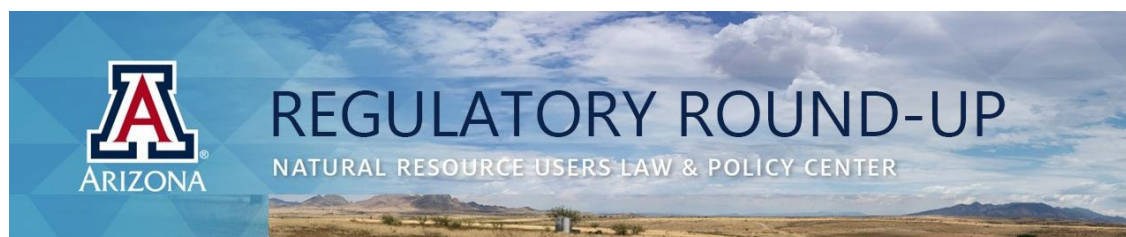


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Issue 14 January-February 2025



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

Executive Orders

[Declaring a National Energy Emergency, Executive Order 14156](#). Sections 5 & 6 deal with how the Endangered Species Act is implemented in regards to the defined fossil fuel energy projects. Quoting from E.O. 14156, " Sec.

5: *Endangered Species Act (ESA) Emergency Consultation Regulations*. (a) No later than 30 days from the date of this order, the heads of all agencies tasked in this order shall: (i) identify planned or potential actions to facilitate the Nation's energy supply that may be subject to the regulation on consultations in emergencies, [50 CFR 402.05](#), promulgated by the Secretary of the Interior and the Secretary of Commerce pursuant to the Endangered Species Act ("ESA"), [16 U.S.C. 1531 et seq.](#)... (b) Agencies are directed to use, to the maximum extent permissible under applicable law, the ESA regulation on consultations in emergencies, to facilitate the Nation's energy supply. Sec 6: *Convening the Endangered Species Act Committee*. [Also known as the 'God Squad.'](a) In acting as Chairman of the Endangered Species Act Committee, the Secretary of the Interior shall convene the Endangered Species Act Committee not less than quarterly, unless otherwise required by law, to review and consider any lawful applications submitted by an agency, the Governor of a State, or any applicant for a permit or license who submits for exemption from obligations imposed by Section 7 of the ESA."

For more more information about Section 7 and emergency consultation see:

CRS 2021. [Endangered Species Act \(ESA\) Section 7 Consultation and Infrastructure Projects.](#)

Agency Actions

Among the many **executive orders**, one froze ongoing regulatory work across the federal government. This order states that the new administration must first review and approve any Federal Register publishing of new rules. This includes any rule recently published from the former administration, but not yet effective, thus changing its effective date to 60 days later. Some of the following rulemaking announcements could be impacted by this order.

Agriculture

USDA APHIS On December 6, 2024, issued a [Federal Order Requiring Additional Testing for and Reporting of Highly Pathogenic Avian Influenza \(HPAI\) in Livestock and Milk.](#) This order is in addition to USDA's April 2024 Federal Order, which requires testing of lactating dairy cows before interstate shipment and reporting of any positive results. [USDA offers financial support](#) "to help dairy producers enhance biosecurity and offset costs associated with Influenza A testing, veterinary expenses, personal protective equipment purchases, milk disposal, and milk losses."

USDA Agriculture Marketing Service finalized the [Poultry Grower Payment Systems and Capital Improvement Systems Rule \(90FR5146\)](#) under the Packers & Stockyards Act. This rule increases transparency and fairness to growers in the poultry industry. The rule becomes effective July 1, 2026.

[USDA FSIS \(Food Safety Inspection Service\) Guidance on Preventing Listeria Outbreaks.](#) According to National Agriculture Law Center *The Feed*, "the agency will strengthen its scientific study of food-based pathogens; improve training for inspection protocols; and focus on data review and current state inspection agreements."

Arizona

[The Arizona Department of Water Resources designates the Wilcox AMA.](#) This designation prohibits irrigation on new acres and requires application of certificate for grandfathered groundwater rights by April 8, 2026. Failure to apply for grandfathered rights "relinquishes any right to withdraw or receive and use groundwater pursuant to a grandfathered right (A.R.S. § 45-477.01)."

