

How to Keep Your Project on Track Under the New Biden Paradigm

Cross-Section/Chapter Collaboration Event

AWMA Upper Midwest Section, Rocky Mountain States Section, and Great Basin Chapter

Shanna Braun and Phil Fish, Barr Engineering

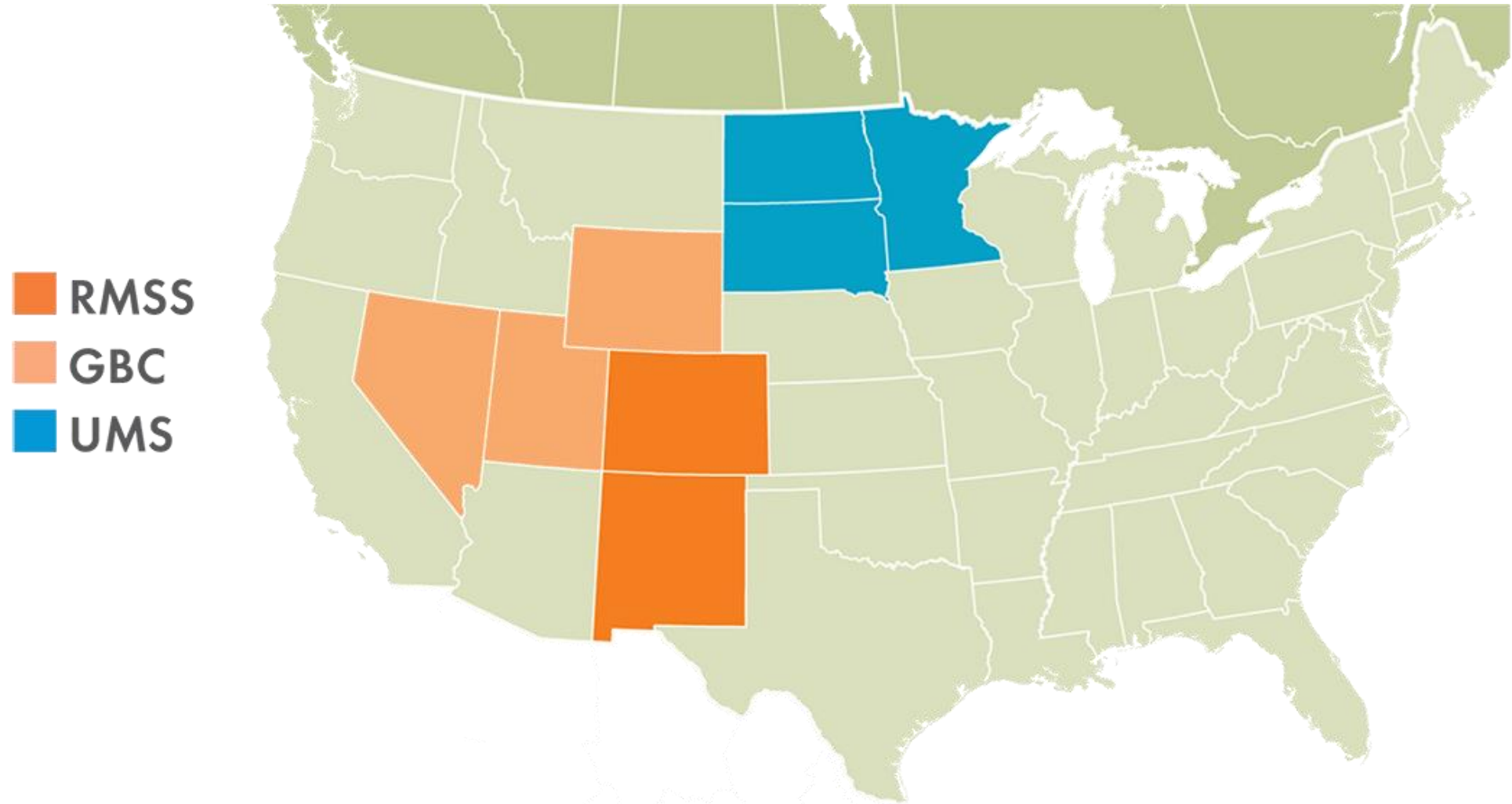
Megan Houdeshel and Alison Garner, Dorsey & Whitney LLP

March 31, 2021

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Who is A&WMA UMS, RMSS, and GBC?



