**Regulating Oil and Gas on Federal Lands under Presidents Bush II, Obama and Trump**

Charles Davis

Department of Political Science

Colorado State University

Ft. Collins, CO 80523

charles.davis@colostate.edu

This paper addresses changes in oil and gas policies adopted by the U.S. Bureau of Land Management (BLM) during the Presidential terms of George W. Bush, Barack Obama, and Donald J. Trump. It focuses on the extent to which drilling activities affect efforts to maintain or improve environmental quality and to reduce adverse climate related impacts. While shifts in regulatory and climate-oriented policies have largely occurred because of Presidential election outcomes, I also discuss how differing Administrations have selectively used varied policy tools to shape agency decisions.

**Introduction**

This paper addresses the changing politics of oil and gas regulation by the U.S. Bureau of Land Management (BLM) across the Administrations of Presidents George W. Bush, Barack Obama and Donald J. Trump. The BLM is in charge of managing the federal government’s onshore subsurface mineral estate, amounting to about 700 million acres of subsurface rights held by the BLM and other federal agencies. It does so by balancing land uses such as energy development or mining with wildlife conservation, recreation and watershed protection under its “multiple-use” management philosophy (BLM, 2019).

Operating under the U.S. Interior Department (DOI), BLM has a longstanding reputation for an agency bias favoring land use decisions favoring commodity production over the conservation of natural resources. Power (2002) and Wood (2006) found that agency decisions from the 1940s through the 1960s tended to align closely with the interests of industry officials engaged in livestock, mineral, energy, and timber harvesting; i.e., activities offering employment opportunities for people in rural western states. Policies were developed within a restricted form of policymaking often referred to as subgovernments,\* that protected pro-development constituencies (Skillen, 2009).

However, it is important to note that BLM’s land use decisions have also been shaped by larger socio-political forces such as the environmental movement of the 1960s and 1970s. The enactment of the Federal Land, Policy and Management Act of 1976 (FLPMA) by Congress conferred statutory legitimacy on the agency and assigned new multiple-use management responsibilities akin to those held by the U.S. Forest Service (Clarke and McCool, 1996). FLPMA also required BLM to evaluate public concerns linked to the *impacts* of developmental decisions on environmental quality or natural resource conservation (Klyza and Sousa, 2013), decisions that eventually led to pushback from traditional land use constituencies (Skillen, 2009).

Since then, BLM has increasing devoted attention to the expansion of regulatory programs addressing oil and gas operations on federal lands. What accounts for these changes? Perhaps the main source of policy shifts can be attributed to a growing partisan divide between Democratic and Republican Presidential Administrations over the appropriate balance between economic development and resource conservation policies on federal lands (Rosenbaum, 2017). Since differing land use policy preferences have made it increasingly difficult to make critical decisions within the hallways of Congress thanks to divided control or the lack of a “filibuster-proof” majority in the Senate, a second factor has also emerged – the tendency for Presidents to pursue new policy priorities through the exercise of executive authority rather than legislation (Vig, 2016).

How does this occur? According to Shafie (2014), this usually begins when the President selects people with similar policy values to head departments or agencies with prior experience or knowledge of natural resource management issues. Other sources of executive authority include

\*An institutional arrangement that restricts participation in policy decisions to agency administrators, legislators and interest group representatives with shared programmatic concerns while maintaining a low degree of visibility within the media and the general public (McCool, 1998).

the issuance of executive orders (the President or a Department Secretary), a moratorium delaying the effective date of rules from the preceding Administration, rule-making, budgetary authority, and coordination with other Departments such as the U.S. Department of Energy (DOE) or the U.S. Environmental Protection Agency (EPA). Any of these approaches can be used to advance policy goals largely by identifying budgetary and enforcement priorities.

