

Key Priorities For Biden's Department Of The Interior

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Debra Haaland in Wilmington, Del., on Dec. 19, 2020. Haaland is President Biden's pick for Department of the Interior. (New York Times News Service)

The U.S. Department of the Interior plays an outsized role in California natural resources law and policy. Two examples: The federal government owns fully half the surface area of California; and California is home to more Native American tribes and the second-largest Native American population of any state.

Accordingly, the role DOI plays in President Joe Biden's administration, and how effectively it can reverse the past, misguided natural resource policies of the Trump administration, will be enormously consequential -- nationally and especially in California and the Western U.S. Biden has already made his most important DOI-related decision: picking Congresswoman Debra Haaland of New Mexico as secretary of

the department. Haaland is the first Native American in American history to serve as a presidential cabinet member, so her selection has enormous symbolic as well as substantive significance. And the Biden administration has already appointed numerous talented individuals to senior DOI positions under Haaland, another positive sign.

What can we expect from President Biden's and Secretary Haaland's DOI -- and what natural resource initiatives *should* they prioritize?

National Monuments

One of the quickest and most anticipated decisions President Biden can make is to reverse former President Donald Trump's massive reduction of previously created national monuments and restore those monuments to their original size. Trump's most egregious such action was to slash (via executive order) the dimensions of the Obama-created Bears Ears and Grand Staircase-Escalante monuments in Utah -- Bears Ears by 85%, Grand Staircase by roughly 50% -- in an effort to reopen them to mineral exploitation. Trump similarly downsized an Obama-era marine monument off the New England coast. President Biden, who in January announced plans to review those Trump monument reductions, should follow through by rescinding the Trump executive orders. Biden can do so simply by signing his own executive orders, nullifying Trump's.

Energy Development on Federal Lands

In January President Biden similarly announced a "pause" on new fossil fuel development on federal lands. That's a welcome and overdue first step. But to further the Biden administration's multifaceted climate change initiatives, the president and Secretary Haaland should go further -- and quickly. Coal mining is already a dying industry due to market forces, and for a period of time natural gas will likely be required as a "bridge fuel" until the nation can transition fully to renewable resources for its energy needs. But DOI should lead by example in refusing to make public lands available for polluting and prospectively unnecessary oil and coal exploration and production. Instead, prospective federal policy should be that federal lands only be accessible for clean, renewable energy projects like wind and solar power. (Rest assured, however, that any such new policy will wind up pitting conservationists against renewable energy advocates on a project-by-project basis.)

A similar policy shift involves reversing the Trump administration's ill-advised policy of opening federal Outer Continental Shelf waters to oil and gas development. (Most coastal states have in recent years opposed such offshore mineral exploitation on safety and aesthetic grounds, but Trump's DOI generally disregarded those concerns in its leasing efforts in the waning days of 2020.) Biden's DOI should do what it can to rescind those 11th-hour Trump leases, and institute a prospective ban on offshore oil and gas offshore leases.

Finally, the Trump administration inexplicably weakened safety protocols DOI implemented for existing offshore oil and gas projects in the wake of the disastrous 2010 Deepwater Horizon oil spill -- the worst in American history. It's imperative that those safety measures -- recommended by a bipartisan federal commission in the wake of the Deepwater Horizon disaster -- be restored by Biden's DOI immediately.

Federal Water Policy

DOI -- and, especially, its Bureau of Reclamation -- plays a major role in delivering water supplies to an arid California and American Southwest. Unfortunately, under President Trump DOI and the bureau had a single-minded focus: maximizing federal water deliveries to agribusiness, while largely ignoring environmental and urban water needs.

Perhaps the most egregious example was the Trump administration's shift in federal water delivery contracts from 40-year terms to *permanent* contracts. (The architect of this misguided policy change was then-DOI Secretary David Bernhardt, previously a lawyer/lobbyist for Westlands Water District -- California's largest and most powerful agricultural water district and a principal beneficiary of Secretary Bernhardt's water contracting largesse.) In an era when climate scientists advise that precipitation patterns in the American West are becoming less predictable and declining overall, the bureau's water contracts should be *shorter* than 40 years, not granted in perpetuity. Fortunately, several Native American tribes and other critics have challenged the legality of the bureau's adoption of permanent bureau water delivery contracts with its agricultural customers. The Biden administration should resolve those lawsuits in a manner that nullifies the permanent contract policy -- permanently.