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Webinar Objectives



Biden's environmental agenda toolkit



Biden's environmental policy actions and themes



Adapting to and influencing the next four years



Questions

Biden Administration's Environmental Agenda – how an agenda moves from concept to realized

Toolkit to implement agenda



Executive and
Special Orders

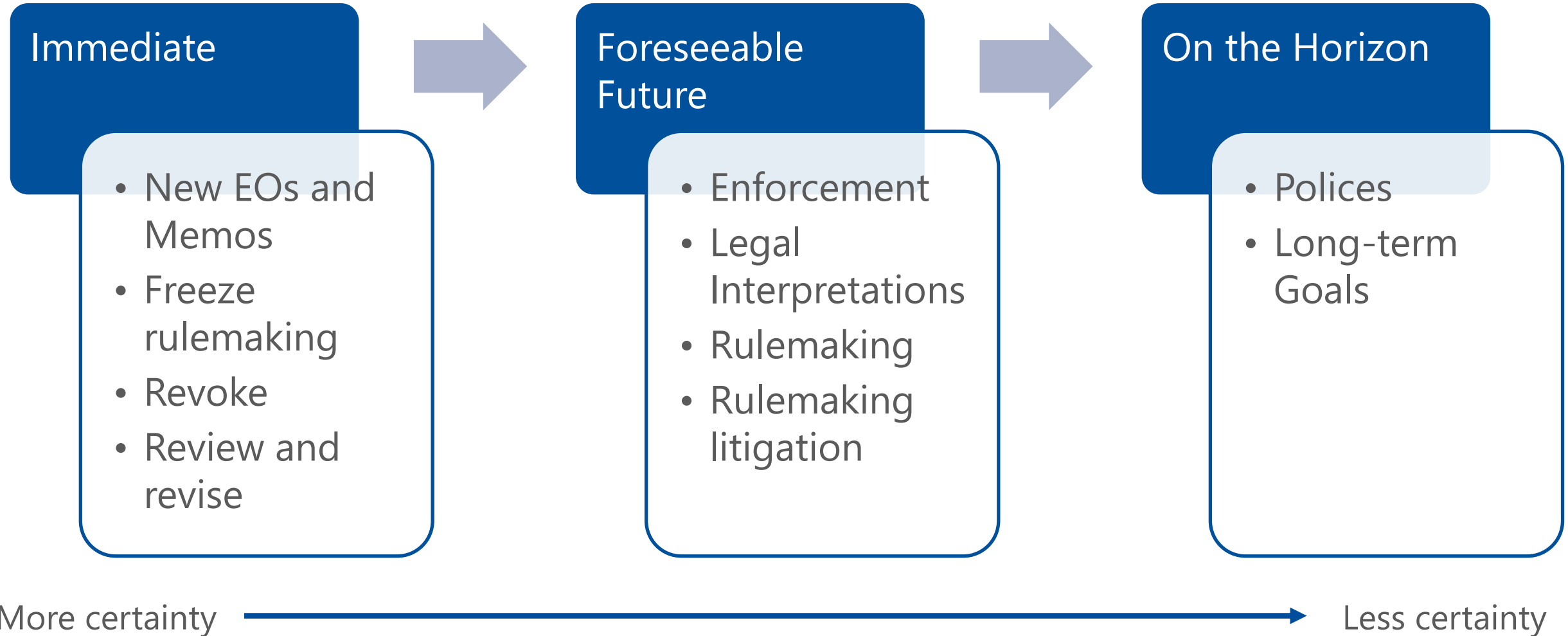
Rulemaking

Agency
Guidance /
Legal
Interpretation

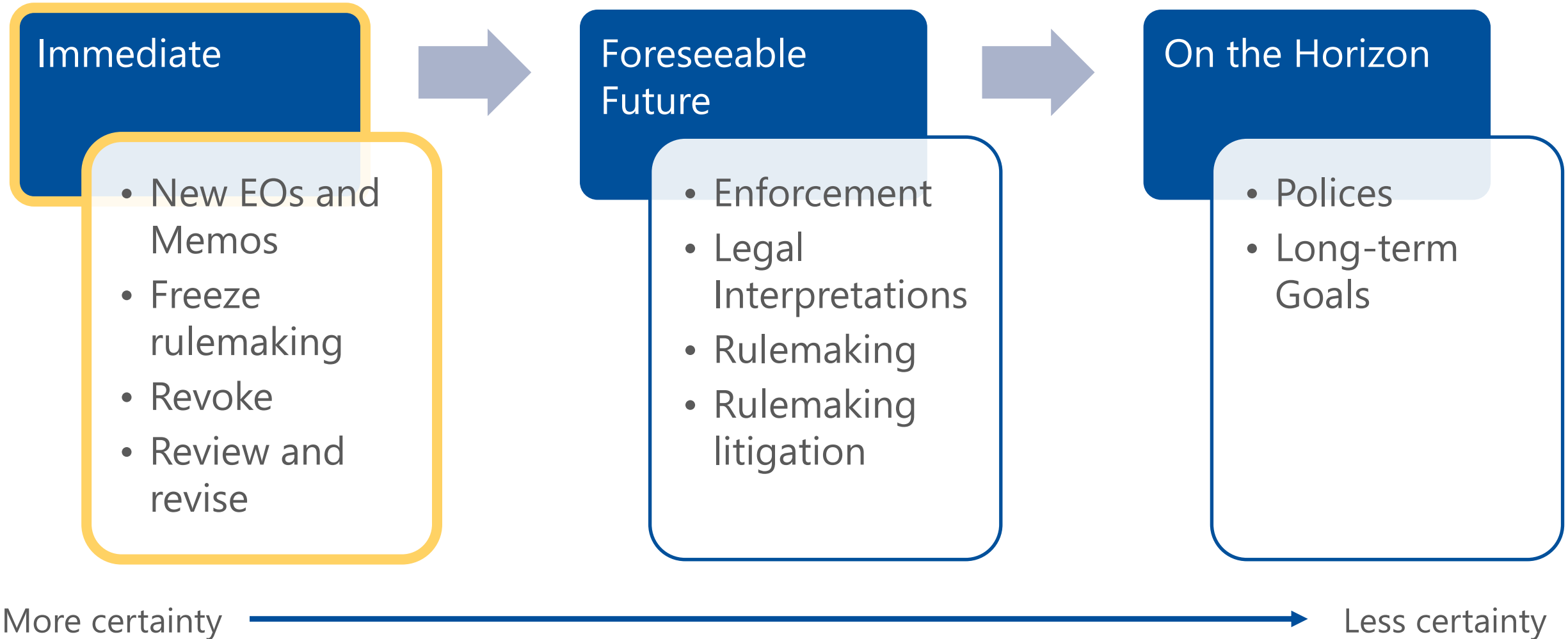
Enforcement

Federal
Spending /
Incentive
Programs

