



# ENERGY AND NATURAL RESOURCES QUARTERLY NEWSLETTER

SUMMER 2020

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## About This Issue

Holland & Knight invites you to read the Summer 2020 issue of our Energy and Natural Resources Quarterly Newsletter, in which our authors discuss important hot topics and developments in energy, natural resources and the environment. This newsletter provides a look around the corner, highlighting top issues and emerging opportunities for the private sector.

Recognizing this newsletter is arriving in your inbox during uncertain times, we also wanted to let you know that Holland & Knight continues to track developments on the emerging situation surrounding the coronavirus (COVID-19) and the impacts the crisis may have on the Energy and Natural Resources industry. Analysis on what the developments may mean for business can be found on our [COVID-19 Response Team](#) page.

This edition covers, among other relevant topics, a number of recent U.S. political developments that may continue to be important market drivers throughout 2020. We encourage you to reach out to our authors with thoughts or questions on these topics.

### WATER

## Revised Waters of the U.S. Rule Provides Clarity Concerning Reach of Federal Agencies

By *Rafe Petersen*

The U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency (EPA) on April 21, 2020, issued a long-awaited final rule defining the term “Waters of the United States” (WOTUS) pursuant to the Clean Water Act (CWA). The Navigable Waters Protection Rule: Definition of “Waters of the United States” 85 *Fed. Reg.* 22250 (April 21, 2020). The WOTUS Rule, which went into effect on June 22, 2020, sets forth the geographic reach of the agencies’ authority to regulate streams, wetlands and other water bodies pursuant to the CWA. The WOTUS Rule replaces one of the Obama Administration’s most controversial environmental regulations, which was viewed by many as a vast overreach of federal jurisdiction.

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### ALTERNATIVE ENERGY AND RENEWABLES

## Studies Find Gulf of Mexico Has Untapped Potential for Offshore Wind Development

By *Todd F. Kimbrough and Jacob J. Lawler*

The Gulf of Mexico is an attractive location for offshore wind development according to two recent studies conducted by the U.S. Department of Energy’s National Renewable Energy Laboratory (NREL) and funded by the U.S. Bureau of Ocean Energy Management. In fact, more than 508 gigawatts (GW) of potential offshore wind development may be possible in the Gulf. Taken together, the studies suggest that the Gulf may be a new frontier in the development of the rapidly growing offshore wind industry.

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## ALTERNATIVE ENERGY AND RENEWABLES

# Treasury Department to Extend Renewable Tax Credit Safe Harbor Deadlines

By *Stephen J. Humes*

The U.S. Department of the Treasury notified the U.S. Senate Committee on Finance recently that it will extend the continuity safe harbor requirements for renewable energy projects that must be placed in service by certain deadlines in order to be eligible for the production tax credit (PTC) and the energy investment tax credit (ITC).

The Treasury Department announcement came in a letter on May 7, 2020, from the U.S. Department of Justice Office of Legislative Affairs in response to an April 23 letter from Finance Committee Chair Chuck Grassley and his majority and ranking members that raised concern about the ongoing COVID-19 crisis on tens of thousands of jobs and billions of dollars in investments in the renewable energy industry.

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## ENVIRONMENTAL

# San Francisco Bay Region Issues Risk-Based Screening Levels for PFAS at Cleanup Sites

By *Letitia D. Moore*

California continues to develop tools for evaluating per- and polyfluoroalkyl substances (PFAS) at cleanup sites. In May 2020, the San Francisco Bay Regional Water Quality Control Board issued an “Interim Final Environmental Screening Levels (ESLs) for Per- and Polyfluoroalkyl Substances (PFAS): Perfluorooctane Sulfonate (PFOS) and Perfluorooctanoate (PFOA)” Memorandum setting groundwater and soil ESLs addressing direct exposure, ecotoxicity and ingestion risk levels for PFOS and PFOA. The PFAS ESLs are part of the ongoing effort by the San Francisco Regional Water Board to “provide conservative screening levels ... to help expedite the identification and evaluation of potential environmental concerns at contaminated sites.”

