



Lead NEPA Story: The Trump rules still vexing Biden

(*Greenwire*, 1/25/2023), Robin Bravender, E&E News Reporter

The Biden administration took office with the promise of demolishing Trump-era environmental policies in favor of more stringent rules.

But two years into President Joe Biden's term, some of those policy reversals haven't been completed.

With Biden halfway into his term and Republicans now holding the majority in the House, environmental advocates are worried about the administration's pace. Failing to get new policies solidified in time, they warn, could make them easier for a future administration to unravel.

"The clock is really ticking against them," said Brett Hartl, government affairs director at the Center for Biological Diversity. "And there's, I think, a deep concern about getting it done on time."

Among the big-ticket environmental policy reversals the Biden team hasn't yet completed are regulations surrounding how government agencies consider the environmental impacts of their decisions, endangered species protections, and limits on power plants' emissions of greenhouse gases and air toxics.

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Clean Water Act: Biden blocks Pebble, but Bristol Bay fights could continue

(*Greenwire*, 1/31/2023) Hannah Northey, E&E News Reporter

The Biden administration finalized a rare veto to block a massive gold and copper mine in Alaska's pristine Bristol Bay watershed, but the brawl over the deposit, fueled by global clamor for materials to be used in low-emissions technology, could keep the region in the spotlight.

Developers are already vowing to fight EPA's final determination in court, calling the move illegal and unprecedented. Others who have spent years fighting the project in one of the world's premier salmon fisheries are quick to note mining could crop up in other areas around the region.

The decision is seen as a major victory for Alaskan tribes that for more than a decade have fought the Pebble project.

Alannah Hurley, executive director of the United Tribes of Bristol Bay, said protections in the final determination are a "great step forward" and that "our tribes and people will continue working to build a sustainable future for Bristol Bay," adding "our work will not be done until every inch of our traditional homelands are protected."

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John Shively, CEO of Pebble LP, a subsidiary of Canadian mining company Northern Dynasty Minerals, slammed EPA's decision.

“This preemptive action against Pebble is not supported legally, technically or environmentally,” he said. “As such, the next step will likely be to take legal action to fight this injustice.”

EPA's Pebble decision is part of a series of moves Biden administration officials have made this week to block areas from development, including cementing protections for the Tongass National Forest in Alaska and restricting mining in Minnesota’s Boundary Waters Canoe Area Wilderness for decades.

The mining restrictions have fueled Republican and industry accusations that Democrats are pushing an aggressive climate agenda while failing to secure domestic mines and supply chains.

EPA’s determination marks just the 14th time that the agency has issued such a veto. In the last 30 years, for example, EPA used the authority just twice — once to kill a World War II flood control project in Mississippi and a second time to halt a sprawling mountaintop-removal project in Appalachia.

In its final determination for Pebble, EPA concluded the mine, as proposed, would damage the region’s fisheries and backed a finding from the Region 10 office that nearly 100 miles of protected stream habitat and more than 2,000 acres of wetlands and other federally protected waters would be permanently destroyed. The decision bars developers or other miners from dumping dredge or fill into three specific watersheds in Bristol Bay, a move seen as critical to protecting fisheries and tribal culture there.

EPA Administrator Michael Regan on a Monday call with reporters acknowledged the decision could be challenged in court and said he could not predict whether a future administration would attempt to overturn the decision. But he also insisted the work is based in “sound science,” a strong record and extensive dialogue with tribal nations.

“There is a very solid record here that we’re very proud of for these two determinations,” said Regan.

Despite Pebble’s vow to fight, experts say the company should expect tough sledding in court, and it’s not clear a future administration would reverse course. Carl Tobias, a professor at the University of Richmond School of Law, said developers won't likely have much luck given the composition of the district court in Alaska and the 9th U.S. Circuit Court of Appeals — where a lawsuit would likely land — and that litigation would likely be lengthy and costly.

