

[My last post](#) covered the likely power that the Administration has to cancel off-shore leases for wind projects – a power that it probably has, if it was to ever get its act together. But even though the Administration has not yet used it, I think it probably has even broader power to cancel leases for onshore projects on federal lands – whether renewable (for this Administration) or fossil fuel (for future Administrations) – under current law. Below I summarize the key points, based on [an article I co-authored with Jordan Diamond a few years ago](#).

Why is that? First of all, it is because there is caselaw – which may well still be good law – that seems to acknowledge broad executive power to cancel contracts with the government if Congress has not explicitly prevented the executive from doing so. One of the cases comes in the oil and gas leasing context, and there is also a Supreme Court case in the context of war contracting. And, as it turns out, the key statute for leasing in general, the Federal Land Policy and Management Act (FLPMA) does not specifically constrain the agency from cancelling leases. (For fossil fuel development, the Mineral Leasing Act (MLA) is also relevant – it has some more provisions on cancellation of contracts, but they may not be broad or clear enough to constrain executive discretion.)

On top of that, FLPMA also gives the executive the power and obligation to prevent “unnecessary and undue degradation” (UUD) of the public lands – a concept that is not defined in the statute. An Administration that wants to be aggressive in pushing its legal powers, as this one certainly has, can probably argue that the UUD provision requires it to cancel leases. And indeed, the standard oil and gas lease, as well as the statutory provisions for permits for renewable projects on federal lands, require lessees to comply with current law, which would include the UUD provision. Thus, one might be able to argue that, for instance, wind turbines contribute to UUD by harming bird life or scenic values, and that in turn gives the executive the power to cancel leases, perhaps even without any compensation (since these requirements are part of the lease terms).

Given all that, there is certainly room for Congress to make it harder for the executive to cancel existing leases for energy development on federal land. Unfortunately, the current effort to do that, the SPEED Act that just passed the House, is probably [inadequate to accomplish that goal](#).

Next post I’ll talk more about what options Congress might have here, for off-shore and on-shore leasing.

