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Biden Administration Day 1 Energy and Environmental Orders*By: Eddy Daniels, Sara Glover, Phil Lookadoo, Mary Mendoza and Chris Reagen*

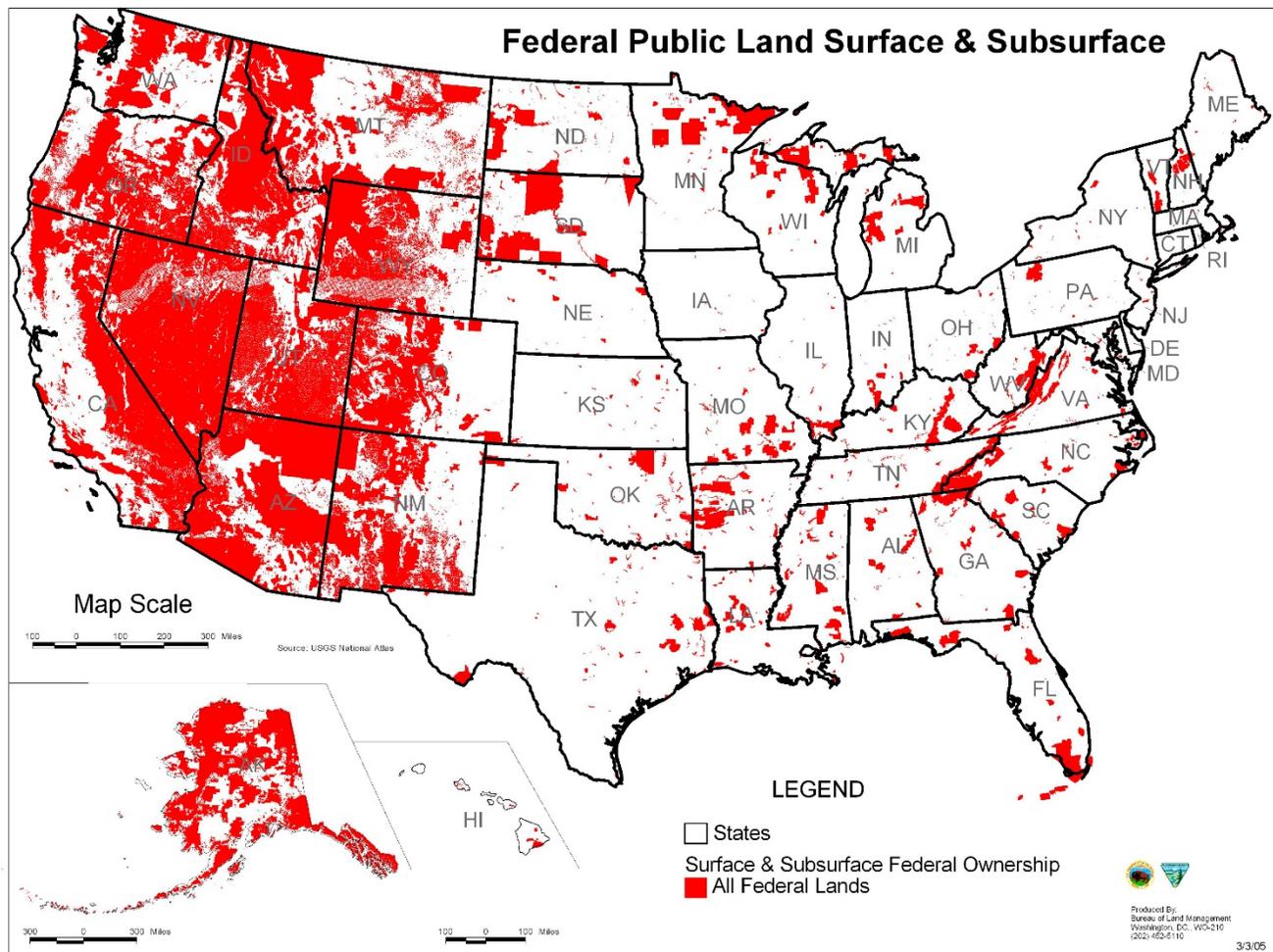
Shortly after his inauguration as the 46th President of the United States, Joe Biden promptly set in motion a myriad of executive orders implementing his energy and climate initiatives. In this alert, we summarize President Biden's Day 1 measures suspending oil and gas permitting on federal lands, placing a moratorium on activity in the Arctic National Wildlife Reserve and canceling the Keystone XL Pipeline, rejoining the Paris Climate Agreement and implementing reforms of environmental policies implemented by his predecessor, Donald Trump. He also announced additional appointments of several regulatory agency heads, including Richard Glick to chair the Federal Energy Regulatory Commission.

