

Trump Transition: Potential Environmental Regulatory and Legal Outcomes and Business Implications

November 29, 2016

President-elect Trump has promised to undo a number of environmental policies and regulations issued by the Obama administration, to promote increased fossil fuel exploration and production and to invest in energy and infrastructure projects while easing applicable permitting requirements. While President-elect Trump's ultimate environmental agenda is only just taking shape, the areas or industries that are likely to be most significantly impacted under his administration based on his existing statements are:

- Climate change regulation;
- Coal, oil and gas exploration and production;
- What constitutes "waters of the United States" for purposes of the federal Clean Water Act; and
- Renewable energy.

These potential changes, the legal framework governing how they can be made, and the key business implications that may result from such changes that companies should consider, such as those relating to potential regulatory uncertainty, investment decisions and disclosure and corporate governance considerations, are summarized below. Further detail regarding the legal framework is set forth in the attached [table](#).

In short, the Trump Administration may:

- reverse most Obama administration environmental executive orders;
- halt, revise or reconsider any environmental regulations that have not been published in the Federal Register¹ by January 20, 2017; and/or
- issue new rulemaking to rescind or revise final environmental regulations delivered to Congress on or prior to May 30, 2016.

In addition, the Republican-led Congress may be able to void by Congressional Review Act (CRA) resolution final environmental regulations delivered to Congress after May 30, 2016.

All of these actions are subject to risks and uncertainties as described below.

I. President-Elect Trump's Environmental Objectives

While subject to change, below are the key environmental policy objectives identified by President-elect Trump during his [presidential campaign](#) or on his [transition website](#).

¹ The Federal Register is the official U.S. government publication that contains executive agency rules, proposed rules and notices.

1. **Climate Change.** President-elect Trump has, during his campaign, expressed skepticism regarding the link between human activity and climate change and declared opposition to the following Obama administration initiatives aimed at curbing greenhouse gas (GHG) emissions:

- **Clean Power Plan.** President-elect Trump has pledged to rescind the U.S. Environmental Protection Agency's (EPA) Clean Power Plan (CPP). The CPP would require the electric power industry to reduce GHG emissions by 32% from 2005 levels by 2030. The U.S. Supreme Court has stayed the CPP pending the resolution of legal challenges to the CPP's validity by a coalition of states and energy companies.
- **Paris Agreement.** President-elect Trump has indicated that he will withdraw from the landmark international Paris Agreement, although he has recently expressed openness to reconsidering his position. The Paris Agreement is an agreement ratified by 112 nations, including the United States, pursuant to the United Nations Framework Convention on Climate Change to limit the increase in global average temperature to below 2 degrees Celsius above pre-industrial levels.²

2. **Coal, Oil and Gas Exploration and Production.** As part of his objective to increase domestic energy production, President-elect Trump has proposed to roll back the following Obama administration environmental policies designed to limit fossil fuel extraction and development:

- **Coal Leasing Moratorium and Other Restrictions on Access to Natural Resources on Federal Lands.** President-elect Trump has called for lifting the moratorium on coal leasing on federal lands issued by the Secretary of the Interior in January 2016. He has also advocated for increased coal, oil and gas exploration and production on federal property and has criticized Obama administration restrictions on access to such properties for fossil fuel exploration resulting from designations of federal lands as national monuments.
- **Stream Protection Rule.** President-elect Trump has promised to rescind this Federal Office of Surface Mining Reclamation and Enforcement (OSMRE) proposed rule, which is scheduled to become final in the next several weeks. The rule would impose restrictions on coal mining activities that could adversely impact waters, fish and wildlife. The rule's critics assert that it would impose significant costs on coal mine operators and make certain coal reserves inaccessible to future mining.
- **Keystone XL Pipeline and Other Energy Projects.** President-elect Trump has pledged to invite TransCanada to reapply for a permit to construct the Keystone XL Pipeline, a proposed oil pipeline running from Canada to central United States, and approve the application. The Obama administration denied a prior permit in November 2015. President-elect Trump has also advocated streamlining the permitting process for energy projects.
- **Hydraulic Fracturing Regulation.** President-elect Trump has called for lifting restrictions on the drilling technique known as hydraulic fracturing or fracking. Regulations subject to challenge could include the U.S. Bureau of Land Management's (BLM) November 2016 and March 2015 regulations regarding methane and waste reduction from oil and gas production

