

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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STATE OF CALIFORNIA, et al.,)	
)	
Petitioners,)	
)	
v.)	No. 21-1018 (and
)	consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
Respondents.)	
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**MOTION TO HOLD CASES IN ABEYANCE PENDING
IMPLEMENTATION OF EXECUTIVE ORDER AND CONCLUSION OF
POTENTIAL RECONSIDERATION**

The United States, on behalf of Respondents United States Environmental Protection Agency, and Jane Nishida, Acting Administrator (together, “EPA”), hereby moves the Court to place these cases in abeyance, pending EPA’s implementation of an Executive Order signed on January 20, 2021. That Executive Order directs EPA to review the Clean Air Act regulation at issue in this case (the “Airplane Rule” or the “Rule”). Allowing EPA to review the Airplane Rule, consistent with the Executive Order and the Clean Air Act, will promote judicial economy by avoiding unnecessary adjudication and will support the integrity of the administrative process.

Accordingly, the United States respectfully requests that this Court hold these cases in abeyance while the Agency conducts its review. The United States requests that the abeyance remain in place until 30 days after the conclusion of review and any resulting rulemaking, with motions to govern further proceedings due upon expiration of the abeyance period.

Respondents contacted counsel for Petitioners and Movant-Intervenors regarding their positions on this motion. Counsel for State Petitioners (No. 21-1018) states that they support a six-month abeyance, with 90-day status reports, and with the opportunity for an additional abeyance if circumstances justify it, but state that they do not support indefinite abeyance. Counsel for Environmental Petitioners (No. 21-1021) states that they do not oppose a six-months abeyance, with 90-day status reports, but oppose an indefinite or longer period of abeyance. Counsel for Movant-Intervenors the Boeing Company states that they do not oppose this motion to hold the case in abeyance.¹

BACKGROUND

On January 11, 2021, EPA promulgated under Section 7571(a) of the Clean Air Act, 42 U.S.C. § 7571(a), a rule entitled “Control of Air Pollution from Airplanes and

¹ Counsel for Respondents also contacted counsel for the Aerospace Industries Association, as the Association sought the parties’ positions on a forthcoming motion to intervene. Although the Aerospace Industries Association is not yet a Movant-Intervenor, counsel for the Association states that they do not oppose this motion to hold the case in abeyance.

Airplane Engines: GHG Emission Standards and Test Procedures” (the “Airplane Rule” or the “Rule”). 86 Fed. Reg. 2136. The Airplane Rule establishes greenhouse gas standards applicable to certain classes of airplane engines. EPA determined in 2016 that greenhouse gas emissions from such aircraft engines used in certain civil aircraft “cause[], or contribute[] to, air pollution which may reasonably be anticipated to endanger public health and welfare,” *see* 42 U.S.C. § 7571(a)(2)(A); 81 Fed. Reg. 54,422 (Aug. 15, 2016), obligating it to set emission standards for these aircraft. The standards ultimately adopted in the Airplane Rule are equivalent to the airplane carbon dioxide standards adopted by the International Civil Aviation Organization (“ICAO”) in 2017. The Rule also adopts the ICAO carbon dioxide metric and test procedures for airplane and engine “specific air range” adopted by ICAO in 2017. Finally, the Rule updates the existing incorporation by reference of the ICAO test procedures for hydrocarbons, carbon monoxide, nitrogen oxides, and smoke.

On January 15, 2021, State and Environmental Petitioners filed two petitions for review of the Airplane Rule, which were consolidated under the lead case *State of California v. EPA*, D.C. Cir. No. 21-1018. The Court has not yet set a schedule for merits briefing.

On January 20, 2021, President Joseph R. Biden Jr. signed Executive Order 13990 on “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). The Executive Order establishes a policy to:

listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

Id. (Section 1). To that end, the Executive Order specifically directs “all executive departments and agencies . . . to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *Id.*

In a list of agency actions accompanying the Executive Order, the President specifically identified the Airplane Rule as falling within the scope of the Executive Order, requiring that it be reviewed “in accordance with the Executive Order: ‘Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.’” Ex. 1, “Fact Sheet: List of Agency Actions for Review,” at “U.S. Environmental Protection Agency” § 4.

