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**Subject:** Project 2025 report

Attached are the two sections from the Heritage Foundation's Project 2025 report that I mentioned in this morning's meeting. Below is a link to the full document.

[https://thf\\_media.s3.amazonaws.com/project2025/2025\\_MandateForLeadership\\_FULL.pdf](https://thf_media.s3.amazonaws.com/project2025/2025_MandateForLeadership_FULL.pdf)

Jim Guthrie

## CENTRAL PERSONNEL AGENCIES: MANAGING THE BUREAUCRACY

Donald Devine,  
Dennis Dean Kirk,  
and Paul Dans

### OVERVIEW

From the very first *Mandate for Leadership*, the “personnel is policy” theme has been the fundamental principle guiding the government’s personnel management. As the U.S. Constitution makes clear, the President’s appointment, direction, and removal authorities are the central elements of his executive power.<sup>1</sup> In implementing that power, the people and the President deserve the most talented and responsible workforce possible.

Who the President assigns to design and implement his political policy agenda will determine whether he can carry out the responsibility given to him by the American people. The President must recognize that whoever holds a government position sets its policy. To fulfill an electoral mandate, he must therefore give personnel management his highest priority, including Cabinet-level precedence.

The federal government’s immense bureaucracy spreads into hundreds of agencies and thousands of units and is centered and overseen at the top by key central personnel agencies and their governing laws and regulations. The major separate personnel agencies in the national government today are:

- The Office of Personnel Management (OPM);
- The Merit Systems Protection Board (MSPB);
- The Federal Labor Relations Authority (FLRA); and
- The Office of Special Counsel (OSC).

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Title 5 of the U.S. Code charges the OPM with executing, administering, and enforcing the rules, regulations, and laws governing the civil service.<sup>2</sup> It grants the OPM direct responsibility for activities like retirement, pay, health, training, federal unionization, suitability, and classification functions not specifically granted to other agencies by statute. The agency's Director is charged with aiding the President, as the President may request, in preparing such civil service rules as the President prescribes and otherwise advising the President on actions that may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees.

The MSPB is the lead adjudicator for hearing and resolving cases and controversies for 2.2 million federal employees.<sup>3</sup> It is required to conduct fair and neutral case adjudications, regulatory reviews, and actions and studies to improve the workforce. Its court-like adjudications investigate and hear appeals from agency actions such as furloughs, suspensions, demotions, and terminations and are appealable to the U.S. Court of Appeals.

The FLRA hears appeals of agency personnel cases involving federal labor grievance procedures to provide judicial review with binding decisions appealable to appeals courts.<sup>4</sup> It interprets the rights and duties of agencies and employee labor organizations—on management rights, OPM interpretations, recognition of labor organizations, and unfair labor practices—under the general principle of bargaining in good faith and compelling need.

The OSC serves as the investigator, mediator, publisher, and prosecutor before the MSPB with respect to agency and employees regarding prohibited personnel practices, Hatch Act<sup>5</sup> politicization, Uniformed Services Employment and Reemployment Rights Act<sup>6</sup> issues, and whistleblower complaints.<sup>7</sup>

The Equal Employment Opportunity Commission (EEOC) has general responsibility for reviewing charges of employee discrimination against all civil rights breaches. However, it also administers a government employee section that investigates and adjudicates federal employee complaints concerning equal employment violations as with the private sector.<sup>8</sup> This makes the agency an additional de facto factor in government personnel management.

While not a personnel agency per se, the General Services Administration (GSA) is charged with general supervision of contracting.<sup>9</sup> Today, there are many more contractors in government than there are civil service employees. The GSA must therefore be a part of any personnel management discussion.

## ANALYSIS AND RECOMMENDATIONS

**OPM: Managing the Federal Bureaucracy.** At the very pinnacle of the modern progressive program to make government competent stands the ideal of professionalized, career civil service. Since the turn of the 20th century,

progressives have sought a system that could effectively select, train, reward, and guard from partisan influence the neutral scientific experts they believe are required to staff the national government and run the administrative state. Their U.S. system was initiated by the Pendleton Act of 1883<sup>10</sup> and institutionalized by the 1930s New Deal to set principles and practices that were meant to ensure that expert merit rather than partisan favors or personal favoritism ruled within the federal bureaucracy. Yet, as public frustration with the civil service has grown, generating calls to “drain the swamp,” it has become clear that their project has had serious unintended consequences.

The civil service was devised to replace the amateurism and presumed corruption of the old spoils system, wherein government jobs rewarded loyal partisans who might or might not have professional backgrounds. Although the system appeared to be sufficient for the nation’s first century, progressive intellectuals and activists demanded a more professionalized, scientific, and politically neutral Administration. Progressives designed a merit system to promote expertise and shield bureaucrats from partisan political pressure, but it soon began to insulate civil servants from accountability. The modern merit system increasingly made it almost impossible to fire all but the most incompetent civil servants. Complying with arcane rules regarding recruiting, rating, hiring, and firing simply replaced the goal of cultivating competence and expertise.

In the 1970s, Georgia Democratic Governor Jimmy Carter, then a political unknown, ran for President supporting New Deal programs and their Great Society expansion but opposing the way they were being administered. The policies were not actually reducing poverty, increasing prosperity, or improving the environment, he argued, and to make them work required fundamental bureaucratic reform. He correctly charged that almost all government employees were rated as “successful,” all received the same pay regardless of performance, and even the worst were impossible to fire—and he won the presidency.

President Carter fulfilled his campaign promise by hiring Syracuse University Dean Alan Campbell, who served first as Chairman of the U.S. Civil Service Commission and then as Director of the OPM and helped him devise and pass the Civil Service Reform Act of 1978 (CSRA)<sup>11</sup> to reset the basic structure of today’s bureaucracy. A new performance appraisal system was devised with a five rather than three distribution of rating categories and individual goals more related to agency missions and more related to employee promotion for all. Pay and benefits were based directly on improved performance appraisals (including sizable bonuses) for mid-level managers and senior executives. But time ran out on President Carter before the act could be fully executed, so it was left to President Ronald Reagan and his new OPM and agency leadership to implement.

Overall, the new law seemed to work for a few years under Reagan, but the Carter-Reagan reforms were dissipated within a decade. Today, employee evaluation is back

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to pre-reform levels with almost all rated successful or above, frustrating any relation between pay and performance. An “outstanding” rating should be required for Senior Executive Service (SES) chiefs to win big bonuses, but a few years ago, when it was disclosed that the Veterans Administration executives who encouraged false reporting of waiting lists for hospital admission were rated outstanding, the Senior Executive Association justified it, telling Congress that only outstanding performers would be promoted to the SES in the first place and that precise ratings were unnecessary.<sup>12</sup> The Government Accountability Office (GAO), however, has reported that pay raises, within-grade pay increases, and locality pay for regular employees and executives have become automatic rather than based on performance—as a result of most employees being rated at similar appraisal levels.<sup>13</sup>

**OPM: Merit Hiring in a Merit System.** It should not be impossible even for a large national government to hire good people through merit selection. The government did so for years, but it has proven difficult in recent times to select personnel based on their knowledge, skills, and abilities (KSA) as the law dictates. Yet for the past 34 years, the U.S. civil service has been unable to distinguish consistently between strong and unqualified applicants for employment.

As the Carter presidency was winding down, the U.S. Department of Justice and top lawyers at the OPM contrived with plaintiffs to end civil service IQ examinations because of concern about their possible impact on minorities. The OPM had used the Professional and Administrative Career Examination (PACE) general intelligence exam to select college graduates for top agency employment, but Carter Administration officials—probably without the President’s informed concurrence—abolished the PACE through a legal consent court decree capitulating to demands by civil rights petitioners who contended that it was discriminatory. The judicial decree was to last only five years but still controls federal hiring and is applied to all KSA tests even today.

General ability tests like the PACE have been used successfully to assess the usefulness and cost-effectiveness of broad intellectual qualities across many separate occupations. Courts have ruled that even without evidence of overt, intentional discrimination, such results might suggest discrimination. This doctrine of disparate impact could be ended legislatively or at least narrowed through the regulatory process by a future Administration. In any event, the federal government has been denied the use of a rigorous entry examination for three decades, relying instead on self-evaluations that have forced managers to resort to subterfuge such as preselecting friends or associates that they believe are competent to obtain qualified employees.

In 2015, President Barack Obama’s OPM began to introduce an improved merit examination called USAHire, which it had been testing quietly since 2012 in a few agencies for a dozen job descriptions. The tests had multiple-choice questions with only one correct answer. Some questions even required essay replies: questions

that would change regularly to depress cheating. President Donald Trump's OPM planned to implement such changes but was delayed because of legal concerns over possible disparate impact.

Courts have agreed to review the consent decree if the Uniform Guidelines on Employee Selection Procedures setting the technical requirements for sound exams are reformed. A government that is unable to select employees based on KSA-like test qualifications cannot work, and the OPM must move forward on this very basic personnel management obligation.

**The Centrality of Performance Appraisal.** In the meantime, the OPM must manage the workforce it has. Before they can reward or discipline federal employees, managers must first identify who their top performers are and who is performing less than adequately. In fact, as Ludwig von Mises proved in his classic *Bureaucracy*,<sup>14</sup> unlike the profit-and-loss evaluation tool used in the private sector, government performance measurement depends totally on a functioning appraisal system. If they cannot be identified in the first place within a functioning appraisal system, it is impossible to reward good performance or correct poor performance. The problem is that the collegial atmosphere of a bureaucracy in a multifaceted appraisal system that is open to appeals makes this a very challenging ideal to implement successfully.

The GAO reported more recently that overly high and widely spread performance ratings were again plaguing the government, with more than 99 percent of employees rated fully successful or above by their managers, a mere 0.3 percent rated as minimally successful, and 0.1 percent actually rated unacceptable.<sup>15</sup> Why? It is human nature that no one appreciates being told that he or she is less than outstanding in every way. Informing subordinates in a closely knit bureaucracy that they are not performing well is difficult. Rating compatriots is even considered rude and unprofessional. Moreover, managers can be and often are accused of racial or sexual discrimination for a poor rating, and this discourages honesty.