“Who knows what’s going to happen in 2024,” said Tobias. “But I just don't see that litigation is the path. It seems pretty unlikely they’re going to prevail.”

Restricted to Pebble proposal

The saga around the Pebble mine has been marked with repeated denials and setbacks, as well as intrigue around possible political influence and secret recordings.

The Obama administration in 2014 moved to block Pebble’s use of certain waters and watersheds. Under the Trump administration in 2020, the Army Corps of Engineers rejected Pebble’s permit application, finding the project would likely damage the Bristol Bay ecosystem — a move that the company then appealed.

That same year, covertly recorded videos from an environmental group sting surfaced showing Pebble mine developers touting their relationship with Alaska Gov. Mike Dunleavy (R), as well as their ability to lobby the White House. In the tapes, then-Pebble Partnership executives revealed their goal to extend the copper and gold project from the current 20-year mine proposal to a 180-year mining district at the headwaters of Bristol Bay.

And last year, EPA's Region 10 office published a recommended determination calling for the mine, as proposed, to be vetoed.

Regan told reporters Monday that the decision was specific to the Pebble mine plan of 2020 and does not address other resources in Alaska, where Dunleavy has offered a warm welcome to the mining sector.

"By no means is this meant to send any signals beyond this specific project," said Regan.

The final determination leaves open the door for future projects that don't damage the Bristol Bay watershed in the same way.

But Radhika Fox, EPA's assistant administration, emphasized that the agency's determination ensures Pebble cannot move forward even if it wins its ongoing administrative appeal before the Army Corps and secures needed permits.

"Army Corps could not approve this project given the 404(c) determination has been made, unless the Pebble company were to somehow amend their proposal and that a future proposal does not have the similar adverse effects of this proposal," said Fox.

Reactions, warnings

Environmental groups, tribal nations and Democrats celebrated the veto as a historic win, while the decision was met with skepticism and concerns by Alaska Republicans and the mining sector.

"The Environmental Protection Agency's Final Determination is a landmark conservation decision that will protect Bristol Bay for generations to come," said Tim Bristol, executive director of SalmonState.

"Today is a great day for Bristol Bay, and one that many thought would never come," said Bristol Bay Native Corp. CEO Jason Metrokin. "While the immediate threat of Pebble is behind us, BBNC will continue working to protect Bristol Bay's salmon-based culture and economy and to create new economic opportunities across the region."

But Republicans and industry groups warned the veto could have a far-reaching chilling effect in Alaska and vowed to ramp up oversight.

The National Mining Association in a statement warned that the Biden administration is pushing an electrification agenda and energy priorities that rely on access to minerals and metals all while blocking domestic mining. "This end-run of the proper permitting process creates significant regulatory uncertainty for the mining industry during a crisis point for minerals demand," the group wrote.

Republican Sen. Dan Sullivan of Alaska in a statement said that although he opposes the Pebble mine, he's also against EPA's pursuit of a "preemptive veto" that raises legal questions and "has the potential to establish a very troubling precedent for resource development" of state land.

"I pressed the EPA administrator to acknowledge that today's EPA decision does not set a precedent for other major mining and resource projects in Alaska, which he did publicly today," said Sullivan. "I encourage other Alaska elected leaders to join me in holding the entire Biden administration to this public commitment."

House Republicans in particular will scrutinize EPA's decision and propose legislation to undo it. In the past, the GOP has been wary of preemptive Clean Water Act vetoes and has probed the agency's actions related to Pebble.

In a statement, Dunleavy echoed Sullivan's concerns.

"EPA's veto sets a dangerous precedent," he said. "Alarmingly, it lays the foundation to stop any development project, mining or non-mining, in any area of Alaska with wetlands and fish-bearing streams."

Editor's Note: The January 30, 2023, *Final Determination, Pebble Deposit Area, Southwest Alaska* may be viewed at <https://www.epa.gov/bristolbay/final-determination-pebble-deposit-area>.