² President-elect Trump has also stated that he will rescind Obama's Climate Action Plan (CAP), a broad set of climate change policies issued by the Obama administration in 2013. Both the CPP and the international negotiations that resulted in the Paris Agreement are listed as priorities in the CAP. However, the CAP lists numerous other proposals, such as limitations on GHG emissions from new power plants, energy conservation, fuel efficiency standards and climate change mitigation efforts. It is unclear whether President-elect Trump intends to target these specific initiatives as well.

on, and fracking safeguards and disclosure protocols with respect to, federal and tribal lands.³

3. The Waters of the United States Rule. President-elect Trump has pledged to rescind EPA's Waters of the United States (WOTUS) rule. The rule redefines what constitutes "waters of the United States" under the U.S. Clean Water Act (CWA) and has been criticized by numerous industries, including the power and agriculture industries, as needlessly expanding the kinds of waterbodies subject to CWA jurisdiction. The rule has been stayed by the Court of Appeals for the Sixth Circuit pending resolution of legal challenges to its validity.

4. Renewable Energy Policies. While President-elect Trump has made negative remarks about wind and solar power and criticized Obama administration policies promoting development of renewable energy sources as "picking winners and losers," he has not yet articulated a clear position on specific existing policies such as the solar and wind tax credit or the renewable fuel standard programs.

II. Legal Framework Applicable to Implementing President-Elect Trump's Environmental Objectives

The implementation of President-elect Trump's policy objectives would face a variety of legal standards applicable to the rulemaking process. These standards may restrict the ability of the Trump administration to rescind or revise existing regulations or subject the process of doing so to lengthy and risky public notice and comment processes, and possibly litigation. In general, the restrictions on a Trump administration's ability to change an existing rule or policy will vary based on (i) the nature of the rule or policy and (ii) the date on which it is issued, delivered to Congress or published in the Federal Register. These legal restrictions are organized by category and described below. A more detailed catalogue of key Obama administration regulations or policies that may be challenged by President-elect Trump (including those outlined above) and the category into which they fall is included in the attached table.

1. Most Environmental Executive Orders Can Be Reversed. Obama administration environmental policies effected by executive orders or executive actions and not by formal rulemaking, such as the Paris Agreement, the Department of the Interior (DOI) coal leasing moratorium or the March 2015 executive order directing federal agencies to cut GHG emissions, can be reversed by President-elect Trump unilaterally without rulemaking.⁴

2. Environmental Regulations That Have Not Been Published in the Federal Register by January 20, 2017 May Be Revised or Reconsidered. President-elect Trump has announced his intention to issue a moratorium on "new" regulations (unless such rule is compelled by Congress or relates to health and safety). If President-elect Trump follows the practice of prior presidents who succeeded a president of the opposing party, this moratorium would include any Obama administration rule that has not been published in the Federal Register by the time he takes office to allow his administration to reshape the rule or abandon it altogether.⁵ Actions by a Trump administration with

³ Note that the latter rule is currently stayed due to legal challenges.

⁴ A possible exception, however, exists with regards to executive designations of national monuments, which have in the past been considered irreversible.

⁵ Prior administrations have also attempted to apply this moratorium to delay the effectiveness of rules that have been published in the Federal Register but have not yet come into effect, but case law sheds doubt on the legal authority to do so without notice and public comment.

respect to an Obama administration environmental rule would be subject to legal challenge, but may benefit from judicial deference typically and currently afforded the executive branch.

3. Final Environmental Regulations Delivered to Congress⁶ After May 30, 2016 May Be Voided by CRA Resolution. With a Republican Congress's help, President-elect Trump will have at his disposal a powerful tool to challenge final environmental regulations delivered to Congress within the several months prior to him taking office. Under the CRA, Congress can void final regulations by a joint congressional resolution passed by a majority of each of the House of Representatives and Senate and signed by the President generally within 60 legislative days after the regulation is delivered to Congress.⁷ According to a calculation conducted by the Congressional Research Service, final regulations delivered to Congress after May 30, 2016 could be subject to CRA review under a Trump administration.⁸ Voiding environmental regulations via the CRA has the following advantages:

- the notice and comment period associated with rulemaking (and likely attendant litigation) is avoided;
- the filibuster rule, which requires 60 votes in the Senate to end debate on traditional legislation and bring it to a vote, does not generally apply to CRA resolutions; and
- the agency that issued the voided rule is enjoined from promulgating the same or substantially similar regulations again.