In 2018, President Trump issued Executive Order 13839<sup>16</sup> requiring agencies to reduce the time for employees to improve performance before corrective action could be taken; to initiate disciplinary actions against poorly performing employees more expeditiously; to reiterate that agencies are obligated to make employees improve; to reduce the time for employees to respond to allegations of poor performance; to mandate that agencies remind supervisors of expiring employee probationary periods; to prohibit agencies from entering into settlement agreements that modify an employee's personnel record; and to reevaluate procedures for agencies to discipline supervisors who retaliate against whistleblowers. Unfortunately, the order was overturned by the Biden Administration,<sup>17</sup> so it will need to be reintroduced in 2025.

The fact remains that meaningfully evaluating employees' performance is a critical part of a manager's job. In the Reagan appraisal process, managers were evaluated on how they themselves rated their subordinates. This is critical to

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responsibility and improved management. It is essential that political executives build policy goals directly into employee appraisals both for mission success and for employees to know what is expected. Indistinguishable from their coworkers on paper, hard-working federal employees often go unrewarded for their efforts and are often the system's greatest critics. Federal workers who are performing inadequately get neither the benefit of an honest appraisal nor clear guidance on how to improve. Political executives should take an active role in supervising performance appraisals of career staff, not unduly delegate this responsibility to senior career managers, and be willing to reward and support good performers.

**Merit Pay.** Performance appraisal means little to daily operations if it is not tied directly to real consequences for success as well as failure. According to a survey of major U.S. private companies—which, unlike the federal government, also have a profit-and-loss evaluation—90 percent use a system of merit pay for performance based on some type of appraisal system. Despite early efforts to institute merit pay throughout the federal government, however, compensation is still based primarily on seniority rather than merit.

Merit pay for executives and managers was part of the Carter reforms and was implemented early in the Reagan presidency. Beginning in the summer of 1982, the Reagan OPM entered 18 months of negotiations with House and Senate staff on extending merit pay to the entire workforce. Long and detailed talks between the OPM and both Democrats and Republicans in Congress ensued, and a final agreement was reached in 1983 that supposedly ensured the passage of legislation creating a new Performance Management and Recognition System (PMRS) for all, (not just management) GS-13 through GS-15 employees.

Meanwhile, the OPM issued regulations to expand the role of performance related to pay throughout the entire workforce, but congressional allies of the employee unions, led by Representative Steny Hoyer (D) of government employee-rich Maryland, stoutly resisted this extension of pay-for-performance and, with strong union support, used the congressional appropriations process to block OPM administrative pay reforms. Bonuses for SES career employees survived, but performance appraisals became so high and widely distributed that there was little relationship between performance and remuneration.

Ever since the original merit pay system for federal managers (GM-13 through GM-15 grade levels, just below the SES) was allowed to expire in September 1993, little to nothing has been done either to reinstate the federal merit pay program for managers or to distribute performance rating evaluations for the SES, much less to extend the program to the remainder of the workforce. A reform-friendly President and Congress might just provide the opportunity to create a more comprehensive performance plan; in the meantime, however, political executives should use existing pay and especially fiscal awards strategically to reward good performance to the degree allowed by law.



**Making the Appeals Process Work.** The nonmilitary government dismissal rate is well below 1 percent, and no private-sector industry employee enjoys the job security that a federal employee enjoys. Both safety and justice demand that managers learn to act strategically to hire good and fire poor performers legally. The initial paperwork required to separate poor or abusive performers (when they are infrequently identified) is not overwhelming, and managers might be motivated to act if it were not for the appeals and enforcement processes. Formal appeal in the private sector is mostly a rather simple two-step process, but government unions and associations have been able to convince politicians to support a multiple and extensive appeals and enforcement process.

As noted, there are multiple administrative appeals bodies. The FLRA, OSC, and EEOC have relatively narrow jurisdictions. Claims that an employee's removal or disciplinary actions violate the terms of a collective bargaining agreement between an agency and a union are handled by the FLRA, employees who claim their removal was the result of discrimination can appeal to the EEOC, and employees who believe their firing was retribution for being a whistleblower can go to the OSC. While the MSPB specializes in abuses of direct merit system issues, it can and does hear and review almost any of the matters heard by the other agencies.

Cases involving race, gender, religion, age, pregnancy, disability, or national origin can be appealed to the EEOC or the MSPB—and in some cases to both—and to the OSC. This gives employees multiple opportunities to prove their cases, and while the EEOC, MSPB, FLRA, and OSC may all apply essentially the same burden of proof, the odds of success may be substantially different in each forum. In fact, forum shopping among them for a friendlier venue is a common practice, but frequent filers face no consequences for frivolous complaints. As a result, meritorious cases are frequently delayed, denying relief and justice to truly aggrieved individuals.

The MSPB can and does handle all such matters, but it faces a backlog of an estimated 3,000 cases of people who were potentially wrongfully terminated or disciplined as far back as 2013. From 2017–2022 the MSPB lacked the quorum required to decide appeals. On the other hand, as of January 2023, the EEOC had a backlog of 42,000 cases.

While federal employees win appeals relatively infrequently—MSPB administrative judges have upheld agency decisions as much as 80 percent of the time—the real problem is the time and paperwork involved in the elaborate process that managers must undergo during appeals. This keeps even the best managers from bringing cases in all but the most egregious cases of poor performance or misconduct. As a result, the MSPB, EEOC, FLRA, and OSC likely see very few cases compared to the number of occurrences, and nonperformers continue to be paid and often are placed in nonwork positions.

Having a choice of appeals is especially unique to the government. If lower-priority issues were addressed in-house, serious adverse actions would be less subject



to delay. With the proper limitation of labor union actions, the FLRA should have limited reason for appeals. The EEOC's federal employee section should be transferred to the MSPB, and many of the OCS's investigatory functions should be returned to the OPM. The MSPB could then become the main reviewer of adverse actions, greatly simplifying the burdensome appeal process.

**Making Civil Service Benefits Economically and Administratively Rational.** In recent years, the combined wages and benefits of the executive branch civilian workforce totaled \$300 billion according to official data. But even that amount does not properly account for billions in unfunded liability for retirement and other government reporting distortions. Official data also report employment as approximately 2 million, but this ignores approximately 20 million contractors who, while not eligible for government pay and benefits, do receive them indirectly through contracting (even if they are less generous). Official data also claim that national government employees are paid less than private-sector employees are paid for similar work, but several more neutral sources demonstrate that public-sector workers make more on average than their private-sector counterparts. All of this extravagance deserves close scrutiny.

**Market-Based Pay and Benefits.** According to current law, federal workers are to be paid wages comparable to equivalent private-sector workers rather than compared to all private-sector employees. While the official studies claim that federal employees are underpaid relative to the private sector by 20 percent or more, a 2016 Heritage Foundation study found that federal employees received wages that were 22 percent higher than wages for similar private-sector workers; if the value of employee benefits was included, the total compensation premium for federal employees over their private-sector equivalents increased to between 30 percent and 40 percent.<sup>18</sup> The American Enterprise Institute found a 14 percent pay premium and a 61 percent total compensation premium.<sup>19</sup>

Base salary is only one component of a federal employee's total compensation. In addition to high starting wages, federal employees normally receive an annual cost-of-living adjustment (available to all employees) and generous scheduled raises known as step increases. Moreover, a large proportion of federal employees are stationed in the Washington, D.C., area and other large cities and are entitled to steep locality pay enhancement to account for the high cost of living in these areas.

A federal employee with five years' experience receives 20 vacation days, 13 paid sick days, and all 10 federal holidays compared to an employee at a large private company who receives 13 days of vacation and eight paid sick days. Federal health benefits are more comparable to those provided by *Fortune* 500 employers with the government paying 72 percent of the weighted average premiums, but this is much higher than for most private plans. Almost half of private firms do not offer any employer contributions at all.

The obvious solution to these discrepancies is to move closer to a market model for federal pay and benefits. One need is for a neutral agency to oversee pay hiring decisions, especially for high-demand occupations. The OPM is independent of agency operations, so it can assess requirements more neutrally. For many years, with its Special Pay Rates program, the OPM evaluated claims that federal rates in an area were too low to attract competent employees and allowed agencies to offer higher pay when needed rather than increased rates for all. Ideally, the OPM should establish an initial pay schedule for every occupation and region, monitor turnover rates and applicant-to-position ratios, and adjust pay and recruitment on that basis. Most of this requires legislation, but the OPM should be an advocate for a true equality of benefits between the public and private sectors.

**Reforming Federal Retirement Benefits.** Career civil servants enjoy retirement benefits that are nearly unheard of in the private sector. Federal employees retire earlier (normally at age 55 after 30 years), enjoy richer pension annuities, and receive automatic cost-of-living adjustments based on the areas in which they retire. Defined-benefit federal pensions are fully indexed for inflation—a practice that is extremely rare in the private sector. A federal employee with a preretirement income of \$25,000 under the older of the two federal retirement plans will receive at least \$200,000 more over a 20-year period than will private-sector workers with the same preretirement salary under historic inflation levels.

During the early Reagan years, the OPM reformed many specific provisions of the federal pension program to save billions administratively. Under OPM pressure, Reagan and Congress ultimately ended the old Civil Service Retirement System (CSRS) entirely for new employees, which (counting disbursements for the unfunded liability) accounted for 51.3 percent of the federal government's total payroll. The retirement system that replaced it—the Federal Employees Retirement System (FERS)—reduced the cost of federal employee retirement disbursements to 28.5 percent of payroll (including contributions to Social Security and the employer match to the Thrift Savings Plan). More of the pension cost was shifted to the employee, but the new system was much more equitable for the 40 percent who received few or no benefits under the old system.

By 1999, more than half of the federal workforce was covered by the new system, and the government's per capita share of the cost (as the employer) was less than half the cost of the old system: 20.2 percent of FERS payroll vs. 44.3 percent of CSRS payroll, representing one of the largest examples of government savings anywhere. Although the government pension system has become more like private pension systems, it still remains much more generous, and other means might be considered in the future to move it even closer to private plans.