However, the main focus of this chapter deals with how the BLM and DOI officials have chosen to develop and implement oil and gas regulatory policies on federal lands from the Bush II Presidency through the Trump Administration. Key concerns include the extent to which environmental land uses are given priority in relation to commodity production and whether climate change impacts are considered in agency planning decisions.

How these decisions are made depends on how BLM administrators juggle a mix of procedural approaches such as rulemaking, resource management planning, environmental impact analyses, and enforcement actions in conjunction with the exercise of discretionary judgment. Thus, administrators can choose to reinforce the strength of a dominant subgovernment by accelerating energy production to enhance energy independence or they can decide to place greater emphasis on more sustainable land use decisions.

Some of these approaches such as rulemaking and the exercise of discretionary authority offer flexibility to administrators to change course policywise without the constraints of maneuvering through a legislative gauntlet and are politically neutral in terms of how they might be applied to attain policy goals. However, other approaches are more commonly applied to facilitate industry interests such as restrictions on public participation or greater use of categorical exclusions (CEs) to expedite the issuance of drilling permits by exempting certain types of projects from environmental impact analyses otherwise required under the National Environmental Policy Act (NEPA). On the other hand, those favoring a greater emphasis on resource conservation objectives are more inclined to push for increased enforcement of environmental requirements, expand the size of agency planning areas and to provide more opportunities for public input.

**Regulatory Context**

The role of the federal government in the regulation of oil and gas drilling operations writ large can best be described as secondary. States have largely assumed regulatory responsibilities since the 1930s with the support of energy interests thanks to the enactment of the Interstate Oil and Gas Compact (IOGCC). While a state’s membership in this compact represents a contractual relationship among producer states that can bind it to particular policy decisions, it can also be viewed as an organizational arrangement largely designed to avoid federal involvement.

However, the division of authority between federal and state government became increasingly difficult to maintain over time since energy and environmental protection policies have become increasingly intertwined. Oil and gas drilling processes are accompanied by the release of contaminants affecting both air and water quality; hence, federal agencies like BLM and EPA have gained jurisdiction over some policies restricting production activities. EPA is responsible for regulating air quality under the Clean Air Act, including emissions from fracking operations. In 2005, Congress and allies within the Bush Administration decided to limit EPA’s authority to regulate the underground injection of wastewater linked to fracking operations (Warner and Shapiro, 2013).

Conversely, BLM’s mission encompasses more than just environmental protection. It oversees oil and gas production on all 700 million acres of federal and Indian lands and operates under a “multiple use” mandate requiring agency officials to balance land uses such as economic (including energy) development with environmental policy concerns like wildlife conservation and watershed protection. One of the agency’s more challenging responsibilities is managing “split estate” lands where subsurface resources are controlled by the feds and the surface areas are either administered by other federal agencies or are owned by individuals. Its regulatory authority includes activities ranging from reviewing applications to drill (APDs), environmental analyses, issuing leases, and enforcing environmental requirements on the 264 million acres lands under its control (U.S. General Accountability Office, 2012). There are approximately 94,000 wells operating on public lands which account for the production of 9% of natural gas supplies and 7% of the oil supplies within the U.S. (U.S. Bureau of Land Management, 2018).

BLM also confers with the U.S. Forest Service and other federal agencies on regulatory decisions dealing with oil and gas production. Agencies that manage surface lands will decide the conditions under which drilling occurs following the development of a surface operations plan while BLM is responsible for subsequent regulatory decisions involving the oversight and enforcement of oil and gas drilling actions. The legal sources for BLM’s managerial role is found in multiple policies including the *Mineral Leasing Act of 1920, Federal Land Policy and Management Act of 1976 (FLPMA), the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and the Energy Policy Act of 2005 as well as federal and state environmental laws (U.S. General Accountability Office, 2013).*

**Findings**

A basic understanding of energy policy priorities precedes and informs agency use of managerial approaches. President George W. Bush’s desire to achieve greater energy indepen- dence for the U.S. as his top domestic policy goal started on day one of his Administration with the issuance of Executive Order 13212, calling for federal agencies to expedite the production and transmission of energy. From 2001 through 2008, he worked toward the accelerated development of oil and gas resources on federal lands. To implement these goals, he appointed Gale Norton as Interior Secretary and Kathleen Clarke as BLMDirector.

