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## NRULPC Newsletter Vol. 8, No. 1

*February 27, 2024*

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### Co-Directors' Message

Hello NRULPC supporters,

Center legal fellow Colin McKenzie offers his thoughts on changes in natural resource laws and policies and Anne Gondor highlights some changes with NEPA. We have an announcement of NRULPC affiliated faculty Dr. Michael Kotutwa Johnson being appointed to BLM Arizona RAC, also some information and announcements regarding the Global Mining Law Center, and lastly a link to the latest Regulatory Round-up on Federal/State rulemaking, legislation, policies and case law.

Best,



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## Navigating Change in Natural Resources Law & Policy

*Colin McKenzie*

In times of political transition, revisiting foundational principles—in the Center's case, those of natural resources law and policy, is essential. This field, which spans statutory, administrative, and common law, governs access to and the management of vital resources—from water rights and mining regulations to energy development and conservation efforts.

The core tension in natural resources law lies in balancing competing interests: conservation and economic development, among others. Some ethical considerations emphasize the rights of future generations to a healthy environment, while more utilitarian approaches weigh economic benefits against environmental costs. And notions of sustainable development seeks to integrate economic growth with environmental protection and social equity, in the service of long-term resource viability.



The shift from the Biden Administration to the Trump Administration marks a significant change in the legal and policy landscape. The Biden Administration prioritized clean energy investment, climate action, and environmental justice, implementing policies such as the Inflation Reduction Act to accelerate decarbonization and expand renewable energy. In contrast, the new Trump Administration is focusing on deregulation, fossil fuel development, and the rollback of Biden-era policies, as well as addressing permitting processes and reducing federal support for clean energy.

Despite these shifts, fundamental challenges remain. Resource scarcity and market failures, for example, as well as issues of regulatory capture continue to

environmental priorities while reckoning with the evolving legal framework.

As these circumstances unfold, staying informed and engaged is critical. The need for evidenced-based insights and analysis on the evolving landscape of natural resources law and policy – as the NRULPC strives to provide through its unique collaboration between Cooperative Extension, CALES, and the College of Law – has never been greater. As a stakeholder, your thoughts are welcome and I look forward to the discussion.

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## NEPA Revisited - 2024 Rule Phase 2 Out

*Anne Gondor*

[State of Iowa et al. v. Council on Environmental Quality \(CEQ\)](#), U.S. District Court for the District of North Dakota, No. 1:24-cv-00089. The case brought by 20 states; Iowa, North Dakota, Texas and Florida among them, won the motion for summary judgment. This case challenged the 2024 NEPA "Phase 2" rule stating that it "violates: (1) NEPA and the Administrative Procedure Act ("APA") by exceeding the agency's authority and making changes inconsistent with the authorizing act, (2) the APA because it is arbitrary and capricious, (3) NEPA because Congress did not authorize the agency to create a document that avoids a full NEPA analysis of projects that have significant impacts, and (4) the major questions doctrine by exceeding CEQ's authority and affecting topics that have major economic significance."

**Court decision:** "The question before this Court is the validity of the 2024 Rule. The Court has found CEQ has no rulemaking authority and therefore, the 2024 Rule is invalid. The APA requires this Court to set aside and vacate invalid agency actions. See 5 U.S.C. § 706. All parties agree if the 2024 Rule is vacate, the status quo is the version of NEPA in place on June 30, 2024, the day before the rule took effect. See Doc. Nos. 135, p. 23; 137, pp. 9–10; see also [89 Fed. Reg. at 35442](#). It is very likely that if the CEQ has no authority to promulgate the 2024 Rule, it had no authority for the 2020 Rule or the 1978 Rule and the last valid guidelines from CEQ were those set out under President Nixon. However, vacating a rule does not mean the Court decides the appropriate replacement. The law states that vacating simply reinstates the previous rule. The validity of the 2020 Rule is not before this Court. Whether or not the 2020 Rule conflicts

rulemaking authority and therefore, the 2024 Rule is invalid and vacated as a matter of law."