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Endangered Species Act: Fish and Wildlife Service delays lesser prairie chicken regulations

(*Greenwire*, 1/23/2023) Scott Streater, E&E News reporter

The Fish and Wildlife Service will delay by two months implementation of a final rule listing the lesser prairie chicken for protection under the Endangered Species Act while it works to ensure livestock grazing plans and other voluntary protection measures are implemented correctly.

The FWS final rule was scheduled to go into effect Tuesday.

It lists the southern distinct lesser prairie chicken population in eastern New Mexico and the southwestern Texas Panhandle as an endangered species. The northern distinct population in the northeastern Texas Panhandle, southeastern Colorado, south-central Kansas and western Oklahoma is being listed as a threatened species.

Some environmental groups expressed concern about the delay.

"Delaying protections for lesser prairie chickens is inexcusable," said Michael Robinson, a senior conservation advocate at the Center for Biological Diversity, noting the bird's dwindling habitat and dropping population numbers.

The bird is known for its colorful mating ritual each spring.

But FWS said in an advance notice in Monday's *Federal Register* that the delay until March 27 is needed while it works with people on the ground to ensure the "conservation tools" in the rule — particularly FWS approved grazing management plans — are being fully utilized. The decision will be formally published in Tuesday's *Federal Register*.

One of the key reasons cited for the delay is a section of the listing rule involving a controversial ESA provision — the Section 4(d) rule — for the threatened population section that

allows FWS to exempt certain agricultural activities, livestock grazing and controlled fires from a provision barring incidentally killing, harming or harassing prairie chickens, if those engaging in such activities commit to certain conservation practices.

But to date, the service said in the *Federal Register* notice that it has only one entity authorized to devise an approved plan for livestock grazing plans that meet FWS requirements. FWS is "actively working with partners to approve entities" that could "begin working directly with interested landowners to develop grazing management plans."

"This will negatively impact conservation of the lesser prairie chicken because a lack of clarity and guidance would result in fewer operators receiving grazing management plans, which are developed to maintain the vegetative characteristics needed to support the lesser prairie-chicken," according to the notice signed by FWS Director Martha Williams. "Thus, we will not have met our obligations under [ESA] to ensure the conservation of listed species."

The service also said in the notice that it wants to enroll more private landowners into voluntary conservation agreements that allow for farming and ranching and other activities in lesser prairie chicken habitat when landowners agree to take specific actions to preserve habitat.

FWS has touted in the past that the Agriculture Department's Natural Resources Conservation Service since 2010 has partnered with 900 private landowners to implement conservation actions on roughly 1.6 million acres of habitat through the Lesser Prairie-Chicken Initiative.

"Delaying the effective date will allow for additional pre-listing enrollment in conservation plans that are beneficial to the species and will allow the Service to continue to work with interested parties to expand our list of approved parties to develop site-specific grazing management plans," according to the notice.

FWS noted last fall that lesser prairie chicken populations have declined across its range by an estimated 90 percent since the early 20th century, when birds numbered in the hundreds of thousands, to a total of about 32,210 birds today.

"The Fish and Wildlife Service's extension is a dangerous, politically motivated concession" to special interest groups, said Joe Bushyhead, an endangered species attorney with WildEarth Guardians. "Industry has had plenty of time to enter into voluntary conservation agreements to protect the lesser prairie chicken. Those agreements simply haven't done enough to protect these birds."

Robinson, the Center for Biological Diversity official, said he agreed.

The November listing decision by FWS stems from a 2019 lawsuit filed by a coalition of environmental groups, including the Center for Biological Diversity, demanding that the service complete a long-delayed 12-month determination analyzing whether the lesser prairie chicken warrants protection.

"It's deeply concerning that the Fish and Wildlife Service is putting the oil and gas

industry ahead of these magnificent birds," Robinson said. "The agency must stop dragging its feet and put safeguards in place now to safeguard the sensitive grasslands lesser prairie chickens need to survive and avoid extinction."

