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Litigation Against Environmental Rollbacks Under the Trump Administration
2020 California Environmental Assembly
Our Climate Crisis: Beyond Seawalls and Electric Vehicles
January 25th, 2020

Fossil Fuel-Related Litigation Against the Trump Administration

A Brief Overview

The U.S. Department of Interior currently manages fossil fuel production on over 40,000 existing oil and gas leases alone encompassing over 26 million acres of BLM onshore land, in addition to oil and gas production in offshore waters. Maximizing additional fossil fuel leasing and extraction is one of the Trump administration's top priorities. The Trump administration has gone to extraordinary lengths to do so.¹

The administration's efforts have fallen into several categories. At the highest programmatic level, the Trump administration has attempted to roll back Obama era protections for the environment, including the withdrawal of the portions of the Arctic and Atlantic oceans from oil and gas leasing, the three-year moratorium on coal leasing, and the designation of Bears Ears and Grand Staircase Escalante National Monuments. In addition to these high-level rollbacks, the Trump administration has focused on revising Resource Management Plans (RMPs), which essentially zone areas of federal land as open or closed for leasing. By revising RMPs to open more areas for leasing, the Trump administration hopes to speed the sale of publicly owned oil, gas, and coal rights for development. In addition, the Trump administration has attempted to maximize the number and acreage of fossil fuel lease sales, and speed development approvals.

The Trump administration's rollbacks and related efforts to speed oil, gas, and coal development have engendered dozens of lawsuits, several of which are summarized below.

Why So Much Litigation over Fossil Fuel Development?

The Trump administration's efforts to fast-track as much fossil fuel development comes at a time of mounting devastation from climate change, with climate fueled superstorms, fires, floods, heatwaves, and other events wreaking havoc around the world. In a landmark 2018 report, the world's leading climate scientists warned that damages will be vastly more severe if warming

¹ See, e.g. United States Department of Interior, Onshore Energy Burden: Examining the Department of the Interior's Actions to Eliminate Onshore Energy Burdens – Statement of Brian C. Steed, Deputy Director, United States Bureau of Land Management (Jan. 18, 2018), *available at*: <https://www.doi.gov/ocl/onshore-energy-burdens> (last visited Sept. 23, 2019).

exceeds 1.5° C above pre-industrial levels.² Extremely deep and rapid greenhouse gas emissions reductions are now needed in order to limit warming to below 1.5° C.

Fossil fuels are the single greatest cause of the climate crisis: the combustion of fossil fuels accounts for 70% of all global greenhouse gas (GHG) emissions and over 90% of all CO₂ emissions.³ Just like a household budget, there is a fossil fuel, or carbon budget, of how much oil, gas, and coal can be burned before the 1.5° C limit is breached. Unfortunately, there is enough oil, gas, and coal in already developed fields and mines globally—that is, places where the infrastructure is built and the capitol is sunk—to far exceed the pollution budget for 1.5° C if these reserves were all produced and burned.⁴ This means that meeting global climate goals will require an immediate halt to the approval of new fossil fuel projects and a phase-out of existing oil, gas, and coal extraction before the reserves in existing field and mines are fully depleted.⁵

The United States is the world’s largest oil and gas producer and third largest coal producer.⁶ An unprecedented planned expansion of oil and gas extraction in the United States is one of the greatest threats undermining the world’s ability to limit global warming to less than 1.5° C. New development, 90% of which is enabled by fracking, could result in 120 billion metric tons of greenhouse pollution by 2050, equivalent to the lifetime emissions of nearly 1,000 average U.S. coal plants.⁷ This U.S. expansion would lock the world into more than 2° C of warming—unless other countries, many of them poorer and less economically diverse than the United States, compensate by rapidly shutting down their own production.⁸

Thus, the Trump administration’s fossil fuel policy agenda is quite literally hurtling the world toward climate catastrophe. This is a top reason, in addition to the many other environmental damages of oil, gas, and coal extraction, for the large number of challenges to Trump administration rollbacks and other actions to promote fossil fuels extraction.