### Where are we at now?

1. <https://eelp.law.harvard.edu/quick-take-iowa-v-ceq-and-the-future-of-nepa/> "However, the court did not address the legality of CEQ's Phase I rule or the 2020 rule and indicated that the result of vacatur is the reinstatement of the 2020 rule. Federal agencies also continue to be bound by their current NEPA regulations."
  2. Recent Trump E.O.s revoking past presidential E.O.s impacting NEPA. <https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/> "Sec. 5. Unleashing Energy Dominance through Efficient Permitting. (a) Executive Order 11991 of May 24, 1977 (Relating to protection and enhancement of environmental quality) is hereby revoked."
  3. Fiscal Responsibility Act of 2023 Public Law No: 11-5. <https://www.congress.gov/bill/118th-congress/house-bill/3746/summary/00>
  4. Phase I rule 2022: <https://www.federalregister.gov/documents/2022/04/20/2022-08288/national-environmental-policy-act-implementing-regulations-revisions>
  5. 2020 Rule: <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>
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We are pleased to inform you that Ms. Haaland, Secretary of the Interior, has appointed Mr. Michael Kotutwa Johnson to the BLM Arizona RAC. Mr. Johnson will be filling the position left vacant by Julie Engel. Mr. Johnson is currently the Assistant Professor for Indigenous Resiliency at the University of Arizona School of Natural Resources and the Environment, and we look forward to his insight at future RAC meetings. Please join us in welcoming Mr. Johnson!

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## Global Mining Law Center News

- The College of Law's Global Mining Law Center (GMLC)\*, directed by NRULPC's John Lacy, along with NRULPC Fellow Colin McKenzie, will be attending this year's [9th Annual Mining Day at the Capitol](#), on Wednesday, April 9, in Phoenix. Please drop by to say hi and talk with us if you are in the area.
- The GMLC, which regularly collaborates with, and receives support from the NRULPC, was [mentioned in an article](#) in last month's Engineering and Mining journal special section on Arizona mining, in a piece on the U of A's School of Mining and Minerals Resources. It highlighted the GMLC in its interdisciplinary "matrix" of collaborators.

*\* The James E. Rogers College of Law and the School of Mining and Mineral Resources continue their collaboration with the Global Mining Law Center (GMLC), offering specialized legal and technical training. Utilizing a state-of-the-art studio at the College of Law, the GMLC provides online courses covering legal systems, mining law, valuation, financing, corporate responsibility, sustainability, and environmental*

law. Law students can earn a certificate in mineral law, while mining professionals, often in remote locations, can pursue a master's degree with a concentration in mining law.

### [Regulatory Round-up Issue 14](#)

## Quick Topics: Federal/State Rulemaking, Legislation, Policy Framework & Case Law

### **New Resources on the NRULPC Website and Blog**

#### [Website](#)

- [Regulatory Roundup - Issue 14](#), November-December 2024.

#### [Western Lands, Western Waters Blog](#)

- No new posts at this time.

#### Natural Resource Users Law & Policy Center (NRULPC)

The Natural Resource Users Law and Policy Center (NRULPC) is a creative partnership of the University of Arizona's James E. Rogers College of Law and Cooperative Extension that grew out of grassroots discussions. The Center's aims are to collaborate with stakeholders, mentor student clinicians and fellows, provide scholarly legal and policy analysis, and address the underrepresented law and policy needs of the natural resource community of Arizona and the West.



#### [NRULPC Website](#)

The NRULPC website provides information on the about the center, student programs, leadership and staff, out publications and the Advisory Board.

### Newsletter and Other Resources

#### Newsletters

- Vol. 1, Number 1 - November 2, 2017 - Welcome to the First NRULPC Newsletter!
- Vol. 1, Number 2 - December 22, 2017
- Vol. 1, Number 3 - February 9, 2018
- Vol. 1, Number 4 - March 19, 2018
- Vol. 1, Number 5 - April 30, 2018
- Vol. 1, Number 6 - May 31, 2018
- Vol. 1, Number 7 - July 24, 2018
- Vol. 2, Number 1 - October 19, 2018
- Vol. 2, Number 2 - December 20, 2018
- Vol. 2, Number 3 - February 25, 2019

#### [Newsletter](#)

The first issue of the NRULPC newsletter was released November 2017. It is published at various times of the year, but generally about every two months.



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## Western Lands, Western Waters

Hot topics in natural resource law and policy affecting the American West



Our Blog posts are carefully researched and written by NRULPC Clinic students.

### [Regulatory Roundup](#)

Summarized updates to law, policy, legislative and regulatory changes. Information made available several times a year.

Would you like to be on our NRULPC listserve? If so, please contact [Sheila Merrigan](#).



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