# Timberlands Regulation Under the @realDonaldTrump Administration

BY KIRK B. MAAG

Those who closely watch the current White House pay particular attention to one Twitter handle: @realDonaldTrump. President Trump is not the first US president to use Twitter to communicate to the country. But I think it's safe to say President Trump has more frequently used Twitter to announce changes in policy than any other US president. When combined with the 24-hour news cycle and the rapid dissemination of information via social media, President Trump's proclivity to announce shifts in policy via Twitter means presidential policy seems more fluid than any time in recent memory. This complicates the task of defining the current administration's overarching timberlands policy priorities.

Many expected the Trump administration to break sharply with the Obama administration's policies regarding the regulation of natural resources and use of federal lands. But to date, change has been slow.

### Legislative efforts

President Trump pushed a narrow legislative agenda in 2017, focusing on hot-button issues that sucked up all the oxygen in Washington, DC. That agenda didn't include major natural resource policy priorities. Instead, the 2017 legislative agenda was dominated by healthcare reform (not yet enacted), tax reform (not yet enacted), immigration reform (not yet enacted), and the confirmation of Justice Neil Gorsuch to the United States Supreme Court. Absent passage of a significant healthcare, tax, or immigration reform bill before the end of 2017, Justice Gorsuch's confirmation is likely President Trump's signature legislative accomplishment of his first year in office.

Despite the lack of significant legislative accomplishments, one possible bright spot and opportunity for bipartisan action relates to federal wildland firefighting funding. Under current law, when the US Forest Service exceeds its firefighting budget, it must "borrow" money from other areas of its budget. Those borrowed funds would otherwise be used for activities like preparing timber sales and other management strategies that would help minimize future fire risks. Western legislators widely support reform to this system, including through the creation and funding of a disaster account that could be used to pay firefighting costs that exceed a baseline average based on firefighting expenses in previous years. Whether this reform effort will succeed likely depends on how many other "reform" proposals, which do not enjoy the same level of broad support, are attached to fire-funding reform.

### Regulatory efforts

President Trump's primary focus on the regulatory front—at least with respect to policies and regulations that affect natural resource industries—has been a rollback of Obama-era policies and regulations. Two of the higher-profile rollback efforts have a connection to timberlands.

First, the Trump administration released a proposed rule to rescind a controversial Obama administration rule from 2015 that modified the definition of "waters of the United States" (or WOTUS) under the Clean Water Act. Some of the opponents of the 2015 rule, including many within the forest products industry, argued that the rule unlawfully expanded the definition to encompass areas not intended by Congress. One of the concerns within the forest products industry was that the 2015 rule would have significantly restricted the use of aerial pesticide application and other timberland management activities. The Trump administration will initiate a new rulemaking process, with the goal of drafting a narrower definition of waters of the United States.

Second, President Trump issued an Executive Order that directed the United States Department of the Interior to review all National Monument designations of more than 100,000 acres since 1996. Many Trump supporters have been highly critical of some of the expansive designations by the Clinton and Obama administrations. In response to the Executive Order, Interior reviewed 27 designations, and in a report that was leaked to the *Washington Post*, recommended that President Trump reduce the size of a "handful" of existing monuments. *Public Lands News* stated that Interior's recommendation "touched off one of the largest public lands battles ever."

The monuments identified for a reduction in size include Bear Ears (Utah), Grand Staircase Escalante (Utah), and Cascade-Siskiyou (Oregon). The connection between National Monument designations and timberlands policy is best illustrated by the controversial expansion of the Cascade-Siskiyou National Monument by President Obama in January 2017. Opponents of the designation contend the designation will unlawfully limit timber harvests from the designated area and could lead to greater fire risks due to more passive management of the area. The expanded designation prompted two separate lawsuits: one by the American Forest Resource

Council, and one by a group of 17 Oregon counties. In contrast, Oregon's Attorney General has threatened to sue the United States if the Trump administration attempts to reduce the size of the expanded monument.

### Environmental group opposition

Perhaps one of the most significant consequences of President Trump's election was the outpouring of donations to environmental groups, including many groups who devote significant resources to litigation. Environmental groups appealed to the public perception that President Trump would aggressively roll-back environmental protection regulations. For example, the Natural Resources Defense Council (NRDC) stated: "It's time to turn shock and outrage into action." NRDC explained that it was "gearing up to fight the Trump administration's disastrous environmental agenda at every turn—in the courtroom, in Washington, and on the global stage." The result: a significant uptick in contributions to environmental groups. One group boasted a 700 percent increase in donations, while another boasted an increase of 160 percent.

It's too early to know exactly how groups will use their new war chests, but two areas where funds are likely to be spent are litigation and voluntary conservation agreements. Most federal environmental laws include "citizen suit" provisions that allow private parties to bring a lawsuit to force defendants to comply with the laws. Increased donations to environmental groups are likely to increase these types of lawsuits and have the potential to block timber harvests based on alleged Clean Water Act violations or harm to species listed under the Endangered Species Act.

For environmental groups focused more on conservation than litigation, increased budgets may allow these groups to expand their focus on using voluntary conservation agreements to accomplish their goals. This may present an opportunity for timberland owners to monetize value from lands that are not core to timber production.

### "Blue State" opposition

Private environmental groups aren't the only entities vowing to fight rollbacks of environmental protections regulations. Various strategies in "blue states"—particularly blue states on the coasts—are being pursued to prevent any weakening of environmental protection standards within their states. This is complicated by the fact that many states simply incorporate federal environmental protection standards into state law. As a result, changes to federal environmental regulations could result in corresponding changes in state environmental laws. A bill was introduced in the Oregon legislature that would have prevented the rollback of state environmental laws below the federal baseline, as it existed at the end of the Obama administration. That legislative effort failed, but it may reemerge in Oregon and other blue states.

In addition to blue state legislative efforts, blue state attorneys general have threatened, and in some cases filed, lawsuits to prevent the rollback of federal environmental regulations and to enforce existing environmental laws through citizen suits. Many believe blue state regulatory agencies will likely (if they haven't already) increase inspection and enforcement efforts based on the perception that the US Environmental Protection Agency will decrease its inspection and enforcement efforts—whether because of personnel changes, budget reductions, or both.

### Takeaways

Nearing the end of President Trump's first year in office, many unknowns remain regarding his administration's priorities related to timberlands and how those priorities rank in comparison to other priorities like healthcare, tax, and immigration reform. Yet it was clear in 2017 that timberlands issues did not make it to the top of the list. Instead, it seems the focus of timberland "regulation" is shifting from DC to federal courts and to the states. This creates the potential for greater state-by-state or regional differences in environmental regulation and enforcement. Increased donations to conservation groups also creates a potential opportunity for timberland owners to explore conservation transactions as a way to monetize non-market resources that exist on their lands.

And for the latest on timberlands regulation under the Trump administration, sign up for Twitter and get the word straight from the source: @realDonaldTrump. ◆

*Kirk B. Maag is a partner for Stoel Rives LLP, focusing on natural resources and environmental law. He can be reached at 503-294-9546 or kirk.maag@stoel.com.*