Selected Case Summaries

(1) *League of Conservation Voters v. Trump*, 363 F. Supp. 3d 1013 (D. Alaska 2019), *appeal docketed*, No. 19-35460 (9th Cir. May 29, 2019).

Federal offshore oil and gas development is governed by the Outer Continental Shelf Lands Act (OCSLA), which establishes a multi-stage process for leasing, exploration and development, under the direction of the Secretary of the Interior. OCSLA provides that “[t]he President of the United

² Intergovernmental Panel on Climate Change, *Global Warming of 1.5° C*, an IPCC special report on the impacts of global warming of 1.5° C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty (Oct. 6, 2018), <http://www.ipcc.ch/report/sr15/>

³ Lazarus, M. *et al.*, *Closing the fossil fuel production gap*, Stockholm Environment Institute (2019).

⁴ Trout, Kelly & Lorne Stockman, *Drilling Towards Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits*, Oil Change International (2019) (“Drilling Towards Disaster”) at Section I, *available at*: <http://priceofoil.org/2019/01/16/report-drilling-towards-disaster/> (last visited Sept. 23, 2019).

⁵ *Ibid.*

⁶ *Id.* at 5.

⁷ *Id.* at 6.

⁸ *Ibid.*

States may, from time to time, *withdraw* from disposition *any* of the unleased lands of the outer Continental Shelf.”⁹ On January 27, 2015, acting pursuant to this section, President Obama withdrew coastal areas in the Arctic's Beaufort and Chukchi Seas from oil and gas leasing. On December 20, 2016, President Obama withdrew another large portion of the U.S. Arctic Ocean and areas of the Atlantic Ocean from future oil and gas leasing. The combined withdrawals totaled 128 million acres. *League of Conservation Voters v. Trump* (D.Alaska 2018) 303 F. Supp. 3d 985, 990. In April 2017, the Trump administration purported to reverse the withdrawals via Executive Order. The District Court vacated the Trump administration’s attempt to reverse the withdrawals because the OCSLA Section 12(a) does not authorize the President to reverse a previous withdrawal, holding “[t]he Court finds Congress's silence in Section 12(a) as to according the President revocation authority was likely purposeful; had Congress intended to grant the President revocation authority, it could have done so explicitly, as it had previously done in several (but not all) of its previously enacted uplands laws.” 363 F. Supp. 3d 1013, 1027. Procedural posture: On appeal to the Ninth Circuit.

(2) *Citizens for Clean Energy v. United States DOI* (D.Mont. 2019) 384 F. Supp. 3d 1264.

In 2016, the Obama Administration issued Secretarial Order 3338 directing the Bureau of Land Management (“BLM”) to impose a moratorium on new coal leasing while preparing a programmatic environmental impact statement (“PEIS”) looking at a variety of issues ranging from whether the public was receiving a fair return on the leasing program to the climate change and other environmental and social impacts of the leasing program. In March 2017, the Trump administration lifted the moratorium and directed BLM to “process coal lease applications and modifications expeditiously” in accordance with regulations and guidance existing before the Obama Secretarial Order. The BLM did not conduct NEPA analysis on the environmental effects of lifting the moratorium on coal leasing. The District Court held that lifting the moratorium “constituted a major federal action.... Federal Defendants' decision not to initiate the NEPA process proves arbitrary and capricious.” 384 F. Supp. 3d at 1281. The Court did not specify the level of NEPA review to be conducted, nor did it issue an injunction against the issuance of further coal leases.

Procedural posture: The BLM issued a short “corrective” Environmental Assessment (EA) but has not issued a new final decision. Further litigation over the adequacy of the EA is likely, if and when the Trump administration issues a final decision. No coal leases have been issued since the moratorium was lifted.

(3) *Western Watersheds Project v. Zinke* (D.Idaho 2018) 336 F. Supp. 3d 1204.