In consideration of the Executive Order and accompanying list of agency actions, EPA requested on January 21, 2021, that the Department of Justice’s Environment and Natural Resources Division “seek and obtain abeyances or stays of

proceedings in pending litigation” concerning, *inter alia*, rulemakings within the scope of the Executive Order. Ex. 2, Letter from Melissa A. Hoffer, Acting General Counsel.

ARGUMENT

The Executive Order and accompanying list of agency actions subject to review mark new developments that warrant holding this litigation in abeyance. Consistent with the inherent authority of federal agencies to reconsider past decisions and EPA’s statutory powers under the Clean Air Act, EPA should be afforded the opportunity to respond to the Executive Order by reviewing the Airplane Rule in accordance with the new policies set forth in the Order. Abeyance will further the Court’s interests in avoiding unnecessary adjudication, support the integrity of the administrative process, and ensure due respect for the prerogative of the executive branch to reconsider the policy decisions of a prior Administration.

It is well-established that agencies have inherent authority to reconsider past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“*State Farm*”). EPA’s interpretations of statutes it administers are not “carved in stone” but must be evaluated “on a continuing basis,” for example, “in response to . . . a change in administrations.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted); *see*

also *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based “on a reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion,” and “[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations” (quoting *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part))).

Courts may defer judicial review of a final rule pending completion of reconsideration proceedings. *See Am. Petroleum Inst. v. EPA*, 683 F.3d 382 (D.C. Cir. 2012) (“*APP*”). And this Court has often held challenges to Clean Air Act rules, in particular, in abeyance pending completion of reconsideration proceedings. *See, e.g., Sierra Club v. EPA*, 551 F.3d 1019, 1023 (D.C. Cir. 2008); *New York v. EPA*, No. 02-1387, 2003 WL 22326398, at *1 (D.C. Cir. 2003) (same).

With these principles in mind, and based on recent developments, abeyance is warranted in this case. The President of the United States has directed EPA to immediately take all steps necessary to review the Airplane Rule and, if appropriate, initiate a new rulemaking “suspending, revising, or rescinding” that action. 86 Fed. Reg. at 7037 (Section 2(a)). EPA has requested that the United States seek an abeyance of this litigation so that it may review the Airplane Rule in accordance with this directive. As that review may result in a determination to initiate the revision or rescission of the Rule at issue in this case, “[i]t would hardly be sound stewardship of

judicial resources to decide this case now.” *API*, 683 F.3d at 388. Abeyance would allow EPA to “apply its expertise and correct any errors, preserve[] the integrity of the administrative process, and prevent[] piecemeal and unnecessary judicial review,” *id.*, while furthering the policy set forth in the Executive Order, as consistent with the Clean Air Act.

Notably, granting abeyance here would also be consistent with this Court’s past practice. This court has granted abeyances in litigation challenging other Clean Air Act rules when a change in presidential administrations prompted EPA to reconsider its decision, including in the few weeks. *See, e.g., California v. EPA*, D.C. Cir. 20-1357, ECF No. 1885114 (February 12th order placing in abeyance challenges concerning regulation of greenhouse gases from oil and gas sources); *Union of Concerned Scientists v. NHTSA*, D.C. Cir. 19-1230, ECF No. 1884115 (February 8th order placing in abeyance challenges to, *inter alia*, withdrawal of a Clean Air Act waiver for state greenhouse gas regulations of vehicles); *see also, e.g., North Dakota v. EPA*, D.C. Cir. No. 15-1381, ECF Nos. 1673072 & 1688176 (placing in abeyance challenges concerning regulation of greenhouse gases from power plants); *Texas v. EPA*, D.C. Cir. No. 17-1021, ECF No. 1715548 (placing in abeyance challenges to Clean Air Act regional haze regulations).

WHEREFORE, the United States requests that this Court hold these cases in abeyance while the agency conducts its review of the Rule, and that the abeyance remain in place until 30 days after the conclusion of review and any resulting

rulemaking, with motions to govern further proceedings due upon expiration of the abeyance period.²

Respectfully submitted,

JEAN E. WILLIAMS
Deputy Assistant Attorney General

DATED: February 16, 2021

/s/ Chloe H. Kolman
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² The United States is willing to provide status reports at regular intervals during the abeyance period (Respondents suggests every 120 days) if the Court would find that useful.

