

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 23, 2020

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C St. NW
Washington, DC 20240

Dear Secretary Bernhardt,

I write you today regarding the United States District Court for the District of Montana's decision in *Bullock v. BLM* that Mr. William Perry Pendley unlawfully served in the role of Acting Director of the Bureau of Land Management (BLM) since he was delegated that role more than 424 days ago.¹ Now that Mr. Pendley's illegal appointment has been struck down, along with three Resource Management Plans (RMP) issued under his tenure, it is essential that the Department of the Interior (Department) determine the consequences of this ruling for BLM actions under that appointment and the impacts those actions have had on public land users across the country.

Per the decision: "The Court recognizes that any 'function or duty' of the BLM Director that has been performed by Pendley would have no force and effect and must be set aside as arbitrary and capricious."² In addition to clearly delineated authorities, the BLM Director's functions and duties include a significant role in influencing and participating in agency policymaking; therefore, a wide variety of decisions made under Mr. Pendley's tenure should be set aside as arbitrary and capricious, unless the Department can provide compelling evidence that such a conclusion is unwarranted.

Other RMPs are clearly at risk. Under BLM regulations, the BLM Director is solely responsible for resolving any protest of an RMP and resolving any appeal filed by a state governor during a consistency review.^{3,4} Therefore, any RMP or RMP amendment acted on under Mr. Pendley's tenure fall squarely under the District Court's order. This is also true for the management plans for which Mr. Pendley delegated this authority, including the planning amendments for the

¹ *Bullock v BLM*, Case No. 4:20-cv-00062- BMM (D. Mont. 2020). Retrieved from <https://www.courthousenews.com/wp-content/uploads/2020/09/420cv62.pdf>

² *Bullock v BLM*, Case No. 4:20-cv-00062- BMM (D. Mont. 2020). Retrieved from <https://www.courthousenews.com/wp-content/uploads/2020/09/420cv62.pdf>

³ 43 C.F.R. § 1610.5-2(a)(3)

⁴ 43 C.F.R. § 1610.2-3

Bears Ears and Grand Staircase-Escalante National Monuments.⁵ Mr. Pendley should never have been allowed to delegate authority he illegally held.

Similarly, within the scope of their typical functions and duties, BLM Directors have significant influence over agency policy decisions, including environmental analyses for major federal actions. During Mr. Pendley's illegal tenure, BLM drafted or finalized a number of major environmental analyses, including those that would allow oil and gas extraction on the Arctic National Wildlife Refuge coastal plain and in the National Petroleum Reserve.^{6, 7} Therefore, these crucial decisions likely fall under the scope of the District Court's order.

Agency policy decisions influenced by the Director also include rulemakings, agency guidance documents, and alterations to handbooks and memoranda. BLM frequently used these tools to shape policy, including proposed rulemakings for land management planning, timber management, and guidance on royalty rate relief.^{8, 9} These decisions and documents should be set aside until the Department can convincingly demonstrate that they are on a solid legal foundation.

Finally, this administration took the problematic step of forcibly relocating the BLM headquarters and its staff to Grand Junction, Colorado. This unjustified move led to the loss of more than half of BLM's headquarters personnel, many through forced relocation orders.¹⁰ The relocation also likely had a disproportionate impact on BLM's Black employees.¹¹ This relocation was directly managed and orchestrated by Mr. Pendley: Mr. Pendley's name appears on documents facilitating the reorganization, and he was a vocal advocate for the move in the press. While initial efforts to relocate these BLM positions may have predated Mr. Pendley's tenure, the disastrous pace and manner under which these moves took place clearly implicate Mr. Pendley. Steps must be taken immediately to reverse the disastrous impact of this reorganization on BLM.

⁵ Bureau of Land Management. (2020, February 6). Record of Decision and Approved Resource Management Plan for the Kanab-Escalante Planning Area. ROD-36. Retrieved from https://eplanning.blm.gov/public_projects/lup/94706/20012472/250017031/KEPA_ROD_and_ARMP_February2020.pdf

⁶ Bureau of Land Management. (2020, August 17). Coastal Plain Oil and Gas Leasing Program Record of Decision [DOI-BLM-AK-0000-2018-0002-EIS]. Retrieved from https://eplanning.blm.gov/public_projects/102555/200241580/20024135/250030339/Coastal%20Plain%20Record%20of%20Decision.pdf

⁷ Bureau of Land Management. (2020, June 25). National Petroleum Reserve in Alaska Integrated Activity Plan and Environmental Impact Statement [DOI-BLM-AK-R000-2019-0001-EIS]. Retrieved from https://eplanning.blm.gov/public_projects/117408/200284263/20020342/250026546/Volume%201_ExecSummary_Ch1-3_References_Glossary.pdf

⁸ Bureau of Land Management. (2020, May 28). BLM Proposes Modernizing Forest Management Rules [Press Release]. Retrieved from <https://www.blm.gov/press-release/blm-proposes-modernizing-forest-management-rules>

⁹ Bureau of Land Management. (2020, July 29). The Trump Administration Proposes Updates to Oil and Gas Regulations [Press Release]. Retrieved from <https://www.blm.gov/press-release/trump-administration-proposes-updates-oil-and-gas-regulations>

¹⁰ Grijalva, R. M. (2019, December 4). The Honorable Raúl M. Grijalva, Chair of the House Committee on Natural Resources, to the Honorable David Bernhardt, Secretary of the Interior [Letter]. Retrieved from <https://naturalresources.house.gov/imo/media/doc/Grijalva%20Letter%20to%20Bernhardt%20on%20Legal%20Risk%20From%20BLM%20Staff%20Move%20Diversity%20Impacts%20December%204%202019.pdf>

¹¹ 41 percent of Black BLM employees across the country were headquartered in Washington, D.C. before the relocation.

The Department's misguided efforts to will away the illegality of this appointment do a serious disservice to the American public. Rather than carefully considering the impacts of this ruling in an effort to improve the management of our public lands, the Department's decision to proceed with business as usual will only create grounds for numerous additional lawsuits and injunctions. I strongly urge that you reconsider this path of action and make every effort to comply with the District Court's ruling.

I appreciate your prompt consideration of these matters. If you have any questions on the substance of my concerns, you can reach out to my Committee staff at 202-225-6065.

Sincerely,



Raúl M. Grijalva

Chair

House Natural Resources Committee