The CRA appears to require that Congress vote separately on each rule it wishes to block, but Congressional leadership has already indicated its intent to pass an act allowing Congress to void in a single "omnibus" resolution multiple Obama regulations subject to CRA attack.⁹ Whether Congress is able to hold together its narrow Senate majority to pass and broadly use such an act, however, is an open question given the uncertainty of whether members will vote along party lines or according to the interests of their home states. To date, the CRA has only been used successfully once,¹⁰ most likely because no president has succeeded a president of the opposing party while the new president's party controlled Congress since the passage of the CRA in 1996.

4. Rescinding Final Environmental Regulations Delivered to Congress on or before May 30, 2016 Will Require New Rulemaking. Final environmental regulations delivered to Congress on or before May 30, 2016, such as the CPP or WOTUS rule discussed above and in the attached table, will require the promulgation of a new rulemaking in order to be rescinded or revised. Such new rule would be subject to the same public notice and comment period applicable to the original rule. While courts are generally deferential to executive agency environmental rulemaking, if the revocation or revision of the CPP or the WOTUS rule is challenged in court, the Trump EPA would have to convince a court that the regulatory record compiled in connection with the original rulemaking is no longer valid. The CPP in particular is based on a long regulatory process that arose from U.S. Supreme Court precedent and a resulting settlement signed by EPA.

⁶ Under the CRA (discussed further below), all final agency regulations must be delivered to Congress. Delivery to Congress also triggers certain of the timetables for congressional review.

⁷ This time period is generally extended when the congressional session adjourns before the expiration of such 60 day period.

⁸ The Congressional Research Service is a non-partisan office within the Library of Congress that provides research and analysis to Congress. Note that this date is subject to change based on how Congress schedules its remaining legislative sessions.

⁹ Yuka Hayashi, *Republican Lawmakers Eye Freeze on Obama Regulations*, Wall Street Journal (Nov. 18, 2016), available at <http://www.wsj.com/articles/republican-lawmakers-eye-freeze-on-obama-regulations-1479489099>.

¹⁰ The CRA was used in March 2001 to overturn ergonomic standards issued by the Clinton administration.

Efforts to undo the CPP and the WOTUS would be impacted by the current court challenges to these regulations. The rules could ultimately be struck down by the courts, obviating the need for action by President-elect Trump. If, however, the rules are remanded or upheld, further rulemaking would follow. Alternatively, President-elect Trump could make a preemptive motion to voluntarily dismiss the cases to allow EPA to revise those rules. Whether a court would grant such a motion is unclear, particularly if states or other groups that support the rules object.

5. Potential Environmental Legislation During President-Elect Trump's Term. While President-elect Trump's environmental policy objectives have, to date, focused on executive branch action, the potential for environmental legislation from Congress remains a possibility given that the White House and Congress are under common party control. While key Republican Congress members have not articulated a comprehensive environmental legislative agenda, legislation proposed in the past may get a second look. For example, during the last congressional session, Senator Ted Cruz (R-TX) proposed legislation exempting GHG emissions from regulation under the U.S. Clean Air Act (CAA), which law would effectively undo much of President Obama's climate change policies. If President-elect Trump attempts to undo the CPP and such efforts are stymied by the courts, such legislation may be reconsidered. However, given current Senate debate rules requiring 60 votes to pass a bill and the possibility of members crossing political party lines, the prospects of any such legislation are unclear. Notably, the last time both the White House and Congress were under Republican control (2005-2006), no significant amendments to federal environmental statutes were passed

III. Business Implications

1. Potential Regulatory Uncertainty and Inconsistency. The initial impact of the recent election on environmentally sensitive businesses is regulatory uncertainty. As noted above, it is unclear whether President-elect Trump will pursue his proposals or statements to date, and if so, whether they will be subject to lengthy rulemaking and litigation with an uncertain outcome. When faced with regulatory uncertainty surrounding President Obama's air regulations that have been subject to litigation, such as the utility Mercury and Air Toxics Rule, industry took a conservative tack, making investments to comply with the rules rather than awaiting the litigation outcome and effectively making any court decision moot. In fact, some reports suggest that decisions already made by the utility industry may be sufficient to meet the emission reduction targets under the CPP.¹¹ Whether these decisions are reconsidered under a Trump administration remains to be seen.