**GSA: Landlord and Contractor Management.** The General Services Administration is best known as the federal government's landlord—designing, constructing, managing, and preserving government buildings and leasing and

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managing outside commercial real estate contracting with 376.9 million square feet of space. Obviously, as its prime function, real estate expertise is key to the GSA's success. However, the GSA is also the government's purchasing agent, connecting federal purchasers with commercial products and services in the private sector and their personnel management functions. With contractors performing so many functions today, the GSA therefore becomes a de facto part of governmentwide personnel management. The GSA also manages the Presidential Transition Act (PTA) process, which also directly involves the OPM. A recent proposal would have incorporated the OPM and GSA (and OMB). Fortunately, this did not take place in that form, but it would make sense for GSA and OPM leadership and staff to hold regular meetings to work through matters of common interest such as moderating PTA personnel restrictions and the relationships between contract and civil service employees.

**Reductions-in-Force.** Reducing the number of federal employees seems an obvious way to reduce the overall expense of the civil service, and many prior Administrations have attempted to do just this. Presidents Bill Clinton and Barack Obama began their terms, as did Ronald Reagan and Donald Trump, by mandating a freeze on the hiring of new federal employees, but these efforts did not lead to permanent and substantive reductions in the number of nondefense federal employees.

First, it is a challenge even to know which workers to cut. As mentioned, there are 2 million federal employees, but since budgets have exploded, so has the total number of personnel with nearly 10 times more federal contractors than federal employees. Contractors are less expensive because they are not entitled to high government pensions or benefits and are easier to fire and discipline. In addition, millions of state government employees work under federal grants, in effect administering federal programs; these cannot be cut directly. Cutting federal employment can be helpful and can provide a simple story to average citizens, but cutting functions, levels, funds, and grants is much more important than setting simple employment size.

Simply reducing numbers can actually increase costs. OMB instructions following President Trump's employment freeze told agencies to consider buyout programs, encouraging early retirements in order to shift costs from current budgets in agencies to the retirement system and minimize the number of personnel fired. The Environmental Protection Agency immediately implemented such a program, and OMB urged the passage of legislation to increase payout maximums from \$25,000 to \$40,000 to further increase spending under the "cuts." President Clinton's OMB had introduced a similar buyout that cost the Treasury \$2.8 billion, mostly for those who were going to retire anyway. Moreover, when a new employee is hired to fill a job recently vacated in a buyout, the government for a time is paying two people to fill one job.

What is needed at the beginning is a freeze on all top career-position hiring to prevent “burrowing-in” by outgoing political appointees. Moreover, four factors determine the order in which employees are protected during layoffs: tenure, veterans’ preference, seniority, and performance in that order of importance. Despite several attempts in the House of Representatives during the Trump years to enact legislation that would modestly increase the weight given to performance over time-of-service, the fierce opposition by federal managers associations and unions representing long-serving but not necessarily well-performing constituents explains why the bills failed to advance. A determined President should insist that performance be first and be wary of costly types of reductions-in-force.

**Impenetrable Bureaucracy.** The GAO has identified almost a hundred actions that the executive branch or Congress could take to improve efficiency and effectiveness across 37 areas that span a broad range of government missions and functions. It identified 33 actions to address mission fragmentation, overlap, and duplication in the 12 areas of defense, economic development, health, homeland security, and information technology. It also identified 59 other opportunities for executive agencies or Congress to reduce the cost of government operations or enhance revenue collection across 25 areas of government.<sup>20</sup>

A logical place to begin would be to identify and eliminate functions and programs that are duplicated across Cabinet departments or spread across multiple agencies. Congress hoped to help this effort by passing the Government Performance and Results Act of 1993,<sup>21</sup> which required all federal agencies to define their missions, establish goals and objectives, and measure and report their performance to Congress. Three decades of endless time-consuming reports later, the government continues to grow but with more paper and little change either in performance or in the number of levels between government and the people.

The Brookings Institution’s Paul Light emphasizes the importance of the increasing number of levels between the top heads of departments and the people at the bottom who receive the products of government decision-making. He estimates that there are perhaps 50 or more levels of impenetrable bureaucracy and no way other than imperfect performance appraisals to communicate between them.<sup>22</sup>

The Trump Administration proposed some possible consolidations, but these were not received favorably in Congress, whose approval is necessary for most such proposals. The best solution is to cut functions and budgets and devolve responsibilities. That is a challenge primarily for Presidents, Congress, and the entire government, but the OPM still needs to lead the way governmentwide in managing personnel properly even in any future smaller government.

**Creating a Responsible Career Management Service.** The people elect a President who is charged by Article 2, Section 3 of the Constitution<sup>23</sup> with seeing that the laws are “faithfully executed” with his political appointees democratically linked to that legitimizing responsibility. An autonomous bureaucracy has neither

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independent constitutional status nor separate moral legitimacy. Therefore, career civil servants by themselves should not lead major policy changes and reforms.

The creation of the Senior Executive Service was the top career change introduced by the 1978 Carter–Campbell Civil Service Reform Act. Its aim was to professionalize the career service and make it more responsible to the democratically elected commander in chief and his political appointees while respecting the rights due to career employees, very much including those in the top positions. The new SES would allow management to be more flexible in filling and reassigning executive positions and locations beyond narrow specialties for more efficient mission accomplishment and would provide pay and large bonuses to motivate career performance.

The desire to infiltrate political appointees improperly into the high career civil service has been widespread in every Administration, whether Democrat or Republican. Democratic Administrations, however, are typically more successful because they require the cooperation of careerists, who generally lean heavily to the Left. Such burrowing-in requires career job descriptions for new positions that closely mirror the functions of a political appointee; a special hiring authority that allows the bypassing of veterans' preference as well as other preference categories; and the ability to frustrate career candidates from taking the desired position.

President Reagan's OPM began by limiting such SES burrowing-in, arguing that the proper course was to create and fill political positions. This simultaneously promotes the CSRA principle of political leadership of the bureaucracy and respects the professional autonomy of the career service. But this requires that career SES employees should respect political rights too. Actions such as career staff reserving excessive numbers of key policy positions as "career reserved" to deny them to noncareer SES employees frustrate CSRA intent. Another evasion is the general domination by career staff on SES personnel evaluation boards, the opposite of noncareer executives dominating these critical meeting discussions as expected in the SES. Career training also often underplays the political role in leadership and inculcates career-first policy and value viewpoints.

Frustrated with these activities by top career executives, the Trump Administration issued Executive Order 13957<sup>24</sup> to make career professionals in positions that are not normally subject to change as a result of a presidential transition but who discharge significant duties and exercise significant discretion in formulating and implementing executive branch policy and programs an exception to the competitive hiring rules and examinations for career positions under a new Schedule F. It ordered the Director of OPM and agency heads to set procedures to prepare lists of such confidential, policy-determining, policymaking, or policy-advocating positions and prepare procedures to create exceptions from civil service rules when careerists hold such positions, from which they can relocate back to the regular civil service after such service. The order was subsequently reversed by President

Biden<sup>25</sup> at the demand of the civil service associations and unions. It should be reinstated, but SES responsibility should come first.

**Managing Personnel in a Union Environment.** Historically, unions were thought to be incompatible with government management. There is a natural limit to the bargaining power of private-sector unions, but the financial bottom line of public-sector unions is not similarly constrained. If private-sector unions push too hard a bargain, they can so harm a company or so reduce efficiency that their employer is forced to go out of business and eliminate union jobs altogether. There is no such limit in government, which cannot go out of business, so demands can be excessive without negatively affecting employee and union bottom lines.

Even Democratic President Franklin Roosevelt considered union representation in the federal government to be incompatible with democracy. Striking and even threats of bargaining and delay were considered acts against the people and thus improper. It was not until President John Kennedy that union representation in the federal government was recognized—and then merely by executive order. Labor bargaining was not set in statute until the Carter Administration was forced by Congress to do so in order to pass the CSRA, although all bargaining was placed under OPM review.

The CSRA was able to maintain strong management rights for the OPM and agencies and forbade collective bargaining on pay and benefits as well as management prerogatives. Over time, OPM, FLRA, and agencies' personnel offices and courts, especially in Democratic Administrations, narrowed management rights so that labor bargaining expanded as management rights contracted. But the management rights are still in statute, have been enforced by some Administrations, and should be enforced again by any future OPM and agency managements, which should not be intimidated by union power.

Rather than being daunted, President Trump issued three executive orders:

- Executive Order 13836, encouraging agencies to renegotiate all union collective bargaining agreements to ensure consistency with the law and respect for management rights;<sup>26</sup>
- Executive Order 13837, encouraging agencies to prevent union representatives from using official time preparing or pursuing grievances or from engaging in other union activity on government time;<sup>27</sup> and
- Executive Order 13839, encouraging agencies both to limit labor grievances on removals from service or on challenging performance appraisals and to prioritize performance over seniority when deciding who should be retained following reductions-in-force.<sup>28</sup>

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All were revoked by the Biden Administration<sup>29</sup> and should be reinstated by the next Administration, to include the immediate appointment of the FLRA General Counsel and reactivation of the Impasses Panel.

Congress should also consider whether public-sector unions are appropriate in the first place. The bipartisan consensus up until the middle of the 20th century held that these unions were not compatible with constitutional government.<sup>30</sup> After more than half a century of experience with public-sector union frustrations of good government management, it is hard to avoid reaching the same conclusion.

**Fully Staffing the Ranks of Political Appointees.** The President must rely legally on his top department and agency officials to run the government and on top White House staff employees to coordinate operations through regular Cabinet and other meetings and communications. Without this political leadership, the career civil service becomes empowered to lead the executive branch without democratic legitimacy. While many obstacles stand in his way, a President is constitutionally and statutorily required to fill the top political positions in the executive branch both to assist him and to provide overall legitimacy.

