



THE **#CLIMATEPRESIDENT** ACTION PLAN

10 STEPS FOR THE NEXT
ADMINISTRATION'S FIRST
10 DAYS:

ACTIONS ON FOSSIL FUELS

ESSENTIAL STEPS THE NEXT PRESIDENT CAN
TAKE ON FOSSIL FUELS WITHOUT CONGRESS

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If the world is to have any reasonable chance of staying below 1.5°C and avoiding the worst impacts of climate change, the next President of the United States must immediately launch a rapid and just transition off of fossil fuels economy-wide.

Fossil fuels are the largest contributor to climate change, accounting for over 75% of global greenhouse gas emissions and nearly 90% of all carbon dioxide emissions.¹ Ending U.S. fossil fuel production, consumption, and export and holding fossil fuel polluters accountable must therefore be central to any successful climate policy.

Recognizing the steps that the next President can take without Congress is critical because these are the “no excuses” actions that can be taken *immediately*—within the next President’s first 10 days in office—to set the nation on a course to address the climate emergency—*regardless* of whether and when Congress acts.

The actions below are excerpted from the *#ClimatePresident Action Plan: 10 Steps for the Next Administration’s First 10 Days*, available at ClimatePresident.org. They can and must be implemented by the next President, pursuant to existing laws, without the need for new legislation from Congress.



1. KEEP FOSSIL FUELS IN THE GROUND: END FOSSIL FUEL LEASING AND DEVELOPMENT APPROVALS, BAN FRACKING, AND COMMIT TO A PLAN TO PHASE OUT ALL U.S. FOSSIL FUEL EXTRACTION.

Today the world faces a fossil fuel “production gap” of tremendous proportions: producers currently plan to extract far more fossil fuels than the world can afford to burn.² There is enough oil, gas, and coal in already developed fields and mines globally—that is, places where the infrastructure is built and the capitol is sunk—to far exceed the pollution budget for 1.5°C if these reserves were all produced and burned.³

This means that meeting global climate goals will require an immediate halt to the approval of new fossil fuel projects and a phase-out of existing oil, gas, and coal extraction before the reserves in existing field and mines are fully depleted.⁴

Over the last decade, about a quarter of U.S. fossil fuel emissions have come from the leasing and development of publicly owned, federal mineral rights.⁵ Lands yet to be leased, if developed, could unleash an order of magnitude more emissions that the world cannot afford to burn.

Fortunately, the next President has full authority to address this important aspect of the problem through the following actions.

a. Halt federal fossil fuel lease sales and permits, wind down existing extraction, and ban fracking on federal lands and waters.

To ensure a nationwide, uniform and immediate halt to leasing, the next President should direct the Interior Secretary to immediately halt all federal fossil fuel lease sales, similar to the Obama administration coal leasing moratorium enacted in January, 2016.⁶ Following environmental review and rulemaking, the leasing moratorium would be made permanent.

For existing leases, the next President should direct the Interior Secretary to implement an immediate moratorium on the approval of new development plans and drilling permits while the relevant Interior Department agencies carry out a full review of potential legal violations relating to the underlying management plans, leases and permits, and the environmental consequences thereof. At the end of the review, the agencies would propose a detailed plan to wind down existing oil and gas extraction in a way that fully comports with applicable law, including the Outer Continental Shelf Lands Act (OCSLA), Minerals Leasing Act of 1920 (MLA), and the Federal Land Policy and Management Act of 1976 (FLPMA).

Fracking supercharges the extent and intensity of air and water pollution, habitat destruction, and human health harms that come from oil and gas development, and is also untenable from a climate perspective: some 90% of U.S. drilling into new oil and gas reserves through 2050 would depend on fracking.⁷ The next President should therefore direct the Interior Secretary to place an immediate moratorium on public land and offshore fracking. Following environmental review and rulemaking, the fracking moratorium would be finalized as a permanent fracking ban on public lands and federal waters.

b. Direct the EPA Administrator to effectively stop fracking everywhere.