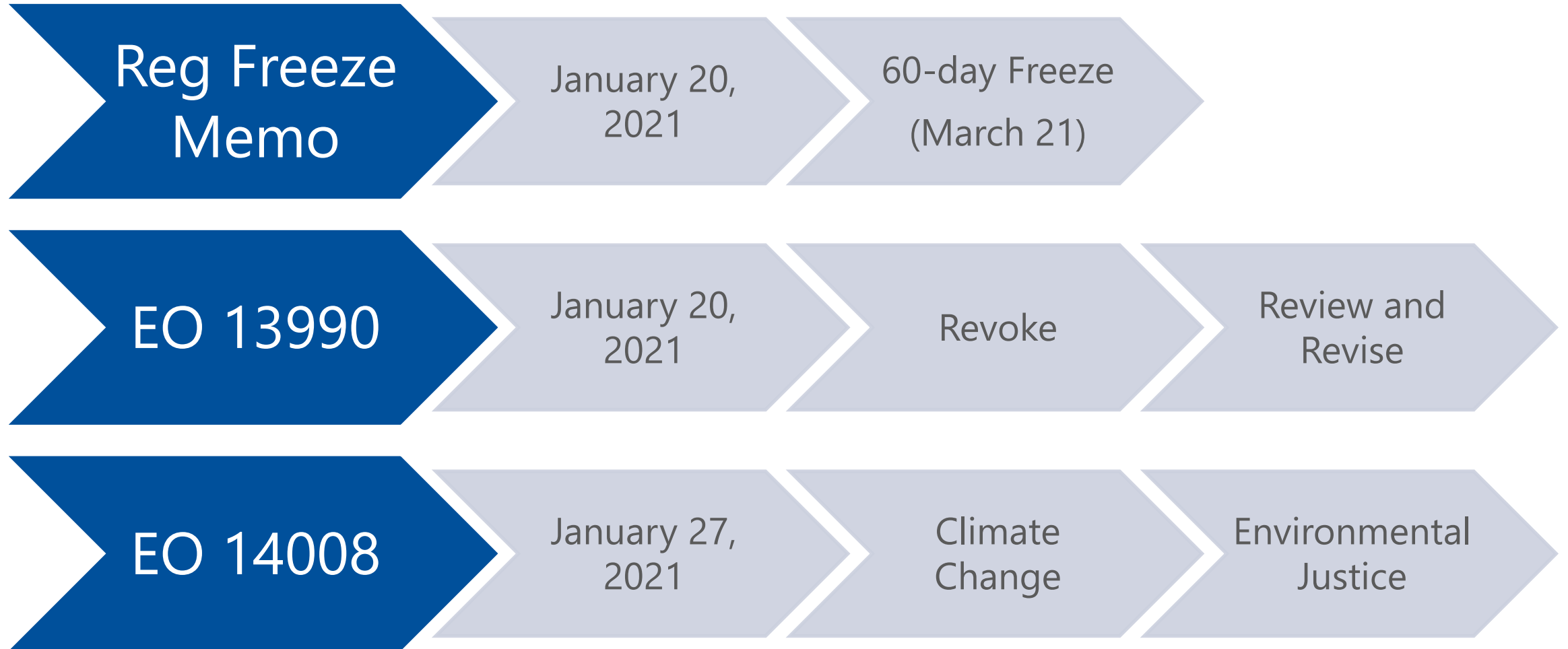
Anticipated changes and timing



Anticipated changes and timing



New Executive Orders/Memorandum Overview



EO 13990 – Revoke, Review, Replace

Easing Infrastructure-focused EOs/Memos

- **EO 13766 – Expediting High Priority Infrastructure Projects**
- **EO 13807 – “FAST 41” Program**
- Keystone XL Pipeline Permit
- 2018 US Dept of Interior Instructional Memo (2018-034) – Updating O&G Leasing Reform



EO 13990 – Revoke, Review, Replace

Easing Infrastructure-focused EOs/Memos

- **EO 13766 – Expediting High Priority Infrastructure Projects**
- **EO 13807 – “FAST 41” Program**

What can you do to help your schedule if you have a major infrastructure project underway or ready to kick off?

- Early agency coordination
- Frequent agency check-ins
- Suggest agency MOUs
- Plan ahead



EO 13990 – Revoke, Review, Replace

Regulatory Direction-related EOs/Memos

- **EO 13778 – Reviewing 2015 WOTUS Rule**
- 2018 Memo (83 FR 16761) – Policies for Implementing Air Quality Standards
- 2019 NEPA GHG Guidance (84 FR 30097) – Replaced with 2016 NEPA Guidance
- Restoring National Monuments

