

Biden Aims to End Arctic Drilling. A Trump-Era Law Could Foil His Plans.

The administration suspended leases that were auctioned in the waning days of the Trump White House. But a 2017 law requires another sale.

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WASHINGTON — President Biden may be forced to hold a new lease sale for oil drilling in the pristine Arctic National Wildlife Refuge, despite his vows to slash fossil fuel pollution and his action this week to suspend Arctic drilling leases that had been awarded in the final days of the Trump administration.

A law passed by the Republican-controlled Congress in 2017 requires the president to hold two lease sales in the refuge before the end of 2024. President Donald Trump held the first; now legal experts say the Biden administration could be locked into holding a second sale.

The 2017 law was a major achievement for Mr. Trump, who sought to permanently open up millions of acres of public lands to oil and gas drilling, including the Coastal Plain of the Alaskan refuge, about 1.5 million acres along the Arctic Ocean that are thought to overlie enormous oil reserves. The refuge is one of the last remaining stretches of untouched wilderness in the United States, home to migrating caribou, birds and polar bears.

Until that law was passed, the fate of the refuge had depended on which political party controlled the White House and Congress. Republicans wanted to allow drilling, Democrats to keep the area off limits.

But the 2017 legislation, which was mostly focused on rewriting the corporate tax code, lifted a decades-old ban on oil development in the refuge and included the two-auction requirement, the second of which had to be held within seven years of passage of the law, or by late December 2024.

That language was seen as a way to bind whoever was in the White House at that point — either Mr. Trump or, as it turned out, Mr. Biden — into continuing to move forward with oil development in the refuge. Now, Mr. Biden, who has set forth the most ambitious climate change agenda of any president and wants to drastically cut fossil fuel use and emissions, is legally on the hook to advance a plan to allow more Arctic drilling.

“It’s a very clever strategy,” said Marcella Burke, an energy policy lawyer who served in the Interior Department during the Trump administration, of including the drilling lease requirements in the 2017 law. “It’s impressive that Congress and the executive branch were able to collaborate so effectively. That’s a big achievement by any administration that wants to bind another administration statutorily.”

Under the law, “Biden’s going to have to do another Arctic drilling lease sale no matter what,” said Patrick Parenteau, a professor of law with the Vermont Law School.

Mr. Parenteau and other legal experts noted that the Biden administration could find ways to delay or diminish the second auction of drilling leases. For example, while the law requires the Interior Department to hold an auction, it does not require that the agency actually award any leases, he said.

“The Interior Department could raise the eligibility requirements for bidders on the leases,” Mr. Parenteau said. “Bidders would need to show that they could responsibly develop in this completely unique, pristine ecosystem with incredible challenges to development.”

“If there isn’t anybody who meets the eligibility then they could have grounds to not award a lease,” he said.

Ms. Burke, the former Trump-era Interior Department official, scoffed at that idea.

“To hold a phony lease sale denies the public of its right to the land,” she said. “If this administration would like to supplement the 2017 tax law with a new law requiring environmental review before a lease sale, then they can go through Congress, like Trump did.”

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A spokeswoman for the Interior Department declined to comment on the record about the agency’s plans.

But some environmentalists agree that the only way to lift Mr. Biden’s obligation to sell Arctic drilling leases is to go back to Congress.

“The only way to undo that, from our perspective, is congressionally,” said Leah Donahey, legislative director for the Alaska Wilderness League. “We would like to see congressional action.”

Ms. Donahey said that could be done through a bill or as part of some other legislation that would effectively repeal the mandate and, ideally, abolish the whole leasing program.

“We feel very strongly that they not only have to get rid of the second sale, but have to repeal the program as well,” she said.

Last month, the world's leading energy agency warned that governments around the globe must stop approving fossil fuel projects now if they want to prevent the pollution they produce from driving average global temperatures above 2 degrees Celsius compared with preindustrial levels. That's the threshold beyond which scientists say the Earth will experience irreversible damage.

The Trump administration's actions on the leasing program are the subject of four lawsuits, brought by environmentalists, Alaska Native groups and some state attorneys general.

The lawsuits are still pending in Federal District Court in Alaska, but have been stayed for several months as the Biden administration reviews the program, said Brook Brisson, a senior staff attorney with Trustees for Alaska, a nonprofit public-interest law firm that is representing the groups.

In her order suspending the leases, Interior Secretary Deb Haaland noted that her department had identified "legal deficiencies" in the leasing program.

But Ms. Brisson said that even if the lawsuits were successful, they only concern the past activities of the Trump administration. A legal victory would not overturn the mandate in the 2017 law to hold two separate lease auctions, she said, "just the way it was carried out."

The 2017 law mandated that each lease sale include at least 400,000 acres of the Coastal Plain. It also required that "those areas that have the highest potential for the discovery of hydrocarbons" be offered for sale.

But understanding of the potential for oil development in the refuge is limited. A single exploratory well was drilled there decades ago, and a New York Times investigation suggested that it was a disappointment. A seismic survey conducted in the 1980s offered only limited information about potential oil reserves, and plans in recent years for a new, more precise survey using improved technology have been consistently derailed.

Given that, there are questions as to how much interest a second sale would generate, especially since there was little interest in the first one. Twenty-two out of 32 tracts were offered in that sale, nearly 1.1 million acres in areas that were thought to have the greatest potential for oil development.

Yet bids were received only on 11 tracts, and in the end only 9 were leased, totaling about 430,000 acres. All were on the western side of the Coastal Plain, closer to existing pipelines and other oil infrastructure on Alaska's North Slope that would help reduce the costs of producing oil in the refuge.

There is little reason to think that the tracts that were not bid on, or the 10 others that were not offered in the first sale and that are farther from areas thought to overlie promising oil reserves, would receive much interest in a second sale.

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