To protect our climate and environment, fracking

must be stopped on non-federal lands as well. In 2005, Congress exempted fracking from the Safe Drinking Water Act, creating what is known as the “Halliburton loophole” and enabling the subsequent fracking boom. The next President cannot therefore ban fracking on non-federal lands through Safe Drinking Water Act regulation without new legislation. However, other laws provide agencies such as the Environmental Protection Agency (EPA) with jurisdiction over fracking. The next President should direct the EPA to protect the air we breathe and effectively stop fracking with new, strict limits on methane and VOC emissions from oil and gas operations. Requiring that methane and VOC emissions be reduced to near zero would effectively prevent fracking nationwide, until and unless industry could reduce emissions from fracking operations sufficiently to meet the standard. Because such a rule would not be a permanent ban on fracking, the next President should also work with Congress on new legislation to permanently ban fracking everywhere in the United States.

c. Work with federal agencies, states, and Congress to phase out all U.S. fossil fuel extraction over the next several decades.

The measures outlined above are a beginning to the necessary phase-out of fossil fuel production nationwide. However, the next President must also work with states and Congress on new legislation and a plan to fully phase out all U.S. fossil fuel production over the next several decades.



2. STOP FOSSIL FUEL EXPORTS AND INFRASTRUCTURE APPROVALS.

a. Re-institute the crude oil export ban.

Following Congress’ reversal of the 40-year old crude oil export ban in 2015, crude oil exports have

skyrocketed, and now hover at nearly three million barrels per day—about a quarter of all U.S. production.⁸ The production and export booms are intertwined and fuel the climate crisis along with the profits and political power of the fossil fuel lobby. The 2015 legislation lifting the crude oil export ban allows the President to reinstate the ban on a year-by-year basis through the declaration of a national emergency.⁹ The next President should declare a national climate emergency pursuant to the National Emergencies Act and immediately re-instate the crude oil export ban.

b. Halt gas exports to the fullest extent allowed by the Natural Gas Act.

The next President can also immediately ban at least a subset of natural gas exports. Parties seeking to export natural gas must file an application with the Department of Energy (DOE) pursuant to the Natural Gas Act.¹⁰ An application for export may not be approved if it is not in the public interest. The next President should issue an Executive Order finding that natural gas exports are not in the public interest due to their climate harms, and thus DOE must stop approving new applications. While this would likely not override a provision of the law requiring export applications to be granted for nations with a free trade agreement requiring national treatment for trade in natural gas,¹¹ it nonetheless should be issued due to its clear effect for exports to countries without such agreements.

c. Direct all federal agencies to deny permits for new fossil fuel infrastructure projects.

The construction of new fossil fuel infrastructure projects is inconsistent with limiting warming to no more than 1.5°C.¹² Approval of such projects, including but not limited to pipelines, import and export terminals, storage facilities, refineries, and petrochemical plants, creates a variety of adverse consequences and risks, including incentivizing the use of fossil fuels even when it is not beneficial from an investment or policy perspective to do so.

Many such infrastructure projects require permits

or approvals from one or more federal agencies, issued under one or more federal laws, in order to move forward. For example, the Obama State Department found that the Keystone Pipeline would not serve the national interest, in part due to its harm to our climate, and denied the permit.¹³ Many other laws governing fossil fuel infrastructure projects require similar considerations, and in most instances there is no legal obligation to issue the permit.

The next President should issue an Executive Order on approval of new fossil fuel infrastructure projects, instructing federal agencies to deny all permits and approvals for fossil fuel infrastructure consistent with federal law.



