

# Subcommittee on Oversight and Investigations

Bruce Westerman, Chairman

Hearing Memorandum

December 4, 2017

To: All Subcommittee on Oversight and Investigations Members

From: Majority Committee Staff—Melissa Beaumont  
Subcommittee on Oversight and Investigations (x5-7107)

Hearing: Oversight hearing entitled “*Transforming the Department of the Interior for the 21st Century*”  
**December 7, 2017 at 10:00 a.m. in 1334 Longworth House Office Building**

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The House Committee on Natural Resources, Subcommittee on Oversight and Investigations will hold an oversight hearing titled, “*Transforming the Department of the Interior for the 21st Century*” on **December 7, 2017 at 10:00 a.m. in 1334 Longworth House Office Building**. The hearing will examine goals and policy ideas for reorganizing and relocating parts of the Department of the Interior and its bureaus.

## **Policy Overview:**

- The Department of the Interior (DOI) is an important agency of the federal government, overseeing more than 400 million acres of federally-owned land, 26 percent of which is concentrated in 11 western states.<sup>1</sup> In recent years, however, the constantly expanding missions at DOI have led to a decline in the agency’s ability to provide efficient, effective, and transparent service to the American public.
- In recent years, various problems and dysfunction within DOI have been thoroughly investigated by the Committee. Examples include a deterioration in the quality of public land management, a failure to tackle more than \$12 billion in maintenance backlogs at national parks, a proliferation of burdensome and unnecessary regulations, particularly during the previous administration, that have restricted responsible development of natural resources located on federal lands, and a persistent lack of accountability for misconduct by DOI officials.
- The Trump Administration has expressed its commitment to restructuring not only DOI, but the entire federal government. In March 2017, President Trump issued Executive Order 13781--which directs the Office of Management and Budget (OMB) to propose a plan for reorganizing governmental functions to improve the efficiency, effectiveness, and accountability of federal agencies.<sup>2</sup> Pursuant to this executive order, OMB issued a

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<sup>1</sup> Carol Hardy-Vincent, Laura A. Henson, Carla N. Argueta, CONG. RESEARCH SERVICE, R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA (2017), available at

<http://www.crs.gov/Reports/R42346?source=search&guid=9b34e8bf4fdd4d5a985c0088d15f0547&index=0>.

<sup>2</sup> Exec. Order No. 13781, 82 Fed. Reg. 1359 (Mar. 16, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-16/pdf/2017-05399.pdf>.

memorandum titled a “*Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Workforce.*”<sup>3</sup>

- As DOI submits its plan for restructuring to OMB, it should consider how best to return decision-making authority closer to the communities and citizens most impacted by DOI’s policies. Western states include by far the largest percentages of federal lands within their borders.<sup>4</sup> Strong local, state, and federal partnerships founded on trust and mutual respect are a prerequisite for successful federal land management.
- To achieve this, DOI should move away from its current top-down, Washington-centric management system and create a more decentralized model that prioritizes accountability, transparency, and service to the public. A key component of this cultural change should be for DOI to give serious consideration to relocating its headquarters for certain bureaus to western states.

**Invited Witnesses (in alphabetical order):**

*Mr. Denis P. Galvin*

Advisor

Coalition to Protect America's National Parks

Washington, D.C.

*Mr. Nicolas Loris*

Herbert and Joyce Morgan Fellow in Energy and Environmental Policy

Roe Institute for Economic Policy Studies

The Heritage Foundation

Washington, D.C.

*Mr. Shawn Regan*

Research Fellow

Property and Environment Research Center (PERC)

Bozeman, Montana

*Ms. Kathleen Sgamma*

President

Western Energy Alliance

Denver, Colorado

**Background:**

While DOI does not have the largest budget in the federal government, it has a vast range of responsibilities. The Department manages over 400 million acres of federal land, an amount

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<sup>3</sup> OMB Memorandum M-17-22, *Memorandum for the Heads of Departments and Agencies*, (Apr. 12, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>.