Departmental approaches used to promote increased oil and gas production included the use of organizational communications and discretionary authority, altering procedures linked to environmental analyses, and rulemaking. The first approach was especially important in setting the tone for establishing more flexible working relationships between BLM administrators and industry officials. They began with White House staff applying pressure by phone to BLM field administrators to cut the amount of time needed to process drilling permits for oil and gas companies, especially in Rocky Mountain states (Miller, Hamburger, and Cart, 2004). This led to a significant increase in the number of permits issued to energy companies between 1999 and 2004 (from 1,803 to 6,399), along with a corresponding rise in the number of acres leased (U.S. General Accountability Office, 2005).

Energy companies and trade groups like the Western Energy Alliance were clearly pleased by the expansion of leasing on federal lands. However, other interests such as sportsmen and environmentalists reacted differently, seeing the pace of energy production on federal lands to be incompatible with resource conservation goals. The issuance of permits in places like Wyoming’s Red Desert or northern New Mexico increasingly generated political resistance from public officials from both political parties because of the perception that other concerns like scenery, recreation and the preservation of wildlife habitat were receiving short shrift from BLM (Skillen, 2009).

In addition, some pushback was received by other stakeholders at the state level. The split estate regulatory context put BLM officials in the uncomfortable position of siding with energy companies holding permits or subsurface mineral rights against the interests of ranchers owning surface property since the latter are required to grant access. This meant that intrusive actions like the construction of drilling pads or roads on ranch property would legally trump the concerns of surface property owners (Duffy, 2008). When state officials in Wyoming passed a law requiring prior notification to surface owners before onsite drilling could take place, BLM raised objections stating that the policy “would impose additional financial requirements that would burden the federal mineral estate” (Associated Press, 2005).

The emphasis placed on oil and gas leasing on federal lands was maintained by Secretary Norton and BLM Director Clarke through President Bush’s second term. It was reinforced by the enactment of one of Bush’s signature achievements, the *Energy Policy Act of 2005.* This was a wide ranging policy offering additional incentives for the development of fossil fuels, leading to the issuance of more permits on an expanded acreage of federal lands (Lubell and Segee, 2013).

An especially important provision of this law was Section 390 that allowed greater use of categorical exclusions (CEs). This refers to a procedure that fast tracks drilling permits for oil and gas wells by exempting National Environmental Policy Act (NEPA) requirements for environmental impact studies on land parcels smaller than 150 acres on or near drilling sites that have been in operation for five years or more (Heilprin, 2005). Its immediate impact between 2006 and 2008 was to contribute to yet another increase in oil and gas-related activities (U.S. General Accountability Office, 2005). Greater CE use was subsequently incorporated into

BLM’s resource area management plans, thus reducing industry wait times for getting a permit.

Another key regulatory responsibility associated with drilling operations is environmental enforcement to ensure that air and water quality are not jeopardized by drilling operations. This requires inspections and, if necessary, the imposition of sanctions. While oil and gas production rose significantly during the Bush Administration, less emphasis and fewer resources were devoted to enforcement (U.S. General Accountability Office, 2013). In terms of workload assignments, the need to encourage permit processing meant that inspectors were sometimes asked to do both.

Barack Obama took office as President in 2009 giving lip service to an “all of the above” energy portfolio that focused more on environmental protection than energy production. He chose former Senator Ken Salazar from Colorado to head DOI and Robert Abbey, a veteran BLM staffer to head that agency. Upon taking office, Secretary Salazar moved quickly to slow oil and gas leasing decisions made by his predecessor to evaluate environmental impacts, notably in an area of Utah close to national parks and wilderness study areas (U.S. General Accountability Office, 2011). This was the beginning of procedural changes in how oil and gas production decisions were made that gave greater weight to environmental concerns, changes that were vigorously opposed by energy company interests. In addition, Salazar also devoted considerably more attention to the siting and development of more environmentally friendly renewable energy resources on federal lands such as wind and solar power.