In addition, aside from the specific regulations discussed above, President-elect Trump has not articulated a detailed policy agenda in a wide range of other areas of environmental law. While President-elect Trump has voiced some broad themes regarding regulation and energy production, at this point we do not know what specific policies a Trump administration will promote on issues such as fuel efficiency, hydraulic fracturing or renewable energy.

Finally, to the extent a Trump administration rolls back certain environmental regulation, states that favor environmental protection may fill the gap with increased regulation and enforcement. This can create challenges for industry, which will be faced with a patchwork of differing state requirements, particularly in states such as California, which historically has had relatively more stringent environmental regimes.

Industry would be well-advised to stay abreast of these federal and state legal developments so that they can understand their relevant regulatory regime, develop and articulate a strategy to comply or otherwise

¹¹ Michael Grunwald, *Environmentalists get a dose of good news*, Politico (Nov. 18, 2016), available at <http://www.politico.com/agenda/story/2016/11/environmentalists-get-a-dose-of-good-news-000233>

shape their future business direction, including possibly taking advantage of the potential opportunities the Trump administration's policies may yield.

2. Winners and Losers. President-elect Trump's environmental agenda can be expected to favor certain sectors of the economy over others. For example, the power, coal, oil and gas industries are clear favorites given President-elect Trump's populist agenda, desire for energy independence and specific pledges to undo the CPP and relax rules on fossil fuel exploration and production. Construction companies may benefit from President-elect Trump's infrastructure investments and pledges to streamline permitting processes. The expected impact of the Trump administration on other sectors, however, is less clear. While the renewables sector may suffer if President-elect Trump ends or weakens favorable policies such as the CPP and wind and solar tax credits, it may also benefit from President-elect Trump's infrastructure investments. Financial institutions and other investors are advised to closely monitor President-elect Trump's environmental agenda as it develops in order to make informed investment decisions.

3. Securities Law and Corporate Governance Implications. U.S. public and other reporting companies should consider the currently known facts surrounding President-elect Trump's potential environmental agenda and possible outcomes as they prepare for the upcoming annual or quarterly reporting season. In particular, public companies in the power and extractives industries should review their disclosure to consider necessary changes, and those in alternative energy or agriculture industries, for example, should assess the need for disclosure of resulting risks, trends and uncertainties that could materially affect their financial condition or operations.

This review should also be mindful of the U.S. Securities and Exchange Commission's (SEC) ongoing current disclosure effectiveness project, in connection with which many constituents have appealed to the SEC to adopt increased climate change and other sustainability disclosure requirements. It remains to be seen what direction the new SEC chair appointed by the Trump administration will take, but given President-elect Trump's statements to date, a Trump-led SEC is unlikely to require increased climate change and sustainability disclosure.

With the potential for President-elect Trump to undo much of President Obama's environmental regulations and agenda, social activists and other like-minded investors may double down on their efforts and continue to use tools currently at their disposal, namely public pressure and shareholder proposals for inclusion in proxy statements, to demand more public information from companies about their environmental and climate change challenges. For example, in 2016, over 80 shareholder proposals focused on environmental topics were on proxy ballots at companies. Common proposals voted on sought reports on companies' policies related to climate change or sustainability, including to meet the Paris Agreement's two degree Celsius goal or to use alternative energy sources or other means to reduce GHG emissions. Other proposals sought to link executive compensation to climate risk management. Relevant companies should be prepared to respond to these proposals as well as proposals seeking to nominate climate risk experts onto their boards. In addition to the increased volume of shareholder proposals on environmental and climate change subjects, institutional investors are increasingly interested in sustainability matters and it has become routine to discuss those issues during shareholder engagement.

**Potential Treatment of Selected Climate Change, Coal, Oil and Gas, Water,
Renewable Energy, Mining and Other Environmental Regulations under the Trump Administration¹²**
November 29, 2016

Name	Regulations Immune from CRA Resolution ¹³	Regulations Subject to CRA Resolution ¹⁴	Regulations/Executive Actions Subject to Revocation/Revision Without Formal Rulemaking ¹⁵	Of Note
I. Climate Change				
1. U.S. EPA CPP	✓			<p>The D.C. Circuit Court of Appeals is currently considering the legality of the CPP¹⁶. Depending on both the timing and the outcome of the court’s decision, the Trump administration could take different actions to undo the CPP:</p> <ol style="list-style-type: none"> 1. If the case is not decided before President-elect Trump’s January 20, 2017 inauguration, the Department of Justice (DOJ) can petition the court to not decide the case and remand the case back to EPA, allowing EPA to revise the CPP. The court may or may not accede to this request, particularly if other parties to the case object.