The bird first became a candidate species for ESA protection in 1998, and FWS eventually listed it as a threatened species in 2014.

A Texas oil trade group and three fossil fuel-rich New Mexico counties, however, successfully challenged that listing decision, and the service has worked with organizations like the Western Association of Fish and Wildlife Agencies on voluntary measures, such as conservation agreements with the oil and gas industry and private landowners.

Following the 2019 lawsuit, the service concluded in November that federal action was needed to save the bird.

The new rule is already likely headed to court.

The Texas Railroad Commission voted last month to ask the state's attorney general to sue over the FWS decision to list the lesser prairie chicken for ESA protection.

Reporter Michael Doyle contributed.

Editor's Note: The Delay of Effective Date for Lesser-Prairie Chicken; Threatened Status with Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment was published in *Federal Register* 88:4087-4088 (January 24, 2023).

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NEPA: Fish and Wildlife Service compensatory mitigation changes move out of White House

(*Greenwire*, 1/26/2023) Michael Doyle, E&E News reporter

Fish and Wildlife Service proposals governing compensatory mitigation cleared a White House hurdle Wednesday, setting up potential reversals of another key Trump administration environmental policy.

Completion of a 10-month-long review by the Office of Information and Regulatory Affairs

means FWS can pursue a policy that might include requiring certain permit applicants to mitigate environmental harm.

"I think it's very important, especially given all the new infrastructure projects coming down the pike," said Andrew Carter, director of the

conservation policy department at Defenders of Wildlife.

Mitigation can take several forms, including the purchase of conservation credits from "mitigation banks" or paying money to an authorized mitigation program.

The White House's most recent, bare-bones notice states only that the OIRA review of potential FWS compensatory mitigation rules concluded Tuesday.

Carter, who was among those who met with Office of Management and Budget officials to discuss the subject last year, noted that "they still have not released anything to the public" and details are scarce.

He speculated, though, that the Biden administration is "going to resurrect the Obama-era mitigation policy ... in weakened form."

Steve Holmer, vice president of policy with the American Bird Conservancy Action Fund, also met with OMB officials last year and said he remains "concerned" about slow action on the mitigation front.

"Development, especially on public lands, continues to outstrip new conservation measures, and as a result irreplaceable values are being lost, such as the 3 billion birds that have disappeared since 1970," Holmer said, adding that his organization is "hopeful the Fish and Wildlife Service mitigation policy will help avoid needless impacts to wildlife, apply available best management practices that reduce preventable mortality, and then provide for fair compensation for any remaining unavoidable impacts."

No details of a revised compensatory mitigation policy have yet been published in the administration's Unified Agenda, and FWS declined to comment Thursday.

Mitigation in its various forms has been batted back and forth across multiple administrations.

During the Obama administration, ambitious federal mitigation policies set a net-benefit goal or, at a minimum, a no-net-loss goal for natural resources whenever possible.

For the American burying beetle, for instance, mitigation has been provided by mitigation banks and in-lieu fee programs. So-called beetle farms buy up suitable habitat and maintain those lands in perpetuity while selling mitigation credits to developers that harm habitat elsewhere.

Fee programs, on the other hand, are government- or nonprofit-run systems that collect charges from developers to purchase habitat for the species protected under the Endangered Species Act.

Industry groups have cast compensatory mitigation demands as misguided.

"The scope of the resources potentially affected by the mitigation policy is exceedingly large and should be narrowed," the Western Energy Alliance wrote in response to the Obama move.

In 2018, the Trump administration's Interior Department ended the mitigation policy set in the Obama administration at both FWS and the Bureau of Land Management.

During the Trump administration, for instance, BLM dropped compensatory mitigation for a project's impacts to greater sage grouse habitat and instead stated that BLM would only consider it "when offered voluntarily by a project proponent."