Most Presidents have had some difficulty obtaining congressional approval of their appointees, but this has worsened recently. After the 2016 election, President Trump faced special hostility from the opposition party and the media in getting his appointees confirmed or even considered by the Senate. His early Office of Presidential Personnel (PPO) did not generally remove political appointees from the previous Administration but instead relied mostly on prior political appointees and career civil servants to run the government. Such a reliance on holdovers and bureaucrats led to a lack of agency control and the absolute refusal of the Acting Attorney General from the Obama Administration to obey a direct order from the President.

Under the early PPO, the Trump Administration appointed fewer political appointees in its first few months in office than had been appointed in any recent presidency, partly because of historically high partisan congressional obstructions but also because several officials announced that they preferred fewer political appointees in the agencies as a way to cut federal spending. Whatever the reasoning, this had the effect of permanently hampering the rollout of the new President's agenda. Thus, in those critical early years, much of the government relied on senior careerists and holdover Obama appointees to carry out the sensitive responsibilities that would otherwise belong to the new President's appointees.

Fortunately, the later PPO, OPM, and Senate leadership began to cooperate to build a strong team to implement the President's personnel appointment agenda. Any new Administration would be wise to learn that it will need a full cadre of sound political appointees from the beginning if it expects to direct this enormous federal bureaucracy. A close relationship between the PPO at the White House and the OPM, coordinating with agency assistant secretaries of administration



and PPO's chosen White House Liaisons and their staff at each agency, is essential to the management of this large, multilevel, resistant, and bureaucratic challenge. If "personnel is policy" is to be our general guide, it would make sense to give the President direct supervision of the bureaucracy with the OPM Director available in his Cabinet.

## **A REFORMED BUREAUCRACY**

Today, the federal government's bureaucracy cannot even meet its own civil service ideals. The merit criteria of ability, knowledge, and skills are no longer the basis for recruitment, selection, or advancement, while pay and benefits for comparable work are substantially above those in the private sector. Retention is not based primarily on performance, and for the most part, inadequate performance is not appraised, corrected, or punished.

The authors have made many suggestions here that, if implemented, could bring that bureaucracy more under control and enable it to work more efficiently and responsibly, which is especially required for the half of civilian government that administers its undeniable responsibilities for defense and foreign affairs. While a better administered central bureaucracy is crucial for both those and domestic responsibilities, the problem of properly running the government goes beyond simple bureaucratic administration. The specific deficiencies of the federal bureaucracy—size, levels of organization, inefficiency, expense, and lack of responsiveness to political leadership—are rooted in the progressive ideology that unelected experts can and should be trusted to promote the general welfare in just about every area of social life.

The Constitution, however, reserved a few enumerated powers to the federal government while leaving the great majority of domestic activities to state, local, and private governance. As James Madison explained: "The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement and prosperity of the state."<sup>31</sup> Modern progressive politics has simply given the national government more to do than the complex separation-of-powers Constitution allows.

That progressive system has broken down in our time, and the only real solution is for the national government to do less: to decentralize and privatize as much as possible and then ensure that the remaining bureaucracy is managed effectively along the lines of the enduring principles set out in detail here.

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## DEPARTMENT OF THE INTERIOR

William Perry Pendley

**T**he U.S. Department of the Interior (DOI) oversees, manages, and protects the nation’s natural resources and cultural heritage; provides scientific and other information about those resources; and honors the nation’s trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities.

### AGENCY OVERVIEW

DOI’s purview encompasses more than 500 million acres of federal lands, including national parks and national wildlife refuges; 700 million acres of sub-surface minerals; 1.7 billion acres of the Outer Continental Shelf (OCS); 23 percent of the nation’s energy; water in 17 western states; and trust responsibilities for 566 Indian tribes and Alaska Natives. DOI’s 2024 budget request totals \$18.9 billion, an increase of \$2 billion, or 12 percent, more than the 2023 enacted level. The budget also provides an estimated \$12.6 billion in permanent funding in 2024. In 2024, DOI will generate receipts of \$19.6 billion.

A “Home Department” had been considered in 1789 and urged by Presidents over the decades until DOI’s creation in 1849. The variety of its early responsibilities—the Indian Bureau, the General Land Office, the Bureau of Pensions, and the Patent Office, among others—earned it various nicknames, including “Great Miscellany,” “hydra-headed monster,” and “Mother of Departments.”<sup>1</sup> Its mission became more focused on natural resources with the rise of the conservation movement in the early 20th century; however, it kept its historic (since the days of the Founding Fathers) role as overseer of vast working landscapes involving grazing,

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logging, mining, oil, and gas and, with the Bureau of Reclamation in 1902, as the nation's dam builder. Today, DOI has 70,000 employees in approximately 2,400 locations with offices across the United States, Puerto Rico, and U.S. Territories and Freely Associated States.

Historically, DOI operated in a bipartisan manner consistent with the laws enacted by Congress pursuant to its powers under the Property Clause.<sup>2</sup> Thus, DOI fulfilled its statutory responsibilities in a manner that ensured the ability of western states, counties, and communities to be sustained by both economic and recreational activities on neighboring federal lands, especially given that in some rural western counties, federal lands constituted 50, 60, 70, 80—even 90 percent of the county's landmass.<sup>3</sup>

That ended with the Administration of President Jimmy Carter, who, beholden to environmental groups that supported his election, adopted DOI policies consistent with their demands, much to the horror of western governors, most of whom were Democrats. President Ronald Reagan campaigned against this “War on the West,” declared himself a “Sagebrush Rebel,” and, on taking office,<sup>4</sup> quelled the rebellion by reversing Carter Administration policies. President George H. W. Bush distanced himself from Reagan's western policies, committed to a “kinder and gentler America,” and proclaimed his desire to be “the environmental President,” which resulted in changes at the his Administration's DOI—again, much to the dismay of westerners.<sup>5</sup> President Bill Clinton resumed Carter's “War on the West,” epitomized by his DOI's deploying of wolves into the states bordering Yellowstone National Park; the decreed death of a world-class mine in Montana; and the designation of a vast national monument in Utah over the objections of Utah leaders—but with the support of the Hollywood elite.<sup>6</sup>

Although Texas Governor George W. Bush and former Wyoming Representative Dick Cheney (R-WY) campaigned in 2000 against Clinton's worst outrages, including the Utah monument, there was no significant ratcheting back of DOI policies that were either objected to by westerners or contrary to the express provisions of federal statutes. President Barack Obama's DOI resumed the anti-economic federal lands policies activated by Carter and amplified by Clinton; however, Obama's DOI's antipathy to oil and gas activity on federal lands as mandated by Congress could not have come at a worse time.

After the demonstrated success of fracking on Bureau of Land Management (BLM) acreage in Wyoming in 1993, the fracking revolution soon swept the nation,<sup>7</sup> yielding massive discoveries on state and private land from coast to coast, but not, thanks to Obama, on western federal lands.<sup>8</sup> President Donald Trump, on the other hand, immediately ordered his DOI to comply with federal law, conduct congressionally mandated lease sales, and seek to achieve energy dominance or independence. Thanks in part to the success of oil and gas operations on federal land in the West, the United States achieved energy security for the first time since 1957 in 2019.<sup>9</sup>

President Joe Biden’s DOI, as is well documented, abandoned all pretense of complying with federal law regarding federally owned oil and gas resources. Not since the Administration of President Harry S. Truman—prior to creation of the OCS oil and gas program—have fewer federal leases been issued.<sup>10</sup>

At DOI, not since the Reagan Administration was the radical environmental agenda (first implemented by Carter, resumed by Clinton, and revitalized by Obama) rolled back as substantially as it was by President Trump. Trump’s DOI change affected not only oil and gas leasing, as noted above, but all statutory responsibilities of its various agencies, bureaus, and offices. Thus, whether the statutory mandate was to promote economic activity, to ensure and expand recreational opportunities, or to protect valuable natural resources, including, for example, parks, wilderness areas, national monuments, and wild and scenic areas, efforts were expended, barriers were removed, and career employees were aided in the accomplishment of those missions.

Unfortunately, Biden’s DOI is at war with the department’s mission, not only when it comes to DOI’s obligation to develop the vast oil and gas and coal resources for which it is responsible, but also as to its statutory mandate, for example, to manage much of federal land overseen by the BLM pursuant to “multiple use” and “sustained yield” principles.<sup>11</sup> Instead, Biden’s DOI believes most BLM land should be placed off-limits to all economic and most recreational uses. Worse yet, Biden’s DOI not only refuses to adhere to the statutes enacted by Congress as to how the lands under its jurisdiction are managed, but it also insists on implementing a vast regulatory regime (for which Congress has not granted authority) and overturning, by unilateral regulatory action, congressional acts that set forth the productive economic uses permitted on DOI-managed federal land.

## BUDGET STRUCTURE

At \$18.9 billion, DOI’s 2024 proposed budget is small relative to many other federal agencies. On the other side of the ledger, the DOI forecasts it will generate more than \$19.6 billion in “offsetting receipts” from oil and gas royalties, timber and grazing fees, park user fees, and land sales, among other sources. Most of the proposed allocations are divided among nine bureaus.

**Bureau of Indian Affairs.** Fulfills Indian trust responsibilities on behalf of 566 Indian tribes; supports natural resource education, law enforcement, and social service programs delivered by tribes; operates 182 elementary and secondary schools and dormitories and 29 tribally controlled community colleges, universities, and post-secondary schools.

**Bureau of Land Management.** Manages and conserves resources for 245 million acres of public land and 700 million acres of subsurface federal mineral estate, including energy and mineral development, forest management, timber and biomass production, and wild horse and burro management.

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**Bureau of Ocean Energy Management.** Manages access to renewable and conventional energy resources of the Outer Continental Shelf, including more than 6,400 fluid mineral leases on approximately 35 million OCS acres; issues leases for 24 percent of domestic crude oil and 8 percent of domestic natural gas supply; oversees lease and grant issuance for offshore renewable energy projects.

**Bureau of Reclamation.** Manages, develops, and protects water and related resources, including 476 dams and 337 reservoirs; delivers water to one in every five western farmers and more than 31 million people; is America's second-largest producer of hydroelectric power.

**Bureau of Safety and Environmental Enforcement.** Regulates offshore oil and gas facilities on 1.7 billion acres of the Outer Continental Shelf; oversees oil spill response; supports research on technology for oil spill response.

