Insights: Alerts

Indian Country Should Defend Environmental Protections

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Doing exactly what he promised to do throughout his campaign, Donald Trump has been rolling back Obama-era environmental regulations since his first full day in office when he issued an executive order to expedite approval of the Dakota Access pipeline. He's continued by bringing back the Keystone pipeline by issuing the cross-border permit that had been denied by the Obama administration. Then, by directing the U.S. Environmental Protection Agency to review and potentially weaken fuel economy standards for cars and trucks. Most recently, he issued another executive order titled "Promoting Energy Independence and Economic Growth." [1] This order directs federal agencies to review and potentially rescind several Obama-era environmental and energy regulations. This most recent
executive order lines up with two years of campaign promises to undo environmental regulations and sends the clear signal that federal agencies will rescind these regulations.

The environmental harm of pipelines crossing the lakes and rivers that make up the water supply for large portions of Indian Country is easy to see, and these pipelines have served as effective rallying points for bringing together tribes and environmentalists in opposition. The image of a pipeline, literally a manmade scar across the earth, was a key component to how the protests at Standing Rock received a level of media coverage not typically devoted to any tribal issue. While that image is lacking from the recent executive order and the drawn out and complex regulatory process it has set in motion, the environmental harms likely to occur in Indian Country could have deep and long lasting impacts to tribes everywhere.

There are some obvious provisions of the executive order that could have immediate impacts on Indian Country. These provisions include lifting the moratorium on coal leasing on federal land, and a review and potential rescission of regulations governing fracking in Indian Country[2] and flaring in Indian Country.[3] The likely rescission of either, or more likely both, of these regulations could have devastating economic and environmental impacts. The fracking regulation was created to replace prior Bureau of Land Management regulations that were at least 25 years old and were created long before fracking was even a commonly used practice.[4] These new Obama administration fracking regulations sought to make more information publically available, ensure well integrity, protect water sources by managing "recovered fluids" in lined pits, and disclosing chemicals used in fracking operations.

Regulated parties have already invested heavily to comply with these fracking regulations that apply to over 47,000 active oil and gas leases on public and Indian lands and over 95,000 oil and gas wells. A rescission of this rule would only leave in place BLM fracking regulations from over two decades ago, when fracking rarely occurred. Likewise, the ordered review on regulations addressing flaring in Indian Country could have far reaching environmental impacts for many tribes.

Flaring, and venting, are the processes by which operators burn off or release natural gas that results from oil and

gas drilling operations. While natural gas is a valuable commodity that is mined in its own right, in some instances its more economical to simply burn off the natural gas that is produced as a byproduct of other drilling operations. Natural gas that is flared or vented is primarily comprised of methane, an especially powerful greenhouse gas with climate impacts significantly above those of carbon dioxide. Flaring is no small issue in Indian Country. The Office of Natural Resources Revenue reported that federal and Indian onshore lessess and operators vented or flared 462 billion cubic feet of natural gas between 2009 and 2015 — enough gas to serve about 6.2 million households for a year.[5] The regulation prohibits the venting of natural gas, except under certain specific conditions, and requires operators to "reduce wasteful flaring of gas by capturing for sale or using on the lease a percentage of their gas production." [6]

In addition to the environmental impacts of these rules, there are substantial economic impacts to tribes as well. The previous rules often did not require operators to pay royalties on vented or flared natural gas. Indeed, the BLM estimated that the new regulations would "produce net benefits ranging from $46 million to $204 million per year." [7]

If the current administration is successful in their efforts to suspend, rescind or revise these significant rules, it is certain to have lasting environmental impacts on par with or greater than those resulting from any pipeline. However, a lengthy process remains before any wholesale regulatory changes can go into effect. Indian Country can and should be active participants in that process, along with the many states and cities who have vowed to oppose any administration efforts to weaken environmental protections or limit expansion of clean energy solutions. Indian Country and the Standing Rock Sioux Tribe clearly demonstrated the coordinated and passionate leadership and reasonable voice that tribes can bring to environmental issues. We all know that tribes are the original EPA, and Indian Country's leadership may be needed now more than ever, in the many fights yet to come on environmental issues that could impact our lands beyond any pipeline.

[1] Exec. Order, Presidential Executive Order on Promoting Energy Independence and Economic Growth (Mar. 28, 2017), available at https://www.whitehouse.gov/the-press-office/2017/03/28/presidentialexecutive-order-promoting-energy-independence-and-economi-1.

[2] Final Rule entitled 'Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands,' 80 Fed. Reg. 16128 (March 26, 2015).

[3] Final Rule entitled 'Waste Prevention, Production Subject to Royalties, and Resource Conservation,' 81 Fed. Reg. 83008 (November 18, 2016).

[4] Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 FR 16128-0, *16128 (Mar. 26, 2015).

[5] Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 FR 83008-01, *83009 (Nov. 18, 2016).

[6] Id. at 83011.

[7] Id. at 83013.