In part, the Trump administration pegged its restricted mitigation policy to a 2013 Supreme Court decision in a Florida case called *Koontz v. St. Johns River Water Management District*. The court held that agencies requiring off-site mitigation as a condition of granting a permit must show "a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use."

Energy companies, the Colorado Department of Agriculture and the Associated General Contractors of America, among others, supported the Trump administration's change.

"Unfortunately, a 'net conservation gain' goal lacks predictability and potentially conflicts with other federal policies," Southern California Edison wrote, adding that "determining a net conservation gain is subjective."

Daniel Jorjani, the Interior Department solicitor during the Trump administration, said Thursday that Interior at the time "made a good-faith effort consistent with the traditional mitigation hierarchy to rein in Obama's regulatory overreach."

"I suspect this will be a topic for Hill review and eventually, I hope, a good-faith bipartisan legislative fix," he said.

Last year, Interior Solicitor Robert Anderson issued a memorandum reinstating compensatory mitigation as a formal policy of BLM. This reversed the Trump-era rule stating that "except where the law specifically requires, the BLM must not require compensatory mitigation from public land users."

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NEPA: Biden sets stage for major Alaska oil project

(*Greenwire*, 2/1/2023) Heather Richards, E&E News reporter

The Biden administration advanced a massive oil and gas project in the Arctic on Wednesday that if given a final approval would represent a legacy-defining decision for the climate-minded White House and dramatically expand drilling in Alaska's North Slope.

The Interior Department's Bureau of Land Management released the final environmental review of ConocoPhillips' Willow project, an \$8 billion oil and gas development near the coast of the Arctic Ocean in Alaska. In it, the department named a "preferred alternative" that would allow the company to build three drilling sites and drill more than 200 wells, a significant program that would last three decades.

A decision on a fourth drilling site would be deferred under that plan.

But the Interior Department stressed in a statement that it has not made a final decision, which is due within 30 days, on whether to greenlight Willow, and reiterated its concerns over Willow's greenhouse gas emissions and environmental impacts.

"The preferred alternative is not a decision about whether to approve the Willow Project," the department wrote. "The Department has substantial concerns about the Willow project and the preferred alternative as presented in the final [supplemental environmental impact statement], including direct and indirect

greenhouse gas emissions and impacts to wildlife and Alaska Native subsistence."

A decision on Willow represents a pivotal moment for the 23-million-acre National Petroleum Reserve in Alaska, the largest swath of federal land in the country, and is a test of the Biden administration's resolve to curb drilling on public land.

Willow would extend drilling deeper into the remote federal lands than ever before. It would also lock in infrastructure like pipelines and roads that would be future arteries to connect oil and gas development in the reserve to the industrialized state and Alaska Native lands of the state's famous North Slope oil fields.

The project was approved by the Trump administration in 2020, one of its most targeted attempts to boost the oil and gas output of federal lands in Alaska.

But a federal judge revoked its approval in 2021 due to a faulty climate analysis by BLM. The supplemental environmental review released Wednesday by the Biden administration is an attempt to correct those deficiencies, and it's sparked both outrage from environmental groups and cautious hope from the oil and gas industry.

ConocoPhillips called the final review a "major milestone" and the preferred alternative a compromise that could keep the project "viable," a nod to concerns the company stressed last year that if the Biden administration too dramatically

scaled back the amount of drilling Willow can support, it could kill the project.

The company said activity could begin as soon as this month with gravel road preparation, pending approvals.

“We believe Willow will benefit local communities and enhance American energy security while producing oil in an environmentally and socially responsible manner,” said Erec Isaacson, the president of ConocoPhillips Alaska. “After nearly five years of rigorous regulatory review and environmental analysis, the National Environmental Policy Act process is almost complete and should be concluded without delay.”

Sen. Joe Manchin, a pro-fossil fuel Democrat from West Virginia, said the Willow review was long “overdue.”

