

# UNITED STATES ANNOUNCES INTENT TO WITHDRAW FROM PARIS CLIMATE ACCORD: WHAT IS THE REAL IMPACT?

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## Public Policy and Law Alert

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On June 1, the United States announced that it would withdraw from the Paris Climate Accord (the "Agreement"). The announcement, though not unexpected, raises a host of questions on several legal, technical, and policy fronts. And while the news and commentary on the decision continues to change, three fundamental questions are worth asking:

1. How is the Agreement structured to handle withdrawal?
2. What legal actions could potentially force the Administration to take actions to address climate change?
3. What impact, if any, would a withdrawal have on U.S. state and private-side initiatives to address climate change?

We focus our analysis on these questions below.

## 1. THE AGREEMENT IS NOT STRUCTURED FOR AN IMMEDIATE WITHDRAWAL

According to the Agreement, a party cannot withdraw for at least three years from its effective date, and a withdrawal does not take effect until at least a year after the notice of withdrawal is received.<sup>[1]</sup> This means that the United States will not be able to withdraw from the Agreement until, at the very earliest, November 4, 2020 — which is coincidentally one day after the next presidential election. For more information about the Agreement and the mechanics of withdrawal, see our previous alert [here](#).

## 2. POTENTIAL LEGAL ACTION TO ADDRESS WITHDRAWAL AND CLIMATE CHANGE

Because the Agreement lacks legally binding emission targets, and there are no sanctions if a party fails to meet its emission reductions or if a party fails to abide by the Agreement, it is unlikely that the Administration will face sanctions or penalties for withdrawing. European Union officials also confirmed that they are not considering imposing trade sanctions on the United States for withdrawing from the Agreement.<sup>[2]</sup> However, other commentators see international arbitration as a possibility for enforcing the Agreement: By failing to implement the Agreement, the United States risks breaching international law because it is bound by the 1992 United Nations Framework Convention on Climate Change ("UNFCCC").<sup>[3]</sup> President Trump's decision to withdraw from

the Agreement may lead to arbitration, including possible treaty claims, because the decision to withdraw from the Agreement arguably demonstrates that the "U.S. is failing to act in accordance with international policy and norms in relation to climate change."<sup>[4]</sup>

On an entirely separate legal front, the Trump administration could be challenged in its rollback of the Clean Power Plan ("CPP") — an Obama administration effort to address climate change — in federal court if the U.S. Environmental Protection Agency ("EPA") fails to issue regulations that satisfy the EPA's 2009 endangerment finding, which determined that greenhouse gas emissions endanger public health and welfare. The EPA is already in the process of rescinding the CPP regulations.<sup>[5]</sup> However, the endangerment finding obligates the EPA to issue replacement regulations to satisfy the endangerment finding and protect the public's health from climate change. If the Trump Administration fails to issue regulations that protect the public health and welfare from climate change, it will likely face a legal battle. Similarly, because the CPP was a final rule when the Trump Administration took power, efforts to rescind or modify the rule are likely to be challenged as well.<sup>[6]</sup>

All potential legal actions will also have to take into consideration the pre-Trump administration litigation in which a coalition of states questioned whether EPA was acting beyond its legal powers with the CPP. That litigation led to a Supreme Court stay of the rule while it was being considered in federal court, and it is now in a 60-day suspension per a request from the Trump administration.<sup>[7]</sup> While there is speculation as to whether the suspension effectively signals the end of the CPP or is simply a temporary pause in the long road to an ultimate Supreme Court decision, states and the private sector continue with their climate change initiatives. As described below, these actions in addition to market-driven fuel substitution may bring the United States close to its Paris commitments despite the administration's intent to withdraw from the Agreement.