Not surprisingly, Salazar and Abbey expressed less concern with an expeditious processing of drilling permit requests, a stance that was understandably less popular with industry officials. One analysis indicated that the number of permits issued declined considerably (45%) along with the amount of acreage leased from the Bush Administration to the Obama Administration. In like fashion, a corresponding decrease occurred in the number of wells actually drilled (Taylor, 2014). An important driver for change was reconsidering how and under what circumstances CEs could be used to expedite oil and gas drilling projects.

BLM officials consulted with Staff at the White House Council on Environmental Quality to determine factors that would allow the use of CEs in project decisions without doing environmental impact analyses. A guidance was developed that would allow the use of CEs but only after receiving assurances that additional information would be obtained about potential environmental risks. Agency staff subsequently approved a pilot project to determine whether a more narrowly focused CE was feasible (Hurley, 2010).

The impact of the new CE guidance on the declining number of energy projects approved was considerable. A comparison of CE use in the final three years of Bush’s second term with the number of CEs used under Obama after 2010 revealed a reluctance among agency staff to sign off on projects after reviewing environmental risk factors. This also helps to account for the decrease in the number of drilling permits issued between 2010 and 2014.

Another clear distinction between the Bush and Obama Administrations was the emphasis on environmental inspections to ensure that drilling operations were carried out without undue impacts to air and water quality as well as the preservation of wildlife habitat. The number of environmental inspections carried out by BLM administrators on oil and gas facilities increased dramatically between 2009 and 2012 (U.S. General Accountability Office, 2013). This was accompanied by an increase in resources especially full time inspectors (Herbert and Kendall, 2013).

It is evident that between Administration differences on drilling activities can largely be attributed to differing land use preferences linked to partisan orientation. While industry officials and some Republicans in Congress argue that the decline can be linked to a dismissive attitude toward energy production on public lands (Pearson, 2014), it is also important to recognize that other factors can play a part such as market prices, geology, competing policy goals and where the resources are. Geography can be important here since many of the most productive shale plays are located on private lands in states like North Dakota, Pennsylvania and Texas. GAO analysts then suggested that greater interest in the development of oil versus gas could be partly attributable to higher oil prices since the profit margin for producing oil is greater than for natural gas.

Another important factor for the decrease in company interest in drilling on federal lands stems from higher costs. Unlike production activities on private lands, BLM has been directed by Congress to consider environmental impacts as well as the logistical challenges of operating in more remote areas. Statutory requirements from the Federal Land Policy and Management Act (FLPMA) task agency administrators to balance land use goals under multiple use criteria (Wilson, 2014).

Another area of managerial concern was how changes in public participation and planning could be deployed to further DOI policy goals. A number of leasing reforms undertaken by Secretary Salazar in 2010 included the development of master leasing plans (MLPs). One rationale was to foster an increase in public participation to give stakeholders more opportunity to express land use concerns. This, in turn, would reduce delays attributable to land use conflicts as well as the number of unanticipated environmental impacts from drilling (U.S. Departments of Interior and Agriculture, 2011). After Salazar resigned in 2012, Secretary Sally Jewell continued the push to develop MLPs with pilot projects in Colorado and Utah (Streater, 2015).

Another key approach to policy change is *rulemaking*. BLM’s attempts to grapple with the environmental challenges posed by the rise of fracking operations on federal lands was complicated by the fact that existing regulatory procedures were more than thirty years old. Since that time, the percentage of federal oil and gas wells using fracking technology rather than convention drilling exceeded 90%. The goal of crafting a new rule was to come up with an improved balance between accessibility for energy companies and environmental values, especially regarding the need to preserve wildlife habitat. A draft rule was released in May, 2012 that focused on a requirement for industry disclosure of fracking fluids used in drilling operations as well as standards for the management of flowback waters and for wellbore integrity (U.S. Bureau of Land Management, 2012).