According to ADWR, "within AMAs, with a few narrow exceptions, persons withdrawing groundwater from non-exempt wells (wells having a maximum pump capacity greater than 35 gallons per minute) are required to measure their groundwater withdrawals with a measuring device or method that is approved by ADWR and must report the groundwater withdrawals to ADWR." See ADWR [Well Drilling in Arizona](#) for more information about non-exempt wells. To find ADWR approved measuring methods and meters see Arizona Administrative Code [R12-15-903](#).

U.S. Department of Health and Human Services Food and Drug Administration

[US FDA Bans Use of Red Dye No. 3 in Food Products \(90 FR 4628\)](#). Goes into effect January 15, 2027. According to the National Agriculture Law Center (NALC) *The Feed* "this decision comes following a 2022 petition by the Center for Science in the Public Interest, to ban use of the food additive under the Delaney Clause of the Federal Food, Drug, & Cosmetics Act." The effects of this rule on producers will be widespread as Red Dye No.3 is used in many food products. To read about other state level food additive bans see the NALC article, [Update on Proposed Food Additive Bans](#).

[US FDA Front-of-pack Labelling "Healthy Rule" \(90 FR 5426\)](#). This rule requires label warnings of specific nutrient contents on the front of food packages and containers. Labels are to display content of sodium, saturated fat, and added sugar, serving amount, percent daily value and portion size information. Comments are due by May 16, 2025; subject to the Trump administration review and possible 60 day extension. See more information on the "[Healthy Rule](#)" on the FDA website or see the NALC article [FDA Releases Final 'Healthy' Rule](#).

[US FDA Plant-Based Alternatives to Animal-Derived Foods Guidance \(90 FR 1139\)](#) to submit comments due by March 10, 2025). This draft guidance is for "best practices for naming and labeling of certain plant-based foods that are marketed and sold as alternatives for animal-derived foods (plant-based alternative foods), especially in the absence of a common or usual name for the product. This draft guidance does not address the naming and labeling of plant-based milk alternatives; FDA is providing recommendations regarding these products in a separate guidance document."

Climate Change

[*Held v State of Montana*, 2024](#). According to the Supreme Court of Montana resulting opinion: "Plaintiffs have standing to challenge the injury to their constitutional right to a clean and healthful environment. Montanans' right to a clean and healthful environment was violated by the MEPA Limitation, which precluded an analysis of GHG emissions in environmental assessments and environmental impact statements during MEPA review. The MEPA Limitation, § 75-1-201(2)(a), MCA, is unconstitutional and the State is enjoined from acting in accordance with it. Additionally, the State did not appeal the District Court's finding that § 75-1-201(6)(a)(ii), MCA (2023), is unconstitutional and its order enjoining the State from acting in accordance with it and it is thus affirmed."

To read a synopsis of the case also see [Columbia Law School Climate Case Charts](#) or the [Case Charts database](#).

Water

[Thomas R. Carper Water Resources Development Act of 2024](#), Public Law No: 118-272. This bill provides for improvements to rivers and harbors of the United States, as well as conservation and development of water and related resources, and for other purposes. This bill funds for Arizona feasibility studies and on the ground projects for improving flood mitigation, aquatic ecosystem restoration and approximately \$80 M in water and wastewater infrastructure projects.

[Clean Water Act Section 404 Tribal and State Assumption Program](#) (89 FR 103454). "The revisions facilitate Tribal and State assumption and administration of CWA section 404, consistent with the policy of the CWA as described in section 101(b), by making the procedures and substantive requirements for assumption transparent and straightforward and clarifies the minimum requirements. The final rule clarifies the criminal negligence standard in the CWA section 404 program, as well as making a corresponding change in the section 402 program. Finally, the final rule makes technical revisions, including removing outdated references associated with the section 404 Tribal and State program regulations."

Mining

[Good Samaritan Remediation of Abandoned Hardrock Mines Act of 2024](#) (Page 138 Stat. 1692 - Public Law No. 118-155 (12/17/2024))

According to the bill, "it promotes the remediation of *abandoned hardrock*

mine sites ([see bill for definitions](#)) by Good Samaritans. A *Good Samaritan* is defined as: "(1) not a past or current owner or operator of the abandoned site; (2) had no role in the creation of the historic mine residue; and (3) is not potentially liable under any law for the remediation, treatment, or control of the historic mine residue.

