



October 31, 2025

The Honorable Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW Washington, D.C. 20240

Re: Improper “acting” Interior leadership officials

Dear Secretary Burgum:

We are writing to ask you to address an important issue of concern in your agency.

The Federal Vacancies Reform Act (FVRA) includes eligibility criteria for temporary appointments to high-ranking agency positions that require presidential nomination and Senate confirmation. Under FVRA, when an agency leadership position requiring such presidential nomination and Senate “advise and consent” becomes vacant, a person may legally qualify to be appointed the powers and title of the “acting” officer in that position only if one of three FVRA criteria are met: 1) that person is already the “first assistant” to that position, 2) that person previously obtained Senate confirmation for a different position, or 3) that person is an officer or employee from the same agency who has worked at the agency for at least 90 days in the year before the vacancy occurred and earns at least a GS-15 salary. 5 U.S.C. § 3345.

Without Senate confirmation, Interior’s leaders are more likely to be “fringe” figures or otherwise unqualified. Further, official actions they take may be found by courts to be invalid.

Secretarial Order (SO) 3414 Amendment 9, of Oct. 1, 2025, is the most recent order that formalizes the appointments of Interior bureau heads into previously vacant Interior positions that lack a Senate-confirmed official (<https://www.doi.gov/document-library/secretary-order/so-3414a9-establishment-new-department-leadership-team-and>). However, your SO claims that those appointments were not of the appointees as “acting” officials under FVRA, rather that they were appointed to exercise your redelegated authority. This is very clear in the SO: *Sec. 6. Limitations. This Order is not intended to, nor does it in law or fact, create an Acting official in the associated PAS position.*

Despite that provision, the following four Interior officials are improperly using titles and issuing regulatory decisions and other actions stating they are the “acting” officials in positions that require Senate confirmation:

Michael Boren, appointed by you on September 4, 2025, has used “Acting Assistant Secretary for Policy, Management and Budget” in official documents, such as issuing this Interior acquisition policy:
[https://www.acquisition.gov/sites/default/files/page_file_uploads/DOI_RFO_Deviation Part-](https://www.acquisition.gov/sites/default/files/page_file_uploads/DOI_RFO_Deviation_Part-)

[43.pdf](#) (Sept. 4, 2025). An Idaho rancher before coming to Interior, Boren does not qualify under any of the three FVRA criteria above to be the Acting Assistant Secretary.

Kevin Lilly, appointed by you on August 4, 2025, has used “Acting Assistant Secretary for Fish, Wildlife and Parks” in official documents, such as this Federal Register notice that finalized rulemaking to expand fishing and hunting in the National Wildlife Refuge System: <https://public-inspection.federalregister.gov/2025-16440.pdf> (Aug. 27, 2025). A Texas investment manager before coming to Interior, Lilly does not qualify under any of the FVRA criteria to be the Acting Assistant Secretary.

Bill Groffy, appointed by you on June 25, 2025, uses “Acting Director of the Bureau of Land Management” (BLM) on BLM’s website, <https://www.blm.gov/leadership>, and in official documents, such as this Federal Register notice on amending the Resource Management Plan for the Greater Sage-Grouse: <https://public-inspection.federalregister.gov/2025-16886.pdf> (Sept. 3, 2025). A Colorado oil and gas association official before coming to Interior, Groffy does not qualify under the FVRA criteria to be the Acting Director.

Matthew Giancona, appointed by you on June 10, 2025, uses “Acting Director of the Bureau of Ocean Energy Management” (BOEM) on BOEM’s website: <https://www.boem.gov/about-boem/boem-leadership>, and in official documents, such as this Federal Register notice on an oil and gas lease sale in Alaska: <https://www.federalregister.gov/documents/2025/09/18/2025-18095/outer-continental-shelf-alaska-region-cook-inlet-planning-area-oil-and-gas-lease-sale-258> (Sept., 2025). A government affairs official in a national industry association before coming to Interior, Giancona does not qualify under the FVRA criteria to be the Acting Director.

No nominees by President Trump are pending in the Senate for any of the positions above. Note that several other Interior leaders have either already been confirmed by the Senate or else they correctly identify themselves as the Principal Deputy, per your appointment of them, rather than as “acting” in their position.

