

## Happy Holidays: Looking Back, Looking Ahead

December 22, 2022

By: [Daniel J. Pope](#), [Timothy A. Wilkins](#), [Jason B. Hutt](#), and [Ann D. Navaro](#)

In this holiday episode of the Environmental Law Monitor, [Tim Wilkins](#), [Jason Hutt](#), and [Ann Navaro](#) from Bracewell's Environment, Lands and Resources Practice Group join host [Daniel Pope](#) to discuss the events of 2022 while looking ahead to 2023, and also some of their favorite things for the holidays.

### **How would you define 2022 in just a couple of words?**

Too quiet is how I would define 2022. In many respects we've had no Waters of the United States rulemaking out of EPA. We've had no greenhouse gas guidance from the Council on Environmental Quality. We've had no National Environmental Policy Act drawn to rulemaking out of CQ. We've had no revisions to the course nationwide Permit 12. We've had no Endangered Species Act Section seven rulemaking. So too quiet is what I would say, and that's fascinating.

### **What were the top three most notable environmental and natural resources developments over 2022?**

First, the Inflation Reduction Act (IRA) and its implications for oil and gas development on public lands, I think is a significant development because as you may recall in that act, Congress required a certain amount of oil and gas leasing as a predicate for wind and other renewable energy approvals and leasing on public lands onshore and offshore. It's yet to be seen whether that's really going to result in more oil and gas leases being issued in this administration. But it's certainly an unprecedented way of using the statutory authority to protect an existing and traditional energy industry.

The second thing I would mention, and this may be kind of out of left field, but the endangered species listings of a couple of bats. And those are significant because their habitat is so widespread, especially across the eastern half of the country. And it has really meaningful implications for onshore wind in particular, and for the ability of wind developers to make investments in onshore wind projects and to operate those projects in an economically feasible way. And I think the Fish and Wildlife Service is still working through a lot of the parameters as to what kind of information they're going to be considering and what kind of requirements might help operators operate despite those listings.

And then the third thing I will mention is, of course, the first Biden rulemaking under the National Environmental Policy Act (NEPA), because even though the administration only made a handful of changes to the Trump administration NEPA rule, they were certainly very significant

and that brought back consideration of cumulative impacts, which historically has been one of the most challenging things for federal agencies and applicants to deal with, and kind of also a litigation rich environment because of the difficulty of defining the scope of cumulative impacts. So even though under the Trump administration rule, there was still some consideration of those types of impacts, it's been kind of brought back to a central and key consideration also in that rulemaking, even though what the administration did was go back to some of the original regulatory language in rolling it out.

**As we look forward to 2023, what are some of the things we are likely to see next year coming from this administration?**

So, I think the things we're going to see are a second rulemaking under the National Environmental Policy Act that could be quite controversial. The NEPA rules have always stayed away from calling out particular types of impacts. But I think it's very possible that this administrator action will specifically address climate and environmental justice and the need for rules that are broadly applicable to all agencies.

We're also clearly going to see some action on the Clean Water Act and the definition of Waters of the United States. I keep expecting the administration to issue the rule, which I think is ready to be issued, as my understanding. But at this point, it's going to come quite close to the Supreme Court's decision in Sackett. I'm also expecting on the renewable side, the Department of the Interior to finally get around to issuing new rules for offshore wind projects which are of high interest as well.

**If you could put something on a company's New Year's resolution list, what would it be?**

I would say keep developing those relationships within the federal agencies that you're dealing with. I think it's easy maybe to perceive federal agencies as faceless permit processors, but obviously everybody's got their own personality and those personal relationships I have seen as key in getting through difficult permits, leases, other authorizations, raising difficult issues.

Also watching what's happening in the world around you and adapting your self-governance to these developments. Our same old compliance assurance and management system mechanisms are not adapted to the changes that are happening externally to the companies. I would just encourage people to do candid evaluation of their compliance under this new set of technologies under the new scrutiny that you're getting. To make sure that your objectives are updated and that your opportunities for improvement are identified broadly, creatively and in furtherance of this stuff that is on the horizon.

Have questions about this podcast? Contact [Daniel Pope](#), [Tim Wilkins](#), [Jason Hutt](#) and [Ann Navaro](#).

*The opinions expressed in this podcast are those of the speakers and do not necessarily reflect the viewpoint of their institutions or clients.*