The Interim Final PFAS ESLs Memorandum identifies:

- soil ESLs for 1) terrestrial habitat, 2) leaching to groundwater and 3) direct exposure human health risk
- groundwater ESLs for 1) aquatic habitat ecotoxicity, 2) seafood ingestion and 3) direct exposure human health risk



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## FEDERAL POLICY AND REGULATION

# Climate-Centric Infrastructure Package Passed by House Democrats: What's Included? What's Next?

By *Taite R. McDonald, Beth A. Viola and Isabel C. Lane*

The U.S. House of Representatives on July 1, 2020, passed a long-awaited infrastructure package – H.R. 2, the Investing in a New Vision for the Environment and Surface Transportation in America Act (INVEST in America Act) – by a party line vote of 233-188. Democrats released details of the package just a week prior on June 23, 2020.

The 2,300-page bill, comprising a \$1.5 trillion total investment, includes climate-oriented infrastructure proposals developed by the Transportation and Infrastructure Committee, as well as the powerful Energy and Commerce and Ways and Means committees. Outlined earlier this year in the release of the Moving Forward Framework, the package lays forth a vision for important Democratic infrastructure priorities, including transportation infrastructure, clean energy initiatives, grid modernization, broadband deployment, clean water standards, among others.

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## FEDERAL POLICY AND REGULATION

# Climate Action Plan Released by House Select Committee on the Climate Crisis

By *Beth A. Viola and Isabel C. Lane*

Democratic staff of the U.S. House of Representatives' Select Committee on the Climate Crisis released a long-awaited report with more than 100 policy recommendations comprising a comprehensive action plan to address climate change. The report, "Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America," is the culmination of nearly two years' work conducting hearings, soliciting stakeholder input and working with House members since the committee was created by Speaker Nancy Pelosi (D-Calif.) at the start of the 116th Congress.

Because the Climate Crisis Committee possesses no statutory jurisdiction, the plan simply makes recommendations to various House committees that the respective chairs may choose to adopt as the "gold standard" for future climate-oriented legislation. The climate roadmap targets all electric cars by 2035, net-zero emissions from electric utilities by 2040 and net-zero greenhouse gas emissions across all sectors of the economy by 2050. The latter is a top-line goal that is becoming increasingly prevalent in Democratic rhetoric approaching the 2020 elections. While not as ambitious as the Green New Deal advocated for by the party's progressive wing, which calls for net-zero emissions by 2035, the 2050 timeline is viewed as more economically and politically feasible by dozens of senior and moderate Democrats.



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## YOU'RE INVITED

# Energy Outlook – A Four-Part Webinar Series

Please join Holland & Knight's [Energy and Natural Resources Industry Sector Group](#) as we continue our four-part Energy Outlook Series on issues that are and will be impacting the energy sector during this time of market disruption.

These highly informative discussions will benefit energy providers, suppliers and developers across the entire energy sector.

### The Series

- Part I – [Legislative Outlook for the Energy Industry](#), May 21, 2020
- Part II – [Business Disruption and Protecting Your Assets](#), July 15, 2020
- Part III – [Litigation in the Eye of COVID-19 and Market Disruption](#), July 30, 2020
- Part IV – [A Look at Today's Latin America Energy Market](#), Aug. 13, 2020



If you are interested in joining us for the remaining webinars, please email [webinars@hklaw.com](mailto:webinars@hklaw.com).

## About Our Energy and Natural Resources Industry Sector Group

The energy and natural resources industries will play a significant role in shaping the future of the global economy, and they must continue their innovative efforts in timely and responsible ways. In order to keep up with competitors and meet their many challenges, companies in the field need to stay ahead of the curve and be prepared for new issues and challenges. Holland & Knight's [Energy and Natural Resources Industry Sector Group](#) consists of more than 80 experienced attorneys and professionals who work on all facets of transactional, regulatory, legislative and litigation matters related to energy and natural resources. In addition to our work with regulatory bodies such as the Federal Energy Regulatory Commission (FERC), we interface with the White House and key agencies such as the U.S. Environmental Protection Agency (EPA), Department of Energy, Department of Agriculture, Department of Defense and Department of the Interior. We understand the importance of tailoring regulatory strategies to meet the unique needs of a particular client and of accommodating existing and anticipated state and national regulation, technology and infrastructure.

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