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WilmerHale ENsights

WilmerHale ENsights is a weekly energy policy analysis on President-elect Donald Trump's transition and the priorities of the new Congress. Our experienced lawyers from our [Energy, Environment and Natural Resources Practice](#) highlight the need-to-know information that will assess your exposure and unlock new potential.

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With Energy-Related Cabinet Nearly Filled, Nominations Foreshadow New Direction

President-elect Donald Trump's nominees to lead his energy, environment and natural resources teams are proving the old adage "Personnel is policy" true. Oklahoma Attorney General Scott Pruitt has been tapped to lead EPA, Texas Governor Rick Perry has been nominated to head the Department of Energy, and Montana Representative Ryan Zinke has been picked to lead the Department of the Interior. The period between January 1 and Inauguration Day promises to be frenzied, with confirmation hearings beginning for the most senior nominees, even while the Senate is in the midst of a post-election reorganization. It will likely take until the August 2017 recess—200 days into the presidency—to fully staff Trump's senior leadership team. And that's just the beginning: the Trump team is responsible for making more than 4,000 political appointments across the federal government, and only about a quarter of those positions require Senate confirmation. These sub-cabinet positions will be key because they will significantly influence permitting, litigation strategy and regulatory policy, all of which are mission critical to American businesses.

Fundamental Reform? Some Call for Starting Over on Key Environmental Statutes

The Trump Administration is almost certain to reconsider or withdraw some of the Obama Administration's foremost energy and environment regulations and executive actions, whether through repeal pursuant to the Congressional Review Act, via litigation challenges or simply as a result of non-funding or non-enforcement. But even more profound changes may be in store for some of the most longstanding environmental laws.

Some members of the transition team and observers on the Hill believe the stage has been set to enable the Trump Administration to make fundamental changes to the statutes governing energy and the environment in a way not seen in a generation. For instance, House Natural Resources Chairman Rob Bishop said this week that there might be no way to reform the Endangered Species Act, so Trump might "simply have to start over again." Others have called for amending the Clean Air Act to provide in the statute itself that greenhouse gases are not "pollutants" and therefore are beyond the scope of agency regulatory oversight. Such reforms would be considered a nuclear option and would require a concerted, coordinated effort by Republican lawmakers, because some Democrats and conservation groups have already been assessing mechanisms to beat back such fundamental reforms.

A New Era for Nuclear?

The Trump transition team's [questionnaire](#) for the Department of Energy (DOE) has been heavily scrutinized, primarily for its questions concerning climate change—including questions about DOE personnel who have attended climate change conferences. But climate change isn't the only issue the questionnaire raises. Buried in the 74-point questionnaire are subtle indications of new directions for the massive agency, including a possible renewed focus on nuclear energy.

Among other queries, the questionnaire asks about preventing the premature closure of nuclear reactors, supporting the operations of existing reactors and pushing forward with licensing plans for the Yucca Mountain nuclear waste repository. Meanwhile, there is growing interest in a new breed of smaller molten salt reactors, which have favorable safety characteristics that could eliminate the need for costly containment vessels. Supporters include Peter Thiel, the billionaire investor and early backer of President-elect Trump. Even Trump himself has said nuclear technologies should have a bigger role in the US energy portfolio, and Congress has bipartisan-supported legislation in the works that would accelerate advanced nuclear technologies. A renewed interest in perpetuating the life of older nuclear facilities and a growing enthusiasm for new technologies could inspire a renaissance for nuclear power over the next four years, something few expected following the 2011 Fukushima Daiichi accident.

Flurry of New Permitting Decisions

Predictably, the final weeks of the Obama Administration are proving eventful for significant pending projects, including a major wind farm in the Rockies and a significant cross-border transmission line.

In the next month, the US Fish and Wildlife Service (USFWS) is expected to approve a five-year eagle take permit for the first phase of one of the largest wind farms in North America. The USFWS issued its [final Environmental Impact Statement](#) on December 8, just as the agency is [taking steps](#) to finalize its proposal to extend eagle take permits from five to 30 years. This permit will also set the stage for the Bureau of Land Management to [green-light](#) the project's first phase.

Separately, on December 6, the Department of Energy issued a [Presidential Permit](#) authorizing the construction and operation of the New England Clean Power Link, a 1,000-megawatt cross-border transmission line that will deliver electricity to New England from a hydropower facility in Eastern Canada.

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