Public participation was considerable with extensive commentary from both supporters and opponents of the proposed rule (U.S. Bureau of Land Management, 2013). Industry trade groups complained complance costs were excessive and regulatory requirements were overly duplicative (Streater, 2013). Many Republican governors and GOP members of Congress also contended that state regulators should play a larger role since they had the experience and local knowledge to more easily address environmental problems. Supporters like the Wilderness Society supported the rule but wanted stronger water quality protections while other groups advocated for including monitoring requirements before and after drilling takes place.

The increased level of controversy led to a revision of the rule to better accommodate industry concerns. The new rule advanced by Secretary Jewell was released in May, 2013 after a thirty day comment period. Because of concerns raised by environmentalists and industry interests, another delay took place (Streater, 2013). The final version of the fracking rule was published in March, 2015 after four years of deliberations and agency review of over a million comments. Despite an effort to bridge differences between contending stakeholder groups, the new rule was immediately challenged in the federal courts. This led to a ruling in June 15, 2015 that postponed the effective date of the rule’s implementation (Gilmer, 2015).

The election of President Donald J. Trump in 2016 resulted in another dramatic shift in federal energy policymaking that more closely resembles policy priorities associated with President Bush than President Obama. Early on, Trump called for policies designed to promote

“energy dominance” and to cut back on regulations from the Obama Administration viewed as “overreach” by incoming public officials (Bomberg, 2017; Vig, 2019). Consequently, dozens of energy and environmental rules have been overturned or substantially revised to lower industry compliance costs and to provide greater flexibility for regulated parties (Popovich, Albeck-Ripka, and Pierre-Louis, 2018).

Unlike his predecessors, Trump had no prior experience in government and has largely relied upon selected Congressional leaders or acquaintances within corporate America for guidance in staffing and policy decisions (Vig, 2019). To head DOI, he chose Ryan Zinke, a former member of the U.S. House of Representatives from Montana. Secretary Zinke followed a pro-development path as DOI Secretary, pushing for cuts in the acreage of Bear Ears and Grand Escalante National Monuments in Utah and for increasing the pace of issuing oil and gas leases on federal lands. Following his resignation in December, 2018, he was succeeded by DOI staffer David Bernhardt as acting (now permanent) Secretary, pushing an identical set of policy goals. To date, a permanent appointment to head BLM has not been made.

Turning to oil and gas development, DOI officials have focused on reducing the backlog of applications to drill permits from energy companies. A push for bids to increase oil and gas leasing across larger swaths of federal land has been made, often in areas previously set aside as valuable wildlife habitat under the Obama Administration. Bernhardt issued a directive requiring environmental impact statements to be limited to no more than 150 pages or 300 pages for especially complex energy projects along with a one year time limit for the completion of the EIS (Dougherty, 2018). Trump has facilitated this process with the aid of Congress under the authority of the Congressional Review Act to essentially eliminate energy and environmental regulations enacted by the Obama Administration in late 2016 (Konisky and Woods, 2018). Two rules aimed at adding greater environmental protection to oil and gas drilling processes on federal lands were successfully eliminated – a rule to encourage more public participation in resource management plans and the fracking rule.

No data are yet available for cross Administration comparisons but through words and actions it seems plausible to expect a pattern of land use decisions that closely resemble DOI and BLM under Secretary Norton and Director Clarke. Zinke has suggested that enforcement decisions may be more appropriate for state officials and that it may also be more useful to emphasize ways to encourage compliance rather than the imposition of punitive measures. A return to a more industry friendly interpretation of CEs allowing exemption from environmental impact analyses for proposed drilling projects is likely.