<sup>4</sup> HARDY-VINCENT ET AL, *Supra*, note 1.

equal to about almost one fifth of all the land in the United States.<sup>5</sup> Its missions are sweeping and diverse and can range from ensuring responsible energy development on federal land (including 1.7 billion acres of the outer continental shelf), to overseeing the Endangered Species Act (ESA) and the Federal Lands Policy Management Act (FLPMA), to administering tens of millions of acres of irrigation for western farmland and producing clean, renewable sources of hydropower, geothermal, solar and other sources of energy, to fulfilling trust responsibilities to Native American and Alaska Native tribal communities and to insular and territories, to running our country's national park system. Despite the importance of these missions, recent years have seen a decline in DOI's effectiveness, transparency, and efficiency. Here are a few of many examples:

- One of DOI's core responsibilities that has suffered significantly from mission drift is its management of our country's natural resources, particularly the management of energy resources located on federal lands. In 2017, GAO included management of federal oil and gas resources on its list of high risk programs most vulnerable to waste, fraud, abuse, and most in need of transformation.<sup>6</sup> The unchecked growth of unnecessary bureaucracy and duplicative regulations contributed to an \$8 billion decline in royalties over just the last four years. This inexplicable management failure shortchanges many essential programs that rely on royalty funds.<sup>7</sup>
- In recent years, DOI's management of federal lands has moved away from its core values and statutorily mandated priorities of public access and multiple use. This has created great uncertainty and a loss of mission focus exemplified by the Obama Administration's creation of the Bureau of Land Management (BLM) Planning 2.0 rule, which reduced the effectiveness of BLM's resource management planning process by removing meaningful participation from cooperating states and localities and by giving more authority to bureaucrats in Washington, DC.<sup>8</sup>
- The National Park system is one of our nation's most cherished institutions. The National Park Service (NPS) is responsible for overseeing 85 million acres located in 417 national park units, each selected for its cultural, natural, and historical importance.<sup>9</sup> The NPS recently celebrated its 100th anniversary in 2016 and enjoys a significant increase in visitors to the national parks.<sup>10</sup> However, the increase in units to the National Park

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<sup>5</sup> See *Id.* at 2.

<sup>6</sup> GAO, *High Risk Series: Progress on Many High Risk Areas, While Substantial Efforts Needed on Others*, GAO-17-317, Highlights page (Washington, D.C.: February 15, 2017).

<sup>7</sup> Office of Natural Resource Revenue website, "Statistical Information", available at <https://statistics.onrr.gov/ReportTool.aspx>.

<sup>8</sup> *Local and State Perspectives on BLM's Draft Planning 2.0 Rule: Hearing before the Subcomm. on Oversight and Investigations of the H. Comm. on Natural Res.*, 114th Cong. (2016) (Hearing Memo), available at [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_ov\\_hrg\\_on\\_05.12.16.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_on_05.12.16.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> *The Fiscal Year 2017 Budget Request For The National Park Service: Hearing before the Subcomm. on Interior, Energy, and Environment, of the H. Approps. Comm.*, 114th Cong. (2016) (Testimony of Jonathan Jarvis, Dir., NPS) available at <http://docs.house.gov/meetings/AP/AP06/20160316/104629/HHRG-114-AP06-Wstate-JarvisJ-20160316.pdf>.

System and subsequent increase in responsibilities and visitors has led to a \$12 billion dollar and growing maintenance backlog.<sup>11</sup>

- The Fish and Wildlife Service (FWS) is responsible implementing the ESA for DOI, in particular for plants, wildlife and inland fisheries.<sup>12</sup> In the 44 years since the enactment of ESA, FWS has faced many challenges in its implementation, as only 42 species have achieved recovery out of 2,335 total listings.<sup>13</sup> The Committee has received testimony from numerous witnesses on problems arising from DOI's implementation of ESA, including on the excessive litigation costs, lack of transparent scientific data, endless consultation processes, negative economic impacts, failure to include states and stakeholders in the process, and promoting more petitions and listings over recovery.<sup>14</sup>
- One factor that may exacerbate the dismal success rate of the ESA is the duplication of efforts between FWS and the National Marine Fisheries Service (NMFS) at the Department of Commerce, which is responsible for implementing the ESA for ocean-going fish and some marine mammals.<sup>15</sup> There are multiple cases where federal and private actions impact species that fall under the jurisdiction of both NMFS and FWS, requiring separate consultations detailing potential impacts on the species, which can result in competing or conflicting recommendations.<sup>16</sup> To alleviate this redundancy, proposals currently exist to consolidate the overlapping functions of NMFS into FWS, with respect to implementing the ESA for anadromous and catadromous fish.<sup>17</sup>
- Underlying these numerous problems is a continuing lack of accountability for DOI officials who have engaged in serious misconduct while on the job. Several well-publicized, high-profile cases of misconduct, including revelations of widespread sexual harassment in national parks<sup>18</sup> and extreme abuse of authority by a senior BLM law