The bill requires the Environmental Protection Agency (EPA) to establish up to 15 Good Samaritan pilot program projects. Under the program, the EPA may issue certain permits to allow Good Samaritans to remediate historic mine residue at abandoned hardrock mine sites to protect human health and the environment without being subject to enforcement or liability under specified environmental laws for past, present, or future releases, threats of releases, or discharges of hazardous substances or other contaminants at or from the abandoned mine site. EPA may only grant permits for projects that meet certain requirements. The bill also outlines requirements for NEPA review of permits and establishes a Good Samaritan Mine Remediation Fund for land management agencies that authorize Good Samaritans to conduct remediation projects on federal land. The bill terminates the program after seven years."

[Recognizing the Importance of Critical Minerals in Healthcare Act of 2023](#)

Public Law No: 118-233. This bill amends the Energy Act of 2020 to require the Secretary of the Interior to include the Secretary of Health and Human Services in consultations regarding designations of critical minerals, elements, substances, and materials.

NEPA Revisited - 2024 Rule Phase 2 Out

[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. This 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 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 vacated, 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. See Paulsen, 413 F.3d at 1008. The validity of the 2020 Rule is not before this Court. Whether or not the 2020 Rule conflicts with the FRA [Fiscal Responsibility Act of 2023] does not affect this Court’s ruling and is not relevant to this decision. The Court holds CEQ has no rulemaking authority and therefore, the 2024 Rule is invalid and vacated as a matter of law."

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

Agriculture and Interior

[Expanding Public Lands Outdoor Recreation Experiences Act or the "EXPLORE" Act](#). "This bill enables the improvement of recreation

opportunities on, and facilitate greater access to, Federal public land, and for other purposes It sets forth policies for the Department of the Interior and the Department of Agriculture related to recreation on certain public lands to address the following issues:

- itemized budget information for outdoor recreation across departments;
- long-distance bike trails;
- recreational climbing activities;
- target shooting ranges;
- filming and still photography;
- motorized and nonmotorized access;
- invasive species;
- gateway communities;
- real-time information for the public on visitor levels;
- broadband and cellular service;
- public-private partnerships;
- access for persons with disabilities to trails and recreation opportunities;
- recreational and job opportunities for military members and veterans;
- youth access to recreational lands;

- issuance of special recreation permits;
- a digital version of the National Parks and Federal Recreational Lands Pass;
- extension of seasonal recreation opportunities; and
- volunteers on public recreational lands

The bill addresses legal and policy issues such as establishing **good neighbor agreement authority** for recreation support and restoration activities and an impact assessment of housing shortages in gateway communities.

[Accelerating Appraisals and Conservation Efforts Act or AACE Act](#). This bill relaxes requirements for the Department of the Interior in appraising and valuing real property for transactions over which Interior has jurisdiction.

Specifically, a private real property appraiser needs only to be licensed or certified in one state to perform appraisal or valuation services for real property over which Interior has jurisdiction. Currently, if a private assessor is used for a real property transaction within Interior's jurisdiction, that assessor must be licensed or certified in the state where that transaction occurs.

When using private appraisers, Interior shall, to the maximum extent practicable, use private appraisers who are certified general real property appraisers licensed in the state where the transaction occurs.

Additionally, Interior may use a private appraiser who is licensed outside the state in which the transaction occurs only if private appraisers licensed in that state are unavailable, not assignment qualified, or not cost competitive. Interior must make the text of all policies related to such appraisals public.

BLM

[BLM, USFS update management plan for Bears Ears National Monument](#). The final plan supports recreation, grazing, and Tribal co-stewardship of this remarkable cultural landscape. Information regarding the [full record of decision management plan](#), and other documents, including maps, is available at the [BLM National NEPA Register](#).

BR and USFS

[Bureau of Reclamation \(BR\) and U.S. Forest Service adopt BLM and DOE NEPA Categorical exclusions](#) (90 FR 2735 and 89 FR 88717). Bureau of Reclamation is revising seven categorical exclusions. The revised categorical exclusions will allow Reclamation to complete environmental reviews more efficiently and effectively for water-related contracting, use authorizations,

financial assistance, loans, and funding activities. USFS is adopting four CEs of similar use as BLM; E12, E13, E17 and F10 and adopting five from DOE's CEs at appendix B of [10 CFR part 1021, subpart D, B4](#). (6), (11), (12), (13), and (16) concerning transmission line rights-of-way and disposal of certain mineral materials.