How have Presidents dealt with climate-related impacts associated with oil and gas production on federal lands? President George W. Bush showed little interest in policies aimed at reducing greenhouse gas emissions during his tenure in office. A high profile example was the decision to avoid a major U.S. role internationally in the adoption of the Kyoto Protocol thus ceding to other policy actors the task of pursuing climate change policy goals.

Within the context of domestic policy concerns, he placed greater emphasis on the attainment of energy independence through the removal of regulatory barriers to energy production than on environmental protection or on mitigating adverse climate impacts. Bush issued an executive order early on that allowed federal agencies pursuing energy development to take precedence whenever a land use decision pitted energy against other policy goals such as wildlife conservation or transportation (Bush, 2001). He pushed for increased power from fossil fuels by working with Congressional leaders to enact the Energy Policy Act of 2005. This law helped to expedite the issuance of drilling permits for energy companies by relaxing procedural requirements for environmental analysis associated with project approval decisions. It also reduced the regulatory role of EPA under the Safe Drinking Water Act to oversee fracking operations, a shift that effectively gave more decision-making authority to state water quality officials.

The subsequent policy vacuum for addressing adverse climate impacts was filled by federal courts and public officials representing state and local governments between 2001 and 2008. Especially important was a U.S. Supreme Court decision, *Massachusetts v. Environmental Protection Agency* (2007), that paved the way for the U.S. EPA to regulate carbon dioxide as a greenhouse gas under the authority of the Clean Air Act. In addition, a number of states passed climate change policies, others joined multistate compacts such as the Regional Greenhouse Gas Initiative in the northeast, and the U.S. Conference of Mayors adopted GHG emission reduction goals that were approved by elected officials in over 900 U.S. cities (Bestsill and Rabe, 2009). The importance of these policy developments lies in establishing a regulatory context for climate policy change that could evolve despite opposition from the Bush Administration.

The election of President Barack Obama in 2008 ushered in a new era of support for environmental policymaking, including a major emphasis on climate change. He supported a bill in Congress calling for federal restrictions on GHG emissions that narrowly passed the House of Representatives in 2009. However, the proposal was subsequently rejected by the U.S. Senate due, in part, to the emergence of the Tea Party movement in 2010. This resulted in the election of a more conservative Republican majority that was skeptical about new regulatory initiatives, including climate change policies. Lacking a base of support in Congress for his environmental policy agenda, Obama turned to increased use of executive authority to achieve his policy goals.

Much of Obama’s focus on climate was directed toward procedural policies affecting a

wide range of federal policies and projects. For example, the use of NEPA by federal agencies to evaluate environmental impacts of proposed projects added climate as a factor to consider (Council on Environmental Quality, 2016). Relatedly, the development of rules by federal departments or agencies incorporated a criterion referred to as the “social cost of carbon” to quantify the economic impact of a proposed rule for projects under consideration (Hulac, 2015). Perhaps the most visible and controversial action taken by the Obama Administration was EPA’s development of the Clean Power Plan, a nationwide rule designed to establish reduction targets for carbon dioxide emissions at power plants (mostly coal) in each state. This generated considerable resistance from many state officials, leading to litigation and eventually to efforts by Republicans in Congress to eliminate or replace it (Bescoe, 2018).

A major climate change initiative linked to oil and gas production on federal lands was the *Methane and Waste Prevention Rule*, advanced by Interior Secretary Sally Jewel in November, 2016. This regulation was designed to slow or eliminate the release of methane emissions from “flaring” or leaks associated with oil and gas drilling operations on BLM and tribal lands. Agency officials, state officials (California and New Mexico) and environmental groups directed attention to environmental benefits such as limiting adverse impacts of methane, a greenhouse gas that is considerably more potent than carbon dioxide (Wilderness Society and Taxpayers for Common Sense, 2018; Duffy and Cook, 2018). Advocates also argued that the rule would reduce waste and preserve revenue for U.S. taxpayers based on royalties earned from drilling operations on federal lands under the Mineral Leasing Act of 1920, including fugitive methane emissions arising from venting, flaring or leaks originating from gas wells or compressors (Lattanzio, 2018).

