



ML Strategies Legislative Update

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## ML Strategies 2017 Outlook: Energy

Though federal energy and environmental policy will look significantly different under a Trump Administration than what we have seen develop over the last eight years, the extent to which his administration will be able to redirect or dismantle Obama Administration achievements remains to be seen. How and whether President-elect Trump's nominees for secretaries of Energy, Interior, and State, and Environmental Protection Agency Administrator are confirmed, and how they and the White House collaborate with the Republican-controlled Congress to address international agreements, tax issues, an energy bill, and current regulations will begin to play out in the coming days and weeks, though many of their efforts are likely to require significant time and attention from all three branches of government.

### **Executive Branch Agenda**

President-elect Trump will head to the Oval Office with a plan to overturn much of what President Obama achieved on energy and environmental issues during his eight years in office, though market forces, international commitments, and the burdens of litigation will all impact how successful those efforts will be. Top targets include:

- 1) Eliminating regulations and reducing related agency authority, including many of the Obama Administration's landmark climate efforts and other items as discussed below ;
- 2) Potentially withdrawing from the Paris climate accord;
- 3) Rearranging domestic energy and environmental priorities toward a greater focus on traditional, inexpensive, American resources ; and
- 4) Opening and hastening federal lands permitting for oil and gas exploration and production and coal mining.

Facing a lengthy to-do list in his attempt to undo President Obama's energy and environmental commitments, President-elect Trump will quickly use executive orders to dismantle many of the previous administration's executive actions where possible, potentially including the Climate Action

Plan and recent pipeline decisions, and Congress may use the Congressional Review Act (CRA) to overturn last minute regulations such as the Stream Buffer Zone rule and the Interior Department's public land methane leak rule. Longer-term regulations, including EPA's CO2 endangerment finding or the mercury rule, will be more difficult to undo, as doing so would require lengthy new justifications to withdraw and would face aggressive legal challenges. Regulations that are still mired in litigation, most notably, but certainly not limited to, the Clean Power Plan, will be more vulnerable. Given the sheer volume of regulations, combined with the regulatory and political obstacles to reversing them, we can expect congressional Republicans to prioritize their energy and environment efforts to some of the higher profile pieces.

### **Key Trump Administration Political Appointees**

President-elect Trump has nominated former Texas Governor Rick Perry to serve as Energy Secretary, Oklahoma Attorney General Scott Pruitt to serve as Environmental Protection Agency Administrator, ExxonMobil CEO Rex Tillerson to serve as Secretary of State, and Rep. Ryan Zinke (R-MT) to serve as Interior Secretary.

Senate Democrats are gearing up for a fight against some of President-elect Trump's nominees, with Mr. Tillerson and Attorney General Pruitt among some of their top targets, though we anticipate that with only a simple majority needed for confirmation, the nominees will be approved.

### **Notable Congressional Committee Changes**

Due to retirements and term limits, several changes in energy and environment related committees may potentially impact the focus of related committees.

Due to Republican committee chair term limits on former chair Sen. James Inhofe (R-OK) and the retirement of former ranking member Sen. Barbara Boxer (D-CA), the Senate Environment and Public Works Committee will have new leadership in Sens. John Barrasso (R-WY) and Tom Carper (D-DE), and Sens. Jerry Moran (R-KS), Joni Ernst (R-IA), Tammy Duckworth (D-IL), and Kamala Harris (D-CA) will also join the committee.

The Senate Energy and Natural Resources Committee will retain Sens. Lisa Murkowski (R-AK) and Maria Cantwell (D-WA) as chair and ranking member, respectively. The committee will rotate two members, Sens. Shelley Moore Capito (R-WV) and Elizabeth Warren (D-MA) off, while welcoming Sens. Jeff Sessions (R-AL), if he does not depart for the Administration, Tammy Duckworth (D-IL), and Catherine Cortez Masto (D-NV) aboard.

The Senate Finance Committee will experience fewer changes, with Sens. Orrin Hatch (R-UT) and Ron Wyden (D-OR) remaining at the helm, and Sens. Bill Cassidy (R-LA) and Claire McCaskill (D-MO) joining the committee.

The House Energy and Commerce Committee will be newly chaired by Rep. Greg Walden (R-OR), who, with a history in radio, has long focused on the telecommunications and technology side of the committee, including chairing the Subcommittee on Communications and Technology. Rep. Frank Pallone (D-NJ) will retain the ranking member slot.

Reps. Rob Bishop (R-UT) and Raul Grijalva (D-AZ) will remain at the helm of the House Natural Resources Committee.

## **Potential Legislative Activity**

In addition to a handful of CRA attempts, we anticipate that the bulk of energy and environment legislative activity will come during budget negotiations as well as the tax reform debate, a potential infrastructure bill, and possibly an energy bill.

Congress will have until late spring to consider resolutions of disapproval under the CRA, and of the more than 1,400 rules that fall within the applicable window, congressional Republicans are likely to prioritize a few energy and environment regulations to target among the roughly 150 significant rules. Given limited time to address CRA resolutions, nominations, appropriations, and other items on the legislative agenda, top energy and environment CRA targets include the Department of Interior's Stream Protection Rule and Methane and Waste Prevention Rule, the Environmental Protection Agency methane and municipal landfill rules, and Department of Energy efficiency rules.

In addition to continued Clean Power Plan and Waters of the U.S. opposition efforts, President-elect Trump's energy adviser Rep. Kevin Cramer (R-ND) has indicated a desire to consider significant revisions to the Clean Air Act and the Clean Water Act, and Rep. Bishop has expressed similar interest regarding the Endangered Species Act, the National Environmental Policy Act, and the Antiquities Act. How assertive the Republican-led Congress will be on high level energy and environment questions remains to be seen, but such proposals would most likely take months or years to develop, while facing strong opposition from congressional Democrats.

In the meantime, legislation expediting liquefied natural gas export permits as well as energy efficiency language has received bipartisan support, and given the members in cycle for 2018, the next two years could provide a unique opportunity for energy reform. After expending so much energy and coming up short in the waning days of the 114<sup>th</sup> Congress, Sens. Murkowski and Cantwell have indicated a desire to get an energy bill of some sort across the finish line this year, the latter expressing increased interest in addressing more significantly the natural resources side of the committee this Congress. In addition to the Land and Water Conservation Fund, forestry and drought issues are likely to receive substantial attention in both chambers.

Furthermore, despite significant infrastructure commitments during the campaign, it appears that an infrastructure bill may slip into the fall or even later. Questions related to domestic infrastructure, including the aging electric grid, may go on the backburner while nominations, healthcare, CRA repeal attempts, appropriations, and tax reform take precedence.

As the tax reform debate unfolds, opportunities to defend the production tax credit and investment tax credit will continue, with Sen. Chuck Grassley (R-IA) and others joining Senate Democrats in efforts to preserve the 2015 multi-year extension and phase-down and ensure market stability that will spur new investment into the 2020s. Additionally, exceptions for non-wind and solar technologies may present themselves as part of a broader compromise during the tax reform debate.

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