

Presented by:
Stacy Stotts, Moderator

sstotts@polsinelli.com

Frank Caro

fcaro@polsinelli.com

Andrew Schulte

aschulte@polsinelli.com

Adam Troutwine

atroutwine@polsinelli.com

Energy and Environmental Policy Forecast and Trump's First 100 Days

AWMA Environmental Technical Conference

February 28, 2017



Outline of Presentation

- Political Appointments
- Executive Orders
 - Regulatory Reform
 - Clean Power Plan
 - Waters of the United States
- Congressional Review Act
- Tax Policy
- Budget and Other Legislative Issues
- Infrastructure
- Local Issues

Department of Energy

- **Rick Perry, Former Texas Governor**
 - Expected to be confirmed by the Senate and sworn in this week
 - Vowed to abolish DOE in 2011 presidential debate
 - As Secretary of Energy, likely to focus resources on fossil fuel production



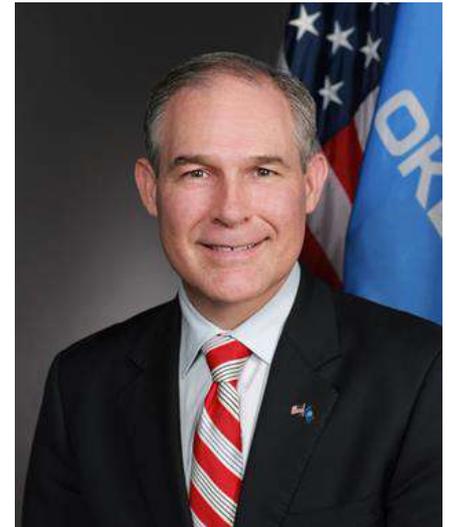
Department of the Interior

- **Ryan Zinke**, U.S. Representative from Montana
 - Expected to be confirmed by the Senate and sworn in this week
 - Campaigned for his house seat on platform of achieving North American energy independence
 - Outdoorsman; opposed to transferring or selling federal lands



Environmental Protection Agency

- **Scott Pruitt**, Former Attorney General of Oklahoma
 - Sworn in on February 17th
 - Oklahoma is one of 28 states suing the EPA over the Clean Power Plan
 - In speech to EPA employees, Pruitt said he was ready to work with them, but stressed that rulemaking should be “tethered to the statute” and that the agency should maintain market certainty
 - Recently released emails show close ties to fossil fuel industry



Federal Energy Regulatory Commission

■ Three Open Seats

- No word on who is being considered by the Trump Administration
- FERC currently lacks a quorum
- Additional authority delegated to Staff, but no contested cases can be decided
- Fewer than 3 dozen of the 550 most important Senate-confirmed jobs have been named.



Supreme Court

- **Neil Gorsuch**, U.S. Court of Appeals Judge for the 10th Circuit
 - Senate Judiciary Committee has set the confirmation hearing for March 20th
 - Majority Leader McConnell hopes for confirmation before the Easter recess, which begins April 7th
 - Has questioned the validity of *Chevron*, which holds that courts should defer to agencies' reasonable interpretation of ambiguous statutes



Executive Orders: Regulatory Freeze

- Issued on Inauguration Day (Jan. 20)
- Similar action taken by Presidents Bush and Obama in 2001 and 2009, respectively
- Directs executive agencies to:
 - Refrain from sending new regulations to the Office of the Federal Register (OFR) until it has been approved by an agency head appointed by Trump
 - Withdraw any regulation that has been sent to the OFR but remains unpublished
 - Postpone for 60 days (from Jan. 20) the effective date of any regulation that has been published by the OFR but has not yet taken effect
 - Exceptions exist for emergencies, national security, and does not cover independent agencies

Executive Orders: Hiring Freeze

- Issued on January 23
- Prohibits executive branch from hiring civilian employees, other than as the head of an executive agency deems necessary to meet national security or public safety responsibilities.
- Directs Office of Management and Budget, in consultation with the Director of Office of Personnel Management, to recommend a long-term plan to reduce through attrition the size of the federal government's workforce.
- Exempts Presidentially-appointed or Senate confirmed positions and non-career positions in the Senior Executive Service, as well as seasonal employees.
- Contracting outside of the Government to circumvent the intent of the memorandum is not permitted.

Executive Orders: Regulatory Reform

- One-in-two-out (Jan. 30)
 - Directs agencies requesting new regulations to cut two existing regulations
 - Zero-sum cost: total cost of new regulations, combined with savings from repealed regulations should equal no more than zero
- Regulatory reform officers and task forces (Feb. 24)
 - Directs heads of departments and agencies to designate an agency official as a “regulatory reform officer” to oversee the implementation of regulatory initiatives and policies
 - Directs the establishment of task forces, which include the regulatory reform officer as chairman, to evaluate existing regulations and make recommendations to their agency heads about repeal, rescission, replacement or modification of existing regulations

Clean Power Plan

- The Clean Power Plan is currently stayed pending action by the DC Circuit Court
 - Oral arguments were heard *en banc* in September, 2016, but the Court has not issued an opinion