3. HOLD FOSSIL FUEL POLLUTERS ACCOUNTABLE.

Fossil fuel polluters are the single greatest cause of the climate emergency and the single greatest barrier to addressing it. Like asbestos, tobacco and opioid manufacturers, the fossil fuel industry had long-standing knowledge of the risks associated with their products; rather than taking steps to prevent climate change, the industry took action to conceal and deny that knowledge and discredit climate science, in contradiction to their own internal research and their actions to protect their assets from climate impacts. At the same time, these polluters and their trade associations have successfully blocked climate policies that would have provided alternatives to fossil fuels.¹⁴

Many legal efforts are underway to hold fossil fuel polluters accountable. More than a dozen local and state governments are currently bringing “nuisance” suits against some of the world’s largest fossil fuel producers to force them to pay for the damage they have caused. Other ongoing accountability efforts

include the New York Attorney General's case against Exxon for fraud in its communications to investors about climate change,¹⁵ as well as a class action by Exxon Shareholders against the company for similarly misrepresenting climate change risk.¹⁶ These cases are critically important, but the next President should do more, including the following.

a. Direct the Attorney General to investigate all legal violations by fossil fuel polluters and prosecute them to the maximum extent of the law.

The next President can direct the Attorney General to investigate all legal violations by fossil fuel polluters and prosecute them to the maximum extent of the law, including by supporting the "nuisance" and "fraud" suits discussed above. The Attorney General should undertake the investigations so as to fully account for the government's full range of criminal, civil, regulatory and administrative remedies. The President should also direct that the Department of Justice coordinate as appropriate with related executive branch actions discussed above, such as the Interior Department review of legal violations in the issuance of fossil fuel leases, as well as investigations and prosecutions undertaken by state attorneys general.

b. Commit to veto all legislation that grants legal immunity to polluters from nuisance and other climate claims, or that rolls back existing laws.

The fossil fuel industry is desperate to obtain relief from ongoing and future efforts to hold them accountable. As such, a central part of industry's strategy is promoting a plan for new legislation, often referred to as the "Baker-Shultz carbon dividend plan" that would provide the world's largest polluters with legal immunity from current and future climate-related lawsuits and eliminate major portions of existing successful pollution control laws.¹⁷ In exchange for bestowing these extraordinary benefits on fossil fuel polluters, the legislation would institute a carbon tax.¹⁸ The Climate Leadership Council, founded by many of the world's largest

oil companies including ExxonMobil, Shell, BP, is one of the primary public faces for this effort.

c. Commit to reject and to veto all other false solutions proposed by the polluters that have created and perpetuated the climate crisis.

In addition to the carbon tax legislation, polluters are advancing a suite of other false solutions in many areas. The next President should pledge to veto any legislation that eliminates existing environmental laws, gives polluters legal immunity from current or future lawsuits against them, or contains any other false solution or rollback. These false solutions include:

- ▶ **Market-based mechanisms and emissions trading schemes** such as offsets which have proven both to be ineffective and to have harmful consequences, such as concentrating pollution in already overburdened environmental justice communities;
- ▶ **Technology options such as carbon capture and storage**, and the use of captured carbon for enhanced oil recovery, which perpetuate fossil fuel extraction and create new public dangers;
- ▶ **Biomass energy**, which increases carbon pollution per unit of energy and incentivizes clearcutting and other harmful forestry practices;
- ▶ **Waste-to-energy**, which similarly does not reduce greenhouse pollution and increases dangerous air pollution, usually in already overburdened environmental justice communities; and
- ▶ **Nuclear power**, which creates severe safety, proliferation, and waste disposal issues and is far more expensive than new clean and renewable energy. These schemes all share the common characteristic that they place corporate profits over community well-being and perpetuate the many systemic injustices that have led to the climate emergency.

ENDNOTES

¹ SEI, IISD, ODI, Climate Analytics, CICERO, and UNEP. (2019). The Production Gap: The discrepancy between countries' planned fossil fuel production and global production levels consistent with limiting warming to 1.5°C or 2°C. <http://productiongap.org/>.