¹² This table summarizes environmental rules, regulations, agreements and policies that President-elect Trump may attempt to undo or revise, organized according to subject area (I. Climate Change, II. Coal, Oil and Gas Exploration and Production, III. Water, and IV. Renewable Energy, Mining and Others) and the different legal standards applicable to the rulemaking process based on the status of each rule, regulation, agreement or policy. Defined terms used and not defined in this table are defined in the memorandum. This table is not meant to be an exhaustive list of all environmental rules, regulations, agreements and policies that may be targeted by President-elect Trump or a Republican Congress, nor is it meant to predict which environmental rules, regulations, agreements and policies will in fact be targeted by President-elect Trump or a Republican Congress. Information in this table is derived from public sources, including news articles, academic and legal blogs and articles and government websites, and has not been independently verified.

¹³ Regulations in this category are final regulations delivered to Congress on or before May 30, 2016 and therefore are not subject to CRA resolution. Such regulations will require formal rulemaking to be revoked or revised.

¹⁴ Regulations in this category are final regulations delivered to Congress after May 30, 2016 and therefore are subject to CRA resolution.

¹⁵ Regulations, agreements or policies in this category are those that can be revoked or revised without formal rulemaking. This category includes regulations that are not expected to be published in the Federal Register before President-elect Trump’s inauguration on January 20, 2017 or policies effected by executive orders or executive actions, which can be reversed by President-elect Trump unilaterally without rulemaking.

¹⁶ *State of West Virginia, et al. v. EPA*, U.S. Court of Appeals for the D.C. Circuit, No. 15-1363.

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				<ol style="list-style-type: none"> 2. If the court strikes down or remands the CPP before the inauguration, the DOJ may choose not to appeal it, but state and environmental interveners could appeal in its stead, and the Supreme Court would decide whether to grant review. 3. If the court upholds the CPP before the inauguration, and state and industry petitioners appeal the decision to the Supreme Court, the DOJ may opt not to defend the rule, and state and environmental interveners could defend it in its stead.
2. Clean Energy Incentive Program (CEIP) of the CPP			✓	This optional program, which is an element of the CPP discussed above, is intended to help states meet emissions goals under the CPP by encouraging investment in zero-emission energy generation. Although implementation of the CPP has been stayed, in June 2016, EPA issued a proposed rule containing design details for the CEIP; the proposed rule is expected to be finalized in 2017, depending upon the status of the CPP itself.
3. Paris Agreement			✓	<p>The Paris Agreement was not ratified by the Senate, but entered solely through executive action. The agreement provides for a four-year withdrawal process. However, Trump advisors have suggested two options for exiting the agreement more quickly:</p> <ol style="list-style-type: none"> 1. Issue an executive order revoking the President’s signature from the agreement. 2. Leave the overall UN Framework Convention on Climate Change, which would take one year.
4. EPA heavy-duty truck fuel efficiency and GHG regulation		✓		These standards are separate from the Corporate Average Fuel Economy (CAFE) standards, which apply to passenger cars and smaller trucks. Automakers have already appealed to President-elect Trump for loosening of these standards.
5. EPA Aircraft Emission GHG Endangerment Finding		✓		An endangerment finding is a finding that GHG emissions contribute to air pollution that may reasonably be anticipated to endanger public health and welfare under CAA Section 231. EPA finalized its endangerment finding for aircraft emissions, which gave EPA the authority to set GHG emissions standards for aircraft in July 2016.