Clean Power Plan, cont'd

- Expect to see an Executive Order that would direct the EPA to begin rewriting the Clean Power Plan
- EPA is compelled to act on CO2 emissions due to *Massachusetts vs. EPA* and the EPA's own endangerment findings several years ago
 - Pruitt has recently questioned whether the EPA has jurisdiction to regulate GHGs
 - Interest groups will likely file lawsuits to force the EPA to act

Waters of the United States

- Under the Obama Administration, the EPA expanded the definition of “Waters of the United States” subject to regulation under the Clean Water Act
- The expanded rules are currently stayed pending action by the U.S. Court of Appeals for the Sixth Circuit
- Expect to see Executive Order instructing the EPA and the Army Corps of Engineers to redo the WOTUS rules



Other Potential Executive Orders

- Expect to see an Executive Order lifting the Obama administration's moratorium on federal coal leasing
- Potential for Executive Order on the Paris Climate Agreement



Congressional Review Act

- Any rules that were finalized within the last 60 legislative days of 2016 are subject to the CRA
 - Applies to regulations finished on or after June 13, 2016
- CRA resolutions only require a simple majority in the House and Senate.



Congressional Review Act, cont'd

- President Trump so far has signed two CRA resolutions into law
 - **H.J. Res. 41**, to overturn the Securities and Exchange Commission rule mandating that oil, gas and coal companies disclose payments made to governments
 - **H.J. Res. 38**, to kill the Interior Department's Stream Protection Rule
- House has already approved 13 CRA resolutions, including:
 - **H.J. Res. 36**, which would kill a Bureau of Land Management (BLM) rule that seeks to curb GHG emissions from oil and gas flaring, venting and leakage on public and tribal lands
 - **H.J. Res. 44**, that would overturn the Interior Department's land management Planning 2.0 rule, finalized by BLM in December
 - **H.J. Res. 69**, which would repeal a 2016 Fish and Wildlife Service rule that gave the federal government tighter control over managing predatory animal populations on national wildlife refuges in Alaska
- The Senate is expected to consider House-passed CRA resolutions after it confirms all of Trump's Cabinet nominees.

Tax Policy

- Wind Production Tax Credit
 - Gradual step-down through 2019, after which the PTC expires
 - Projects may lock-in tax credit amounts by beginning construction before the end of the period and completing construction within four years
 - Unlikely to be reduced or expanded
- Solar Investment Tax Credit
 - Gradual step-down through 2022
 - Projects may lock-in tax credit amounts by beginning construction before the end of the period and completing construction by 2024
 - Unlikely to be reduced or expanded
- Carbon Tax
 - Support from Congressional Republicans?
 - Revenue neutral
- Fossil Fuel Production
 - The Republican-led Congress may create incentives for coal and gas production and protect existing fossil fuel tax preferences

Other Legislative Issues

- Expect most non-defense departments and agencies to receive budget cuts in FY 2018
 - White House expected to propose a budget that increases defense spending by \$54 billion and offset it with cuts to non-defense agencies, including 24% cut to EPA (EPA's current budget is \$8.1 billion)
- Congress will consider reforming the Endangered Species Act, the Renewable Fuels Standard, and the Superfund and Brownfields programs.
 - Any such reform efforts will require at least some Democratic support
 - Given current levels of partisanship in Washington and other issues that will receive prior Congressional attention (healthcare and tax reform), it's likely that none of these laws are significantly changed before the 2018 midterm elections

Infrastructure

- Executive Orders to revive Keystone XL and Dakota Access oil pipelines
 - Army Corp. of Engineers granted easement to Dakota Access
 - Keystone XL re-submitted application to Dept. of State
- List of priority projects released in January
 - Preliminary wish list
 - Includes the Plains & Eastern Transmission Line, TransWest Express Transmission Line, Chokecherry and Sierra Madre Wind Projects, Mojave Solar Project, Upgrades to Hydro Plants, and the Atlantic Coast Gas Pipeline
- Congressional Infrastructure Package
 - Given the focus on health care and tax reform, we are unlikely to see a major infrastructure package in 2017

Local Issues

- Ameren's Rush Island Power Plant
 - On January 23, 2017, a federal district court ruled that Ameren violated the CAA for expanding the Rush Island Power Plant without getting the necessary permits
 - Enforcement action brought by the Obama Administration's EPA; Trump's EPA may not defend the appeal
- Great Plains/Westar Merger
 - Application pending at FERC, which cannot be ruled upon until a quorum is in place

Contact Information

Frank Caro

Chair, Energy Practice Group

816-572-4754

fcaro@polsinelli.com

Stacy Stotts

Shareholder

816-691-3770

sstotts@polsinelli.com

Adam Troutwine

Shareholder

816-572-4759

atroutwine@polsinelli.com

Andrew Schulte

Associate

816-691-3731

aschulte@polsinelli.com

Tracy Hammond

Senior Policy Advisor (Washington, DC)

202-626-8322

thammond@polsinelli.com



Polsinelli provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

Polsinelli is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.

*© 2016 Polsinelli PC. In California, Polsinelli LLP.
Polsinelli is a registered mark of Polsinelli PC*

