

INTERIOR

Complaint calls acting directors 'invalid'

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Acting National Park Service Director P. Daniel Smith (right) spoke with Boy Scouts during a volunteer day in 2008. Yorktown Windmill Project

A watchdog group today filed a complaint alleging the Interior Department has been illegally relying on temporary agency directors.

In the six-page [complaint](#) lodged with Interior's Office of Inspector General, Public Employees for Environmental Responsibility contends the Trump administration's use of temporary or acting directors violates a law that limits how long nonconfirmed officials can lead an agency.

"The law prevents a president from installing acting directors for long periods and completely bypassing Senate confirmation," PEER Executive Director Jeff Ruch said in a statement. "Federal agencies are not supposed to be run like a temp service."

The complaint raises the profile of a seemingly arcane but potentially significant issue that began dogging the Trump administration late last year.



Greg Sheehan.
Fish and Wildlife
Service

The Federal Vacancies Reform Act states that a person may serve as acting director "for no longer than 210 days beginning on the date the vacancy occurs." This period can be extended an additional 90 days after a "transitional inauguration day," so the maximum tenure of an acting director is 300 days.

The complaint specifically cites actions taken by acting directors of the National Park Service, Bureau of Land Management and Fish and Wildlife Service as being in "blatant violation" of the Federal Vacancies Reform Act ([Greenwire](#), Nov. 9, 2017).

The complaint, for instance, contends that Michael Reynolds improperly served approximately 386 days as acting director of the National Park Service. Greg Sheehan has likewise served too long as acting Fish and Wildlife Service director, according to the complaint.

It also charges that Sheehan, current NPS acting Director P. Daniel Smith and BLM acting Director Brian Steed all did not serve in a senior position for 90 days during the prior year, as the act requires, and were appointed by Interior Secretary Ryan Zinke, not Trump.

When asked about Vacancies Reform Act issues, Interior spokeswoman Heather Swift said last November that "we are aware of the deadline and we have taken sufficient administrative actions to ensure that the functions, duties, and responsibilities of the positions are performed."

An Office of Inspector General spokesperson could not be reached this morning.

Interior officials last year defended the appointment of Steed at BLM, for example, and said they were acting within the law because Zinke can delegate the responsibilities of any confirmed post within the agency, as part of a reorganization plan (E&E News PM, Nov. 17, 2017).

But Paul Light, a public policy professor at New York University, has said the Federal Vacancies Reform Act is the "exclusive means for temporarily authorizing an acting official to perform the functions and duties" of all advise-and-consent positions unless otherwise expressly provided for in law or unless President Trump uses his recess appointment authority.

Light has also said Interior appears to be inviting legal action on any and all decisions tied to such appointments (Greenwire, Nov. 27, 2017).

Terry Sullivan, executive director of the nonpartisan White House Transition Project, questioned in an email the legal basis for saying a reorganization plan that dates back to 1950 overrides a statute passed in 1998.

Ruch said the complaint didn't address Interior's reference to the reorganization plan because a "later act of Congress, by its terms, trumps ... everything," referring to the Federal Vacancies Reform Act of 1998. The Trump administration has not yet nominated individuals to serve as directors of the three high-profile natural resources agencies, instead relying on temporary fill-ins.

Any action taken by an official in violation of the Federal Vacancies Reform Act "shall have no force or effect," and it cannot later be "ratified," according to the law.

As part of the complaint, PEER is asking Interior Deputy Inspector General Mary Kendall to compile a list of "all of the invalid actions taken in violation" of the Vacancies Reform Act. Kendall is her office's senior staffer, as Trump has also not nominated an inspector general.



Brian Steed. Bureau of Land Management

"Trump's dereliction of duty has created the anomaly of acting directors unable to act," Ruch said. "This chronic leadership failure casts a deep, murky legal shadow across a wide range of Interior decisions that may be legal nullities."

When the Vacancies Act's 300-day clock runs out during a transition year, an official can perform the nonexclusive duties of a Senate-confirmed position but cannot do its exclusive functions, which are assigned to that specific office by law or regulation. Agency heads then may have to step in to perform those exclusive duties.

The Government Accountability Office has previously tracked 20 violations of the law by agencies since 2000.