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Motion to Hold Cases in Abeyance complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(2)(A) because it contains approximately 1,653 words, excluding exempted portions, according to the count of Microsoft Word.

/s/ Chloe H. Kolman
CHLOE H. KOLMAN

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Motion to Hold Cases in Abeyance have been served through the Court's CM/ECF system on all registered counsel this 16th day of February, 2021.

/s/ Chloe H. Kolman
CHLOE H. KOLMAN

EXHIBIT 1



BRIEFING ROOM

Fact Sheet: List of Agency Actions for Review

JANUARY 20, 2021 • STATEMENTS AND RELEASES

Actions Address the COVID-19 Pandemic, Provide Economic Relief, Tackle Climate Change, and Advance Racial Equity

This is a non-exclusive list of agency actions that heads of the relevant agencies will review in accordance with the Executive Order: “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” Additional agency actions also will be reviewed to determine consistency with Section 1 of the Executive Order. *Note that actions published in the January 20 Federal Register will be added to this list.*

COUNCIL ON ENVIRONMENTAL QUALITY

1. “Guidance Document Procedures,” 86 Fed. Reg. 1279 (January 8, 2021).
2. “Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act,” 85 Fed. Reg. 43304 (July 16, 2020).

U.S. DEPARTMENT OF AGRICULTURE

1. “Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska,” 85 Fed. Reg. 68688 (October 29, 2020).

U.S. DEPARTMENT OF COMMERCE

1. “Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico,” 86 Fed. Reg. 5322 (January 19, 2021).
2. “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,” 85 Fed. Reg. 81411 (December 16, 2020).
3. National Oceanic and Atmospheric Administration, Biological Opinion on Long Term Operation of the Central Valley Project and the State Water Project (October 21, 2019).



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4. “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat,” 84 Fed. Reg. 45020 (August 27, 2019).

5. “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” 84 Fed. Reg. 44976 (August 27, 2019).

U.S. DEPARTMENT OF DEFENSE

1. “Reissuance and Modification of Nationwide Permits,” 86 Fed. Reg. 2744 (January 13, 2021).

2. “The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22250 (April 21, 2020).

U.S. DEPARTMENT OF ENERGY

1. “Energy Conservation Program: Energy Conservation Standards for Small Electric Motors,” 86 Fed. Reg. 4885 (January 19, 2021).

2. “Energy Conservation Program: Establishment of New Product Classes for Residential Clothes Washers and Consumer Clothes Dryers,” 85 Fed. Reg. 81359 (December 16, 2020).

3. “Test Procedure Interim Waiver Process,” 85 Fed. Reg. 79802 (December 11, 2020).

4. “Energy Conservation Program: Establishment of a New Product Class for Residential Dishwashers,” 85 Fed. Reg. 68723 (October 30, 2020).

5. “Energy Conservation Program for Appliance Standards: Procedures for Evaluating Statutory Factors for Use in New or Revised Energy Conservation Standards,” 85 Fed. Reg. 50937 (August 19, 2020).

6. “Energy Conservation Program for Appliance Standards: Procedures for Use in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment,” 85 Fed. Reg. 8626 (February 14, 2020).

7. “Energy Conservation Program: Energy Conservation Standards,” 85 Fed. Reg. 1378 (January 10, 2020).

8. “Energy Conservation Program: Energy Conservation Standards for General Service Incandescent Lamps,” 84 Fed. Reg. 71626 (December 27, 2019).

9. “Final Determination Regarding Energy Efficiency Improvements in the 2018



International Energy Conservation Code (IECC),” 84 Fed. Reg. 67435 (December 10, 2019).

10. “Final Determination Regarding Energy Efficiency Improvements in ANSI/ASHRAE/IES Standard 90.1–2016: Energy Standard for Buildings, Except Low-Rise Residential Buildings,” 83 Fed. Reg. 8463 (February 27, 2018).