Department of the Interior Order Suspending Permitting on Federal Lands

The Acting Secretary of the Interior, Scott de la Vega, issued [Order No. 3395](#) temporarily suspending delegated authority within the Department of the Interior. This means that certain decisions previously handled at the Bureau or Office level now will be solely up to the discretion of the Secretary, Deputy Secretary, Solicitor, Assistant Secretaries or someone with specific delegation of the authority of those officials. The stated purpose of this Order is for "targeted and time-limited elevation of relevant decisions" for the purpose of reviewing "questions of fact, law and policy." The Order further states that the Department will continue to permit existing operations "consistent with all legal obligations and policy goals to uphold trust and treaty responsibility to tribal nations and to responsibly steward the Nation's public lands, waters, and resources for current and future generations." From a practical standpoint, the Order temporarily suspends the authority of Bureaus or Offices of the Department to take the following actions:

- (1) Publish any notice in the Federal Register, including but not limited to, notice of proposed or final agency action taken in accordance with the National Environmental Policy Act;
- (2) Issue, revise or amend any Resource Management Plans;
- (3) Grant right of ways, easements or any conveyance of property or interest in property, including land sales and exchanges, or any notices to proceed under previous surface use authorization that will authorize ground-disturbing activities;
- (4) Approve or amend plans of operation under the General Mining Law of 1872;
- (5) Issue any final decisions relating to R.S. 2477 claims;
- (6) Hire new employees above a certain level, with limited exceptions; and
- (7) Issue any onshore or offshore "fossil fuel authorization," including but not limited to, leases, amendments or extensions of leases, contract, or other agreement, or permit to drill. (NOTE: The Order states that it does not limit existing operations under valid leases).

Order No. 3395 will be in effect for 60 days or until it is amended, superseded or revoked.



Source: Bureau of Land Management

Moratorium in the Arctic National Wildlife Refuge and Revocation of Keystone XL Permit

On his first day in office, President Biden took swift action to sign an executive order entitled [“Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”](#). In addition to other measures, this Order places a temporary moratorium on oil and gas development in the Arctic National Wildlife Refuge and revokes the federal permit for the controversial Keystone XL pipeline.

The granting of oil and gas leases in the Arctic Wildlife Refuge has been a contentious issue over the past several years. This Order suspends all activities of the federal government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program until further review by the Secretary of the Interior of the potential environmental impacts of oil and gas development. Additionally, this Order reinstates President Obama’s Executive Order No. 13754 and the Presidential Memorandum of December 20, 2016 reestablishing the withdrawal of certain Arctic waters and the Bering Sea from oil and gas operations. The Order also permits the

Attorney General to request stays in related pending litigation until the Secretary's review of the Coastal Plain Oil and Gas Leasing Program in the Arctic National Wildlife Refuge has been completed.

The Keystone XL Pipeline has been mired in controversy over the past decade and has encountered contrasting fortunes with each of the last three administrations. The Obama administration rejected the trans-border permit, effectively halting the project, but President Trump issued a presidential permit to the operator of the Keystone XL Pipeline, TC Energy, in 2017, and TC Energy continued construction on various portions of the pipeline. With President Biden's recent action, the \$9 billion project is once again shelved pending further developments. TC Energy has halted construction of the 1,700-mile pipeline, which would transport crude oil from Alberta's oil sands to Nebraska before continuing the journey to Gulf Coast refineries, while it reviews the decision.