**National Park Service.** Maintains and manages 401 natural, cultural, and recreational sites, 26,000 historic structures, and more than 44 million acres of wilderness; provides outdoor recreation; provides technical assistance and support to state and local programs.

**Office of Surface Mining Reclamation and Enforcement.** Regulates coal mining and site reclamation; provides grants to states and tribes for mining oversight; mitigates the effects of past mining.

**U.S. Fish and Wildlife Service.** Manages the 150-million-acre National Wildlife Refuge System; manages 70 fish hatcheries and other related facilities for endangered species recovery; protects migratory birds and some marine mammals.

**U.S. Geological Survey.** Conducts scientific research in ecosystems, climate, and land-use change, mineral assessments, environmental health, and water resources; produces information about natural hazards (earthquakes, volcanoes, and landslides); leads climate change research for the department.

## RESTORING AMERICAN ENERGY DOMINANCE

Given the dire adverse national impact of Biden's war on fossil fuels, no other initiative is as important for the DOI under a conservative President than the restoration of the department's historic role managing the nation's vast storehouse of hydrocarbons, much of which is yet to be discovered. The U.S. depends on reliable and cheap energy resources to ensure the economic well-being of its citizens, the vitality of its economy, and its geopolitical standing in an uncertain and dangerous world. Not only are valuable natural resources owned generally by the American people involved, so too are those owned separately by American Indian tribes and individual American Indians, both of which have been injured by Biden's illegal actions.

The federal government owns 61 percent of the onshore and offshore mineral estate of the U.S., but only 22 percent of the nation's oil and 12 percent of U.S. natural gas comes from those federal lands and waters—and even that amount is



declining. Additionally, 42 percent of coal production takes place on federal lands in 11 states.<sup>12</sup> DOI manages a subsurface mineral estate of 700 million acres onshore and 1.76 billion acres offshore, for a total of 2.46 billion acres.

The total land area of the U.S. is 2.263 billion acres. Private and state lands, at 1.563 billion acres, make up only 39 percent of the total onshore and offshore subsurface area of the United States. Oil, natural gas, coal, and other minerals on federal lands and waters are managed by the Bureau of Land Management, Bureau of Ocean Energy Management, and Office of Surface Mining Reclamation and Enforcement; these agencies' responsibilities frequently overlap with resource management by the U.S. Forest Service in the U.S. Department of Agriculture, state governments, and private property owners.

Biden is "aligning the management of...public lands and waters...to support robust climate action," as envisioned in Executive Orders 14008 and 13990.<sup>13</sup> One of his first actions was to ban federal coal, oil, and natural gas leasing on federal lands and waters to fulfill his campaign promise of "no federal oil," followed by actions from Interior Secretary Deb Haaland to rescind the Trump Administration's Energy Dominance Agenda. To this end, DOI unilaterally overhauled resource management plans, lease sales, fees, rents, royalty rates, bonding requirements, and permitting processes to prevent new production of coal, oil, and natural gas on federal lands and waters; to dramatically increase production of solar and wind energy; and to accomplish its "30 by 30," "America the Beautiful" agenda to remove federal lands from "multiple"—that is, productive—use.

DOI is abusing National Environmental Policy Act (NEPA)<sup>14</sup> processes, the Antiquities Act,<sup>15</sup> and bureaucratic procedures to advance a radical climate agenda, ostensibly to reduce greenhouse gas emissions, for which DOI has no statutory responsibility or authority.<sup>16</sup> The Federal Land Policy and Management Act (FLPMA), Outer Continental Shelf Lands Act (OSCLA), General Mining Law,<sup>17</sup> and other congressional acts clearly set forth multiple-use principles and processes that include production of coal, oil, natural gas, and other minerals, as legitimate activities consistent with the welfare of all Americans and of environmental stewardship.

Biden's DOI is hoarding supplies of energy and keeping them from Americans whose lives could be improved with cheaper and more abundant energy while making the economy stronger and providing job opportunities for Americans. DOI is a bad manager of the public trust and has operated lawlessly in defiance of congressional statute and federal court orders.

## ADMINISTRATION PRIORITIES

**Rollbacks.** A new Administration must immediately roll back Biden's orders, reinstate the Trump-era Energy Dominance Agenda, rescind Secretarial Order (SO) 3398, and review all regulations, orders, guidance documents, policies, and

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similar agency actions made in compliance with that order.<sup>18</sup> Meanwhile, the new Administration must immediately reinstate the following Trump DOI secretarial orders:

- SO 3348: Concerning the Federal Coal Moratorium;<sup>19</sup>
- SO 3349: American Energy Independence;<sup>20</sup>
- SO 3350: America-First Offshore Energy Strategy;<sup>21</sup>
- SO 3351: Strengthening the Department of the Interior’s Energy Portfolio;<sup>22</sup>
- SO 3352: National Petroleum Reserve—Alaska;<sup>23</sup>
- SO 3354: Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program;<sup>24</sup>
- SO 3355: Streamlining National Environmental Policy Reviews and Implementation of Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects”;<sup>25</sup>
- SO 3358: Executive Committee for Expedited Permitting;<sup>26</sup>
- SO 3360: Rescinding Authorities Inconsistent with Secretary’s Order 3349, “American Energy Independence”;<sup>27</sup>
- SO 3380: Public Notice of the Costs Associated with Developing Department of the Interior Publications and Similar Documents;<sup>28</sup>
- SO 3385: Enforcement Priorities;<sup>29</sup> and
- SO 3389: Coordinating and Clarifying National Historic Preservation Act Section 106 Reviews.<sup>30</sup>

**Actions.** At the same time, the new Administration must:

- **Reinstate** quarterly onshore lease sales in all producing states according to the model of BLM’s IM 2018–034, with the slight adjustment of including expanded public notice and comment.<sup>31</sup> The new Administration should work with Congress on legislation, such as the Lease Now Act<sup>32</sup> and

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ONSHORE Act,<sup>33</sup> to increase state participation and federal accountability for energy production on the federal estate.

- **Conduct** offshore oil and natural gas lease sales to the maximum extent permitted under the 2023–2028 lease program,<sup>34</sup> with the possibility to move forward under a previously studied but unselected plan alternative.<sup>35</sup>
- **Develop** immediately and finalize a new five-year plan, while working with Congress to reform the OCSLA by eliminating five-year plans in favor of rolling or quarterly lease sales.
- **Review** all resource management plans finalized in the previous four years and, when necessary, select studied alternatives to restore the multi-use concept enshrined in FLPMA and to eliminate management decisions that advance the 30 by 30 agenda.
- **Set** rents, royalty rates, and bonding requirements to no higher than what is required under the Inflation Reduction Act.<sup>36</sup>
- **Comply** with the Alaska National Interest Lands Conservation Act (ANILCA) and the Tax Cuts and Jobs Act of 2017 to establish a competitive leasing and development program in the Coastal Plain, an area of Alaska that was set aside by Congress specifically for future oil and gas exploration and development. It is often referred to as the “Section 1002 Area” after the section of ANILCA that excludes the area from Arctic National Wildlife Refuge’s wilderness designation.<sup>37</sup>
- **Conclude** the programmatic review of the coal leasing program, and work with the congressional delegations and governors of Wyoming and Montana to restart the program immediately.<sup>38</sup>
- **Abandon** withdrawals of lands from leasing in the Thompson Divide of the White River National Forest, Colorado; the 10-mile buffer around Chaco Cultural Historic National Park in New Mexico (restoring the compromise forged in the Arizona Wilderness Act<sup>39</sup>); and the Boundary Waters area in northern Minnesota if those withdrawals have not been completed.<sup>40</sup> Meanwhile, revisit associated leases and permits for energy and mineral production in these areas in consultation with state elected officials.
- **Require** regional offices to complete right-of-way and drilling permits within the average time it takes states in the region to complete them.

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**Rulemaking.** The following policy reversals require rulemaking:

- **Rescind** the Biden rules and reinstate the Trump rules regarding:
  1. BLM waste prevention;
  2. The Endangered Species Act rules defining Critical Habitat and Critical Habitat Exclusions;<sup>41</sup>
  3. The Migratory Bird Treaty Act;<sup>42</sup> and
  4. CEQ reforms to NEPA.<sup>43</sup>
- **Reinstate** President Trump’s plan for opening most of the National Petroleum Reserve of Alaska to leasing and development.

**Personnel Changes.** The new Administration should be able to draw on the enormous expertise of state agency personnel throughout the country who are capable and knowledgeable about land management and prove it daily. States are better resource managers than the federal government because they must live with the results. President Trump’s Schedule F proposal<sup>44</sup> regarding accountability in hiring must be reinstituted to bring success to these reforms. Consistent with the theme of bringing successful state resource management examples to the forefront of federal policy, DOI should also look for opportunities to broaden state–federal and tribal–federal cooperative agreements.

## IMMEDIATE ACTIONS

**BLM Headquarters.** BLM headquarters belongs in the American West. After all, the overwhelming majority of the 245 million surface acres (10 percent of the nation’s landmass) managed by the agency lies in the 11 western states and Alaska: A mere 50,000 surface acres lie elsewhere. Moreover, 97 percent of BLM employees are located in the American West.

Thus, the Trump Administration’s decision to relocate BLM headquarters from Washington, D.C., to the West was the epitome of good governance: That is, it was not only well-informed, but it was also implemented efficiently, effectively, and with an eye toward affected career civil servants. Plus, despite overblown chatter from the inside-the-Beltway media, Congress, with bipartisan support, approved funding the move.

Meanwhile, state, tribal, and local officials, the diverse collection of stakeholders who use public lands and western neighbors became accustomed to having top BLM decision-makers in Grand Junction, Colorado, rather than up to four

time zones away. All of them also appreciated that the BLM's top subject matter experts were located not in the District of Columbia, but in the western states that most need their knowledge and expertise. Westerners no longer had to travel cross country to address BLM issues. Neither did officials in the West, closest to the resources and people they manage.