EO 13990 – Revoke, Review, Replace

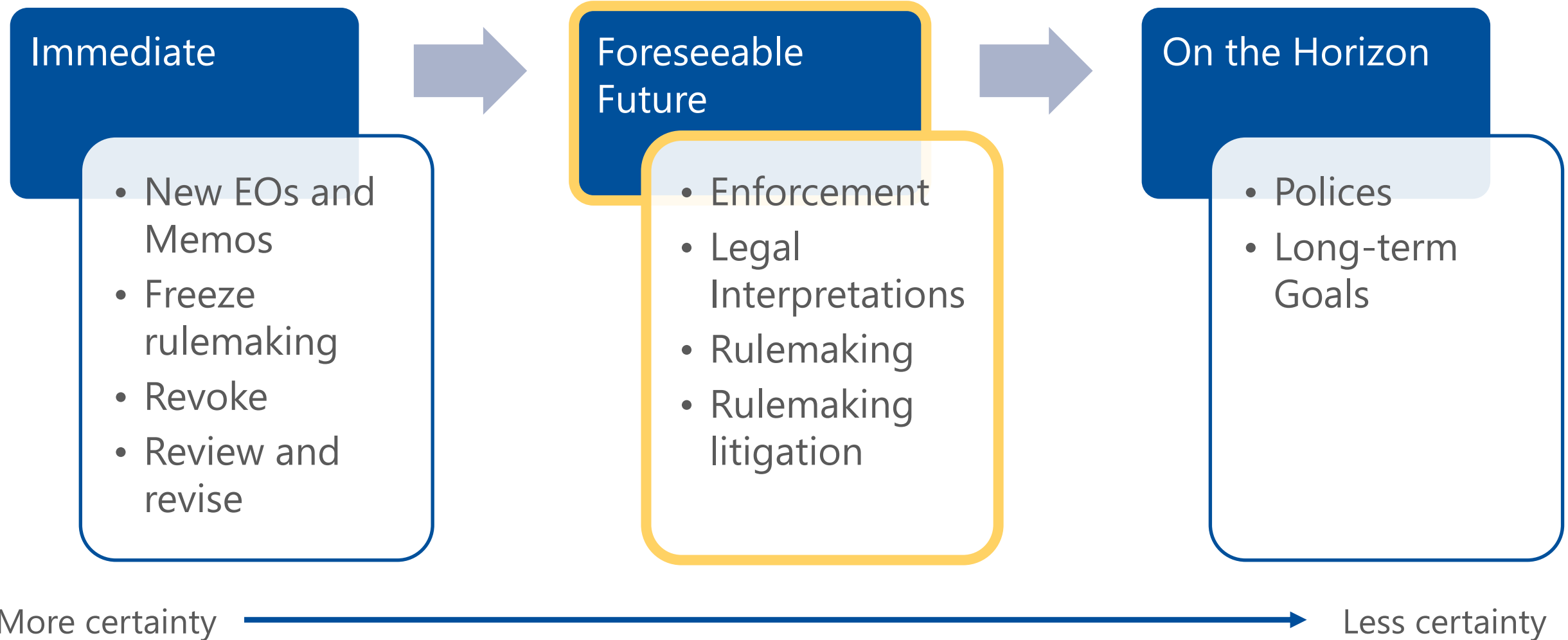
Regulatory Direction-related EOs/Memos

- **EO 13778 – Reviewing 2015 WOTUS Rule**

What can you do if you have a project that may require a wetland permit?

- Include ephemerals in wetland delineation
- Schedule pre-application meeting with USACE to understand current status
- Request an approved JD if schedule allows

Anticipated changes and timing



EO 13990, A List of Agency Actions for Review

- www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/
- Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, 85 Fed. Reg. 81411 (Dec. 16, 2020)
- NEPA Implementing Procedures for the BLM (516 DM 11), 85 Fed. Reg. 25472 (May 1, 2020)
- Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information, 86 Fed. Reg. 469 (Jan. 6, 2021)
- Reissuance and Modification of Nationwide Permits, 86 Fed. Reg. 2744 (Jan. 13, 2021)
- Financial Responsibility Requirements Under CERCLA Section 108(b) for Classes of Facilities in the Hardrock Mining Industry, 83 Fed. Reg. 7556 (Feb. 21, 2018)
- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration and Review
- Multiple National Ambient Air Quality Standards revisions

Litigation

- *Wild Virginia v. Council on Env'tl Quality* (W.D. Va.)
 - CEQ NEPA Rule
- *Western Watersheds Project v. Haaland* (D. Idaho)
 - Sage Grouse plan amendments
- *NRDC v. Department of the Interior* (S.D.N.Y.)
 - Migratory Bird Treaty Act



<https://fwp.mt.gov/conservation/wildlife-management/migratory-bird-wetland-program>



<https://www.usgs.gov/media/images/greater-sage-grouse-0>

Litigation

- *Conservation Law Foundation v. EPA* (D. Colo.)
 - Navigable Waters Protection Rule
- *Environmental Defense Fund v. EPA* (D.C. Cir.)
 - 2012/2016 New Source Performance Standards (methane)
- *Wyoming v. Department of the Interior* (D. Wyo.)
& *California v. Haaland* (N.D. Cal.)
 - 2016 Waste Prevention Rule (venting and flaring)
- *California v. EPA* (D.C. Cir.)
 - Significant contribution finding for GHG emissions



