



Research

Executive Orders and Presidential Memorandums: Energy

KIMBERLY VANWYHE | FEBRUARY 7, 2017

- In his first two weeks in office, President Trump issued 4 new presidential memorandums and 1 executive order that will have a direct impact on U.S. energy manufacturing, production and development.
- These most recent orders will streamline permitting processes, are pro-development and will allow for job creation and growth.

Right out of the Gate

The Trump Administration has not wasted any time doling out executive actions through executive orders (a rule or order issued by the president to an executive branch of the government and having the force of law) and Presidential memorandums (executive actions issued by the president to manage and govern the actions, practices, and policies of the various departments and agencies found under the executive branch of the United States government).

In just under 2 weeks, President Trump has signed 17 executive orders and 9 Presidential memorandum, of which 4 Presidential memorandums and 1 executive order have direct implications for U.S. energy production and development and may impact the future of all energy infrastructure projects going forward.

Tomato Tomato(e)

Both executive orders and presidential memorandums have the force and effect of law when issued in the Federal Register, however, Presidential memorandums can be amended or rescinded by executive orders or another memorandum, executive orders however, take legal precedence and cannot be changed by a memorandum.^[i]

Below are the most recent executive orders and presidential memorandums and what they mean for U.S. energy.

Executive Order

Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects: According to the National Law Review, this order will streamline environmental reviews for all infrastructure projects, but creates a special mechanism to focus on “High Priority” projects. “High Priority” projects are to be designated by the Chairman of the White House Council on Environmental Quality (CEQ) within 30 days of a request by the Governor of a State or the head of any executive department or agency^[ii].

While it is very important that environmental assessments be completed for the safety of both the environment and the project at hand, the environmental review process has been daunting and excessively lengthy causing

significant delays as a result of agency processes and procedures.^[iii] The designation of high priority infrastructure will allow for more investment certainty and create a stronger and more reliable energy infrastructure system.

Presidential Memorandums

Construction of Dakota Access Pipeline (DAPL): This [memorandum](#) was sent directly to the Secretary of the Army (designee unknown). The action instructs the U.S. Army Corps of Engineers (USACE) to provide and expedite all Federal approvals required to complete construction of DAPL. This action only applies to USACE approvals on Federal lands, not private property.^[iv] This has been a very contentious and divisive issue and will continue to be such, however, it is also the most efficient way to move Bakken Crude oil to the U.S. market. When completed, the \$3.8 billion dollar pipeline will transport half of the total production from the Bakken. It is estimated that the project will result in over \$156 million in sales and income and \$55 million in property taxes annually, which will be a boon for the U. S^[v].

Construction of Keystone XL Pipeline: This [memorandum](#) was sent directly to the Secretary of State (designee Rex Tillerson), Secretary of the Interior (designee Ryan Zinke) and Secretary of the Army (designee unknown). The action invited TransCanada to resubmit its application for a presidential Permit. Under this action, the permit must be reviewed and decided on within 60 days of submission.

Two days after this order was signed, TransCanada resubmitted their application, a final decision is due by March 27th, 2017. Before anything moves forward the State Department must study the application and give its approval. Nebraska, the state that the pipeline would cross, will also need to review the permit application and give its final decision before any construction begins.

The new line was intended to open in 2012 and transport 830,000 barrels of crude per day from Alberta, Canada into the United States where it would then be sent to preexisting pipeline infrastructure heading to the Gulf Coast.

This will be the third time since 2008 that Keystone developer TransCanada has applied for such a permit. In February 2015, President Obama vetoed legislation authorizing the construction of the Keystone XL Pipeline citing environmental concerns, despite a 2014 State Department review which concluded that the proposed pipeline would not increase greenhouse gas emissions by a significant amount. [Previous AAF research](#) also indicated that carbon emissions stemming from the Keystone XL pipeline would be significantly less than that coming from rail transport, additionally, the risk of oil spills is greatly reduced as pipelines have a lower spill rate than rail.

Construction of American Pipelines: This [memorandum](#) was sent directly to the Secretary of Commerce (designee Wilbur Ross) for review and directs the pending Secretary to submit a plan within 180 days that will require all new, retrofitted, repaired and expanded pipelines inside the borders of the United States to use materials and equipment produced in the United States.^[vi] The intent is to keep the steel industry robust as well as keep jobs in the U.S.. While the intent of this policy is good in nature, it will drive up costs for companies wishing to purchase steel and iron materials for pipeline construction. According to a recent report by [CNBC](#), “mandating that an industry use products from one country raises the cost of every project by limiting the supply, gives monopoly power to domestic producers and allows suppliers to abandon the pricing discipline that competition creates”. Another critical question that remains to be seen is where or not the U.S. steel industry has the bandwidth and capacity to supply all new projects going forward in the United States. In the last year, new

steel tariffs have taken a big leap, almost 62 percent which is a boon for domestic steelmakers but is hurting domestic manufacturers[vii].

This new order will have a real-time impact on the Keystone XL Pipeline and Dakota Access Pipeline. TransCanada, the company behind Keystone is already in a bind claiming that most of the steel for the pipeline has already been purchased and is non-U.S. materials. It will be interesting to see if they are able to grandfather in the already purchased materials or if the Trump Administration will make this enforceable for this project.

Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing: This memorandum was sent to the heads of Executive Departments and Agencies and directs them to support the expansion of manufacturing in the United States “through expedited review of and approvals for proposals to construct or expand manufacturing facilities[viii]” According to the [National Law Review](#), this memorandum requires 60 days for public comments, and then a report to the President 60 days after the end of the comment period. The report is required to identify priority actions; recommend deadlines for completing actions; make recommendations for changes to existing policies that can be implemented immediately; and propose changes to existing regulations or statutes as needed.

Similar to the environmental review streamlining order, this will take the uncertainty away from production and allow for investment and infrastructure development to move forward.

Conclusion

For the past 8 years, U.S. energy production and growth has been stifled from over regulation and permitting requirements. While it is very important for oversight to be a big part of these projects, it is equally as important for these projects to be able to go forward and not be hindered by bureaucratic red tape. Stifled infrastructure development and growth leads to job loss and lower economic activity which has a direct impact on GDP. These actions are a step in the right direction to strong domestic energy growth.

[i] [Presidential Memorandums](#)

[ii] [National Law Review- High Priority Projects](#)

[iii] [Politico- expediting environmental reviews](#)

[iv] [National Law Review- DAPL](#)

[v] [DAPL](#)

[vi] [National Law Review- Steel](#)

[vii] <http://www.cnbc.com/2017/01/26/trumps-plan-to-force-pipeline-makers-to-use-us-steel-is-dictatorial-and-a-bad-idea.html>

[viii] [National Law Review- Streamlining Permitting](#)