While this rule enjoyed considerable support from individuals or companies possessing subsurface mineral rights and environmental groups, industry officials considered it to be overly burdensome since BLM drilling sites are often located in remote areas where the costs of capturing methane and delivering the gas for energy users is quite high. The rule required oil and gas companies to not only restrict and capture methane emissions but to also to upgrade their equipment and to develop plans for minimizing waste when drilling on public lands (Gilmer, 2018). The new rule was immediately challenged in the federal courts by energy industry groups.

President Trump took office with little knowledge and experience pertaining to energy policy and climate change. During the campaign for the Presidency, he famously referred to climate change as an “expensive hoax” (Davenport, 2016). While key initiatives to resist or overturn Obama’s policies such as decisions committing the U.S. to withdraw from the Paris accords and to redo the Clean Power Plan were undertaken by EPA, other departments like DOI took action to erase Obama policies aimed at mitigating adverse climate impacts (Davenport, 2016).

President Trump quickly discovered that the quickest way to influence policy direction was to make use of executive authority, notably executive orders and the selection of political appointments to head environmental or energy department heads. On March 28, 2017, Trump issued E.O. 13783 titled *Promoting Energy Independence and Economic Growth* (Trump, 2017). This called for BLM to re-examine its 2016 Methane Capture Rule with an eye toward its compatibility with energy independence and to take corrective measures if necessary. He also appointed departmental leaders with some governmental experience such as former Texas Governor Rick Perry at EPA, former Oklahoma Attorney General Scott Pruitt at EPA, former Montana Congressman Ryan Zinke at DOI and former Georgia Governor Sonny Purdue at USDA. All shared his policy priorities as did appointees with industry ties and former lobbyists like Andrew Wheeler (Pruitt’s successor at EPA) that supported his emphasis on deregulation of environmental and energy programs, including climate change.

Another early indication of a different policy direction was the decision to eliminate agency links to data or information mentioning climate change. Shortly after Trump became President, the official White House website deleted references to the topic. Other federal agencies including DOI did the same along with links to studies and data pertaining to climate change or global warming (Davenport and Lipton, 2017). This resulted in pushback from supporters of climate change research and policy. A number of scientists at U.S. universities subsequently took steps to save and store information to ensure that accessibility to government records could be maintained. Another broad action directly affecting federal natural resource agencies was the withdrawal of the Obama Administration guidance requiring the inclusion of greenhouse gas emissions whenever environmental analysis studies were carried out (Popovich, Albeck-Ripka, and Pierre-Louis, 2018). Legal challenges have followed, most recently a decision by a U.S. District Court judge in Washington, DC on March 20 that blocked oil and gas drilling in Wyoming after BLM officials failed to consider climate impacts under NEPA (Eilperin, 2019).

Perhaps the most direct effort to delete climate impacts from oil and gas production on federal lands occurred when DOI proposed doing away with BLM’s 2016 methane rule. It was one among many other energy and environmental regulations adopted by the Obama Admini- stration to be targeted for elimination by Congressional Republicans under the Congressional Review Act; however, after a vote to disapprove the measure passed in the House of Represen- tatives, it was narrowly defeated in the Senate (Harvard Environmental Law Program, 2018). DOI officials then filed suit to suspend the rule and to rewrite parts of the regulation.

A final BLM rule titled “Waste Prevention, Production Subject to Royalties, and Resource Conservation; Recission or Revision of Certain Requirements” was published on September 28,

2018. It eliminated several provisions of the previous regulation, including waste minimization plans, well drilling and completion actions, and leak detection and repair requirements. In addition, changes in how the measurement and reporting of the volume of gas that is vented or flared is calculated (BLM, 2018).