On July 16, 2019, Secretary of the Interior David L. Bernhardt delivered to Congress the proposal for the relocation of nearly 600 BLM headquarters employees. On August 10, 2020, Secretary Bernhardt formally established the Robert F. Burford headquarters—named after the longest-serving BLM director, a Grand Junction native—with a staff of 41 senior officials and assistants. Another 76 positions were assigned to BLM state offices in western communities such as Billings, Montana; Boise, Idaho; Reno, Nevada; Salt Lake City, Utah; and Cheyenne, Wyoming, to meet critical needs. Scores of other positions were assigned to the states that required BLM expertise. For example, wild horse and burro professionals were relocated to Nevada, home to nearly 60 percent of these western icons. Sixty-one positions were retained in Washington, D.C., to address public, congressional, and regulatory affairs, Freedom of Information Act compliance, and budget development.

Despite the dislocating impact of the COVID-19 pandemic, the BLM successfully filled hundreds of long-vacant positions, as well as those that opened because of the move West. The BLM saw notable numbers of applicants for these positions—so numerous that the BLM capped the number of eligible applicants to no more than 50. Obviously, reduced commuting times (often from hours to mere minutes), lower cost of living, and opportunity to access vast public lands for recreation made these jobs attractive to potential employees. Many, if not most, applicants stated they would not have applied had the positions been based in Washington, D.C. At the same time, western positions attracted those with the skills needed to meet the BLM's multiple-use, sustained-yield mandate, disproving the claim that the BLM was suffering a “brain drain.”

The Trump Administration recognized that, despite its attractions, not everyone employed by BLM in Washington, D.C., could move West. The Administration applied a hands-on approach, with all-employee briefing and question-and-answer sessions, regular email communications, and a website devoted to frequently asked questions. Two human resources teams aided employees wishing to remain in federal jobs in the D.C. area: All received new opportunities.

The BLM's move West incurred no legal challenges, no formal Equal Employment Opportunity or U.S. Merit Systems Protection Board complaints, and no adverse union activity. It is hard to please everyone, but the Trump Administration's BLM did just that, putting the lie to assertions, by some, that the BLM was trying to “fire” federal employees.

The total cost of \$17.9 million for relocation incentives, permanent change-of-station moves, temporary labor, travel, printing, rent, supplies, equipment, and

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other contracts will save money for the American people. For example, in fiscal 2020, the BLM estimated \$1.6 million in travel costs savings, which will grow slightly over time, and \$1.9 million in savings from its terminated lease in Washington, D.C. Furthermore, BLM estimated that, by October 2022, the BLM move West would generate a net savings of \$3.5 million, which, the following fiscal year, would increase to \$10.3 million.

Those funds can be devoted to reducing the risk of wildfires, increasing recreational opportunities, conserving public lands, and addressing tough issues such as wild horses and burros. Moreover, those funds will be used more wisely thanks to the efficiency of senior, seasoned managers working closely with BLM field employees in near daily contact with western officials, stakeholders, and neighbors.

In late 2022, Secretary of the Interior Deb Haaland announced the return of headquarters and scores of highly paid, senior employees to Washington, D.C. Subsequently, BLM Director Tracy Stone-Manning revealed 56 BLM jobs in BLM's "Western Headquarters" and 70 other BLM jobs will remain in Grand Junction, an increase of 15 from the 41 announced by Trump's BLM in 2019, and an increase of 40 other jobs above the 16 first announced by Biden officials. Thus, the director, the two deputy directors, six of seven assistant directors (ADs) and their staffs are now or soon will be in Washington.

The Biden Administration failed to recognize the wisdom of having BLM's leadership, including its director, deputy directors, and ADs in the West. That is why, decades ago, the AD and staff in charge of BLM's firefighters were relocated to Boise, Idaho, where they remain. Not so the head of BLM law enforcement and security, who supervises over 200 uniformed law enforcement rangers and 76 special agents stationed mainly in 11 western states and Alaska. Haaland moved that official to Washington, far from state troopers, county sheriffs and deputies, and city police with whom BLM law enforcement officers keep the peace in the West's wide-open spaces. BLM's "top cop" might as well be on the moon.

The AD in charge of oil, gas, and minerals was also moved to Washington, D.C., notwithstanding that most oil, gas, and minerals are in the West and Alaska; New Mexico's Permian Basin, for example, is second only to Alaska in petroleum potential, and Montana and Wyoming's Powder River Basin contains the world's best low-sulfur coal. The AD responsible for wild horses and burros was moved east as well, despite the fact that the uncontrolled growth of wild horses and burros poses an existential threat to public lands; 60 percent of the nation's wild horses are in Nevada,<sup>45</sup> but thousands are in nine other western states. There is no way these and other ADs can professionally manage issues thousands of miles and multiple time zones away.

It is not just effective and responsive management that has been lost; Colorado lost its chance to become a must-visit destination for BLM's stakeholders. Those seeking to develop world-class mineral deposits in Minnesota or another Prudhoe

Bay in Alaska; to expand recreation across BLM's vast, diverse, and unique landscapes; or to manage timber and rangelands to prevent wildfires, would all journey to Grand Junction. Convention opportunities on Colorado's western slope would abound for BLM's disparate constituencies to congregate and meet with BLM leadership. The Western States Sheriffs' Association, for example, whose annual gathering attracts hundreds of law enforcement officers from 17 western and plains states might have moved its event to Grand Junction.

**Law Enforcement Officers.** In 2002, at the direction of the Secretary of the Interior in the days following the 9/11 attack, the Inspector General (IG) for DOI made a series of department-wide recommendations regarding law enforcement. Then-Secretary of the Interior Gale Norton ordered adoption of those recommendations, which drew strong bipartisan support from Congress. Over the years, most were implemented. One, however, remained undone: placing all BLM law enforcement officers (LEOs), that is, its 212 Law Enforcement Rangers and 76 Special Agents, in an exclusively law enforcement chain of command.

This was not just the IG's recommendation in 2002, but that of every IG who followed. It is also the strong recommendation of the department's top LEO. Moreover, it has been the urgent recommendation of law enforcement professionals across the country, especially in the West, for decades, including the Western States Sheriffs Association. Unfortunately, over time, BLM leadership stonewalled, adhering to a haphazard system in which LEOs reported to non-LEO superiors, including not only state directors, but also district and field managers with expertise in other fields—range management or petroleum engineering, for example—with only 24 hours of law enforcement study. Obviously, those managers lack a comprehensive understanding of law enforcement issues—constitutional, legal, and tactical. In addition, they do not uniformly apply or enforce rules of conduct or ethical standards for LEOs and special agents, leading to weakened *esprit de corps* and morale. Worse yet, because of their duties as managers of the multiple-use lands under their jurisdiction, they are exposed to conflicts of interests and may intentionally or unintentionally prevent LEOs from investigating violations or applying the law.

In the final days of the Trump Administration, Secretary David L. Bernhardt ordered, and Deputy Director William Perry Pendley implemented, the IG's recommendation. Of course, leadership heads exploded; they were furious with their loss of authority, not to mention subordinates and budgets. Unfortunately, in the first days of the Biden Administration, BLM Deputy Director Mike Nedd suspended Pendley's order.

Nonetheless, LEOs, the BLM, and westerners want LEOs—who make life-and-death decisions—to be as well-trained and well-equipped as possible. They should report to a professional, expert, and knowledgeable chain of command. After all, they protect visitors to BLM lands and the natural and cultural resources of those lands, as well as the employees who manage those lands.



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BLM's LEOs must keep in touch, work closely, and coordinate with fellow federal, state, and local law enforcement officers. In the Trump Administration, they joined state and local law enforcement in arresting dangerous suspects in Cortez, Colorado; responded to a request from a rural sheriff in Arizona to rescue a family stuck in freezing temperatures; and, teamed up in an all-hands-on-deck effort to locate a missing American Indian teenager in rural Montana. More important, western LEOs need the assurance that the BLM LEOs with whom they work are professionals who report through a professional chain of command.

**Wild Horses and Burros.** In 1971, Congress ordered the BLM to manage wild horses and burros to ensure their iconic presence never disappeared from the western landscape. For decades, Congress watched as these herds overwhelmed the land's ability to sustain them, crowded out indigenous plant and other animal species, threatened the survival of species listed under the Endangered Species Act, invaded private and permitted public land, disturbed private property rights, and turned the sod into concrete. BLM experts said in 2019 that some affected land will never recover from this unmitigated damage.

There are 95,000 wild horses and burros roaming nearly 32 million acres in the West—triple what scientists and land management experts say the range can support. These animals face starvation and death from lack of forage and water. The population has more than doubled in just the past 10 years and continues to grow at a rate of 10 to 15 percent annually. This number includes the more than 47,000 animals the BLM has already gathered from public lands, at a cost to the American taxpayer of nearly \$50 million annually to care for them in off-range corrals.

This is not a new issue—it is not just a western issue—it is an American issue. What is happening to these once-proud beasts of burden is neither compassionate nor humane, and what these animals are doing to federal lands and fragile ecosystems is unacceptable. In 2019, the American Association of Equine Practitioners and the American Veterinary Medication Association—two of the largest organizations of professional veterinarians in the world—issued a joint policy calling for further reducing overpopulation to protect the health and well-being of wild horses and burros on public lands. The National Wild Horse and Burro Advisory Board, a panel of nine experts and professionals convened to advise the BLM, endorsed the joint policy. Furthermore, animal welfare organizations such as the American Society for the Prevention of Cruelty to Animals and the Humane Society of the United States recognize that the prosperity of wild horses and burros on public lands is threatened if herds continue to grow unabated.

The BLM's multi-pronged approach in its 2020 Report to Congress<sup>46</sup> included expanded adoptions and sales of horses gathered from overpopulated herds; increased gathers and increased capacity for off-range holding facilities and pastures; more effective use of fertility control efforts; and improved research, in concert with the academic and veterinary communities, to identify more effective

contraceptive techniques and strategies. All of that will not be enough to solve the problem, however. Congress must enact laws permitting the BLM to dispose humanely of these animals.

