



# REGULATORY ROUNDUP

NATURAL RESOURCE USERS LAW & POLICY CENTER  
COLLEGE OF AGRICULTURE & LIFE SCIENCES AND COLLEGE OF LAW

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### Climate Change

#### The National Natural Capital Accounting Strategy

Recently closed, with only 31 submitted comments, the Office of Management and Budget had posted a federal register announcement ([87 FR 51450, Aug 22, 2022](#)) on a request for information on a [National Strategy To Develop Statistics For Environmental Economic Decisions: A U.S. System of Natural Capital Accounting and Associated Environmental-Economic Statistics](#). “This plan establishes natural capital accounts and associated environmental-economic statistics as core statistical products over the next 15 years. This will enable a system that represents the dependencies the economy has on natural resources and enables more accurate reporting of economic growth.” It facilitates the US to “incorporate the environment and nature into economic decision making.” The strategy falls under three major authorities to be coordinated across government: Paperwork Reduction Act, Evidence-Based Policymaking Act and National Environmental Policy Act (NEPA). The Strategy states that “natural capital accounting involves a ‘systemic, interdisciplinary approach’ to quantifying environmental effects, and because it could facilitate more precise accounting for ‘presently unquantified environmental amenities and values,’ such efforts are well in line with NEPA’s mandates.” This may be a timely strategy to implement as climate change impacts incur more economic losses on communities and threaten the ecosystem functions and biodiversity that support our natural resources.

#### NOAA and the United States Global Change Research Program (USGCRP)

USGCRP announced the draft Fifth National Climate Assessment (NCA5) report for public comment ([87 FR 67873](#), Nov 10, 2022). National climate assessments are mandated by the Global Change Research Act (GCRA) of 1990, “to evaluate scientific findings and uncertainties related to global change, analyze the effects of global change, and analyze the current and projected trends in global change, both human-induced and natural.” Three new topics added to the NCA5 are: economics, human social systems and indicators. Comments on the draft NCA5 can be made through the USGCRP Review and Comment System at <https://review.globalchange.gov/> but you must register first to see the draft. Comments are due by February 2, 2023.

#### **Other reading - litigation to watch:**

[“How an Early Oil Industry Study Became Key in Climate Lawsuits.”](#) Nov 30, 2022. Yale E360.



## Conservation Easements

***Internal Revenue Service Syndicated Conservation Easement Transactions as Listed Transactions*** ([87 FR 75185](#), Dec 8, 2022), proposes a new rule to close loopholes in tax code regarding syndicated conservation easements. An [E&E news article](#) goes into depth about the issues. Interviewed experts disagree on the path forward to correction of tax shelter abuses of conservation easements. Some feel that in addition to the IRS approach, Congress should act. According to E&E news, two pending bills may address some of these issues, [S. 4808](#) and [S. 2256](#). Some experts feel that any of these efforts in the end will interfere with the amount of land that goes into conservation easements in the future to protect wildlife habitats. Conservation easements have been one of the best tools for private landowners to stem the impending urban development of rangelands ([Snape et. al. 2021](#)). Written comments are due February 6, 2023. Go to [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-106134-22 in search) for details on participating in a public hearing teleconference.

### Further reading:

Snape, W., L. Harris, and T. Geib. 2021. "[Conservation Easements as a Tool for Nature Protection.](#)" Digital Commons @ American University Washington College of Law 87:14.

Yachnin, J. 2022. "[IRS Takes Aim at Conservation Easement Tax Loophole.](#)" E&E News. Dec 7, 2022.

## Mining

***Natural Resource Use and Management Clinic - Western Lands, Western Waters Blog*** (Jake Collier, Nov 22, 2022). [The Rosemont Mine Decision and the Future of Federal Mining Law.](#)

## Ranching

***The National Agricultural Law Center (NALC) Fence Laws Webinar***, 2022. The NALC gives you quick access to a [State Law Clearinghouse](#), including the topic of fence laws, here is the link for [Arizona fence laws](#). The clearinghouse includes 24 topics, for each state, related to agricultural state laws. Please note that you may need to click into the topic on the left first and then the map selecting the state of interest. See also the NRULPC memo on [Open Range Law in Arizona](#) (Ruyle and Eisenberg, 2018).

## Water and Agriculture

***US Bureau of Reclamation: Lower Colorado Basin Conservation and Efficiency Program.***

The first round for Lower Colorado River water delivery contract or entitlement holders and Central Arizona Project water delivery contract or entitlement holders to propose their submissions on water conservation efforts that will benefit the system ([see USBR letter](#)) are now closed. However, "Reclamation will announce a 3rd opportunity in early 2023 for entitlement holders to submit proposals for long-term system efficiency improvements that will result in additional system conservation. Ranking factors for this competitive process include: the amount and timing of water conserved in Lake Mead; the duration of the conservation; and previous participation in existing conservation programs and/or the recently offered first round of conservation proposal efforts. Reclamation requires a confirmation of water conservation and system benefits and a system

conservation agreement.” Those interested should contact Daniel A. Bunk Chief, Boulder Canyon Operations Office email: [dbunk@usbr.gov](mailto:dbunk@usbr.gov).