### 3. IMPACT ON U.S. STATE AND PRIVATE SECTOR CLIMATE CHANGE INITIATIVES

#### States and Businesses Pledging to Meet U.S. Emission Goals Under the Agreement

Numerous states, cities, universities, businesses, and other leaders have pledged to meet the Agreement's goals despite President Trump's actions. On June 5, 2017, former New York City Mayor Michael Bloomberg (who is currently the U.N. Secretary-General's special envoy for Cities and Climate Change) submitted a statement signed by over 1,000 U.S. governors, mayors, businesses, and universities that have pledged to meet the goals of the Agreement.<sup>[8]</sup> Bloomberg will coordinate "America's Pledge" to quantify the emissions reduction pledges from U.S. governors, mayors, businesses, and universities and submit the emission reductions to the UNFCCC.<sup>[9]</sup>

Bloomberg's charitable organization, Bloomberg Philanthropies, has also pledged to donate \$14 million to cover a portion of the UNFCCC's operating budget — the amount the United States was supposed to provide under the Agreement.<sup>[10]</sup>

On the same day that the President announced U.S. withdrawal from the Agreement, the governors of Washington, New York, and California announced the formation of the United States Climate Alliance (the "Alliance") to uphold the goal of reducing emission levels. Thirteen governors have joined the Alliance, consisting of those in: California, Connecticut, Delaware, Hawaii, Massachusetts, Minnesota, New York, Oregon, Puerto Rico, Rhode Island, Vermont, Virginia, and Washington.<sup>[11]</sup> Furthermore, California Governor Jerry Brown has

aggressively accepted the role of negotiating with China on emissions reductions and signed an agreement with China on June 6, 2017, to work together to reduce emissions.<sup>[12]</sup>

### Potential Uncertainty for Utilities

The Administration's decision to withdraw from the Agreement and to review the CPP may create some uncertainty for investor-owned utilities that operate on a long-term planning cycle. Utilities typically plan asset investments and procurement strategies decades in advance, and the Agreement gave them an ambitious target to shoot for — one that many anticipated could be codified into federal policy by a future administration.<sup>[13]</sup> Lack of direction from the federal government may make it more difficult for utilities to continue to plan for a full green buy-in. However, utility planning and activities are also significantly influenced by customer demand and policy on the state and local level. Demand from large customers and changing state policies will continue to drive utility decision-making; however, such changes will be at the state level. In addition, fuel and commodity markets are also a significant driving force in utility planning decisions. The withdrawal decision by the Administration is unlikely to affect these markets; as such, the relative costs of coal to natural gas and other fuel sources are largely insulated from the decision to withdraw. That said, a change in the CPP would likely have a significant impact on fuel and commodity markets.

### Renewable Energy Will Continue to Thrive

Organized by groups like Ceres<sup>[14]</sup> and We Mean Business,<sup>[15]</sup> many of the wide range of U.S. corporations that have set emissions reductions and renewable energy targets have indicated that they will remain committed to their targets despite the Administration's decision. Many of these companies are interested in purchasing renewable power as part of their energy mix and as a long-term strategy to have more control over their energy costs. Because of commitments like these, along with the increasing affordability of renewable energy such as solar and wind power, the decision "will have little impact on investors in the energy sector," and the renewable energy sector is expected to continue to thrive.<sup>[16]</sup> And while President Trump has proposed to slash funding for renewable energy up to 70 percent, support for renewable energy research and development at the Department of Energy and other programs which support energy technology like the Advanced Research Projects Agency-Energy have significant bipartisan support on Capitol Hill and beyond.<sup>[17]</sup> Congressional appropriations staff often refer to a quote from President Franklin D. Roosevelt, "It is the duty of the President to propose and it is the privilege of the Congress to dispose," when discussing their response to President Trump's budget, which slashed funding for renewable energy research and development.

## CONCLUSION

While the United States has announced its withdrawal from the Agreement, withdrawal will not be complete until one day after the 2020 U.S. presidential election. In the meantime, a number of nonfederal actors, including cities, states, and corporations, have stated their commitment to emissions reductions in an effort to meet the U.S. emissions reduction goals included in the Agreement. These commitments along with increasingly competitive pricing for renewable and lower-emission sources of energy will inevitably result in U.S. emissions reductions that may come close to the Agreement's targets. Legal challenges to the administration's rollback of

the CPP and EPA's potential inaction on the endangerment finding may also result in forced domestic action on climate change, albeit in a different form than the CPP. It remains to be seen whether the decision to withdraw is much ado about nothing or a watershed moment in climate policy and law.

We will continue to monitor these events and provide updated analysis of the administration's actions and industry, stateside, and international responses.