U.S. ENVIRONMENTAL PROTECTION AGENCY

1. “Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984,” 86 Fed. Reg. 5013 (January 19, 2021).
2. “National Primary Drinking Water Regulations: Lead and Copper Rule Revisions,” 86 Fed. Reg. 4198 (January 15, 2021).
3. “Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories,” 86 Fed. Reg. 2542 (January 13, 2021).
4. “Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures,” 86 Fed. Reg. 2136 (January 11, 2021).
5. “Review of Dust-Lead Post Abatement Clearance Levels,” 86 Fed. Reg. 983 (January 7, 2021).
6. “Hexachlorobutadiene (HCBd); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” 86 Fed. Reg. 922 (January 6, 2021).
7. “Pentachlorothiophenol (PCTP); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” 86 Fed. Reg. 911 (January 6, 2021).
8. “Phenol, Isopropylated Phosphate (3:1) (PIP 3:1); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” 86 Fed. Reg. 894 (January 6, 2021).
9. “Decabromodiphenyl Ether (DecaBDE); Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” 86 Fed. Reg. 880 (January 6, 2021).
10. “2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP); Regulation of Persistent,



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- 86 Fed. Reg. 866 (January 6, 2021).
11. “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information,” 86 Fed. Reg. 469 (January 6, 2021).
 12. “Review of the Ozone National Ambient Air Quality Standards,” 85 Fed. Reg. 87256 (December 31, 2020).
 13. “Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process,” 85 Fed. Reg. 84130 (December 23, 2020).
 14. “Review of the National Ambient Air Quality Standards for Particulate Matter,” 85 Fed. Reg. 82684 (December 18, 2020).
 15. “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,” 85 Fed. Reg. 73854 (November 19, 2020).
 16. “Hazardous and Solid Waste Management System: Disposal of CCR; A Holistic Approach to Closure Part B: Alternate Demonstration for Unlined Surface Impoundments,” 85 Fed. Reg. 72506 (November 12, 2020).
 17. “NPDES Electronic Reporting Rule—Phase 2 Extension,” 85 Fed. Reg. 69189 (November 2, 2020).
 18. “Pesticides; Agricultural Worker Protection Standard; Revision of the Application Exclusion Zone Requirements,” 85 Fed. Reg. 68760 (October 30, 2020).
 19. “EPA Guidance; Administrative Procedures for Issuance and Public Petitions,” 85 Fed. Reg. 66230 (October 19, 2020).
 20. “Steam Electric Reconsideration Rule,” 85 Fed. Reg. 64650 (October 13, 2020).
 21. U.S. Environmental Protection Agency, Memorandum Regarding Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans (October 9, 2020).
 22. “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration,” 85 Fed. Reg. 57398 (September 15, 2020).
 23. “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review,” 85 Fed. Reg. 57018 (September 14, 2020).
 24. “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Deadline To Initiate Closure,” 85 Fed. Reg. 52516 (August 28,



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- 2020).
25. “Streamlining Procedures for Permit Appeals,” 85 Fed. Reg. 51650 (August 21, 2020).
 26. “Drinking Water: Final Action on Perchlorate,” 85 Fed. Reg. 43990 (July 21, 2020).
 27. “Clean Water Act Section 401 Certification Rule,” 85 Fed. Reg. 42210 (July 13, 2020).
 28. “Methylene Chloride (MC); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability,” 85 Fed. Reg. 37942 (June 24, 2020).
 29. “National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review,” 85 Fed. Reg. 31286 (May 22, 2020).
 30. “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,” 85 Fed. Reg. 24174 (April 30, 2020).
 31. “The Navigable Waters Protection Rule: Definition of ‘Waters of the United States,’” 85 Fed. Reg. 22250 (April 21, 2020).
 32. “Air Plan Approval; Texas; Dallas-Fort Worth Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards,” 85 Fed. Reg. 19096 (April 6, 2020).
 33. “Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes,” 85 Fed. Reg. 14150 (March 11, 2020).
 34. “On-Site Civil Inspection Procedures,” 85 Fed. Reg. 12224 (March 2, 2020).
 35. “Air Plan Approval; Texas; Houston-Galveston-Brazoria Area Redesignation and Maintenance Plan for Revoked Ozone National Ambient Air Quality Standards; Section 185 Fee Program,” 85 Fed. Reg. 8411 (February 14, 2020).
 36. “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act,” 84 Fed. Reg. 69834 (December 19, 2019).
 37. U.S. Environmental Protection Agency, Evaluation of Maryland’s Phase III Watershed Implementation Plan (WIP) (December 19, 2019).
 38. “Findings of Failure To Submit a Clean Air Act Section 110 State Implementation Plan for Interstate Transport for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)” 84 Fed. Reg. 66612 (December 5,