Name	Regulations Immune from CRA Resolution ¹³	Regulations Subject to CRA Resolution ¹⁴	Regulations/Executive Actions Subject to Revocation/Revision Without Formal Rulemaking ¹⁵	Of Note
6. EPA GHG Emission Standards for Aircraft			✓	EPA is expected to issue a notice of proposed rulemaking in January 2018.
7. EPA Leaded Fuel Aircraft Endangerment Finding			✓	EPA is expected to issue a CAA endangerment finding for releases from aircraft operating on leaded fuel by December 2017.
8. EPA Acid Rain Program			✓	EPA is expected to issue a notice of proposed rulemaking in November 2017 for major revisions to the CAA Acid Rain Program's emissions monitoring and reporting requirements for coal-fired power plants.
II. Coal, Oil and Gas Exploration and Production				
1. DOI moratorium for new coal leases on federal land			✓	This ban is an order from the Secretary of Interior directing BLM to prepare a discretionary Programmatic Environmental Impact Statement (PEIS) that analyzes potential leasing and management reforms to the current federal coal program. The order was entered on January 15, 2016, and the ban is expected to be in effect until the PEIS is completed, which is currently expected to take approximately three years.
2. OSMRE Rule Governing Use of Coal Combustion Residuals in Mine Reclamation			✓	A notice of proposed rulemaking is expected in March 2017. This rule would establish requirements and standards that apply when coal combustion residuals are used during reclamation at a coal mining operation permitted under the U.S. Surface Mining Control and Reclamation Act or used during reclamation at an abandoned coal mining site.
3. Revisions to OSMRE Rules Governing Temporary Cessation of Surface Coal Mining and Reclamation			✓	A notice of proposed rulemaking is expected by the end of November 2016. The proposed rule would require that before temporarily ceasing operations for a period of more than 180 days, a permittee submit an application to the regulatory authority for approval. This requirement is intended to ensure that a temporary cessation of operations is not used to delay reclamation, safety and environmental controls are in place, and there is an end point to the cessation of operation.

Name	Regulations Immune from CRA Resolution ¹³	Regulations Subject to CRA Resolution ¹⁴	Regulations/Executive Actions Subject to Revocation/Revision Without Formal Rulemaking ¹⁵	Of Note
4. OSMRE Updates to Coal Mine Bond Requirements			✓	A notice of proposed rulemaking is expected in January 2017. This rulemaking is intended to limit the availability to coal mine operators of self-bonding as a financial assurance mechanism securing reclamation obligations and to ensure that sufficient funds are available to complete required reclamation if the regulatory authority has to perform the work in the event of forfeiture.
5. OSMRE Proposed Stream Protection Rule		✓		Rule proposed in July 2015; final rule submitted to White House for review in May 2016, and is expected to be finalized prior to President-elect Trump's inauguration. ¹⁷ The rule is subject of an ongoing Freedom of Information Act lawsuit by Murray Energy in D.C. District Court.
6. EPA Final New Source Performance Standards and Permitting Requirements for the Oil and Natural Gas Industry	✓ ¹⁸	✓		Curbs emissions from methane, volatile organic compounds and toxic air pollutants from new, reconstructed and modified oil and gas sources.
7. BLM fracking rules on federal and tribal lands	✓			On June 21, 2016, the U.S. District Court for the District of Wyoming struck down the DOI fracking rules, ruling that Congress had not granted BLM the authority to establish rules over fracking on federal and tribal lands, specifically excluding fracking from federal oversight. Environmental groups

¹⁷ The Executive Office of the President Office of Information and Regulatory Affairs webpage on this rule indicates that the rule is in "Final Action" as of November 2016.

¹⁸ In its memorandum dated November 17, 2016, the Congressional Research Service (CRS) listed this rule in a table of major rules CRS identified would fall under CRA review. The same table, however, lists the date the rule was sent to the House of Representatives for review as May 20, 2016 and lists no record for the Senate, ten days before the May 30, 2016 date that CRA identified in the same memorandum as being the cutoff date for CRA review. Also, the Congressional Record and the record of Executive Communications at congress.gov indicate the date of receipt by the House of Representatives and the Office of the President of the Senate, respectively, to be May 24, 2016. It is therefore unclear as to which legal standard this rule would fall under. The CRS memorandum is available [here](#), the Congressional Record is available [here](#), and the record of Executive Communications at congress.gov is available [here](#).