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<sup>11</sup> *Identifying Innovative Infrastructure Ideas for the National Park Service and Forest Service: Hearing before the Subcomm. on Fed. Lands of the H. Natural Res.*, 115th Cong., (2017) (Hearing Memo) available at [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_ov\\_hrg\\_on\\_03.16.17.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_on_03.16.17.pdf).

<sup>12</sup> Pervase A. Sheikh and Alexandra A. Wyatt, CONG. RESEARCH SERVICE, RL31654, THE ENDANGERED SPECIES ACT: A PRIMER, available at <http://www.crs.gov/Reports/RL31654?source=search&guid=1c7ec578ddcf42c1acc6c9cd3b71e90f&index=0>, at 8.

<sup>13</sup> U.S. FWS website, Environmental Conservation Online System, "Delisted Species", available at <https://ecos.fws.gov/ecp0/reports/delisting-report>.

<sup>14</sup> *E.g. Legislative Hearing on H.R. 424, H.R. 717, H.R. 1274, H.R. 2603, H.R. 3131, Before the H. Comm. on Natural Resources*, 115th Cong. (2017), available at <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=402373>.

<sup>15</sup> Congressional Research Service Report "The Endangered Species Act: A Primer," p. 8.

<sup>16</sup> *Legislative Hearing on H.R. 3916 Before the H. Comm. on Natural Res.*, 114th Cong. (2016) (Hearing Memo), available at [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_leg\\_hrg\\_on\\_hr\\_3916\\_on\\_10.12.17\\_updated.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_leg_hrg_on_hr_3916_on_10.12.17_updated.pdf), at 3.

<sup>17</sup> H.R. 3916, 115th Cong. (2017)

<sup>18</sup> OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF THE INTERIOR, INVESTIGATIVE REPORT OF MISCONDUCT AT THE GRAND CANYON RIVER DISTRICT, (2016) available at [https://www.doioig.gov/sites/doioig.gov/files/Misconduct\\_GrandCanyonRiverDistrict\\_Public.pdf](https://www.doioig.gov/sites/doioig.gov/files/Misconduct_GrandCanyonRiverDistrict_Public.pdf); See also: OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF THE INTERIOR, INVESTIGATIVE REPORT OF MISCONDUCT ALLEGED SEXUAL MISCONDUCT AND REPRISAL AT YELLOWSTONE NATIONAL PARK (2017) available at [https://www.doioig.gov/sites/doioig.gov/files/AllegationsofSexualMisconductandReprisalYellowstone\\_Public.pdf](https://www.doioig.gov/sites/doioig.gov/files/AllegationsofSexualMisconductandReprisalYellowstone_Public.pdf).

enforcement officer provide some troubling examples.<sup>19</sup> These cases have exposed a culture that protects senior officials to the detriment of those employees dedicated to effective and ethical service.

These and other problems have been thoroughly examined by the Committee. On a foundational level, these systematic failings best exemplify the need for real reform and change at DOI to alleviate these issues and bring back a culture of public service.

### Administration Efforts on Government Reorganization

The Trump Administration has begun taking steps to restructure not only DOI, but all Executive Branch agencies. In March 2017, President Trump issued Executive Order (EO) 13781 on a Comprehensive Plan for Reorganizing the Executive Branch, which required OMB to create a plan for reorganizing governmental functions in ways that improve the efficiency, effectiveness, and accountability of federal agencies.<sup>20</sup> This EO requires OMB to identify areas where governmental restructuring can raise the quality of service to the American public and where policies and regulations need to be realigned with agencies' core missions to eliminate unnecessary, redundant levels of management.<sup>21</sup>

