



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Mr. Jeff Ruch, Executive Director
Public Employees for Environmental Responsibility
962 Wayne Ave.
Suite 610
Silver Spring, MD 20910

FEB 23 2018

Dear Mr. Ruch,

This is in response to your letter of February 12, 2018 in which you requested that the Office of Inspector General conduct a review of alleged violations of the Vacancies Reform Act (Vacancies Act) at the U.S. Department of the Interior.

We conducted a preliminary inquiry into the status of the three individuals you allege are “acting” in violation of the Vacancies Act: P. Daniel Smith of the National Park Service; Brian Steed of the Bureau of Land Management; and Greg Sheehan of the U.S. Fish and Wildlife Service. We determined that while these individuals have been referred to as “acting” in various news reports and Department press releases, all three of them have been formally given the title of Deputy Director. Pursuant to a delegation order issued by Secretary Zinke on January 24, 2018, Steed and Smith are delegated the functions, duties, and responsibilities of the Director of their respective bureaus. The delegation order states that it only covers “those functions or duties that are not required by statute or regulation to be performed only by the Senate-confirmed official occupying the position.” At the Fish and Wildlife Service, the delegation order assigns those duties to James Kurth, Deputy Director for Operations. The Department’s Office of the Solicitor advised us that these individuals have not exercised any non-delegable functions or duties.

As your letter notes, the Vacancies Act contains certain reporting requirements. Federal agencies are required to report their vacancies to the Comptroller General, and pursuant to 5 U.S.C. Section 3349(b), the Comptroller General determines whether an agency is in violation of the Vacancies Act. Through our discussions with staff at the U.S. Government Accountability Office, we have learned that the Department has not been timely with the reporting requirements of the Vacancies Act and we have urged the Department to rectify this. We have been advised that the deficiency is being addressed.

There is a broader issue that we believe is properly addressed by the Comptroller General pursuant to the authorities given to that office by Congress. That issue is whether the Department can rely on laws outside of the Vacancies Act to temporarily fill positions that require nomination by the President and confirmation by the Senate. The Department of Justice’s Office of Legal Counsel has opined that such appointments may be proper. But this is an issue that impacts many federal agencies and one that is best resolved by the Comptroller General. For that reason, we are forwarding your letter for their consideration.

Finally, as you may know, alleged violations of the Vacancies Act have been historically addressed in Federal District Courts in actions brought by aggrieved parties who are affected by a Federal Government decision made or action taken in violation of the Vacancies Act. That avenue remains available to any party with standing to challenge a decision by Department officials.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Delaplaine', with a stylized flourish extending to the right.

Bruce Delaplaine
General Counsel