

KIRKLAND & ELLIS

Blog Post

Biden Administration's Energy, Environmental, and Climate Policies: Week in Review

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After the flurry of activity on January 20, 2021, the Biden administration continued to define its energy, environmental and climate policy agenda in its first full week in office. Among the most significant actions announced this week, the Biden administration suspended issuance of new oil and gas leases on federal lands and waters pending completion of a comprehensive review of the federal government's oil and gas leasing and permitting program. This action constitutes [a moratorium on new oil and gas leases](#) on federal lands and waters pending this review, which could take until 2022 or beyond. Another important development this week is the U.S. Environmental Protection Agency ("EPA") letter to the U.S. Department of Justice ("DOJ") requesting that DOJ seek to stay all pending litigation over rules promulgated during the Trump administration.

This post summarizes the noteworthy developments impacting the federal energy, environmental and climate policies in the past week. Given the dramatic policy shift in the Biden administration on energy, environmental and climate policies, we intend to post an update on a weekly basis, at least through the Biden administration's first 100 days in office.

Setting the Federal Climate Policy and Structure

On January 27, 2021, President Biden issued an Executive Order launching a federal government-wide approach to climate policy.¹ The Climate Order sets forth the administration's policy to focus on reducing climate pollution in every sector of the economy, increasing resilience, protecting public health, conserving lands, waters

and biodiversity, elevating environmental justice issues, generating union jobs to build a modern and sustainable infrastructure, delivering an equitable clean energy future, and putting the country on a path to achieve net-zero emissions, economy-wide, by 2050.

- **Federal Climate Structure.** The Climate Order creates a climate structure within the federal government. The White House Office of Domestic Climate Policy will coordinate domestic climate policy issues, headed by the Assistant to the President and National Climate Advisor ("National Climate Advisor") and a Deputy National Climate Advisor. Former EPA Administrator Gina McCarthy and former New York Deputy Secretary for Energy and Environment Ali Zaidi – a Kirkland & Ellis alumnus – have been chosen for those positions, respectively. In addition, there will be a government-wide National Climate Task Force chaired by the National Climate Advisor and consisting of all cabinet members and heads of the Executive Office of the President offices.
- **Prioritization of Climate Change Action.** The Climate Order instructs cabinet members to “prioritize action on climate change in their policy-making and budget processes, in their contracting and procurement and in their engagement with State, local, Tribal and territorial governments.”

Temporary Moratorium on New Oil and Gas Leases (but Not Permits) on Federal Lands and Waters

Notably, the Climate Order directs the Secretary of the Interior to temporarily pause new oil and gas leases on federal public lands and waters, to the extent consistent with applicable law. New leasing will be suspended pending completion of a comprehensive review of the federal government’s existing oil and gas leasing and permitting program that will consider the Department of the Interior’s (“DOI”) “broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and other impacts....”² This comprehensive review is expected to take until 2022 or beyond. The leasing program review will include consultation with other executive departments, including the Departments of Agriculture, Energy and Commerce through the National Oceanic and Atmospheric Administration. The DOI issued a fact sheet clarifying that “[t]he targeted pause [on new federal leases] does not impact existing operations or permits for valid, existing leases, which are continuing to be reviewed and approved.”³

The Climate Order follows the 60-day suspension of authority issued on January

20, 2021, which suspended the authority of DOI bureaus and offices (other than headquarters) to issue new oil and gas leases and permits on federal lands and waters. The 60-day suspension of authority remains in effect, with the addition (from the Climate Order) of the pause on new oil and gas leases on federal lands and waters concurrent with the comprehensive review. In the press briefing announcing the Climate Order, National Climate Advisor Gina McCarthy noted that, as part of the comprehensive review, the federal government will consider whether to adjust the royalties collected from both coal and natural gas operations or to take other actions to account for the costs of climate impacts. Suspension of the federal leasing program was swiftly challenged by the Western Energy Alliance in federal district court in Wyoming.⁴

Promoting Renewable Energy Development and Shift Away from Fossil Fuels

The Climate Order demonstrates President Biden's commitment to advancing renewable energy development and shifting away from traditional energy sources.