Interior

[BLM Record of Decision Utility – Scale Solar Energy Development \(Western Solar Plan\) Volume 1](#). Although recent executive orders have paused renewable projects, nonetheless, the Record of Decision (ROI) for the revised Western Solar Plan 2024 has been finalized. Additional documents for the ROI are:

- [Volume 2, Appendix E](#),
- [Biological Opinion on 116 listed & proposed threatened and endangered species](#)
- [Biological Opinion Appendix A: Species and Critical Habitat with a Not Likely to Adversely Affect Determination](#)

[US FWS proposed listing of Monarch butterfly \(89 FR 100662\)](#). **Comments are due by March 12, 2025.** "Under section 4(d) with protective regulations of the ESA the monarch butterfly is proposed as a threatened species. The USFWS has determined that the following threats on the species: loss and degradation of breeding, migratory, and overwintering habitat (from past conversion of grasslands and shrublands to agriculture and widespread use of herbicides; logging/thinning at overwintering sites in Mexico; urban development, senescence (*i.e.*, deterioration with age), and incompatible management of overwintering sites in California; and drought; exposure to insecticides and effects of climate change."

The FWS is also requesting comments from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. The best possible scientific data is needed regarding 10 factors concerning biology, range (distribution and migratory patterns), and population trends, threats and additional information to assist with issuing section 4(d) protective regulations to provide for the conservation of the monarch butterfly. See the [regulations.gov posting](#) for further information.

The proposal designation of critical habitat for the species is based on overwintering sites that meet abundance criteria. These are mainly located in

California with a total of 4,395 acres (1778 ha). So far the listing has more than 10,000 comments in the Federal Register. See [Webinars for a National Agriculture Law Center](#) hosted webinar **February 19**.

[U.S. Fish and Wildlife Service withdraws the proposed rule on biological integrity, diversity, and environmental health \(BIDEH\) of the National Wildlife Refuge System](#) (89 FR 103761). Withdraws the published proposal on February 2, 2024 ([89 FR 7345](#)) that proposed new regulations addressing and updates to the existing BIDEH policy due to 50,000 comments, of which 150 were of substantial commentary from State and Tribal entities.

USGS

[Water Data Improvement Act Public Law No: 118-174](#). This bill reauthorizes through FY2028 the United States Geological Survey's (1) Federal Priority Streamgauge network—previously known as the National Streamflow Information Program—that tracks the amount of water in streams and rivers; (2) groundwater monitoring program, including the National Groundwater Monitoring Network; and (3) grants for water estimation, measurement, and monitoring technologies and methodologies.

Recent resources from USGS

[USGS releases a comprehensive look at water resources in the United States](#). "This new National Water Availability Assessment offers critical insights into water supply, demand and quality across the Nation. A pioneering scientific overview of water availability that offers first-of-its-kind insights into the balance between water supply and demand across the conterminous United States." This assessment complements the [USGS Water Data For the Nation mapping webpage](#), that highlights information on surface water flow and levels, groundwater levels, water quality and water use.

Funding Awards & Grant Opportunities

Water

[WIFA Conservation Grant Fund](#) \$14.1 M available. Applications due by **March 6, 2025 at 5:00 pm**. All projects must be completed by June 30, 2026. This fund provides financial resources to eligible entities to conserve Arizona's water supply.

[USBR is launching the Sustainable Water for Agriculture Pilots \(SWAP\) Program](#) "that will test innovative crops and practices to significantly reduce agricultural water use at low to moderate costs. These projects will keep the farmland in production while conserving water. Reclamation has \$6.5 million available this year for this new program through the Inflation Reduction Act."

[USBR announced \(January 15, 2025\) a \\$257.6 million investment through President Biden's Investing in America agenda](#) for long-term water conservation projects in Arizona. Project investments are in collaboration with the City of Tucson, the Town of Gilbert, Salt River Project and Central Arizona Project.

Education, Online Planning Tools and Webinars

Webinars

[Association of Natural Resource Extension Professionals on forestrywebinars.net](#) is hosting a 9 webinar series. The series focuses on creating high impact articles, successful program delivery via television, creating good stories, building relationships with local media, creating high impact, short videos and more. The Association of Natural Resource Extension Professionals (ANREP)'s Professional and Learning Development Committee Presents a webinar series on ways to reach your target audience and provide innovative programs. Each of the webinars will be recorded for on demand viewing. Visit the link above for dates and times, no registration required. For more information about the Association of Natural Resource Extension Professionals visit <https://anrep.org/>.

[National Agricultural Law Center Webinar](#) opportunity (February 19 - 10 am Arizona time): Brigit Rollins, Staff Attorney, will present "*Proposed for Listing: Overview of Proposed Decision to List the Monarch Butterfly Under the ESA.*" Click [here](#) to register.