www.morningagclips.com



www.istockphoto.com/photos/methane-flare

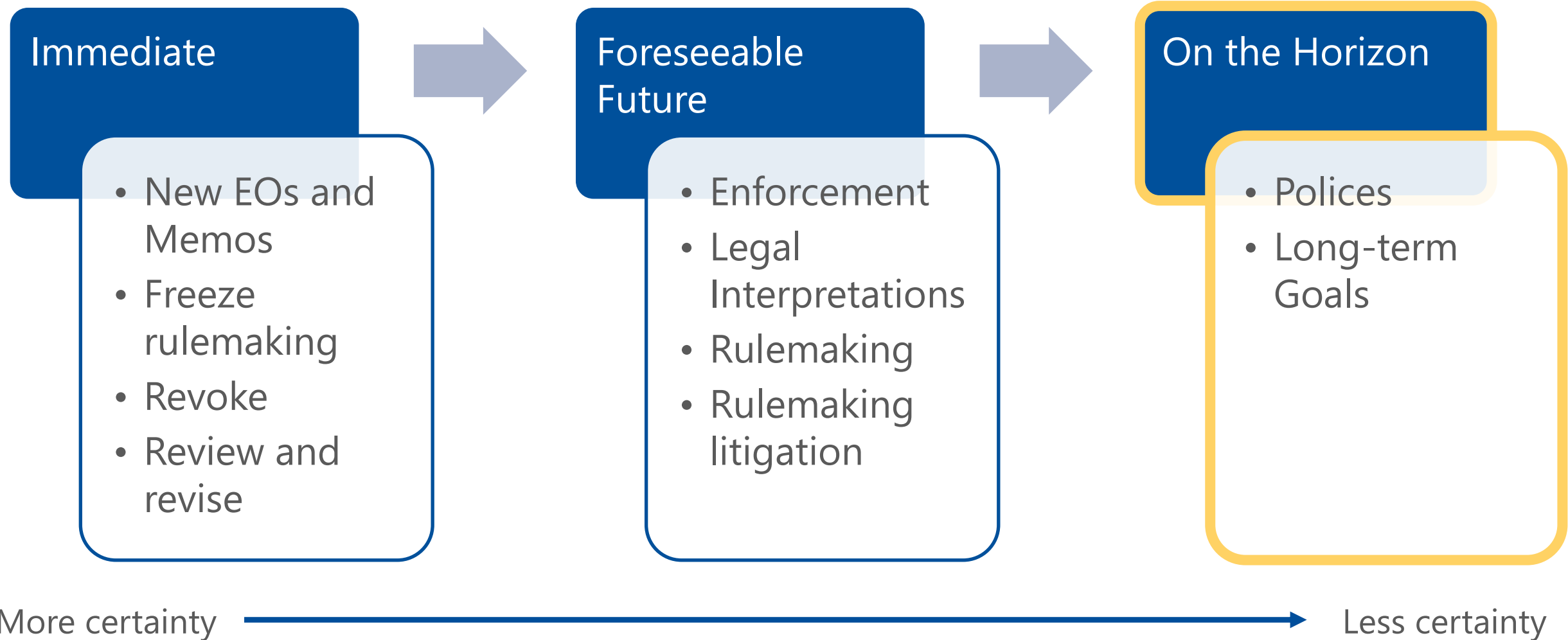
Litigation

- *Western Energy Alliance v. Biden* (D. Wyo.)
 - Challenges to Biden administration oil and gas leasing pause