In response to President Biden's action, Prime Minister of Canada, Justin Trudeau, objected to the revocation of the Keystone XL Pipeline permit while also welcoming other executive orders, including the decision to rejoin the Paris Climate Agreement and the temporary moratorium on all oil and gas leasing activities in the Arctic National Wildlife Refuge. It is unclear whether Canada will continue to push for authorization of the Keystone XL Pipeline or will evaluate alternative means of developing and transporting oil from Alberta's oil fields.

Rejoining the Paris Climate Agreement

On January 20, President Biden fulfilled a campaign promise to address climate change by [rejoining the Paris Climate Agreement](#). In formal terms, President Biden accepted the Agreement. The Paris Climate Agreement is an accord joined by 189 countries to date. The countries commit to reduce emissions contributing to climate change and to work to adapt to the impacts of climate change. Each participating country submits "nationally determined contributions" setting out its plan for addressing climate change.

Other Climate and Environmental Actions

Under the [Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis](#), heads of various agencies are directed to review all regulations, orders, guidance and policies issued during the Trump administration for consistency with various stated environmental goals including reducing greenhouse gas emissions, prioritizing environmental justice, listening to scientists, improving public health and protecting the environment. Several major rules or policies of the Trump administration were specifically slated for a review on varying timelines including, among others:

- The methane emissions rules for the oil and natural gas sector (review by September 2021);
- National Emission Standards for Hazardous Air Pollutants for coal and oil-fired electric utility steam-generating units (review by August 2021);
- The recently adopted cost benefit rule under the Clean Air Act (review as soon as possible);
- The January 6, 2021 rule on the use of scientific information in various EPA rulemaking (review as soon as possible).

The Order also establishes the Interagency Working Group on the Social Cost of Greenhouse Gases. The Working Group is charged with developing interim and final methodologies for agencies to "monetize the value of changes in greenhouse gases" for rules and agency actions, including the "social cost of carbon," "the social cost of nitrous oxide" and the "social cost of methane."

Biden's New Appointees for Regulatory Agencies

Federal Energy Regulatory Commission (FERC) – On January 20, 2021, President Biden named current FERC Commissioner Richard Glick (D) to be Chairman of FERC. Commissioners Allison Clements (D) and Mark Christie (R) recently joined Commissioner Neil Chatterjee (R), whose term expires in June 2021, and former Chairman James Danly (R). With Republicans having a 3-2 majority at FERC until June 2021, when Commissioner Chatterjee's term ends, it is unclear which recent FERC decisions, if any, may be overturned by FERC. Nevertheless, Chairman Glick will set the agenda for FERC actions. Commissioner Glick was very vocal in his dissent to many of FERC's decisions regarding natural gas pipelines, oil pipelines and LNG facilities. Commissioner Glick consistently objected to FERC decisions that he said gave inadequate consideration to FERC's obligation to consider the downstream environmental impacts of building new pipelines or LNG facilities that increased the consumption of oil or natural gas, thereby increasing emissions of carbon dioxide and the likelihood of methane leaks, all of which he said adversely affect climate change.

Commodity Futures Trading Commission (CFTC) – Commissioners of the CFTC unanimously named Commissioner Rostin Behnam (D) to be the Acting Chairman effective immediately, when current Chair Heath Tarbert (R) announced his departure from the role of chairman (by resignation effective January 21, 2021), even though Commissioner Tarbert has announced his intention to remain a CFTC Commissioner until his term expires on April 13, 2024. Acting Chairman Behnam's term as a CFTC Commissioner expires on June 19, 2021. Commissioner Brian Quintenz (R), whose term expired in April 2020, continues to be a CFTC Commissioner, presumably until President Biden appoints a new Democrat Commissioner and the Senate confirms such new Commissioner. Commissioner Dawn Stump (R) is serving a term that expires in April 2022. Commissioner Dan Berkovitz (D) is serving a term that expires April 2023.