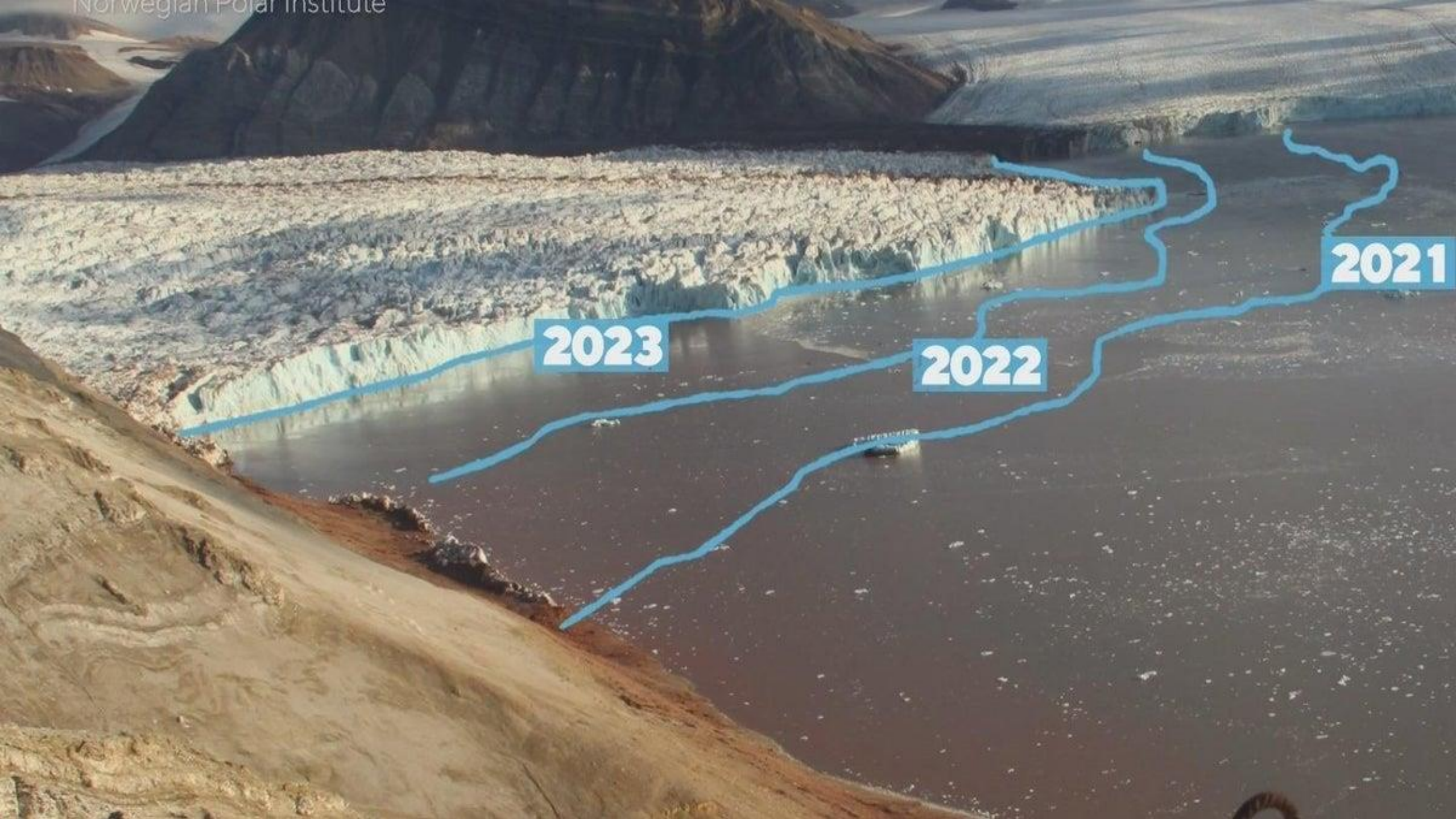


Recent Rapid Policy Change in Agency and Natural Resources Law

Bret Birdsong
Professor of Law





2021

2022

2023



Shifting Ground in Administrative Law

- **Judicial / Executive Boundaries**
- **Congressional / Executive Boundaries**
- **Reformulating the Judicial Role**
- **Intergovernmental Relations**

Shifting Judicial/Executive Boundaries

- The Fall of the *Chevron* Doctrine (agency expertise interpreting agency authority)
 - *Loper Bright v. Raimondo* (2023)
- What's Old is New Again (timing of challenge to agency regulations)
 - *Corner Post v. Board of Governors* (2023)

Shifting Congressional/Executive Boundaries

- The Rise of the “Major Questions Doctrine”
 - *West Virginia v. EPA* (2022)
- The End? of Independent Agencies

Reformulating Judicial Review

- **Limits of Nationwide/Universal Injunctions**

- **The Rise of the Supreme Court's Emergency ("Shadow") Docket**

Legal Developments in Intergovernmental Relations

- **The Rio Grande Litigation**
- **Navajo Reserved Water Rights and the Federal Trust Responsibility**

A photograph of two tennis rackets and three tennis balls on a clay court. The rackets are positioned diagonally across the frame, with their heads resting on the ground. The balls are scattered near the rackets. The background is a blurred view of the court and a net.

Changes in Federal Policy by this Administration

- NEPA
- Endangered Species Act
- Clean Water Act

A background image of a tennis court. A tennis racket with a blue and yellow frame is leaning against a black tennis net. Three yellow tennis balls are on the orange-brown court surface in the foreground. The text is overlaid on the upper half of the image.

NEPA Environmental Impact Analysis

- Repeal of CEQ Regulations
- Reliance on Agency Regs/Guidance
- Supreme Court Assist
 - Emphasis on deference to agencies' NEPA procedures
- Streamlining of Review
 - Fee for Expedited NEPA Review
- Scope of Review

A photograph of a tennis racket and three tennis balls on a court. The racket is blue and yellow, leaning against a white tennis net. Three yellow tennis balls are on the orange-brown court surface. The background is a blurred view of the court and sky.

Endangered Species Act

- **Definition of “Harm”**
- **Listing and Critical Habitat**
- **Agency Consultation**
- **Protection of Threatened Species**

Clean Water Act -- WOTUS

- The wellspring of the issue
 - Navigable Waters
 - Waters of the United States
- Historical Ebb and Flow of WOTUS
- *Sackett v. EPA* (2023)
 - The post-Sackett Biden Rule
- The Trump Proposed Rule

Implications for Basin Players

- Uncertainty in Planning
- Uncertainty in Judicial Review
- Uncertainty in Reliance Interests