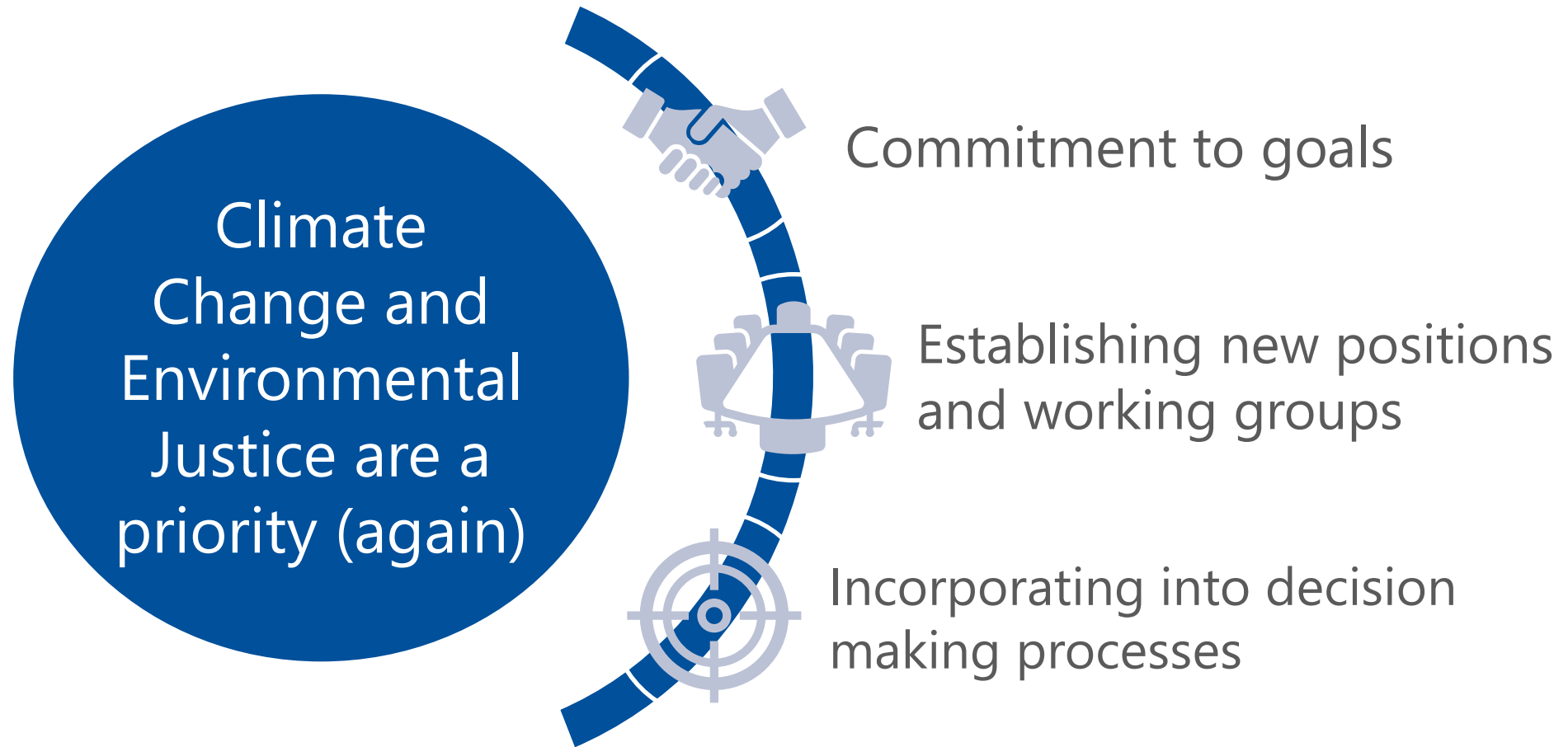
<https://www.wyomingnewsnow.tv/content/news/140-parcels-up-for-sale-in-March-oil-and-gas-lease-sale-505192861.html>