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				have appealed the district court decision and the case is now before the Tenth Circuit Court of Appeals.
8. BLM methane rule		✓		Only regulates oil and gas production on federal and tribal lands. Scheduled to take effect January 17, 2017.
9. BLM rule re: royalties for shale development on federal lands ¹⁹			✓	This final rule governing royalty payments is not expected until February 2017.
10. Revised BOEM ²⁰ Financial Assurance Requirements			✓	The July 2016 BOEM “Notice to Lessees and Operators” updated financial assurance criteria for leaseholders and operators in the Outer Continental Shelf. In addition, by August 2017, BOEM intends to fully revise 30 C.F.R. 553, which establishes requirements governing the financial responsibility of offshore oil and gas drilling facilities.
11. BSEE ²¹ Updates to Offshore Oil Spill Response Plans			✓	Updates expected by July 2017.
12. DOI ban on new leases for offshore oil and gas drilling in Arctic Ocean			✓	This ban is part of the DOI’s Five-Year Program for 2017-2022 under the OCS Lands Act.
13. Keystone			✓	Due to the nature and location across the national border, this project is

¹⁹ Rule applies only to federal lands in Wyoming, Colorado and Utah.

²⁰ Bureau of Ocean Energy Management, an agency in the DOI.

²¹ Bureau of Safety and Environmental Enforcement, an agency in the DOI.

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Pipeline				subject to a Presidential Permit, applications for which are reviewed and administered by the U.S. Department of State.
III. Water				
1. WOTUS Rule	✓			This rule is subject to a nationwide stay pending litigation across the country. In February 2016, the Sixth Circuit Court of Appeals ruled that it, not the district courts, has jurisdiction over review of the rule. Following this decision, district courts around the country continue to dismiss challenges to the rule on jurisdictional grounds and the Eleventh Circuit has issued a stay in its proceedings so as to not duplicate the proceedings in the Sixth Circuit.
2. Army Corps of Engineers Administrative Appeal Process			✓	In November 2016, the Army Corps of Engineers issued a notice of proposed rulemaking to require that parties challenging wetlands designations first exhaust all administrative appeal remedies before filing a legal action in federal courts. The final rule is expected by March 2017.
3. Revisions to 1991 Lead and Copper Rule			✓	EPA is expected to issue a notice of proposed rulemaking in June 2017 (with a final rule following in December 2018) to further strengthen the drinking water protections of the original 1991 Lead and Copper Rule.
IV. Renewable Energy, Mining and Other				
1. CERCLA ²² 108(b) Financial Responsibility Requirements for Facilities in the Hard Rock Mining Industry; Proposed Rule			✓	CERCLA requires EPA to identify certain classes of facilities that must establish evidence of financial responsibility and directs EPA to promulgate financial assurance requirements for the identified classes. Following litigation by environmental groups alleging EPA has failed to implement this provision, EPA identified hard rock mining as the first industry sector for which it will develop financial responsibility rules. The D.C. Circuit Court of Appeals ordered EPA to publish a proposed rule by December 1, 2016 and finalize the rule by December 1, 2017.

²² Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Name	Regulations Immune from CRA Resolution ¹³	Regulations Subject to CRA Resolution ¹⁴	Regulations/Executive Actions Subject to Revocation/Revision Without Formal Rulemaking ¹⁵	Of Note
2. 2017 Renewable Volume Obligations pursuant to the Renewable Fuel Standard		✓		On November 23, 2016, EPA issued a final rule raising the renewable fuel volume requirements for biofuels for 2017 under the Renewable Fuel Standard program, including cellulosic biofuel, biomass-based diesel, advanced biofuel and renewable fuel. Total renewable fuel volumes will grow to about 19.3 billion gallons in 2017, about a 6 percent increase from the 2016 level of 18.1 billion. EPA also finalized the volume requirement for biomass-based diesel for 2018 (2.1 billion gallons).
3. Endangered and Threatened Species			✓	U.S. Fish and Wildlife Service is not expected to finalize critical habitat designations for the rufa red knot and yellow-billed cuckoo, downgrade the Florida manatee from endangered to threatened, and delist the Yellowstone grizzly, in each case until after January 20, 2017.
4. Various Chemicals-Related Rulemakings			✓	EPA is expected to propose various chemicals-related rules over the next year, including but not limited to (a) a procedural rule for evaluating chemical risks under the U.S. Toxic Substances Control Act (TSCA) (December 2016); (b) a list of priority chemicals under TSCA (December 2016); (c) a rule adding natural gas facilities to the Toxics Release Inventory (January 2017); and (d) a proposed rule requiring public and commercial buildings to follow certain lead standards (April 2017).

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.²³

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²³ The authors gratefully acknowledge the assistance of law clerk, Drew Dean, in preparing this memorandum.