

Biden Administration's Energy, Environmental and Climate Policies: Latest Updates and Actions (February 12, 2021)

12 February 2021

Real-world impacts of President Biden's day one Executive Orders and the Administration's policy shift on energy, the environment and climate have begun. In the last two weeks, the Biden administration has taken actions ranging from the revocation of certain oil and gas permit authorizations to moving forward with a large-scale solar project on federal land in California. The Department of Justice has begun seeking to stay litigation over Trump-era regulatory rollbacks (such as the Navigable Waters Protection Rule) pending review of rules put in place by the Trump administration.

This post summarizes noteworthy developments regarding federal energy, environmental and climate policies in the past two weeks.

President Biden's Environment and Climate Executive Order Impacts Oil and Gas Leases

- **Interior Department Revokes Numerous Drilling Permits Issued Under Biden Without Required Senior Department Review.** Under the Department of the Interior's 60-day suspension of Department bureaus' authority to issue permits to drill,¹ any new permits to drill must undergo an elevated review by high-level department officials. While the Department has continued to issue permits on existing leases under this new process, not all of the permits granted since the beginning of the Biden administration complied with this requirement for elevated Department-level review. On January 29, 2021, the Department notified

oil and gas companies holding approximately 70 permits issued in the past few weeks for onshore development of the revocation of those permits for failing to comply with the elevated review process. The notification directed those companies to cease operations under the subject permits and required the companies to resubmit the permits for review and approval. The Department of the Interior indicated that the companies will not be penalized for any work that had commenced.

- **BOEM Cancels Alaska Lease Sale.** On February 4, 2021, in response to President Biden's Environment and Climate Executive Order,² the U.S. Bureau of Ocean Energy Management ("BOEM") cancelled the public comment period on its draft environmental impact statement for the planned oil and gas lease sale at Cook Inlet off Alaska's southcentral coast.³ BOEM cited the Executive Order's direction to pause new leases on public waters as the reason for cancelling the sale.
- **Forest Service Guidance Effectively Stops Development in the Tongass.** On February 1, 2021, the Acting Deputy Undersecretary for Natural Resources and Environment ("NRE") [issued instructions](#) to the Chief of the U.S. Forest Service to conduct a special review of any activities in roadless areas in national forests. This effectively blocks any new road construction, timber harvesting and mining in roadless areas in national forests pending elevation to the NRE. The instructions will likely impact oil and gas development in Alaska's Tongass National Forest, which is another step to advance President Biden's Environment and Climate Executive Order directing the U.S. Department of Agriculture to review the Trump administration's rule opening the Tongass to development.⁴

EPA Seeks a Stay in Navigable Waters Protection Rule Litigation

This week, there was another turn in the long-standing litigation over the definition of the "waters of the United States." On January 20, 2021, [President Biden revoked President Trump's Executive Order](#) that the U.S. Environmental Protection Agency ("EPA") and the Army Corps of Engineers relied upon to replace the Obama-era Waters of the United States Rule with the Navigable Waters Protection Rule ("NWPR"). Currently, the Navigable Waters Protection Rule is in effect in every state except Colorado (where environmental litigants successfully obtained a stay of the rule during the pendency of the case). At the request of the EPA, the Department of Justice has sought stays in pending litigation challenging both the repeal of the Obama-era rule and the NWPR in certain courts across the country, which have so

far been granted in cases pending in the District of Columbia, New York, New Mexico and Maryland.⁵

Court Ruling Opens Door for Biden's EPA to Reverse Trump Administration's "Secret Science" Rule

On January 6, 2021, EPA issued a rule limiting the use of certain types of scientific data in rulemaking processes.⁶ Supporters of the rule viewed it as instilling transparency in data underlying environmental rules and combating "secret science"; opponents viewed the rule as undercutting EPA's ability to use health studies containing private health data. Environmental groups challenged the rule in federal district court in Montana, filing a complaint and summary judgment motion simultaneously.⁷ On January 27, 2021, the court granted partial summary judgment in the environmental groups' favor holding that the Trump administration improperly classified the rule as procedural, allowing it to take effect the same day it was issued (rather than 30 days later). Because the court found that the Trump administration's rule did not properly take effect before President Biden's memorandum freezing regulatory changes, it opened the door for EPA to change course. On February 1, 2021, the court granted EPA's request to vacate the rule.

Renewables: Crimson Solar and Vineyard Wind Projects Moving Forward

- **Crimson Solar Project Receives Green Light.** The Crimson Solar Project is planned for construction on approximately 2,000 acres of land owned by the U.S. Bureau of Land Management ("BLM") in Riverside County, California. BLM briefly withdrew its final environmental impact statement and land-use plan amendment in response to President Biden's Memorandum freezing regulatory actions pending a review by the new administration. BLM appears to have completed its review and the agency published its notice of availability for the environmental impact statement and opened a public comment period,⁸ signaling the project will move forward.
- **Vineyard Wind Reinstates Permit Review Request.** Vineyard Wind, LLC is seeking to develop a large-scale offshore wind project off of the coast of Martha's Vineyard. In December 2020, Vineyard Wind notified BOEM that it was withdrawing its Construction and Operation Plan from the permit review process

while it completed a technical review. Vineyard Wind [recently announced](#) that it has completed that review, determined that no changes are necessary and reinstated its request for the required permits, thus allowing the federal permitting process to resume.

1. Department of the Interior Order No. 3395: Temporary Suspension of Delegated Authority, January 20, 2021, available at: <https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3395-signed.pdf>.↵

2. Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (the “Environment and Climate Executive Order”), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>↵

3. BOEM Cancels Comment Period, Virtual Meetings for Proposed Lease Sale Offshore Alaska (Feb. 4, 2021), available at: <https://www.boem.gov/boem-cancels-comment-period-virtual-meetings-proposed-lease-sale-offshore>.↵

4. Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska (Oct. 29, 2020), available at: <https://www.federalregister.gov/documents/2020/10/29/2020-23984/special-areas-roadless-area-conservation-national-forest-system-lands-in-alaska>.↵

5. See e.g., *Environmental Integrity Project v. Nishida*, No. 1:20-cv-01734-KBJ (D.D.C.); *Chesapeake Bay Foundation v. Nishida*, No. 1:20-cv-01063-RDB (D. Md.); *New Mexico Cattle Growers’ Association v. U.S. EPA*, No. 1:19-cv-00988-RB-SCY (D.N.M.); *Murray v. Nishida*, No. 1:19-cv-01498-LEK-TWD (N.D.N.Y.).↵

6. Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information, 86 Fed. Reg. 46901 (Jan. 6, 2021), available at: <https://www.federalregister.gov/documents/2021/01/06/2020-29179/strengthening-transparency-in-pivotal-science-underlying-significant-regulatory-actions-and>.↵

7. *Environmental Defense Fund et al. v. U.S. EPA*, No. 4:21-cv-00003-BMM (D. Mont.).↵

8. Environmental Impact Statements; Notices of Availability (filed Feb. 1–8, 2021), available at: <https://public-inspection.federalregister.gov/2021-02888.pdf>.↵

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