## **IMMEDIATE ACTIONS REGARDING ALASKA**

Alaska is a special case and deserves immediate action.<sup>47</sup> When Alaska was admitted to the Union in 1959, nearly its entire landmass was federally owned; therefore, Alaska was granted the right to select 104 million acres (out of 375 million acres) to manage for the benefit of its residents.<sup>48</sup> In less than eight years, Alaska selected 26 million acres. Then-Interior Secretary Stewart Udall—who served during the Kennedy and Johnson Administrations—put a freeze on further land selections to protect any claims that might be asserted by Native Alaskans.<sup>49</sup>

**Alaska Native Claims Settlement Act.** The discovery of oil at Prudhoe Bay in 1968 made resolution of the issue by Congress a matter of urgency. As a result, in 1971, Congress passed the Alaska Native Claims Settlement Act (ANCSA), which allowed the Native community to select 44 million acres.<sup>50</sup>

Environmentalists, upset that too much of the land they coveted would be selected by the state and Native Alaskans for development, demanded the inclusion in the act of a provision—Section 17(d)(2)—that ordered the Interior Secretary to withdraw 80 million acres for future designation by Congress as parks, refuges, wild and scenic rivers, and national forests.<sup>51</sup> The deadline for this congressional action was 1978, and as it neared, the Carter Administration, impatient and worried, decided to force Congress's hand. The Administration unilaterally withdrew 100 million acres from any use by the state or Native Alaskans.<sup>52</sup> Alaska promptly sued, charging that the Administration had failed to comply with the National Environmental Policy Act.<sup>53</sup>

In a lame duck session at the end of 1980, Congress passed (over the objections of the Alaskan delegation) the Alaska National Interest Lands Conservation Act, which revoked all of the withdrawals of the Carter Administration and substituted congressional designations that put 100 million acres permanently in federal enclaves, doubled the acreage of national parks and refuges, and tripled the amount of land declared to be wilderness.<sup>54</sup> Through all of this, Alaska pressed for the DOI to convey the lands to which Alaska was entitled by federal law, but the department grudgingly transferred only portions of that land.

By the time Ronald Reagan took office, Alaska had received less than half the lands to which it was entitled after its admission into the Union, and Native Alaskans had received only one-third of the land due to them.<sup>55</sup> From January of 1981 through 1983, however, under Reagan, Alaska received 30 million acres and a commitment of land transfers at the rate of 13 million acres annually. In the same period, Native Alaskans received 11 million acres, which constituted nearly 60 percent of their entitlement, and an additional 15 million acres were transferred by the end of 1988.<sup>56</sup>

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Despite the passage of nearly 40 years since the end of the Reagan Administration, the federal government has yet to fulfill its statutory obligation to Alaska and Alaska Natives—specifically, each group has 5 million acres of entitlement remaining. Standing in the way are Public Land Orders (PLOs) issued by the BLM seizing that land for the agency. Those PLOs must be lifted to permit Alaska and Alaska Natives to select what was promised by Congress.

For example, revocation of PLO 5150<sup>57</sup> will provide the state of Alaska 1.3 million acres of its remaining state entitlement. This revocation should be a top priority. BLM recommended this revocation in the 2006 report to Congress based on the Alaska Land Transfer Acceleration Act, and the Interior Secretary has authority to revoke based on the Alaska Native Claims Settlement Act under section d(1).<sup>58</sup> All other remaining BLM PLOs—all of which are more than 50 years old—should be revoked immediately.

Alaska has untapped potential for increased oil production, which is important not just to the revitalization of the nation's energy sector but is vital to the Alaskan economy. One-quarter of Alaska's jobs are in the oil industry, and half of its overall economy depends on that industry. Without oil production, the Alaskan economy would be half its size.

A new Administration must take the following actions immediately:

- **Approve** the 2020 National Petroleum Reserve Alaska Integrated Activity Plan (NPRA-IAP) by resigning the Record of Decision. (Secretary Haaland's order reverted to the 2013 IAP, the science for which is out of date, unlike the 2020 IAP.)
- **Reinstate** the 2020 Arctic National Wildlife Refuge Environmental Impact Statement (EIS) by secretarial order and lift the suspension of the leases.
- **Approve** the 2020 Willow EIS, the largest pending oil and gas projection in the United States in the National Petroleum Reserve-Alaska, and expand approval from three to five drilling pads.<sup>59</sup>

**Minerals.** Alaska is not just blessed with an abundance of oil, it has vast untapped mineral potential. Therefore, the new Administration must immediately approve the Ambler Road Project<sup>60</sup> across BLM-managed lands, pursuant to the Secretary's authority under the ANILCA and based on the Final Environmental Impact Statement on the project.<sup>61</sup> This will permit construction of a new 211-mile roadway on the south side of the Brooks Range, west from the Dalton Highway to the south bank of the Ambler River, and open the area only to mining-related industrial uses, providing high-paying jobs in an area known for unemployment.

**Wildlife and Waters.** Throughout Alaska’s history, the federal government has treated Alaska as less than a sovereign state. This is especially the case when it comes to two of Alaska’s most valued resources, its wildlife and its waters. Immediate action is required to end, at least in part, this injustice. A new Administration should:

- **Revoke** National Park Service and U.S. Fish and Wildlife Service rules regarding predator control and bear baiting, which are matters for state regulation. Such revocation is permitted under the 2017 Congressional Review Act.<sup>62</sup>
- **Recognize** Alaska’s authority to manage fish and game on all federal lands in accordance with ANILCA as during the Reagan Administration, when each DOI agency in Alaska signed a Memorandum of Understanding with the Alaska Department of Fish and Game ceding to the state the lead on fish and wildlife management matters.<sup>63</sup>
- **Issue** a secretarial order declaring navigable waters in Alaska to be owned by the state so that the lands beneath these waters belong to Alaska. This will force the BLM to prove that water is not navigable, since in the case of non-navigability, any submerged lands belong to the BLM. Currently, BLM requires Alaska to prove navigability at its own expense—including the BLM’s preposterous assertion that the mighty Yukon River is non-navigable.
- **Reinstate** President Trump’s 2020 Alaska Roadless Rule<sup>64</sup> for the Tongass National Forest in Alaska, which was replaced by a Biden Roadless Rule that continues a 2001 Clinton rule affecting 9.37 million of the forest’s 16.7 million acres.<sup>65</sup> The Clinton rule affects an area where communities are in small islands with no road access. It has prevented multiple infrastructure projects, including roads, electric transmission lines, and water and sewer projects, and it forces residents to use a heavily subsidized ferry system. Logging has been shut down to the extent that New York harvests more timber than does all of Alaska.

## OTHER ACTIONS

**The 30 by 30 Plan.**<sup>66</sup> President Biden’s Executive Order 14008 (30 by 30 plan)<sup>67</sup> requires that the federal government, which already owns one-third of the country: (1) remove vast amounts of private property from productive use; and (2) end congressionally mandated uses of all federal land. The end result will be “total federal control of an additional 440 million acres of land or oceans in the U.S. by 2030.”<sup>68</sup>

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Although the new President should vacate that order, DOI under a conservative President must take immediate action on the 30 by 30 plan by vacating a secretarial order issued by the Biden DOI<sup>69</sup> that eliminated the Trump Administration's requirement for the approval of state and local governments before federal acquisition of private property with monies from the Land and Water Conservation Fund.<sup>70</sup>

**National Monument Designations.** As has every Democratic President before him beginning with Jimmy Carter, Joe Biden has abused his authority under the Antiquities Act of 1906. Like the outrageous, unilateral withdrawals from public use of multiple use federal land under the Carter, Clinton, and Obama Administrations, Biden's first national monument was one in Colorado—adopted over the objections of scores of local groups and at least one American Indian tribe.<sup>71</sup> In the days before the 2024 election, Biden will likely designate more western monuments.

Although President Trump courageously ordered a review of national monument designations, the result of that review was insufficient in that only two national monuments in one state (Utah) were adjusted.<sup>72</sup> Monuments in Maine and Oregon, for example, should have been adjusted downward given the finding of Secretary Ryan Zinke's review that they were improperly designated. The new Administration's review will permit a fresh look at past monument decrees and new ones by President Biden.

Furthermore, the new Administration must vigorously defend the downward adjustments it makes to permit a ruling on a President's authority to reduce the size of national monuments by the U.S. Supreme Court.

Finally, the new Administration must seek repeal of the Antiquities Act of 1906, which permitted emergency action by a President long before the statutory authority existed for the protection of special federal lands, such as those with wild and scenic rivers, endangered species, or other unique places. Moreover, in recent years, Congress has designated as national monuments those areas deserving of such congressional action.

**Oregon and California Lands Act.** One national monument worthy of downward adjustment is in Oregon, where its designation and subsequent expansion interfere with the federal obligation to residents to harvest timber on its BLM lands. A federal district court ruled in 2019 that land subject to the Oregon and California (O&C) Grant Lands Act of 1937<sup>73</sup> was set aside by Congress to be harvested for the benefit of the people of Oregon. Specifically, those federal lands are to be “managed...for permanent forest production” and its timber “sold, cut, and removed in conformity with the princip[le] of sustained yield.”<sup>74</sup>

As the district court concluded,<sup>75</sup> beginning in 1990, the federal government erected a trifecta of illegal barriers to the accomplishment of the congressional mandate, beginning with a response to the listing of the northern spotted owl,<sup>76</sup> continuing a decade later with the designation of the Cascade–Siskiyou National Monument,<sup>77</sup> and concluding in 2017 with an expansion of that monument.<sup>78</sup> In

order to fulfill the yet-unaltered congressional mandate contained in federal law, to provide for jobs and well-paying employment opportunities in rural Oregon, and to ameliorate the effects of wildfires, the new Administration must immediately fulfill its responsibilities and manage the O&C lands for “permanent forest production” to ensure that the timber is “sold, cut, and removed.”<sup>79</sup>

**NEPA Reforms.** Congress never intended for the National Environmental Policy Act to grow into the tree-killing, project-dooming, decade-spanning monstrosity that it has become. Instead, in 1970, Congress intended a short, succinct, timely presentation of information regarding major federal action that significantly affects the quality of the human environment so that decisionmakers can make informed decisions to benefit the American people.