OMB released further guidance concerning EO 13781 in an April 12, 2017 memorandum, ordering federal agencies to provide an "Agency Reform Plan" and a separate plan identifying ways to maximize employee performance.<sup>22</sup> A subsequent July 7, 2017 OMB memorandum provides guidance for agencies' fiscal year 2019 budget requests. Through its July 7 memorandum, OMB directs agencies to include long-term workforce plans with their budget requests by September 11, 2017.<sup>23</sup> Four subjects must be addressed in the proposals: how to eliminate non-core activities, how to restructure or merge agency functions, how to improve organizational efficiency and effectiveness, and how to improve workforce management.<sup>24</sup> According to OMB, "The FY 2019 budget process will give special consideration to bold reform and reorganization proposals that have the potential to dramatically improve effectiveness and efficiency of government operations."<sup>25</sup> DOI must embrace this mandate and consider innovative reforms to improve the agency's effectiveness, transparency, and the quality of service it provides to the public.

### Concepts for Reorganization

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<sup>19</sup> OFFICE OF INSPECTOR GENERAL, U.S. DEP'T OF THE INTERIOR, INVESTIGATIVE REPORT OF ETHICAL VIOLATIONS AND MISCONDUCT BY BUREAU OF LAND MANAGEMENT OFFICIALS (2017) available at [https://www.doi.ig.gov/sites/doi.ig.gov/files/EthicalViolationsAndMisconductByBLMOfficials\\_Public.pdf](https://www.doi.ig.gov/sites/doi.ig.gov/files/EthicalViolationsAndMisconductByBLMOfficials_Public.pdf).

<sup>20</sup> Exec. Order No. 13781, 82 Fed. Reg. 1359 (Mar. 16, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-03-16/pdf/2017-05399.pdf>.

<sup>21</sup> *Id.*

<sup>22</sup> OMB Circular M-17-22, *Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce*, (Apr. 12, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-22.pdf>.

<sup>23</sup> OMB Circular M-17-28, FISCAL YEAR (FY) 2019 BUDGET GUIDANCE, (July 7, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-28.pdf>, at 2.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 2.

## Policy Changes

In addition to OMB, many non-governmental organizations have studied and developed potential reorganization plans for DOI and the federal government as a whole.<sup>26</sup> The hampering effect of bureaucratic control concentrated in Washington, D.C. is well documented. Without meaningful reform, entrenched and powerful special interest groups based in Washington, D.C. will continue to exercise a disproportionate influence over DOI, despite being far removed from the people most impacted by decisions about federal lands.<sup>27</sup> To reduce this influence, thoughtful consideration should be given to reorganization plans that allow for a more balanced, increased state and local level input in DOI's decision-making policies.

Decisions made by DOI officials have far-reaching consequences. Whether through restrictions on private property due to findings of endangered species by the Fish and Wildlife Service (FWS) or limitations and delays by BLM in approving energy development on federal lands, all DOI regulations impose economic costs on those being regulated.<sup>28</sup> It is important that these decisions are made with a full understanding of the local circumstances and in good faith cooperation and consultation with states and localities. Congress' intentions in passing many of the foundational federal land management laws incorporate the use of state and local input. For instance, the Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands with resource management plans (RMPs) that are developed in coordination with state and local governments.<sup>29</sup> According to FLPMA, BLM must provide meaningful public involvement for state and local government officials in developing RMPs, as well as in land use regulations and decisions.<sup>30</sup>

The simplest way to restore balance to the partnership between the states and federal government is to provide state and field-level managers more authority and input in the decision-making process. When DOI employees in the field are required to receive approval from managers in Washington, D.C. for even the most routine land management practices, the efficiency and quality of stewardship inevitably declines. Delegating some of that authority to and improving coordination with state and local managers can help minimize delays caused by bureaucracy and increase state and local collaboration in the management of public lands, fish, wildlife and water resources.

To complement this delegation of authority, DOI should consider relocating and/or consolidating the headquarters of some of its bureaus in the western states where much of its work is conducted. Relocating DOI bureaus away from Washington, D.C. to a western state will not

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<sup>26</sup> E.g. CATO, HANDBOOK FOR POLICYMAKERS 8TH EDITION, (2017) available at [https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-for-policy-makers/2017/2/cato-handbook-for-policy-makers-8th-edition\\_1.pdf](https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-for-policy-makers/2017/2/cato-handbook-for-policy-makers-8th-edition_1.pdf).