**Notes:**

[1] See Paris Agreement, Article 28, Dec. 12, 2015.

[2] Stine Jacobsen, *EU Not Looking to Sanctions if U.S. Quits Climate Deal: Canete*, Reuters, (June 1, 2017), <http://www.reuters.com/article/us-usa-climatechange-eu-idUSKBN18S5DE>.

[3] See *Trump risks claims through US climate change backtrack*, Glob. Arb. Rev., (June 2, 2017), <http://globalarbitrationreview.com/article/1142260/trump-risks-claims-through-us-climate-change-backtrack>. The U.S. Senate ratified the UNFCCC in 1992. See UNFCCC, Oct. 7, 1992, S. Treaty Doc. 102-38, 1771 U.N.T.S. 107.

[4] *Id.*

[5] *EPA to Review the Clean Power Plan Under President Trump's Executive Order*, EPA, (Mar. 28, 2017), <https://www.epa.gov/newsreleases/epa-review-clean-power-plan-under-president-trumps-executive-order>.

[6] The CPP would not be subject to the Congressional Review Act (5 USC §§ 801-808); therefore, any effort by EPA to rescind the rule would like be challenged under the Administrative Procedure Act.

[7] Per Curium Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Apr. 28, 2017), ECF No. 1673071, [https://www.eenews.net/assets/2017/04/28/document\\_gw\\_03.pdf](https://www.eenews.net/assets/2017/04/28/document_gw_03.pdf).

[8] For the full list of signatories, see <http://wearestillin.com> (last visited June 8, 2017).

[9] Valerie Volcovici, *Bloomberg delivers U.S. pledge to continue Paris climate goals to U.N.*, Reuters, (June 5, 2017), <https://www.reuters.com/article/us-usa-climate-paris-idUSKBN18W2DQ>.

[10] Hiroko Tabuchi & Henry Fountain, *Bucking Trump, These Cities, States and Companies Commit to Paris Accord*, NY Times, (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/american-cities-climate-standards.html>.

[11] *United States Climate Alliance adds 10 new members to coalition committed to upholding the Paris Accord*, (June 5, 2017), <http://governor.wa.gov/news-media/united-states-climate-alliance-adds-10-new-members-coalition-committed-upholding-paris>.

[12] Matthew Brown, *California, China sign climate deal after Trump's Paris exit*, ABC News, (June 6, 2017), <http://abcnews.go.com/International/wireStory/california-gov-brown-us-stay-climate-fight-47856346>.

[13] Gavin Bade, *Utilities post-Paris: Uncertainty rules power sector as Trump shatters climate consensus*, Utility Dive (June 2, 2017), <http://www.utilitydive.com/news/utilities-post-paris-uncertainty-rules-power-sector-as-trump-shatters-clim/444124/>.

[14] Press Release, Ceres, *Withdrawing the U.S. from the Paris Climate Agreement Puts America Last* (June 1, 2017), <https://www.ceres.org/news-center/press-releases/withdrawing-us-paris-climate-agreement-puts-america-last>.

[15] Press Statement, *We Mean Business*, *Statement on United States Government Withdrawal from Paris Agreement* (June 1, 2017), <https://www.wemeanbusinesscoalition.org/blog/statement-united-states-government-withdrawal-paris-agreement>.

[16] See Michael Krancer, *The Best Energy Companies Didn't Care Either Way About the Paris Accord*, *Forbes* (June 1, 2017), <https://www.forbes.com/sites/michaelkrancer/2017/06/01/the-best-energy-companies-didnt-care-either-way-about-the-paris-accord/2/#163b01286baf>.

[17] Dino Grandoni, *The Energy 202: Seven former heads of Energy renewables office balk at Trump budget*, *Wash. Post* (June 8, 2017), [https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2017/06/08/the-energy-202-seven-former-heads-of-energy-renewables-office-balk-at-trump-budget/593819cde9b69b2fb981dc81/?utm\\_term=.f68acdfaaf02](https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2017/06/08/the-energy-202-seven-former-heads-of-energy-renewables-office-balk-at-trump-budget/593819cde9b69b2fb981dc81/?utm_term=.f68acdfaaf02).

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