“This is an important step towards reestablishing American energy independence and strengthening American energy security,” he said in a statement.

Supporters of the project include union and trade organizations; Alaska politicians, including the influential Sen. Lisa Murkowski (R); and some Alaska Native leaders, all promoting the energy access, jobs and revenue that Willow could bring to the region.

“The Willow project is likely one of the most studied and analyzed projects in the country,” said Kara Moriarty, president of the Alaska Oil and Gas Association, who was still reviewing the document. “Willow has strong support from a diverse group of Alaskans, from the majority of the North Slope Borough residents and the Iñupiat Community of the Arctic Slope to organizations like the Alaska Federation of Natives.”

But Willow has long been criticized by climate activists and environmentalists who see today as a potential “disaster” for the Western Slope of Alaska.

Kristen Miller, director of the Alaska Wilderness League, said the Biden administration should “reverse course on this massive climate disaster.”

“Our window to act is rapidly closing to avert catastrophic climate change, and this plan only takes us one giant step closer to the edge,” she said in a statement.

The Sovereign Iñupiat for a Living Arctic also urged the Biden administration to kill the project on climate grounds.

“No amount of fossil fuels, no amount of money, and no form of mitigation from this infrastructure will pass the climate test necessary to keep us on track to a sustainable future,” the Alaska Native group said in a statement. “The Interior Department must reject the Willow proposal and live up to this administration’s promises to take meaningful climate action.”

A potential approval of Willow was flagged last year after federal documents released in a public records request last year showed the administration had leaned in that direction. But the Interior Department said at the time those documents had been an error.

BLM said Wednesday that its preferred alternative would reduce Willow’s impact on protected wildlife and resources, including in the Teshekpuk Lake Special Area, “a critical ecological area in the NPR-A that supports thousands of migratory birds and is a primary calving area and migration corridor for the Teshekpuk Caribou herd.”

The bureau said the preferred alternative also slashed the amount of fresh water needed for the project and the amount of pipelines, gravel roads and ice roads to support the drilling program, “all of which may impede caribou movement and impact subsistence users.”

But if approved in the weeks ahead, Willow could leave a significant bruise on the White House’s legacy in the Arctic, a region warming more than twice as fast as the rest of the world due to the burning of fossil fuels for transportation and energy, according to NOAA.

The Center for American Progress estimated that Willow could lead to 260 million metric tons of carbon dioxide released over its lifetime, the equivalent of one-third of the nation’s coal fleet, a figure the company has dismissed as an exaggeration.

Locally the project has sparked mixed reactions with primarily Alaska Native communities, some seeking its economic benefits and others fearing its impact to caribou and air quality.

The Native Village of Nuiqsut, the closest settlement to the Willow project, said in a Jan. 25 letter that BLM was consistently focused on how to move projects forward, despite village concerns about impacts to quality of life, noise pollution, air quality impacts and impeding caribou migration with roads.

The letter cited as evidence of industry's risk a prolonged natural gas leak several miles from the village last year from a current ConocoPhillips drilling site. The letter also notes that roughly 70 percent of the village relies on subsistence hunting to provide nearly half of their diet.

But Alaska Native organizations aren't in agreement about the project.

The Voice of the Arctic Iñupiat, whose board includes Alaska Native village corporation presidents, mayors and other Alaska Native leaders, send a December letter to Interior Secretary Deb Haaland supporting the project. The group wrote that people living in North Slope communities show "overwhelming" support for Willow moving forward.

"For the North Slope Iñupiat, the Willow Project is a new opportunity to ensure our communities and our people have a viable future," the group wrote. "If our region, our state and our nation are to fully realize Willow's economic development and energy security benefits, the approval process must advance now."

Editor's Note: The SEIS for the Willow Master Development Plan may be viewed at <https://eplanning.blm.gov/eplanning-ui/project/109410/510>.