- **Promoting Renewable Energy Development.** The Secretary of the Interior was tasked with identifying steps to increase renewable energy production on federal lands and waters through a review of "siting and permitting processes on public lands and in offshore waters." The direction includes the specific goal of doubling offshore wind production by 2030.
- **Removing "Fossil Fuel Subsidies."** The Climate Order instructs agencies to identify "any fossil fuel subsidies" and take steps to ensure that "Federal funding is not directly subsidizing fossil fuels." It also instructs the Director of the Office of Management and Budget to seek, in coordination with the heads of agencies and the National Climate Advisor, to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter.
- **Federal Funding.** The Climate Order directs agencies to seek opportunities to make federal funding available for the "innovation, commercialization and deployment" of clean energy technologies and infrastructure, to the extent consistent with law.
- **Climate Finance Plan.** The Climate Order directs the Secretaries of Treasury and Energy to coordinate with the U.S. Export-Import Bank and the U.S. International Development Finance Corporation to "promote ending international financing of carbon-intensive fossil fuel-based energy" and at the same time advance

sustainable development goals while helping to move capital “toward climate-aligned investments and away from high-carbon investments.” This is expected to impact international financing of fossil-fuel based infrastructure (including possibly natural gas projects). The Climate Order instructs the Secretaries to submit a climate finance plan to address these goals to the President within 90 days.

Preserving Federal Lands and Waters: Goal of 30% by 2030

Consistent with President Biden’s campaign promises, the Climate Order directs the Secretaries of Agriculture and Commerce and the Chair of the Council on Environmental Quality (“CEQ”) (and other relevant agencies) to submit a report within 90 days with their recommendations on actions the federal government should take “to achieve the goal of conserving at least 30% of our lands and waters by 2030.”

Promoting Environmental Justice

The Climate Order implements President Biden’s campaign promises presented in his environmental justice plan, creating a White House Environmental Justice Interagency Council headed by the Chair of the CEQ. The Interagency Council will develop the government’s environmental justice strategy and track performance metrics to ensure accountability. The Climate Order also created the White House Environmental Justice Advisory Council, which will advise the Interagency Council. In addition, CEQ was directed to create a geospatial Climate and Economic Justice Screening Tool within six months and to publish interactive maps identifying disadvantaged communities.

Federal Procurement of Clean Electricity and Zero-Emission Vehicles

The Climate Order directs the National Climate Advisor to develop a comprehensive plan to stimulate the clean energy industries and create green jobs by using the federal procurement authorities to achieve a carbon pollution-free electricity sector

by 2035 and purchase clean and zero-emission vehicles for government agencies at the federal, state, local and Tribal areas. In addition, the procurement decisions will be required to conform to the Made in America Laws to support and increase union jobs in the clean energy space.⁵

EPA Signals Policy Changes, Pivots its Litigation Position

EPA's acting general counsel, Melissa Hoffer, issued a letter to the DOJ requesting that it seek stays of pending litigation regarding any EPA regulation promulgated during the Trump administration (January 20, 2020 through January 20, 2021). This move is common when there is a change in a presidential administration and signals EPA's plan to pivot away from the Trump administration's environmental regulation rollback and possibly issue new rules. Where the courts are unwilling to stay litigation, Hoffer asks that DOJ seek extensions to provide the agency time to reconsider its litigation position.

President Biden Issues Executive Order Enhancing Worker Safety in Response to COVID-19

On January 21, 2021, President Biden issued an Executive Order on worker health and safety as part of the administration's response to the COVID-19 pandemic.⁶ The Executive Order directed the Occupational Safety and Health Administration ("OSHA") to review workplace safety guidance on COVID-19 and consider whether any temporary emergency standards are necessary. Notably, the Executive Order directed OSHA to increase enforcement actions, concentrating on violations that place the largest number of workers at risk.

1. Executive Order on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021) (the "Climate Order"), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.↵

2. Climate Order, § 208.↵

3. FACT SHEET: President Biden to Take Action to Uphold Commitment to Restore Balance on Public Lands and Waters, Invest in Clean Energy Future (Jan. 27, 2021), available at: <https://www.doi.gov/pressreleases/fact->

[sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands.](#)↵

4. *Western Energy Alliance v. Biden et al.*, Petition for Review of Government Action (Jan. 27, 2021), available at: https://www.westernenergyalliance.org/uploads/1/3/1/2/131273598/2021-01-27_-_petition_for_review_of_government_action.pdf.↵

5. Ensuring the Future Is Made in All of America by All of America's Workers (Jan. 25, 2021), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/>.↵

6. Executive Order on Protecting Worker Health and Safety (Jan. 21, 2021), available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-protecting-worker-health-and-safety/>.↵

Authors

Brooksany Barrowes

Partner / Washington, D.C.

Alexandra N. Farmer

Partner / Houston / Washington, D.C.

Robert S. Fleishman

Partner / Washington, D.C.

Brian C. Greene, P.C.

Partner / Washington, D.C.

Jonathan E. Kidwell

Partner / Dallas

Paul D. Tanaka, P.C.

Partner / Bay Area – San Francisco / Houston

Raya B. Treiser

Partner / Washington, D.C.

Tyler Burgess

Associate / Washington, D.C.

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