Conclusions

The regulation of oil and gas production on federal lands has varied dramatically over the past couple of decades. While Congress occasionally offers policy guidance through the enactment of laws like FLPMA in 1976 or the Energy Policy Act of 2005, there is relatively little oversight over what DOI or BLM does to implement them. Unlike detailed legislation such as the Clean Air Act of 1990 that prescribes courses of action for EPA administrators to be taken in response to particular situations, Nie (2008) suggests that federal land laws are ambiguous, offering more decisional leeway for differing interpretation of statutory meaning. Consequently, policy change often occurs in smaller increments through rulemaking, a useful policy path but less permanent than the enactment of legislation.

In examining changes in the management of oil and gas management practices across the past three Presidential Administrations, partisan orientation clearly stands out. BLM’s policy decisions vary most in terms of following the lead of Republican leaders with a staunchly pro- development goal versus Democratic leaders preferring greater sensitivity to resource conservation goals. Approaches used most commonly to achieve these goals include organizational communications, the exercise of discretionary authority and procedural changes in public participation and planning.

Use of approaches under DOI and BLM leaders vary. In support of Bush’s goal to accelerate oil and gas production, Secretary Norton pressured field administrators to more quickly process industry applications for drilling permits and, after the adoption of the Energy Act of 2005, she utilized CEs to exempt environmental impact reviews for proposed drilling projects. These objectives were also advanced by placing less emphasis on inspecting oil and gas drilling operations to safeguard against air and water quality violations.

On the other hand, DOI Secretaries Salazar and Jewell promoted Obama’s pro-environmental agenda by focusing more on the inclusion of environmental policy criteria in public land use decisions linked to oil and gas production. This was achieved through restrictions on the approval of CEs, adopting a new rule aimed at strengthening environmental quality standards for fracking operations on BLM lands, enlarging the size of resource area planning areas and increasing the number of environmental inspections on drilling sites.

Although DOI Secretary Zinke and his successor, David Bernhardt, have been on the job for a relatively short period of time, their decisions so far appear to be in sync with Trump’s desire to achieve “energy dominance.” BLM has set a rapid pace thus far to lease oil and gas federal permits on federal lands with moves to restore access to the use of CEs to expedite the waiver if environmental impact analyses. These efforts have also been bolstered by Trump’s success in getting Congress to use CRAs to revoke the Obama rule aimed at expanding BLM resource management planning areas and opportunities for public participation. Greater emphasis has also been placed on incentivizing compliance with environmental laws in drilling operations than with punitive measures to deter future violations.

In terms of addressing the impacts of climate change on federal land management decisions, the decisions made by Secretaries Norton, Salazar /Jewell and Zinke/Bernhardt have essentially mirrored those made to address energy policy. Climate policies were largely ignored under Secretary Norton in order to accelerate oil and gas production goals. Secretaries Salazar and Jewell actively pursued policies to mitigate adverse climate impacts, notably the rule designed to prevent flaring and the release of methane in drilling operations. Under the Trump Administration, DOI and Secretary Zinke were unable to eliminate the rule via the CRA but succeeded in developing a substantially weaker replacement regulation in September, 2018 that offered more flexibility for regulated industries along with reduced compliance costs.

In examining the near term prospects for achieving a balance between energy production goals, environmental conservation and the mitigation of climate impacts, the outlook is not bright. Democrats and environmental advocates will continue to utilize litigation strategies to maintain existing regulatory protections. In some cases, policymakers in states like California and Colorado have responded to federal initiatives with policies requiring oil and gas companies to capture and use methane released during fracking operations. Similar efforts may well gain steam because of political momentum from the 2018 midterm elections that resulted in Democrats regaining control of the U.S. House of Representatives. It is unclear whether ongoing litigation challenging Trump Administration policies will succeed. Time will tell.

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