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Green groups' big worry: President Donald Trump or another Republican candidate could win the White House in 2024 and torpedo any Biden policies not shored up prior to January 20, 2025. Environmentalists aren't eager to see a repeat of 2017, when advocates who expected a Hillary Clinton administration to pursue an Obama-esque regulatory agenda were surprised when Trump entered the White House and reversed course on major policies.

"The biggest lesson, honestly, was that you shouldn't take for granted the outcome of a future election and sort of plan your rulemakings around that assumption," Hartl said. "Because a lot of good work was killed because of that."

Environmental advocates point to a range of reasons the Biden team hasn't moved more quickly on rewriting major environmental rules, including broad changes by the Trump administration, budget and staffing cuts to environmental agencies, legal threats, and a

desire to ensure that Biden-era rules are bulletproof in court.

There were "a lot of booby traps to defuse before they could get started on their affirmative agenda," said James Goodwin, a senior policy advocate at the Center for Progressive Reform. The Biden administration was "in a lot of ways operating with one arm tied behind their back," Goodwin said, "because the Trump administration had chased off so many long-term public servants, especially scientists. So the rebuilding process was always going to be a challenge."

Biden and his top officials have repeatedly vowed to stick to science when it comes to writing environmental policies.

The Biden White House declared on its first day in office that it would "address federal regulations and other executive actions taken during the last four years that were harmful to

public health, damaging to the environment, unsupported by the best available science.”

Science — and legal reviews — can take awhile.

The Biden administration “is doing their best to make the rules as solidly scientific-based and legally as strong as possible,” said Patrick Drupp, director of climate policy at the Sierra Club. Agencies are also trying to make sure rules are “airtight,” given a “Supreme Court that seems to want to limit those kinds of authorities anytime they possibly can,” Drupp said.

Still, Drupp added, “There is a little bit of concern at this point, two years in, that there’s still so much work to do on a lot of different things that people care about finalizing.”

Air, NEPA, endangered species rules

One EPA rule that’s expected soon but hasn’t been finalized yet is a regulation determining that it is “appropriate and necessary” to limit releases of mercury and other hazardous air pollutants from power plants. Biden made an early promise to restore the finding after Trump’s team had scrapped it, but the process has been delayed.

Biden’s EPA is also still working on a fresh attempt to regulate greenhouse gases from power plants after courts struck down both the Obama and Trump administrations’ attempts to do so.

John Walke, clean air director in the climate and clean energy program at the Natural Resources Defense Council, said he is particularly concerned about a raft of air pollution guidance documents put into effect by the Trump EPA that the Biden team has left on the books.

“Either the Biden EPA supports those Trump rollbacks or they don’t care enough about them to reverse, and either answer is bad for public health and air quality,” Walke said.

Some Trump Endangered Species Act rules remain on the books while the Biden team is working to redo them.

The Biden administration agreed to redo the three rules in response to litigation, but it vexed environmentalists by urging that the Trump rules remain on the books in the meantime for administrative reasons. Environmentalists argued that the Trump policies were “gutting the Endangered Species Act.”

Another rule redo that environmental advocates are watching closely is the Biden administration’s planned “Phase 2” of its overhaul of a Trump-era policy that limited the scope of environmental reviews for projects like pipelines and highways.

The White House Council on Environmental Quality last spring finalized its first round of reforms governing how agencies implement the National Environmental Policy Act, a move that reversed one of Trump’s most contentious environmental policies.

The administration promised a broader set of Phase 2 changes, but that hasn’t yet been completed.

CEQ spokesperson Alyssa Roberts said the agency is “continuing work on our modernization of the National Environmental Policy Act regulations and anticipates issuing a proposed rule in the coming months.”

“Since day one, the Biden-Harris Administration has worked expeditiously to restore science, protect lands and waters, and combat climate change while advancing the most ambitious environmental justice agenda of any administration,” Roberts added. “We’re full speed ahead.”

Reporters Pamela King and Michael Doyle contributed.

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