The Trump administration adopted a new set of procedures which limited public involvement in federal fossil fuel lease sale decisions in many ways, including by eliminating a 30-day public notice and comment period and shortening the period to file an administrative protest of a lease sale to 10 days. The District Court found that the rule change was final agency action, Plaintiffs’ challenge was ripe, and that the purpose of the rule changes was to “dramatically reduce and even

⁹ 42 U.S.C. § 1341(a) (emphasis added).

eliminate public participation” in lease sale decisions. Further, the new rules did not meet the minimum public participation requirements required by the National Environmental Policy Act (NEPA) and Federal Lands Policy and Management Act (FLPMA) in lease sale decisions. The Court issued a preliminary injunction against future oil and gas lease sales within the range of the greater sage grouse, because the federal management plans adopted to provide protection for sage grouse relied in part upon the public’s ability to raise concerns regarding harm to sage grouse during the public comment period for federal oil and gas lease sales.

Procedural Posture: Preliminary injunction in effect. Summary judgment briefing completed at the District Court; awaiting hearing.

California Oil and Gas Leasing Cases

As a result of two prior cases brought starting in 2011, there has been no federal oil and gas leasing in California since 2013. The Trump administration’s attempt to re-start leasing has been challenged in the following cases.

- (4) *Center for Biological Diversity and Sierra Club v. U.S. BLM*, No.4:19-cv-07155 (N.D. Cal. filed Oct. 30, 2019).

This case challenges the Central Coast Resource Management Plan Amendment. In response to prior litigation in *Ctr. for Biological Diversity & Sierra Club v. BLM* (N.D.Cal. 2013) 937 F.Supp.2d 1140, the BLM prepared an environmental impact statement and resource management plan amendment for oil and gas development on federal lands and mineral estate in the Bay Area and northern Central Coast of California. While BLM, under the Obama administration, initially proposed closing much of its estate to oil and gas development, the final EIS and resource management plan amendment adopted an alternative not included in the draft EIS that aggressively opened 725,500 acres of federal public land and mineral estate to oil and gas development, including in counties where such development is prohibited by County ordinance. Plaintiffs challenge BLM’s EIS and subsequent resource management plan amendment on the basis it failed to adequately analyze alternatives, failed to adequately analyze the impacts of oil and gas development on climate, air quality, surface- and groundwater quality, seismicity and wildlife and plant species in the region. Plaintiffs also argue that upon developing the new alternative that it adopted, it should have prepared a supplemental EIS for public comment.

- (5) *Center for Biological Diversity et al. v. U.S. BLM*, No. 2:20-cv-00371-DSF-SS (C.D. Cal. filed Jan. 14, 2020).

As a result of prior litigation in *Los Padres ForestWatch v. United States BLM* (C.D.Cal. Sep. 6, 2016, 2016 U.S.Dist.LEXIS 138782), BLM was prohibited from leasing public land and mineral estate for oil and gas development in Central California until it properly considered the risks of fracking. This case challenges BLM’s supplemental environmental impact statement on the impacts of fracking, and its subsequent decision to open more than 1.2 million acres of federal public land and mineral estate to oil and gas development, including fracking. Plaintiffs challenge BLM’s failure to take a hard look at the impacts of fracking on environmental justice communities, human health, climate, air quality, groundwater, seismicity, national parks and recreational

opportunities. Plaintiffs also challenge BLM's failure to adequately respond to comments from the public, as NEPA requires.

(6) *State of California v. Stout*, No. 2:20-cv-00504 (C.D. Cal. filed Jan. 17, 2020).

State Plaintiffs Gov. Newsom, Attorney-General Becerra, California Air Resources Board, Department of Fish & Wildlife and Department of Water Resources challenge BLM's decision to proceed with oil and gas leasing under the existing resource management plan following completion of a supplemental EIS into the impacts of fracking. The state challenges the EIS on the basis that it failed to take the requisite hard look at impacts to environmental justice communities and a variety of natural resources, failed to adequately analyze alternatives, failed to adequately identify feasible mitigation measures, failed to consider how BLM's decision conflicts with various state policies including plans to reduce fossil fuel consumption and achieve carbon neutrality, and failed to provide adequate opportunity for public comment on BLM's proposed plan.