From the USFS [Science You Can Use](#)

[USFS Announces The National Land Cover Database Tree Canopy Cover](#) (NLCD TCC) data now available annually. This level of information will help management of wildfire, drought and wildlife habitats. At a 30 meter resolution, "the dataset is continuous (percent cover 0-100%), and consistent across management boundaries. "It's available for the entire country across all federal, state, tribal, and private lands. Forest definitions can vary, so

continuous values allow users to select a canopy cover percent definition for forests that is best suited to their application. The data are useful across larger spatial extents and management boundaries. Users can easily explore trends through time and don't have to stitch together maps made with different methods."

In addition to the NLCD TCC "the 2020 Resources Planning Act Assessment (RPA Assessment) looks at historical data trends and projects the availability and condition of renewable resources across the nation's forests and rangelands 50 years into the future. Mandated by the 1974 Forest and Rangeland Renewable Resources Planning Act." The *Taking Stock* article is quick summary of the 2020 RPA providing key highlights of the assessment results and links to data.

Although Biden rescinded the Old Growth Forest rule, the USFS made headway on mapping these old growth forests. Using the FIA, Forest Inventory Assessment data researchers created a consistent approach to estimate old-growth forest. They estimated that NFS lands hold approximately 17 percent (10 million hectares) that could be classified as old growth. The repeatable mapping system afforded by the FIA can help refine old-growth definitions in the future. Along with the NFS, BLM mapped pinyon and juniper old growth by state.

Public Lands Management

BLM handles natural resources and domestic affairs for 480 million acres of federal land.

Wakild, E. (2025, January 8). *Interior secretary manages vast lands that all Americans share – and can sway the balance between conservation and development*. The Conversation, <https://theconversation.com/us>.

Southwest Ecological Restoration Institutes (SWERI).

Beeton, T. A. et al. (2024). *Collaborative Forest Landscape Restoration Program Collaborative Governance Assessment A National Baseline Synthesis for the Common Monitoring Strategy*. Southwest Ecological Restoration Institute.

Desertification

United Nations Global Aridity Report finds 3/4 of the earth has become permanently drier.

Vicente-Serrano, S. M., N. G. Pricope, A. Toreti, E. Morán-Tejeda, J. Spinoni, A. Ocampo-Melgar, E. Archer, A. Diedhiou, T. Mesbahzadeh, N. H. Ravindranath,

R. S. Pulwarty and S. Alibakhshi (2024). *The Global Threat of Drying Lands: Regional and global aridity trends and future projections*. A Report of the Science-Policy Interface. United Nations Convention to Combat Desertification (UNCCD). Bonn, Germany.

Groundwater Study

[Continental Scale Groundwater Pathways Study](#). University of Arizona researcher Laura Condon, with the Hydrology and Atmospheric Sciences Department along with researchers at Princeton and Sun Yat-sen Universities, have found "that groundwater can travel underground for hundreds of kilometers before emerging as streamflow." This may have important implications for the management of watershed resources and inter-basin groundwater.

Yang, C., Condon, L. E., & Maxwell, R. M. (2025). Unravelling groundwater–stream connections over the continental United States. *Nature Water*, 3(1), 70–79. <https://doi.org/10.1038/s44221-024-00366-8>

NEPA EIS Tool (archived)

[NEPAccess.org](#). This University of Arizona tool needs your help, please answer the [survey](#). The search functions are now down due to lack of funding. This "beta platform (2021-2024) enabled search, download, and analysis of environmental impact statements (EISs) and other documents created under the US National Environmental Policy Act of 1969 (NEPA), all in one place." Please also see the article from Climate Law Blog - Columbia Law School, [A Buried Treasure Trove of NEPA Documents](#) by Michael Gerrard, Director Sabin Center.

Wildland Fire Tool

[Burn Period Tracker](#). The University of Arizona has developed a new online tool to track fire weather monitoring. "This tool defines Burn period as the number of hours per day where the hourly average relative humidity is less than or equal to 20% and is calculated from [Remote Automatic Weather Stations](#) with real-time data and several years of historical data. Values range from 0 to 24 hours per day with higher values associated with increased fire danger."

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ABOUT THE REGULATORY ROUND-UP

The *Regulatory Round-up* summarizes recent federal and state agency rulemaking, policy, case law,

legislation, funding opportunities and planning tools that may be of interest to the natural resource users community. Please visit the [NRULPC website](#) to view the newsletter past issues (*Natural Resource Briefs*), *Regulatory Round-ups* or access programs and other information.



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