## Wildfire Management

**[USFS National Prescribed Fire Program Review report.](#)** The USFS reinstated prescribe burns after the summer instituted 90-day agency pause and review of controlled burns that began in May. The results of the review are detailed in the report. In addition, the recommendations include their commitment to develop additional tools, training, a prescribed fire national strategic plan and hiring dedicated hazardous fuels crews.

### **[Wildland Fire Mitigation and Management Commission Opportunities for Engagement.](#)**

This USFS commission is requesting comments on multiple aspects of wildland fire mitigation and recommendations for wildland fire policy changes on the topics below:

- *Post-fire:* Seeking recommendations related to social recovery, long-term recovery planning, post-fire flood mitigation, remediation, and reforestation. **Submissions due January 6, 2023.**

Comments for the following topics begin in 2023:

- *Response Coordination:* January 3 - 24, 2023.
- *Science, Data, and Technology and Public Health and Infrastructure:* February 1 - 22, 2023.
- *Appropriations and Accountability and Workforce:* March 1 - 22, 2023.

See above link for additional information and comments submission link.

### **[Further reading on the wildfire management topic:](#)**

Fire Adapted Communities Learning Network. 2022. “[Burn Small, Burn Often: Introducing Practical Prescribed Fire Into Your Community.](#)” (blog).

University, Stanford. 2022. “[Empowering Private Landowners to Prevent Wildfires.](#)” Stanford News (blog).

California [SB926](#) - Prescribed Fire Liability Pilot Program: Prescribed Fire Claims Fund.

[Prebunking prominent examples of wildfire misinformation related to western North American forests.](#)

**[Wildfire SAFE](#)** is a multi-platform tool that incorporates real-time data from sources that include the U.S. National Fire Danger Rating System, U.S. Drought Monitor drought conditions, weather data, and vegetation conditions to provide targeted information on any wildfire in the continental United States.

USDA Forest Service. 2022. “[Confronting the Wildfire Crisis – GIS Story Maps.](#)” This GIS based information highlights current USFS initiatives among them are the Four Forests Restoration (4FRI) and Greater Prescott Area Initiatives.

## EPA

**[EPA Advances Early Pesticides Protections for Endangered Species, Increases Regulatory Certainty for Agriculture.](#)** The EPA’s recently updated [ESA Workplan](#) ”prioritizes certain FIFRA actions for ESA compliance, outlines how EPA will pursue early mitigation for listed species under FIFRA, and



describes directions for expediting and simplifying the current pesticide consultation process.” See docket [EPA-HQ-OPP-2022-0908](#) for submitting comments by January 30, 2023.

## ESA/USFWS

Confused about where the Habitat Definition and the Critical Habitat Exclusion Rules stand? Both of these rules were modified by the Trump administration, the Biden administration rescinded them and then legal challenges reversed them back. Due to the Ninth Circuit Court of Appeals decision (Sep 21, 2022) the current status of the regulations according to the [National Agricultural Law Center](#) are as follows:

- “The [Habitat Definition Rule](#) and [Critical Habitat Exclusion Rule](#) [section 4] have been fully rescinded. The term “habitat” is once again undefined under the ESA. Previous procedures are being used to determine when to exclude an area from critical habitat designation.
- The [Listing Rule](#) [section 4], [Blanket Rule Repeal](#) [section 4(d)] and [Interagency Consultation Rules](#) [section 7] are still in effect. It was briefly overturned by the district court in [Biological Diversity v. Haaland](#) but was reinstated by the Ninth Circuit. FWS is currently carrying out a rulemaking process to revise the rule [by 2024].”

### ***Further reading on the ESA***

National Agricultural Law Center. 2022. “End of Year Update on the ESA.” 2022.

<https://nationalaglawcenter.org/end-of-year-update-on-the-esa/>.

Eberhard, Erich K., David S. Wilcove, and Andrew P. Dobson. 2022. “Too Few, Too Late: U.S. Endangered Species Act Undermined by Inaction and Inadequate Funding.” PLOS ONE 17 (10): e0275322. <https://doi.org/10.1371/journal.pone.0275322>.

***Revised List of Migratory Birds*** ([87 FR 75977](#), Dec 12, 2022). Comments due February 10, 2023.

## Executive Orders (EO)

### ***Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy***, September 12, 2022. A policy to “advance biotechnology and

biomanufacturing towards innovative solutions in health, climate change, energy, food security, agriculture, supply chain resilience, and national and economic security.” Two of the objectives highly relevant to agriculture are: the requirement to “boost sustainable biomass production and create climate-smart incentives for American agricultural producers and forest landowners” and “expand market opportunities for bioenergy and biobased products and services”. By 180 days the Secretary of Agriculture will report on an assessment of how biotechnology/biomanufacturing can be used for: “food and agriculture innovation; improving sustainability and land conservation; increasing food quality and nutrition; increasing and protecting agricultural yields; protecting against plant and animal pests and diseases; and cultivating alternative food sources.”