Similarly, until the Trump administration took office, the bureau historically coordinated its management of the Central Valley Project in California with state officials' operation of the parallel State Water Project. That collaboration ended in 2017, with President Trump ordering DOI and the bureau to prioritize maximum water deliveries to California agricultural interests. Secretary Haaland and the bureau should immediately reaffirm the "coordinating agreement" between federal and state water project managers, so that federal and state water supplies are shared equitably and efficiently among urban, agricultural and environmental needs.

Restoring science as the Vasis of DOI Resource Management Policy

In 2018, former DOI Secretary Bernhardt formally adopted a policy -- with the Orwellian title of the "Open Science Rule" -- that imposed political restrictions on what science and data could be considered in DOI policymaking. Fortunately, earlier this month President Biden's DOI revoked the Bernhardt rule, recommitting DOI to scientific integrity and empowering DOI's scientific and technical experts to use the best available science in their work and policy recommendations.

That's a most welcome policy reversal. DOI's return to science-based decision-making will prove especially important in connection with the Department's administration of the Endangered Species Act -- one of the most contentious of DOI's natural resources management responsibilities.

Prioritizing the Needs of America's Native American communities

Despite the fact that the Bureau of Indian Affairs is part of DOI, the interests and needs of Native American peoples have too often been left unaddressed by the Department in Democratic and Republican administrations alike. With a Native American secretary of the interior, that sorry tradition should end. There are two early challenges DOI can and should confront in "Indian Country":

First, last summer the U.S. Supreme Court decided the case of *McGirt v. Oklahoma*. In that decision, the court held that under long-ignored treaties, nearly half of the state of Oklahoma is sovereign land owned by Native American tribes. While *McGirt* was a criminal law case, Chief Justice John Roberts aptly noted in dissent that the decision would likely have a profound effect on water and other natural resource jurisdictional issues affecting tribes in Oklahoma and throughout the West. Secretary Haaland and her DOI are in an ideal position to work with both state and tribal governments to implement the *McGirt* fairly and expeditiously.

Second, in a 2016 decision -- *Agua Caliente Tribe v. Coachella Water District* -- the 9th U.S. Circuit Court of Appeals held (in a case of first impression) that Native American reserved water rights apply to groundwater as well as surface water resources. That decision was celebrated by tribal governments while generating shockwaves among non-Native American groundwater users. Again, Secretary Haaland's DOI can constructively serve as an honest broker in helping to implement this landmark water rights decision.

Two Overdue DOI Jurisdictional Reforms

Finally, the Biden administration would do well to consider and implement two long overdue but worthwhile changes to the federal government's management of its natural resources. First, while the Bureau of Land Management and the National Park Service -- both part of DOI -- together manage over 250 million acres of federal lands, the U.S. Forest Service -- part of the Department of Agriculture -- is responsible for another 193 million acres of federal forest lands. That division of authority may have made sense when Congress devised it in 1905 -- when forests were considered crops to be harvested more than natural resources to be managed in perpetuity -- but it doesn't in the 21st century. The Biden administration should sponsor legislation transferring the U.S. Forest Service and its duties from the Department of Agriculture to DOI, so that all our federal public lands can be managed in a holistic, coordinated fashion.

Similarly, responsibility for implementing the federal Endangered Species Act is currently divided between DOI's U.S. Fish & Wildlife Agency (responsible under the ESA for terrestrial and freshwater species) and the National Marine Fisheries Service, a unit within the Department of Commerce that has ESA jurisdiction over ocean-based species. This split of authority makes little sense. Again, the Biden administration would be well-served to propose legislation moving the N.M.F.S. from the Department of Commerce to DOI, thereby allowing the ESA to be implemented in a unified and more efficient fashion.

Like the U.S. Environmental Protection Agency, the Department of the Interior and its supporters suffered mightily under the Trump administration. The former administration seemed overtly and consistently hostile to DOI's stated mission to "conserve and manage the Nation's natural resources and cultural heritage for the benefit and enjoyment of the American people." Hopefully, President Biden and Secretary Haaland will restore the Department to its historic stature and critical role. 