- 2019).
39. “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 Fed. Reg. 51310 (September 27, 2019).
 40. “Adopting Requirements in Emission Guidelines for Municipal Solid Waste Landfills,” 84 Fed. Reg. 44547 (August 26, 2019).
 41. “Regulation of Persistent, Bioaccumulative, and Toxic Chemicals Under TSCA Section 6(h),” 84 Fed. Reg. 36728 (July 29, 2019).
 42. “Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order,” 84 Fed. Reg. 35555 (July 24, 2019).
 43. “Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint,” 84 Fed. Reg. 32632 (July 9, 2019).
 44. “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” 84 Fed. Reg. 32520 (July 8, 2019).
 45. “Methylene Chloride; Regulation of Paint and Coating Removal for Consumer Use Under TSCA Section 6(a),” 84 Fed. Reg. 11420 (March 27, 2019).
 46. “Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Amendments to the National Minimum Criteria (Phase One, Part One),” 83 Fed. Reg. 36435 (July 30, 2018).
 47. “Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry,” 83 Fed. Reg. 7556 (February 21, 2018).
 48. “Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act,” 82 Fed. Reg. 33726 (July 20, 2017).

U.S. DEPARTMENT OF JUSTICE

1. “Prohibition on Settlement Payments to Non-Governmental Third Parties,” 85 Fed. Reg. 81409 (December 16, 2020).

U.S. DEPARTMENT OF THE INTERIOR

1. “Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Northern Spotted Owl,” 86 Fed. Reg. 4820 (January 15, 2021).



2. U.S. Department of the Interior, National Greater Sage-Grouse Land Use Planning Page (NEPA No. DOI-BLM-WO-WO2100-2017-0003-RMP-EIS) (last updated January 11, 2021).
3. “Regulations Governing Take of Migratory Birds,” 86 Fed. Reg. 1134 (January 7, 2021).
4. “Endangered and Threatened Wildlife and Plants; Regulations for Designating Critical Habitat,” 85 Fed. Reg. 82376 (December 18, 2020).
5. “Forest Management Decision Protest Process and Timber Sale Administration,” 85 Fed. Reg. 82359 (December 18, 2020).
6. “Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Monarch Butterfly,” 85 Fed. Reg. 81813 (December 17, 2020).
7. “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,” 85 Fed. Reg. 81411 (December 16, 2020).
8. “Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Bering Sea-Western Interior Planning Area, Alaska,” 85 Fed. Reg. 78350 (December 4, 2020).
9. “Endangered and Threatened Wildlife and Plants; Eleven Species Not Warranted for Listing as Endangered or Threatened Species,” 85 Fed. Reg. 78029 (December 3, 2020).
10. “Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (*Canis lupus*) From the List of Endangered and Threatened Wildlife,” 85 Fed. Reg. 69778 (November 3, 2020).
11. “Notice of Availability of the Record of Decision for the Proposed Willow Master Development Plan Project, Alaska,” 85 Fed. Reg. 69351 (November 2, 2020).
12. “Procedures for Issuing Guidance Documents,” 85 Fed. Reg. 67666 (October 26, 2020).
13. “Alaska; Hunting and Trapping in National Preserves,” 85 Fed. Reg. 35181 (June 9, 2020).
14. U.S. Department of the Interior, M-37056: Status of Mineral Ownership Underlying the Missouri River within the Boundaries of the Fort Berthold Indian Reservation (North Dakota) (May 26, 2020).
15. “National Environmental Policy Act Implementing Procedures for the Bureau of Land Management (516 DM 11),” 85 Fed. Reg. 25472 (May 1, 2020).