Anticipated changes and timing



Long-term Goals

Climate Change and Environmental Justice



Commitment to Goals

Climate Change

Rejoin the Paris Agreement

Carbon-free Electricity Sector

Doubling Offshore Wind by 2030

Conserving 30% of Lands and Water



Commitment to Goals

Climate Change

Rejoin the Paris Agreement

Carbon-free Electricity Sector

Doubling Offshore Wind by 2030

Conserving 30% of Lands and Water

Environmental Justice

Justice40 Initiative

Strengthen Enforcement in EJ Areas

Support communities' transition



Establishing New Positions and Working Groups

Climate Change

White House Office of Domestic Climate Policy

White House National Climate Advisor

Special Presidential Envoy of Climate

Office of Climate Change and Health Equity

Environmental Justice

White House Environmental Justice Advisory Council

Environmental Justice and Natural Resources Division

DOJ Office of Environmental Justice

Integrating into Decision Making Processes

Climate Change

Social Cost of Carbon

Climate Action Plan

Clean Energy Financial
Management

Climate Change as a National
Security Priority

Integrating into Decision Making Processes

Climate Change

Social Cost of Carbon

Climate Action Plan

Clean Energy Financial Management

Climate Change as a National Security Priority

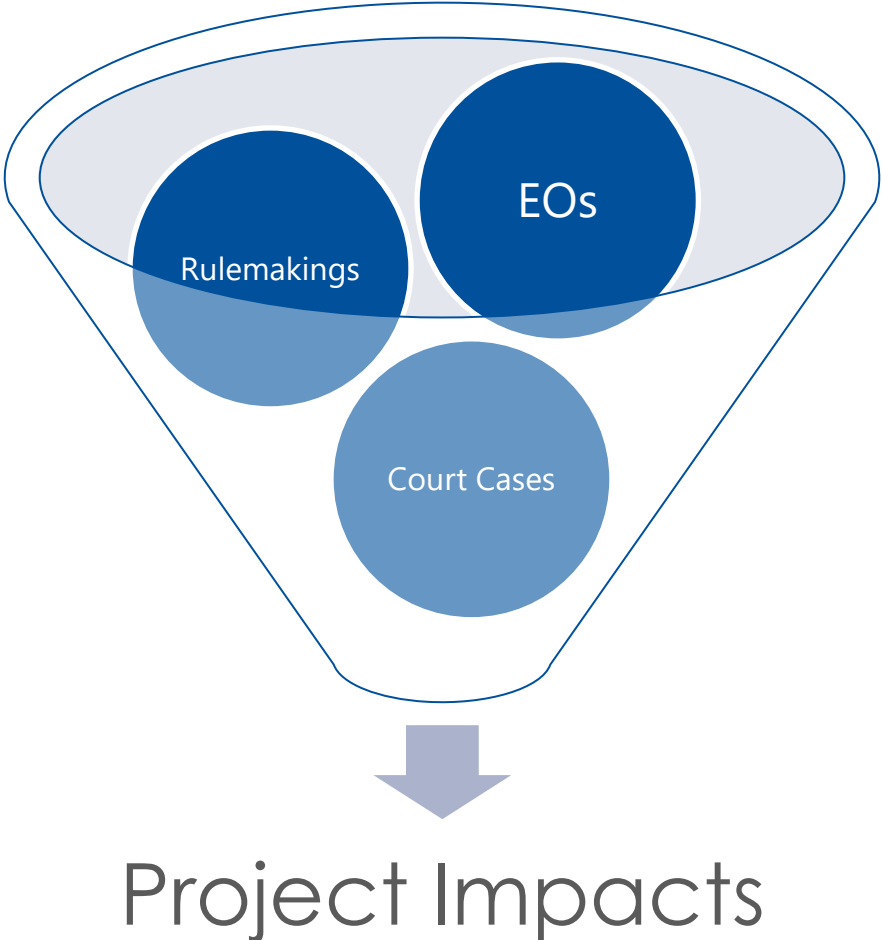
Environmental Justice

Coal and Power Plant Comm. Prioritization Plan

Climate and EJ Data Availability

Comprehensive EPA EJ Enforcement Strategy

That's all great (maybe) but, what does this mean for me?



Toolkit to adapt and influence

Best practices for adapting to a changing regulatory environment



Avoid triggers when possible

Participate in the rulemaking process

Engage in industry groups

Be involved in local community

Engage local agencies early



Toolkit to adapt and influence

- Avoid Triggers when Possible
 - sage grouse habitat
 - Consider renewable energy generation and storage
 - Propose measures to address EJ considerations
 - Early mitigation strategies
 - Propose voluntary environmentally beneficial projects

Toolkit to adapt and influence

- Engage Community, Local Agencies, Industry Groups
 - Positive community outcomes
 - Relationship building with local agency leads
 - Leverage Industry Group connection and influence
 - Highlight positive climate and/or EJ outcomes of project

Toolkit to adapt and influence

- Rulemaking
 - More industry participation needed now
 - Individual commenting in addition to Industry Group participation can be critical
 - Comments needed to maintain operational compatibility of new regulations



Key Takeaways

- Be Patient, and Don't Presume
- Highlight positive climate change outcomes
- Communicate, Communicate, Communicate
- Track Key Regulatory Changes
- Get Involved

Questions



AWMA-UMS Upcoming Events

Landfill Operator's Virtual Conference Series

- 1:00 PM – 3:00 PM CT May 13th, 20th, and 27th

2021 Conference on the Environment

- November 9th, all day event
- Minneapolis Convention Center

Details at <https://www.awma-ums.org/>



AWMA GBC Upcoming Virtual Events:

- Presentation on Wednesday, April 14th at 12:00 pm MT
- Trivia Night on Wednesday, May 12th at 4:00 pm MT
- Events registration links to be distributed via email, contact awmagreatbasin@gmail.com



A&WMA Rocky Mountain States Section

AWMA Rocky Mountain States Section Air Quality Conference

- Scheduled for October 7, 2021
- Call for Abstracts is currently open
- <https://awma-rmss.org/2020-air-quality-conference/>



A&WMA Rocky Mountain States Section

Monthly Meetings

- Open to everyone and currently taking place through Teams
- More information on monthly meetings and events can be found here: <https://awma-rmss.org>

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- Youtube Chanel: <https://www.youtube.com/channel/UCE3XV6It5fAp1KI1YGUhcCg>