² *Ibid.*

³ Trout, Kelly & Lorne Stockman, Drilling Towards Disaster: Why U.S. Oil and Gas Expansion Is Incompatible with Climate Limits, Oil Change International (2019) ("Drilling Towards Disaster") at Section I, *available at*: <http://priceofoil.org/2019/01/16/report-drilling-towards-disaster/> (last visited Sept. 23, 2019).

⁴ *Ibid.*

⁵ Center for Biological Diversity, Petition to End Federal Offshore Oil and Gas Leasing of the United States Outer Continental Shelf to Address Climate Change (2016) ("CBD 2016a") at 29, *available at*: https://biologicaldiversity.org/news/press_releases/2016/offshore-drilling-03-29-2016.html (last visited Sept. 24, 2019).

⁶ United States Department of Interior, Order 3338: Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program (Jan. 15, 2016), *available at*: https://www.eenews.net/assets/2016/01/15/document_gw_04.pdf (last visited Sept. 23, 2019).

⁷ Drilling Towards Disaster, *supra* note 3 at 19.

⁸ United States Energy Information Administration, Data: Petroleum & Other Liquids, *available at*: <https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=pet&s=mcrexus2&f=m> (last visited Sept. 23, 2019); DiChristopher, T., *US crude oil exports hit a record last week at 3.6 million barrels a day*, CONSUMER NEWS AND BUSINESS CHANNEL, Feb. 21, 2019, *available at*: <https://www.cnbc.com/2019/02/21/us-crude-oil-exports-hit-a-record-high-last-week.html> (last visited Sept. 23, 2019).

⁹ 42 U.S.C. § 6212a(d)(1)(A).

¹⁰ 15 U.S.C. § 717(a); 10 C.F.R. § 590.201 et seq.

¹¹ 15 U.S.C. § 717(c); Nations with such a free trade agreement include: Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea and Singapore.

¹² Tong, D. et al., Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target, 572 *Nature* 373-377 (2019); Smith, C.J. et al., Current fossil fuel infrastructure does not yet commit us to 1.5°C warming, 10 *Nature Communications* 101 (2019).

¹³ The White House Office of the Press Secretary, Statement by the President on the Keystone XL Pipeline, <https://>

obamawhitehouse.archives.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline (last visited Dec. 3, 2019).

¹⁴ See, e.g., Influence Map, Big Oil's Real Agenda on Climate Change (2019) (Influence Map 2019), *available at*: <https://influencemap.org/report/How-Big-Oil-Continues-to-Oppose-the-Paris-Agreement-38212275958aa21196dae3b76220bdc> (last visited Sept. 24, 2019); Influence Map, The Carbon Policy Footprint (2017), *available at*: <https://influencemap.org/report/Corporate-Carbon-Policy-Footprint-4274a464677481802bd502ffff008d74> (last visited Sept. 24, 2019).

¹⁵ Kusnetz, Nicholas, & David Hasemyer, *Exxon Accused of Pressuring Witnesses in Climate Fraud Case*, INSIDECLIMATE NEWS, Aug. 9, 2019, *available at*: <https://insideclimatenews.org/news/06082019/exxon-climate-fraud-investigation-witness-pressure-investors-new-york-attorney-general> (last visited Oct. 7, 2019).

¹⁶ Savage, K., *Federal Judge: Employees Can Pursue Climate Fraud Suit Against Exxon*, CLIMATE LIABILITY NEWS, Aug. 15, 2018, *available at*: <https://www.climate-liabilitynews.org/2018/08/15/climate-fraud-suit-exxon-employees-ramirez/> (last visited Oct. 7, 2019).

¹⁷ Irfan, U., *Exxon is lobbying for a carbon tax. There is, obviously, a catch*, VOX, Oct. 18, 2018, *available at*: <https://www.vox.com/2018/10/18/17983866/climate-change-exxon-carbon-tax-lawsuit> (last visited Sept. 24, 2019).

¹⁸ *Ibid.*

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