<sup>27</sup> HERITAGE FOUNDATION, BLUEPRINT FOR REORGANIZATION: AN ANALYSIS OF FEDERAL DEPARTMENTS AND AGENCIES, (2017), available at [http://www.heritage.org/sites/default/files/2017-06/BlueprintforReorganization-DepartmentsandAgencies\\_1.pdf](http://www.heritage.org/sites/default/files/2017-06/BlueprintforReorganization-DepartmentsandAgencies_1.pdf), at 1.

<sup>28</sup> *Id.* at 94.

<sup>29</sup> Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701-1781.

<sup>30</sup> *State Perspectives on BLM's Draft Planning 2.0 Rule: Hearing before the Subcom. on Oversight and Investigations of the H. Natural Res. Committee*, 114<sup>th</sup> Cong., (2016), available at [https://naturalresources.house.gov/uploadedfiles/hearing\\_memo\\_-\\_ov\\_hrg\\_07.07.16.pdf](https://naturalresources.house.gov/uploadedfiles/hearing_memo_-_ov_hrg_07.07.16.pdf), at 4.



only improve the effectiveness and quality of service, but will also bring long-term savings to the American taxpayer. For example, in the Washington, D.C. metropolitan area, federal employees receive a 27.10 percent locality pay adjustment, which is one of the higher rates in the nation.<sup>31</sup> Accordingly, the Washington, D.C. metropolitan area has one of the highest costs of living in the country.<sup>32</sup> While there will be an initial cost to any relocation, moving to areas with lower costs of living will ultimately save the taxpayer money in the long-run.

### *Bureau of Land Management*

While DOI has numerous bureaus that are candidates for relocation, the BLM merits additional attention. Approximately 99 percent of the land BLM manages is located in western states and Alaska.<sup>33</sup> Unlike NPS, BLM's management policies focus on achieving sustained yield and allowing for multiple uses of public lands. BLM managed land should be used for a variety of purposes including, recreation, conservation of fish and wildlife habitats, grazing, and timber.<sup>34</sup> It is essential that BLM's management plans allow for significant local input regarding public access and other land use regulations. Moving the headquarters of BLM to a western state can improve BLM's commitment to collaboration with states and localities.

While there are many unilateral steps DOI can take to delegate decision-making authority or to plan for relocating bureaus' headquarters, Congress has a key role to play in any departmental reorganization. Under 4 U.S.C. § 72, all offices connected to the seat of government must be exercised in the District of Columbia unless expressly provided by law. In response to this limitation, Representative Scott Tipton introduced H.R. 2287 on May 2, 2017, which directs DOI to submit a strategy to Congress for relocating the headquarters of BLM to a western state that saves the maximum amount of taxpayer money practicable.<sup>35</sup> The strategy must include a timeline, metrics for choosing a location, and a description of the factors that will be considered in choosing a location.<sup>36</sup>

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<sup>31</sup> OPM website, "Alternative Plan for 2017 Locality-Based Comparability Payments", available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/locality-payments-under-presidents-alternative-plan-january-2017.pdf>, See also: OPM Website, "Salary Table 2017-GS", available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/GS.pdf>, See also: OPM website, "Salary Table 2017-DCB", available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2017/DCB.pdf>.

<sup>32</sup> Perry Stein, *You need to make \$108,092 a year to live comfortably in D.C., report says*, WASH. POST., Jan. 29, 2015, available at [https://www.washingtonpost.com/news/local/wp/2015/01/29/you-need-to-make-108092-a-year-to-live-comfortably-in-d-c-report-says/?utm\\_term=.aff9d9304c26](https://www.washingtonpost.com/news/local/wp/2015/01/29/you-need-to-make-108092-a-year-to-live-comfortably-in-d-c-report-says/?utm_term=.aff9d9304c26).

<sup>33</sup> HARDY-VINCENT ET AL., *Supra*, note 1, at 7.

<sup>34</sup> See *Id.* at 4.

<sup>35</sup> H.R. 2287, 115th Cong., (2017).

<sup>36</sup> *Id.*