Further, National Park Service (NPS) Comptroller **Jessica Bowron** has served as its acting Director since President Trump took office on January 20, 2025. (<https://npshistory.com/publications/directors/index.htm>). As a former lead NPS official, she is qualified to serve as acting Director. However, FVRA provides, at 5 U.S.C. § 3349a, that she can only serve for up to 300 days since her appointment began on January 20, which means her role must end on November 16, 2025.

During the first Trump Administration, there was repeated litigation for similar violations, most notably the decision by the U.S. District Court in Montana in 2020 that William Perry Pendley, who had served as BLM Director for more than one year, could not continue in that position because he was not qualified to continue under FVRA. *Bullock v. U.S. Bureau of Land Mgmt.*, 489 F. Supp. 3d 1112, 1125-26 (D. Mont. 2020).¹ Various of Mr. Pendley’s BLM management plan actions that he

¹ Cramer, M. 2020. “Top U.S. Lands Official Served Unlawfully for Over a Year, a Federal Judge Rules,” *New York Times*, Sept. 26, at: <https://www.nytimes.com/2020/09/26/us/william-perry-pendley-blm.html>

took were reversed on that basis. President Trump's stated preference then for acting officials in key leadership positions rather than Senate-confirmed leaders was shown to be repeatedly legally vulnerable, e.g., *L.M.-M. v. Kenneth T. Cuccinelli II*, 442 F. Supp. 3d 1 (D.D.C. 2020).

Note also that the Government Accountability Office's (GAO) official database on FVRA appointments contains no names of acting officials in any of the Interior leadership positions that require Senate confirmation.² This is despite requirements under FVRA, § 3349, that such information on vacancies be promptly reported to GAO. In addition to allowing the substantive violations described above, your agency is violating that procedural requirement.

This is to request that you direct all officials who are improperly using "acting" in their titles in positions that require Senate confirmation to refrain from doing so going forward. Further, their regulatory and other decisions that were issued using improper titles should be withdrawn.³ If these actions are not taken PEER will consider appropriate actions Further, Interior should promptly make the required reports to the GAO.

² GAO FVRA database results at: https://www.gao.gov/legal/federal-vacancies-reform-act/federal-vacancies-current-administration?processed=1&agency=interior&vacancy_status=Vacant%20Positions%20with%20Acting%20Official#s-skipLinkTargetForMainSearchResults.

³ However, an action taken by anyone acting outside the permissible limits of the FVRA "in the performance of any function or duty of a vacant office . . . shall have no force or effect." 5 U.S.C. § 3348(d)(1). Not only does an action taken in violation of the FVRA have no force or effect, it "may not be ratified" even by a properly appointed official. *Id.* § 3348(d)(2). This prohibition on ratification "was designed to prevent the practice of a properly appointed official reissuing a decision taken in violation of FVRA provisions." *Pub. Emps. for Env't Responsibility v. Nat'l Park Serv.*, 605 F. Supp. 3d 28 (D.D.C. 2022) (citing *SW Gen., Inc. v. NLRB*, 796 F.3d 67, 70, 418 U.S. App. D.C. 67 (D.C. Cir. 2015), *aff'd*, 580 U.S. 288, 137 S. Ct. 929, 197 L. Ed. 2d 263). Further, the following excerpt from *Bullock v. U.S. Bureau of Land Mgmt.*, *supra*, at 1125-26 is highly relevant to any future attempt to merely keep principal deputies in as the *de facto* acting officials past the term limits in FVRA:

Federal Defendants' argument attempting to distinguish an 'Acting Director' from an 'official performing the Director's duties under the Secretary's delegation' represents a distinction without a difference. Such arguments prove evasive and undermine the constitutional system of checks and balances. Federal Defendants' theory flies in the face of the constitutional design, the clear text of the FVRA that provides the 'exclusive' means for temporary appointment, and the history of Executive Branch evasion of the Appointments Clause that led Congress to pass the FVRA in the first place The President cannot shelter unconstitutional 'temporary' appointments for the duration of his presidency through a matryoshka doll of delegated authorities.

Please feel free to contact me if you would like additional information.

Sincerely,

Timothy Whitehouse
Executive Director

cc: Department of the Interior, Office of Inspector General
U.S. Congress, Government Accountability Office
Senator Mike Lee, Chair, Energy and Natural Resources Committee
Senator Martin Heinrich, Ranking Member, Energy and Natural Resources Committee