

[Interior Department Changes Rule to Remove Congress Veto](#)

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by: [Felicity Barringer, The New York Times](#)



The Interior Department on Thursday unveiled a new rule that challenges Congress's authority to prevent mining planned on public lands. (Photo: Stephen Codrington)

In another regulatory action in the waning days of the Bush administration, the Interior Department on Thursday unveiled a new rule that challenges Congress's authority to prevent mining planned on public lands.

Congress has emergency power to stop mineral development, and has used it six times in the last 32 years. The most recent was in June, when it put a three-year moratorium on uranium mining on one million acres near the Grand Canyon. Interior Secretary Dirk Kempthorne has ignored that Congressional directive, saying it was procedurally flawed.

The new rule issued by the Interior Department's Bureau of Land Management comes as environmental groups are suing the bureau in federal court for failing to obey Congress's directive, which under a 1976 law can be invoked when "an emergency situation exists and extraordinary measures must be taken to preserve values that would otherwise be lost."

The revision of the rule eliminates all references to Congressional authority. The revision moved through the often-cumbersome rule-making process with lightning speed; it was proposed in October, and the public was given just 15 days to comment.

The rule seems intended to speed a judicial confrontation on the constitutionality of the 1976 law, and to underscore the Interior Department's determination to leave public land near Grand Canyon National Park in northern Arizona open for mineral development.

Tina Kreisher, a spokeswoman for the department, said that revising the rule did not relieve the department of its legal obligation to obey Congress. "We are obliged to follow the law," Ms. Kreisher said.

Bill Hedden, the executive director of the Grand Canyon Trust, described the new rule as a power play, saying, "They certainly are wanting to remove anything that might crimp their power" to determine what can be done on public lands.

In September, the Center for Biological Diversity, the Grand Canyon Trust and the Sierra Club sued the secretary of the interior for ignoring the mandate of the House Natural Resources Committee. The Interior Department contends that the committee action withdrawing lands from mining was invalid because the panel lacked a quorum. In response, the committee chairman said the appropriate numbers had been present to validate its action.

The environmental groups' lawsuit is the most obvious opportunity for a constitutional challenge to the 1976 law.

Congress's emergency withdrawal power gives "the government an opportunity to reflect on whether or not the lands should be left open to mining or closed," said Mark Squillace, director of the Natural Resources Law Center at the University of Colorado Law School.

Because of the broad ability of mining companies to make claims, Mr. Squillace added, "without the time out, the choice is essentially made."

This is not the first time a Republican administration has tried to block the emergency withdrawal provisions; in the early 1980s, a federal judge rejected a challenge brought by Interior Secretary James G. Watt.

Asked why the new rule was necessary, Chris Paolino, another department spokesman, said that the law had been dormant since the early 1980s, but that "it has again come forward and that makes this an appropriate time to address this sticking point in our regulations."

The Bush administration is not unique in seeking to put its stamp on rules in the final days of its term. The Clinton administration, for example, did, too.

This week another rule made it easier for coal companies to dump rock and dirt from mountaintop mining operations into streams and valleys.

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[Impeach and imprison the](#)

Sun, 12/07/2008 - 21:14 — Anonymous (not verified)
Impeach and imprison the bush/chene crooks.

[ARMEN: may I suggest a](#)

Sun, 12/07/2008 - 13:26 — jessepoverseas (not verified)
ARMEN: may I suggest a slight revision? How about Mother Rape? We might make a bumper sticker saying "Rape your Mother. It's good for the GDP." Too many images of the actual to list could be used.

[No Government Authority,](#)

Sat, 12/06/2008 - 17:10 — radline9 (not verified)
No Government Authority, lawbreaking at every opportunity, ignore the laws (they can make a profit while it's in litigation) Laws are only for the little people.

[Ah, profit. What would life](#)

Sat, 12/06/2008 - 07:18 — Anonymous (not verified)
Ah, profit. What would life be like without profit? Yes, yes, there may not be "Survivor" and football, but think of how more fulfilling life would be without kowtowing to some boss who only sees you as a liability, not a person, not a human being. The air would be a lot cleaner, 90% of the streams and rivers of this country would be drinkable, instead of the other way around, and you could grow vegetables in your back yard without having to worry about lead or arsenic or some other industrial poison growing into your food. But hey, let's go get a flat screen and worry about it some other day, when the game or "my show" isn't on.

[Attention Obama](#)

Sat, 12/06/2008 - 06:16 — Anonymous (not verified)
Attention Obama Administration: We expect you immediately to reverse ALL of the fascist ploys conducted by Cheney-Bush departments in the dying days of their fascist administration.

[Is there any doubt that W.](#)

Sat, 12/06/2008 - 04:41 — Giovanna Lepore (not verified)
Is there any doubt that W. Bush is a criminal?

[It is news to me that the](#)

Sat, 12/06/2008 - 01:29 — Otto Schiff (not verified)
It is news to me that the Interior Department can tell the Congress what to do. I thought that we have a constitutional Republic. Why not abolish the Congress and let the president run the country. This has been tried before, in Russia and in Germany.

[Nature Rape.](#)

Fri, 12/05/2008 - 23:50 — Armen Donelian (not verified)
Nature Rape.