenticeship under an experienced lawyer in a rural area, or in a government or nonprofit law setting” (Arizona Supreme Court 2024), thus increasing the access to Arizona lawyers serving in rural communities.

[U.S. Environmental Protection Agency and AmeriCorps Environmental Justice Corps](#). “This program aims to recruit participants from communities disproportionately impacted by environmental justice challenges and seeks to recruit individuals with an interest in environmental justice careers. Environmental Justice Climate Corps members will be paid a living allowance and reimbursed for selected living expenses. In total, this allowance is equivalent to receiving more than \$25 per hour



throughout their year of service. Members will obtain the [benefits](#) of AmeriCorps VISTA service—including the Segal AmeriCorps Education Award, which is valued at \$7,395 in FY24, and streamlined pathways into certain federal jobs—as well as gain mentorship and professional development opportunities. Applications for the Environmental Justice Climate Corps will open in early 2025, with a goal for its first cohort to start later that year. To sign up for updates on the program, visit [EPA’s Environmental Justice Climate Corps Program website.](#)”

[E2 Clean Energy Economy Maps 2024.](#) These maps display by state numbers of clean energy projects including investment amounts and job numbers developed or expanded by the Inflation Reduction Act.


[USDA Forest Service ForSys Investment scenario planning model.](#) The [ForSys model](#) planning tool uses the [firedheds](#) data base to build the scenarios for advance planning for mitigating and managing wildfire. It is an initiative to improve prioritization of restoration and forest management investments.

[USDA Forest Service SCIENCEx Webinar Series](#) Video Sessions- Forest Products Webinar Week. Celebrate National Forest Products Week with the SCIENCEx team and learn how agency scientists pioneer new and better uses — from skyscrapers to energy to plastics — for products from sustainably managed forests.

[StockSmart.](#) Developed by Washington State University and The University of Arizona and supported by the intramural research program of the U.S. Department of Agriculture, National Institute of Food and Agriculture, this grazing management decision support tool uses trusted data sets from the Rangeland Production Monitoring Service. Remotely-sensed Normalized Difference Vegetation Index data are used to calculate vegetation production and trends to calculate stocking rate. Potential management action scenarios can be generated, such as installing new water locations or changing herd characteristics. Multiple scenarios can demonstrate how stocking rates may be affected by these decisions. **StockSmart virtual training workshop series**, Nov 13, 2024 02:00 PM; Dec 2, 2024 02:00 PM; Dec 11, 2024 02:00 PM. [Register here.](#) Please visit the following link and add your information to the waitlist. <https://csanr.wsu.edu/educational-opportunities/webinars/stocksmart/>

[Yale Climate Opinion Maps \(2023\).](#) These maps display percentages by state of public opinion on global warming topics and opinions on how to address decision making and policy creation to reduce global warming or prepare for its’ impacts.



 Interested to receive NRULPC’s *Regulatory Roundup* in your email inbox? Contact: Sheila Merrigan merrigan@cals.arizona.edu or Anne Gondor gondora@arizona.edu.