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Biden Administration Issues Temporary Suspension of BLM/BIA Approvals

Need an Approval? You'll have to head to D.C.

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The day after the inauguration, the Acting Secretary of Interior issued Order No. 3395, Temporary Suspension of Delegated Authority, suspending the delegation of authority to all Department of Interior Bureaus and Offices, including the BLM and BIA, for 60 days. Of particular note is the suspension of the BLM's and BIA's authority to approve leases, amendments and extensions thereof, applications for permit to drill (APDs), rights of way, and easements. Following is the entire list of the suspended actions:

1. To publish, cause to be published, or aid in the publication of any notice in the Federal Register, including, but not limited to, notices of proposed or final agency action and actions taken in accordance with the National Environmental Policy Act;
2. To issue, revise, or amend Resource Management Plans under the authority of Section 202 of the Federal Land Policy and Management Act as amended;
3. To grant rights of way, easements, or any conveyances of property or interests in property, including land sales or exchanges, or any notices to proceed under previous surface use authorizations that will authorize ground-disturbing activities;
4. To approve plans of operation, or to amend existing plans of operation under the General Mining Law of 1872;
5. To issue any final decision with respect to R.S. 2477 claims, including recordable disclaimers of interest;
6. To appoint, hire, or promote personnel, or approve the appointment of any personnel, assigned to a position at or above the level of GS 13, but this does not apply to seasonal hires or emergency work force personnel;
7. To issue any onshore or offshore fossil fuel authorization, including but not limited to a lease, amendment to a lease, affirmative extension of a lease, contract, or other agreement, or permit to drill. This does not limit existing operations under valid leases.

As background, the Secretary of Interior is authorized to perform the duties specified in the various acts administered by the Department of Interior. For instance, under the Mineral Leasing Act, the Secretary is authorized to issue leases for oil and gas, approve assignments and unit or communitization agreements, and issue APDs. 30 USC §§ 226(a), (g), (m), (p). Furthermore, under the Reorganization Plan No. 3 of 1950, Section 1, all functions of all other officers of the Department of Interior and all

functions of all agencies and employees of the Department are transferred to the Secretary. In Section 2, the Secretary then “may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of the Interior of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.” 64 Stat. 1262. Such delegations are set forth in the Delegation (200) Series of the Departmental Manual. In issuing the Secretarial Order No. 3395, the Secretary is relying on its authority granted under Section 2 of the Reorganization Plan No. 3.

Until the suspension is lifted, approval of any of the above actions identified in Order No. 3395 must come from the Secretary, Deputy Secretary, Solicitor, or Assistant Secretary, as applicable.

We note the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah has already responded to the Acting Secretary stating that the Order violates treaty and trust responsibilities to the Ute Indian Tribe and demanding that the Order be amended to provide for an exception for energy permits and approvals on Indian lands. This is most likely the beginning of the protests to Order No. 3395.

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