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Legal Sidebar

Biden Administration Withdraws Offshore Areas from Oil and Gas Leasing: Can a Withdrawal Be Withdrawn?

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On January 6, 2025, President Joe Biden issued two presidential memoranda directing the withdrawal of areas in the Atlantic and Pacific Oceans and the Gulf of Mexico, as well as the northern Bering Sea, from "disposition by oil or natural gas leasing for a time period without specific expiration," pursuant to Section 12(a) of the Outer Continental Shelf Lands Act (OCSLA; 43 U.S.C. § 1341(a)). Section 12(a) authorizes the President to, "from time to time, withdraw from disposition any of the unleased lands of the outer Continental Shelf," which is defined as the area lying seaward from state waters and generally extending to the limits of the U.S. exclusive economic zone 200 nautical miles from the coastline. The January 2025 Biden withdrawal permanently prohibits all future oil and natural gas leasing in the covered areas, which total more than 625 million acres.

Immediately following President Biden's announcement, President-elect Donald Trump stated that he intends to reverse the withdrawal upon taking office.

The withdrawal, issued just prior to a change in Administration, raises longstanding questions regarding whether and to what extent a President is empowered to revoke or amend previous offshore withdrawals under Section 12(a). Section 12(a) authorizes the President to make such offshore leasing withdrawals but does not explicitly provide revocation authority. It is not clear from the text of the OCSLA whether such revocation authority exists.

Only one federal court has addressed the issue explicitly. In 2017, then-President Trump issued Executive Order 13795, Section 5 of which sought to "modify" previous withdrawals issued by President Barack Obama in 2015 and 2016 and by President George W. Bush in 2008 by reversing the withdrawals in part and making withdrawn areas available for leasing. A number of parties challenged this action, arguing that Presidents do not have the authority to revoke Section 12(a) withdrawals.

In a 2019 decision, *League of Conservation Voters v. Trump*, the U.S. Court for the District of Alaska agreed with these challenges and held that Section 5 of Executive Order 13795 was "unlawful and invalid." However, this decision was subsequently vacated and remanded by the U.S. Court of Appeals for the Ninth Circuit, which found that Executive Order 13990, issued by President Biden in January

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2021, had invalidated Section 5 of Executive Order 13795 and thus mooted the litigation. As a result, there is no direct precedent still in effect interpreting the scope of the President's authority to revoke an existing withdrawal of offshore areas. However, it may be instructive to look at the district court's reasoning as well as the arguments presented by the parties and others with respect to revocation of Section 12(a) withdrawals.

In *League of Conservation Voters v. Trump*, the district court concluded that, while Section 12(a) contains no explicit authorization that allows Presidents to revoke previous withdrawals, the "from time to time" language in Section 12(a) could be interpreted as contemplating starting and ending dates for withdrawals. To resolve ambiguity as to the meaning of a provision, courts turn to the principles of statutory interpretation. As the plaintiffs noted, Congress has explicitly included permission to revoke withdrawals in other statutes, including the Forest Service Organic Administration Act of 1897 and the Pickett Act of 1910. The plaintiffs argued, and the court agreed, that if Congress had wished to grant authority to amend and revoke existing offshore withdrawals in the OCSLA, it could have done so in a manner similar to the grant of authority to amend and revoke onshore withdrawals as provided for in these statutes. As another example, Section 204(a) of the Federal Land Policy and Management Act, which governs various aspects of onshore federal land management, authorizes the Secretary of the Interior to "make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section." Federal courts have found that "[w]here Congress knows how to say something but chooses not to, its silence is controlling." Here, the court resolved the ambiguity regarding the scope of authority under Section 12(a) of the OCSLA in favor of the plaintiffs and thus invalidated the revocation, although, as noted, the court' decision was ultimately vacated as moot. Should they rely on this court's reasoning, however, courts and future Administrations would likely interpret the President's authority under Section 12(a) as limited only to withdrawals rather than as a more expansive authority to also modify or revoke those existing withdrawals.

As noted, however, this district court decision was subsequently vacated by the Ninth Circuit, which concluded that the underlying dispute had been mooted by President Biden's issuance of Executive Order 13990 in 2021. Moving forward, an effort to revoke a withdrawal may be interpreted differently by courts and could also depend in part on the type of action taken by the President. For example, the first Trump Administration presented Section 5 of Executive Order 13795 as a "modification" of existing withdrawals rather than a revocation, and the federal defendants in *League of Conservation Voters v. Trump* noted that the Bush Administration issued a modification of then-existing withdrawals in 2008 that still stands. (The 2008 modification was not challenged in court.) Supporters of a President's power to revoke a Section 12(a) withdrawal might also cite the legal principle that statutory construction is a "holistic endeavor," whereby statutory language is interpreted in accordance with the overall purpose of the statute. In this instance, the incoming Trump Administration could argue that interpreting Section 12(a) of the OCSLA to provide withdrawal authority without the subsequent authority to revoke that withdrawal and reintroduce withdrawn areas for potential leasing would undermine the rest of the OCSLA, which broadly establishes a framework for leasing offshore areas for energy exploration and production. An Administration seeking to revoke a Section 12(a) withdrawal might also argue that Presidents have implicit authority to undo anything statutes authorize them to do. Courts have found that the executive branch's "power to reconsider is inherent in the power to decide." It is not clear, however, whether courts would apply this principle to reconsideration of a Section 12(a) withdrawal.

Irrespective of the President's authority to modify or revoke withdrawals under the OCSLA, Congress could make changes to the Biden Administration's withdrawals if it wished to do so. Legislation could be narrowly tailored to overturn specific offshore area withdrawals, thus making previously withdrawn areas once again eligible for leasing. Congress could also consider amending the OCSLA's Section 12(a) authority more broadly to explicitly state whether a President may revoke a Section 12(a) withdrawal. Legislation to reverse all existing withdrawals or even nullify Section 12(a) withdrawal authority has been introduced in previous Congresses.

Congress would likely not be able to use the Congressional Review Act's fast-track procedures to reverse the January 6, 2025, executive memoranda, as the President is not considered an "agency" for purposes of that act and therefore the CRA does not apply to presidential actions. For further analysis of the Congressional Review Act and its applicability, see CRS Report R43992, The Congressional Review Act (CRA): Frequently Asked Questions, by Maeve P. Carey and Christopher M. Davis (2021), and CRS In Focus IF12386, Defining Final Agency Action for APA and CRA Review, by Valerie C. Brannon (2024).

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