16. U.S. Department of the Interior, M-37055: Withdrawal of Solicitor's Opinion M-37029, "The Meaning of 'Under Federal Jurisdiction' for Purposes of the Indian Reorganization Act" (March 9, 2020).
17. U.S. Department of the Interior, Guidance Regarding Application of the Coastal Barrier Resources Act to Non-Structural Projects for Shoreline Stabilization (November 4, 2019).
18. U.S. Fish and Wildlife Service, Biological Opinion for the Reinitiation of Consultation on the Coordinated Operations of the Central Valley Project and State Water Project (October 21, 2019).
19. "Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat," 84 Fed. Reg. 45020 (August 27, 2019).
20. "Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation," 84 Fed. Reg. 44976 (August 27, 2019).
21. "Oil and Gas and Sulfur Operations in the Outer Continental Shelf—Blowout Preventer Systems and Well Control Revisions," 84 Fed. Reg. 21908 (May 15, 2019).
22. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Northwest Colorado," 84 Fed. Reg. 10327 (March 20, 2019).
23. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Idaho," 84 Fed. Reg. 10325 (March 20, 2019).
24. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Oregon," 84 Fed. Reg. 10324 (March 20, 2019).
25. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Nevada and Northeastern California," 84 Fed. Reg. 10323 (March 20, 2019).
26. "Notice of Availability of Record of Decision and Approved Resource Management Plan Amendment for Greater Sage-Grouse Conservation, Wyoming," 84 Fed. Reg. 10322 (March 20, 2019).
27. "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements," 83 Fed. Reg. 49184 (September 28, 2018).
28. U.S. Department of the Interior, Instruction Memorandum No. 2018-034:



Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews (January 31, 2018).

- 29. “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands; Rescission of a 2015 Rule,” 82 Fed. Reg. 61924 (December 29, 2017).
- 30. U.S. Department of the Interior, M-37050: The Migratory Bird Treaty Act Does Not Prohibit Incidental Take (December 22, 2017).
- 31. U.S. Department of the Interior, Order No. 3348: Concerning the Federal Coal Moratorium (March 29, 2017).

U.S. DEPARTMENT OF LABOR

- 1. “Financial Factors in Selecting Plan Investments,” 85 Fed. Reg. 72846 (November 13, 2020).

U.S. DEPARTMENT OF TRANSPORTATION

- 1. “Hazardous Materials: Liquefied Natural Gas by Rail,” 85 Fed. Reg. 44994 (July 24, 2020).
- 2. “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,” 85 Fed. Reg. 24174 (April 30, 2020).
- 3. “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 Fed. Reg. 51310 (September 27, 2019).

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EXHIBIT 2

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL**January 21, 2021**

Jean E. Williams
Bruce S. Gelber
Deputy Assistant Attorneys General
Environment and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001
transmitted electronically

Re: Abeyances in EPA Rule Cases

Dear Jean and Bruce:

In conformance with President Biden's *Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* issued January 20, 2021, (Health and Environment EO), this will confirm my request on behalf of the U.S. Environmental Protection Agency (EPA) that the U.S. Department of Justice (DOJ) seek and obtain abeyances or stays of proceedings in pending litigation seeking judicial review of any EPA regulation promulgated between January 20, 2017, and January 20, 2021, or seeking to establish a deadline for EPA to promulgate a regulation in connection with the subject of any such regulation, in order to provide an opportunity for new Agency leadership to review the underlying rule or matter. *See Health and Environment EO* at Section 2; *see also Memorandum for the Heads of Executive Departments and Agencies: Regulatory Freeze Pending Review*, January 20, 2021. For a case where an abeyance or stay of proceedings is not feasible, we request that DOJ seek extensions of time that are of sufficient duration to allow this review. While these rule cases are a particularly high priority, we also anticipate that a similar request may apply for additional cases in a defensive posture. For any case that you believe merits separate consideration, or for which you believe an abeyance, stay of proceedings, or sufficient extension is not feasible, please promptly notify us and the involved EPA Office of General Counsel's Associate General Counsel for a discussion.

The EPA Office of General Counsel will work with DOJ to help carry out this request. If there are questions, feel free to contact me, Jim Payne, payne.james@epa.gov, 202-672-3727, or the

Associate General Counsel for the case. Thank you.

Sincerely,

Melissa A. Hoffer
Acting General Counsel

Cc: Jim Payne