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Biden's tall task

With interwoven climate and extinction crises in view, a new administration faces 'a lot of damage to be undone.'

by [Johnathan Hettinger](#) 01.18.2021

President-elect Joe Biden, who will be inaugurated on Wednesday, has pledged to pursue the most ambitious climate plan in history, including promises to rejoin the Paris climate agreement, [cancel the Keystone XL pipeline](#), and take other swift [action to combat climate change](#).

But the new administration will also be occupied restoring environmental regulations undone by the Trump administration, which has [rolled back 125 environmental safeguards](#) and protected just 25 new species, fewer than any administration since the Endangered Species Act was passed in 1973. That blitz has continued even into the Trump administration's final days, with [new rollbacks announced as recently as last week](#).

Many of those changes have been promoted as loosening regulations that unnecessarily burden industry, and have been praised by Montana Republicans including Gov. Greg Gianforte and Sen. Steve Daines.

But environmental and public health groups say the Trump changes are harmful to human health and the environment, and have wasted precious time in the fight to mitigate climate change and its effects.

Many of the Trump rollbacks affect human health, the environment and public lands in Montana. Rules that govern how federal agencies interpret science have been weakened. Pollution standards defined to protect children's health have been lowered. Species facing existential threats from climate change, development and other threats, like [wolverines](#), [Montana Arctic graylings](#) and [monarch butterflies](#), were denied federal protections under the Endangered Species Act.

"It's going to be really difficult for the Biden administration to walk in and fix all of the things [the Trump administration] upended," said Anne Hedges, director of policy and legislative affairs at the Montana Environmental Information Center.

'LONG LIST' OF PRIORITIES

Most of the Trump rollbacks arrived in the form of agency rules. Those changes can generally be reversed in two ways: through a successful legal challenge, or through a new and lengthy rule-making process.

Hedges said the best place for the Biden administration to start unraveling the damage is to look at all of the issues on which the Trump administration is being sued.

“They’re in court over nearly all of them,” Hedges said.

Lawsuits against the Trump administration have been common for groups like the [Center for Biological Diversity](#), [Earthjustice](#), the [Western Environmental Law Center](#) and the Montana Environmental Information Center.

Tim Preso, managing attorney for Earthjustice’s Northern Rockies office in Bozeman, said the new administration will start the work in its first days, and the effort will likely take years.

Earthjustice has filed more than 150 lawsuits against the Trump administration. It has won more than [80% of the cases that have reached resolution](#), leading, among other results, to reinstatement of protections for Yellowstone grizzly bears and a finding that the administration violated the law by ending a federal moratorium on coal leasing.

But many of those lawsuits are still pending decisions.

The Biden administration could reach settlements with plaintiffs to help undo the Trump rules, Preso said.

For example, on Jan. 12, the Western Environmental Law Center challenged five recent Bureau of Land Management oil and gas lease sales on 58,297 acres of public land in Montana and North Dakota. The lawsuit, [filed on behalf of WildEarth Guardians, Sierra Club, the Center for Biological Diversity, the Montana Environmental Information Center and Waterkeeper Alliance](#), argues that the Trump administration violated the National Environmental Policy Act by not considering the impact the lease sales will have on climate change and water supplies.

That lawsuit follows a [2018 case where a federal judge in Great Falls voided 145,063 acres of leases in Montana](#) for similar reasons.

Melissa Hornbein, an attorney with the Western Environmental Law Center, said the public interest law firm would be willing to settle with the new administration, which has said it will conduct no new leasing or fossil fuel development on federal land.

Simply acknowledging the scientific reality of climate change will be a significant change in the new administration, environmental groups said. Asked to identify some of the most significant problems the Biden administration will need to address, Preso said, “It’s a long list.”

Among the most important, Preso listed stopping oil and gas leasing on public lands, rule changes that allow more pollution that is likely to harm public health, and rule changes that have significantly weakened the Endangered Species Act.

“There’s a lot of damage to be undone. There’s just one thing after another,” Preso said. “They have a pretty dismal report card. There is a lot of wreckage to be sifted through and hopefully restored as much as possible.”

LAST-MINUTE CHANGES

The rollbacks have continued in recent weeks.

One of the most impactful changes was finalized on Jan. 6, [the day a pro-Trump mob stormed the Capitol in Washington, D.C.](#), leading to [President Trump’s second impeachment](#).

Dubbed by opponents the “censored science rule,” the policy would allow the U.S. Environmental Protection Agency to give less weight to studies that don’t or can’t release the data behind their findings. The rule would minimize the agency’s consideration of epidemiological studies, often used to develop public health standards.

Last week, MEIC, along with the Environmental Defense Fund and Citizens for Clean Energy, filed a [lawsuit challenging the decision](#).

Hedges said such studies are “foundational to every type of public health regulation adopted in this country” and help determine the standards supporting allowable levels of pollution in air and water.

The rule has already been used to justify the continued spraying of [chlorpyrifos, a pesticide linked to brain development issues in children](#).

Also last week, the U.S. Fish and Wildlife Service [announced a new proposed rule](#) that would allow the U.S. Forest Service and Bureau of Land Management to continue logging, grazing and other development projects even if new information is presented indicating that an endangered species may be harmed.

That means the agencies could disregard new science, running counter to the “best available science” mandate of the Endangered Species Act, said Stephanie Kurose, a senior policy specialist at the Center for Biological Diversity.

“As the last act of the most anti-wildlife administration in history, Trump is telling agencies to stick their heads in the sand and ignore science about the threats to endangered species,” Kurose said.

The rule mirrors the Litigation Relief for Forest Management Projects Act proposed by Montana U.S. Sen. Steve Daines, who said in a press release that the FWS proposed rule removes unnecessary red tape and called the move a “win for conservation, forests, wildlife and Montana’s timber industry.”

One option that a Democrat-controlled Congress could use to undo such last-minute changes is the [Congressional Review Act](#). Passed in the 1990s, the act allows Congress to reconsider recent rule changes and vote them up or down.

LOOKING AHEAD

One million species worldwide are at risk of going extinct, [according to the United Nations](#).

The [planet is on pace to warm by more than 3 degrees](#) Celsius by 2100.

Over the past four years, the extent of the climate crisis and extinction crisis has become more clear.

“Both the climate emergency and extinction crisis are worsening, and we lost four years that we didn’t really have four years to lose,” said Noah Greenwald, endangered species director for the Center for Biological Diversity.

Overall, the Biden administration has “long, hard and complicated work” ahead of it, said Erik Schlenker-Goodrich, executive director of the Western Environmental Law Center. But the administration will likely take immediate steps to place a moratorium on proposed changes and rules it disagrees with, Schlenker-Goodrich said.

Still, restoring the old regulations likely won’t be enough, he said. Instead, Schlenker-Goodrich said, he expects that whenever possible the Biden administration will engage in a two-for-one strategy where they both restore a previous regulation and take it a step or two farther.

“We are at an incredibly chaotic and uncertain moment,” Schlenker-Goodrich said. “Our federal government is in a deeply precarious spot and not functioning. There is huge competition in the Biden administration to address the damage done and leapfrog forward.”