The Biden Administration has set aggressive goals for the reduction of greenhouse gas emissions from the United States. And a necessary component for any long-term plan to address greenhouse gas emissions from the United States is reducing and ultimately eliminating the emissions from fossil fuels produced on federal lands.

Why is this such a critical issue? Almost half of the coal mined in the United States, about a quarter of the oil, and around one-sixth of the natural gas is produced from leasing federal lands to private parties for coal, oil, and gas development. Without addressing federal fossil fuel leasing, the United States would not be able to meet the commitment of the Paris Accord to reduce greenhouse gas emissions enough to avoid more than two degrees Celsius in global temperature increases.

The Biden transition team indicated that they were looking at ending new fossil fuel leasing on federal lands – particularly coal – to help meet climate goals. On Biden's first day in office, the administration set a 60-day pause on leasing and permitting, and there is talk of a full moratorium. But that just addresses new leases. What about the existing leases on federal lands, which already lock in substantial emissions and under current leasing systems could produce for decades to come?

Addressing those leases may be crucial for the new Administration. To help answer this open question, we undertook a comprehensive assessment of the legal capacity of the federal government to end existing fossil fuel leases.

Now, if Congress passes legislation terminating existing leases, then the legal question is easy – the federal government can terminate the leases, though it would likely owe compensation to the lease holders. But such action seems unlikely.

But even under existing legislation, our analysis indicates that there are reasonably strong legal arguments that unilateral executive action to terminate existing fossil fuel leases is possible. This action might be justified under the terms of existing leases – in which case compensation might not be owed to lessees. Alternatively, and more likely, we believe there are good arguments that under certain circumstances under the current statutory scheme for federal coal, oil, and gas leases, the executive branch can cancel a lease, pay compensation to the lease holders for the breach of contract, and end fossil fuel development on those leases.

Of course, just because something *can* be legally done doesn't mean it *should* be. For example, there is a fair amount of uncertainty about whether unilateral efforts by a single nation to restrict the production of fossil fuels will significantly reduce

greenhouse gas emissions, since those unilateral reductions may be offset by imports from other producers around the world, or by substituting one fossil fuel for another. However, our initial review suggests that it is plausible that termination of coal leasing on federal lands in the United States would lead to significant emissions reductions – in part because the global market for coal is not nearly as robust as for oil, and in part because there are good lower-carbon or carbon-free substitutes for many uses of coal (e.g., renewable energy to produce electricity).

In addition, there are important questions around the just transition of fossil fuel operations, including ensuring that the transition leaves workers and communities better off, not worse. Our analysis does not address such vital issues that lie at the heart of the "should we" question. It simply tackles the question of "could we."

We hope our paper prompts a conversation within the Biden Administration about termination of existing leases. Not because that will always be the answer, but to underscore that the legal pathways for reducing emissions from federal coal, oil, and gas development are broader than might have previously been widely understood.

This blog post, and the article, were co-authored by Eric Biber and CLEE Executive Director Jordan Diamond. The article is forthcoming in the Arizona Law Review.