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Cases Involving Executive Orders

Montana & Texas v. Biden (Keystone) (No. 3:21-cv-00065) (S.D. Tex.)

President Biden’s Executive Order 13990 purportedly revoked the cross-border permit for the Keystone XL Pipeline. A coalition of states led by Montana and Texas challenged the executive order on constitutional grounds and the Administrative Procedure Act (“APA”). The federal government filed a motion to dismiss that the case is moot given that TC Energy abandoned the project. The States contend that mootness would effectively approve an unlawful action by the federal government and given ongoing debates surrounding other cross-border pipelines, the federal action is capable of repetition. The District Court has not issued a ruling on the motion to dismiss.

Louisiana v. Biden (Leasing Moratorium) (No. 2:21-cv-00778) (W.D. La.)

President Biden’s Executive Order 14008 directed the Department of Interior to “pause new oil and natural gas leases on public lands or in offshore waters” 86 Fed. Reg. at 7624–7625, and Executive Order 13990 orders Interior to “place a temporary moratorium on all activities of the Federal Government relating to the implementation of the Coastal Plain Oil and Gas Leasing Program.” 86 Fed. Reg. at 7039. States, led by Louisiana, challenged implementation of the EOs on constitutional grounds and under the APA.

On June 15, the District Court granted the States a preliminary injunction against the leasing moratorium on the grounds that President Biden’s EOs exceeded his constitutional authority and that Interior’s implementation of the leasing moratorium violated the Mineral Leasing Act and the Outer Continental Shelf Leasing Act.

Wyoming v. Interior (Leasing Moratorium) (No. 0:21-cv-0056) (D. Wyo.)

Wyoming challenged the same Executive Orders at issue in *Louisiana v. Biden*. The Wyoming District Court ruled that the preliminary injunction in *Louisiana* applied to the Wyoming case, so no further action has occurred.

North Dakota v. Interior (Leasing Moratorium) (No. 1:21-cv-00148) (D. ND).

Based on the *Louisiana* case, North Dakota filed to compel Interior to resume quarterly oil and gas lease sales. No action has occurred.

Missouri v. Biden (Social Cost of Carbon) (4:21-cv-00287) (E.D. Mo.).

Executive Order 13990 established an “Interagency Working Group on the Social Cost of Greenhouse Gases” tasked with determining final values associated with the “social costs” of carbon emissions for the purposes of agency cost/benefit rulemaking. Missouri, along with twelve other states, challenged the EO on constitutional and APA grounds. On August 31, the District Court granted the federal government’s motion to dismiss for lack of jurisdiction. In short, the District Court found that the States lacked standing to bring this suit because their claim was against the Working Groups’ findings *en masse* rather than being tied to a specific agency action or project. The District Court did not rule on the merits of the claim and the States appealed the dismissal, but no further action has occurred.

Other Cases and Issues

West Virginia v. EPA (Clean Power Plan) (20-1530) (U.S.)

The United States Supreme Court granted certiorari to resolve the long-running question over whether the EPA, under the Clean Air Act, has the authority to set regional and national emissions targets for the utility sector. The case will have broad implications for the EPA, the Clean Air Act, and potentially for Congress’ ability to delegate authority to regulatory agencies.

Methane Rule

The Biden Administration, at COP26, proposed a new methane emissions rule under the Clean Air Act that would be stricter than the Obama-era standard set in 2016. Montana will likely track this rule as an area of interest as it moves through the process.

Social Costs of Carbon and Cumulative Impacts on Future Oil and Gas Leases

Earlier this month, the Bureau of Land Management concluded that oil and gas leases impose significant costs—using their social cost of carbon model—but declined to halt or delay sales in Wyoming, Colorado, Montana, Utah, Nevada, New Mexico and North Dakota. Montana will likely keep an eye on this issue as it relates to the issues in the *Missouri* case.