## FDA

***Food Labeling: Nutrient Content Claims; Definition of Term “Healthy”***, ([87 FR 59168](#), Sep 29, 2022). This proposed rule: “Updates the definition for the implied nutrient content claim *healthy* to be consistent with current nutrition science and Federal dietary guidance.” **Comments are due Dec 28, 2022.**

## Interior

***The DOI and USDA joint Secretarial Order no. 3043 - Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters*** (2021) and [DOI has recently released new guidance](#) on developing opportunities for co-stewardship. Each Interior agency, the [Bureau of Land Management \(BLM\) \(Sept 2022\)](#), [National Park Service \(NPS\)](#), and the [U.S. Fish and Wildlife Service \(USFWS\)](#) have detailed steps to facilitate and support agreements with Tribes. The BLM memo requires the bureau’s 12 state directors to, within six months, create “state-specific plans for outreach” to identify co-stewardship opportunities. The USDA Forest Service has advanced this order through [11 new agreements with tribes](#).

***Interior Department (BLM) Proposes Rule to Reduce Methane Releases on Public and Tribal Lands*** ([87 FR 73588](#), Nov 30, 2022). The rule proposes regulations to reduce the waste of natural gas from venting, flaring, and leaks during oil and gas production activities on Federal and Indian leases. This approach may help to reduce emissions of methane a greenhouse gas that remains in the atmosphere for decades and traps far more energy than CO<sub>2</sub> ([EPA 2022](#)). Also see the [EPA factsheet](#) and [EPA proposed rule](#) on efforts to reduce leaks and implementation of a new third-party enforcement provision. [Public comments on the BLM proposed rule](#) are due January 30, 2023.

***BLM to update the 2012 Solar Programmatic Environmental Impact Statement***, ([87 FR 75284](#), Dec 8, 2022) to accelerate utility scale solar development. The 2012 PEIS established solar energy zones for 6 states: Arizona, Nevada, California, Colorado, New Mexico and Utah. The new revision will evaluate previously excluded areas and add five additional western states: Idaho, Montana, Oregon, Washington and Wyoming. The BLM will hold two virtual and 12 in-person public scoping meetings at the following locations: Phoenix, Arizona; Sacramento, California; Grand Junction, Colorado; Washington, D.C.; Boise, Idaho; Billings, Montana; Albuquerque, New Mexico; Reno, Nevada; Bend, Oregon; Salt Lake City, Utah; Spokane, Washington; and Cheyenne, Wyoming. Check the [BLM eplanning website](#) for contributing comments and for later announcements about the public meetings. Direct questions to Jeremy Bluma, Acting Division Chief, National Renewable Energy Coordination Office (NRECO), BLM Headquarters, [jbluma@blm.gov](mailto:jbluma@blm.gov) or (208) 789-6014. [Comments](#) are due February 6, 2023.

## USDA

***The USDA National Agroforestry Center***. From September 2022 through June 2, 2023, there are webinars that highlight USDA grant programs. Webinars are the first Friday of each month, 3-4PM ET, registration and recordings are available [here](#).

[\*\*Disaster Assistance Programs Website\*\*](#). These USDA Farm Service Agency programs include those for: livestock assistance, farm loans, farmland damage and crop losses.

[\*\*Rural Energy for America Program Energy Audit & Renewable Energy Development Assistance Grants\*\*](#). This USDA Rural Development program assists rural small businesses and agricultural producers by conducting and promoting energy audits and providing Renewable Energy Development Assistance (REDA). Applications are due January 31, 2023.

## Online Planning Tools

[\*\*Climate and Economic Justice Screening Tool version 1.0 \(Nov 2022\)\*\*](#). This Council on Environmental Quality (CEQ) tool is a result of the Biden [Executive Order 14008](#), to identify disadvantaged communities in order to direct 40% of all investments into climate and clean energy initiatives into these areas. The interactive map and datasets are composed of burdens indicators experienced by disadvantaged communities in nine categories: climate change, energy, health, housing, legacy pollution, transportation, water, wastewater, and workforce development.

[\*\*Environmental Resource Database of New Mexico\*\*](#) – (New Mexico 2021 [HB 51](#)) – The Environmental Database Act. The act established an online data hub for the public to easily access state environmental data in one location.

[\*\*Quantifying the Role of National Forest System and Other Forested Lands in Providing Surface Drinking Water Supply for the Conterminous United States\*\*](#). This USDA Forest Service report describes the reliance of public drinking water systems on national forests and grasslands and provides actionable information to help prioritize hazardous fuels reduction, watershed management, and restoration treatments.

[\*\*Streamflow in a Changing Climate\*\*](#). This USDA Forest Service ArcGIS story map hosts a map viewer and exporter of modeled streamflow due to changes in temperature, precipitation, snowpack and droughts. Models simulate historical, mid-century and end-of-century time periods.

[\*\*Unified Website for Biotechnology Regulation\*\*](#) this site highlights the Coordinated Framework for the Regulation of Biotechnology and is a hub for the agencies (EPA, FDA and USDA) that regulate the safety of biotechnology products.