The Trump Administration adopted common-sense NEPA reform that must be restored immediately. Meanwhile, DOI should reinstate the secretarial orders adopted by the Trump Administration, such as placing time and page limits on NEPA documents and setting forth—on page one—the costs of the document itself. Meanwhile, the new Administration should call upon Congress to reform NEPA to meet its original goal. Consideration should be given, for example, to eliminating judicial review of the adequacy of NEPA documents or the rectitude of NEPA decisions. This would allow Congress to engage in effective oversight of federal agencies when prudent.

**Settlement Transparency.** Interior Secretary David Bernhardt required DOI to prominently display and provide open access to any and all litigation settlements into which DOI or its agencies entered, and any attorneys’ fees paid for ending the litigation.<sup>80</sup> Biden’s DOI, aware that the settlements into which it planned to enter and the attorneys’ fees it was likely to pay would cause controversy, ended this policy.<sup>81</sup> A new Administration should reinstate it.

**The Endangered Species Act.** The Endangered Species Act was intended to bring endangered and threatened species back from the brink of extinction and, when appropriate, to restore real habitat critical to the survival of the species. The act’s success rate, however, is dismal. Its greatest deficiency, according to one renowned expert, is “conflict of interest.”<sup>82</sup> Specifically, the work of the Fish and Wildlife Service is the product of “species cartels” afflicted with groupthink, confirmation bias, and a common desire to preserve the prestige, power, and appropriations of the agency that pays or employs them. For example, in one highly influential sage-grouse monograph, 41 percent of the authors were federal workers. The editor, a federal bureaucrat, had authored one-third of the paper.<sup>83</sup>

Meaningful reform of the Endangered Species Act requires that Congress take action to restore its original purpose and end its use to seize private property, prevent economic development, and interfere with the rights of states over their wildlife populations. In the meantime, a new Administration should take the following immediate action:

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- **Delist** the grizzly bear in the Greater Yellowstone and Northern Continental Divide Ecosystems and defend to the Supreme Court of the United States the agency's fact-based decision to do so.<sup>84</sup>
- **Delist** the gray wolf in the lower 48 states in light of its full recovery under the ESA.<sup>85</sup>
- **Cede** to western states jurisdiction over the greater sage-grouse, recognizing the on-the-ground expertise of states and preventing use of the sage-grouse to interfere with public access to public land and economic activity.
- **Direct** the Fish and Wildlife Service to end its abuse of Section 10(j) of the ESA by re-introducing so-called "experiment species" populations into areas that no longer qualify as habitat and lie outside the historic ranges of those species, which brings with it the full weight of the ESA in areas previously without federal government oversight.<sup>86</sup>
- **Direct** the Fish and Wildlife Service to design and implement an impartial conservation triage program by prioritizing the allocation of limited resources to maximize conservation returns, relative to the conservation goals, under a constrained budget.<sup>87</sup>
- **Direct** the Fish and Wildlife Service to make all data used in ESA decisions available to the public, with limited or no exceptions, to fulfill the public's right to know and to prevent the agency's previous opaque decision-making.
- **Abolish** the Biological Resources Division of the U.S. Geological Survey and obtain necessary scientific research about species of concern from universities via competitive requests for proposals.
- **Direct** the Fish and Wildlife Service to: (1) design and implement an Endangered Species Act program that ensures independent decision-making by ending reliance on so-called species specialists who have obvious self-interest, ideological bias, and land-use agendas; and (2) ensure conformity with the Information Quality Act.<sup>88</sup>

**Office of Surface Mining.** The Office of Surface Mining Reclamation and Enforcement (OSM) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA)<sup>89</sup> to administer programs for controlling the impacts of surface coal mining operations. Although the coal industry is contracting, coal constitutes



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20 percent of the nation’s electricity and is a mainstay of many regional economies. The following actions should ensure OSM’s ability to perform its mission while complying with SMCRA and without interfering with the production of high-quality American coal:

- **Relocate** the OSM Reclamation and Enforcement headquarters to Pittsburgh, Pennsylvania, to recognize that the agency is field-driven and should be headquartered in the coal field.<sup>90</sup>
- **Reduce** the number of field coal-reclamation inspectors to recognize the industry is smaller.
- **Reissue** Trump’s Schedule F executive order to permit discharge of nonperforming employees.<sup>91</sup>
- **Permit** coal company employees to benefit from the OSM Training Program, which is currently restricted to state and federal employees.
- **Revise** the Applicant Violator System, the nationwide database for the federal and state programs, to permit federal and state regulators to consider extenuating circumstances.
- **Maintain** the current “Ten-Day Notice” rule, which requires OSM to work with state regulators in determining if a SMCRA violation has taken place in recognition of the fact that a coal mining state with primacy has the lead in implementing state and federal law.
- **Preserve** Directive INE-26, which relates to approximate original contour, a critical factor in permitting efficient and environmentally sound surface mining, especially in Appalachia.<sup>92</sup>

**Western Water Issues.** The American West, from the Great Plains to the Cascades Range, is arid, as recognized by John Wesley Powell during his famous trip across a large part of its length. Pursuant to an Executive Order signed by President Trump, and consistent with its authority along with other federal agencies, DOI’s Bureau of Reclamation must take the following actions:

- **Develop** additional storage capacity across the arid west, including by:
  1. Updating dam water control manuals for existing facilities during routine operations; and

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2. Engaging in real-time monitoring of operations.
- **Reduce** bureaucratic inefficiencies by consolidating federal water working groups.
  - **Implement** actions identified in the Federal Action Plan for Improving Forecasts of Water Availability,<sup>93</sup> especially by adopting improvements related to:
    1. Forecast Informed Reservoir Operations; and
    2. Aerial Snow Observation Systems.
  - **Clarify** the Water Infrastructure Finance and Innovation Act<sup>94</sup> to ensure consistent application with other federal infrastructure loan programs under the Federal Credit Reform Act. This should be done to foster opportunities for locally led investment in water infrastructure.
  - **Reinstate** Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West.<sup>95</sup>

## AMERICAN INDIANS AND U.S. TRUST RESPONSIBILITY

The Biden Administration has breached its federal trust responsibilities to American Indians. This is unconscionable. Specifically, the Biden Administration's war on domestically available fossil fuels and mineral sources has been devastating. To wit:

- The ability of American Indians and tribal governments to develop their abundant oil and gas resources has been severely hampered, depriving them of the revenue and profits to which they are entitled during a time of increasing worldwide energy prices, forcing American Indians—who are among the poorest Americans—to choose between food and fuel.
- Indian nations with significant coal resources have some of the highest quality and cleanest-burning coal in the world, but the Biden Administration has sought to destroy the market for their coal by eliminating coal-fired electricity in the country and to prevent the transport of their coal for sale internationally. Meanwhile, the Biden Administration, at great public expense, artificially boosted the demand for electric vehicles, which, because of their remote locations, the absence of increased electricity demands for charging electric vehicles nearby, and the distances to be traveled, are not a choice for Indian communities.

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- A significant percentage of critical minerals needed by the United States is on Indian lands, but the Biden Administration has actively discouraged development of critical mineral mining projects on Indian lands rather than assisting in their advancement.
- Despite Indian nations having primary responsibility for their lands and environment and responsibility for the safety of their communities, the Biden Administration is reversing efforts to put Indian nations in charge of environmental regulation on their own lands.

Moreover, Biden Administration policies, including those of the DOI, have disproportionately impacted American Indians and Indian nations.

- By its failure to secure the border, the Biden Administration has robbed Indian nations on or near the Mexican border of safe and secure communities while permitting them to be swamped by a tide of illegal drugs, particularly fentanyl.
- When ending COVID protocols at Bureau of Indian Education (BIE) schools, Biden's DOI failed to ensure an accurate accounting of students returning from school shutdowns, which presents a significant danger to the families that trust their children to that federal agency.
- The BIE is not reporting student academic assessment data to ensure parents and the larger tribal communities know their children are learning and are receiving a quality education.

The new Administration must take the following actions to fulfill the nation's trust responsibilities to American Indians and Indian nations:

- **End** the war on fossil fuels and domestically available minerals and facilitate their development on lands owned by Indians and Indian nations.
- **End** federal mandates and subsidies of electric vehicles.
- **Restore** the right of tribal governments to enforce environmental regulation on their lands.
- **Secure** the nation's border to protect the sovereignty and safety of tribal lands.

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- **Overhaul** BIE schools to put parents and their children first.

Finally, the new Administration should seek congressional reauthorization of the Land Buy-Back Program for Tribal Nations,<sup>96</sup> which provided a \$1.9 billion Trust Land Consolidation Fund to purchase fractional interests in trust or restricted land from willing sellers at fair market value, but which sunsets November 24, 2022. New funds should come from the Great American Outdoors Act.<sup>97</sup>

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**AUTHOR'S NOTE:** The preparation of this chapter was a collective enterprise of individuals involved in the 2025 Presidential Transition Project. All contributors to this chapter are listed at the front of this volume, but some deserve special mention. Kathleen Sgamma, Dan Kish, and Katie Tubb wrote the section on energy in its entirety. I received thoughtful, knowledgeable, and swift assistance from Aubrey Bettencourt, Mark Cruz, Lanny Erdos, Aurelia S. Giacometto, Casey Hammond, Jim Magagna, Chad Padgett, Jim Pond, Rob Roy Ramey II, Kyle E. Scherer, Tara Sweeney, John Tahsuda, Rob Wallace, and Gregory Zerzan. The author alone assumes responsibility for the content of this chapter; no views expressed herein should be attributed to any other individual.

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### ENDNOTES

1. See generally William Perry Pendley, *Sagebrush Rebel: Reagan's Battle with Environmental Extremists and Why It Matters Today* (Regnery, 2013), preface, pp. xvi-xxii.
2. U.S. Const. art. IV, § 3, cl. 2. "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."
3. In Wyoming, the federal government owns 48 percent of the land; in Wyoming's Teton County, the federal government owns 97 percent of the land.
4. Pendley, *Sagebrush Rebel*.
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