

October 15, 2013

The Honorable Sally Jewell
U.S. Secretary of the Interior
1849 C Street, NW
Washington, D.C.

Re: Notice of Violations of Anti-Deficiency Act During Federal Shutdown

Dear Secretary Jewell:

On behalf of our over 600,000 members and supporters, the Center for Biological Diversity urges you to immediately stop mining, drilling and other extraction activities on federally protected lands until employees and visitors are no longer locked out. We recognize that federal agencies have been put in a difficult position with the shut-down, and we are looking forward to the government reopening. However, it is contradictory and illegal to restrict public access to public lands such as the National Parks, Wildlife Refuges, Offshore Areas, and Bureau of Land Management Lands, while allowing environmentally degrading private activities to occur on those same lands.

We can't hike, camp or enjoy our nation's public parks and monuments. But grazing, mining, logging, and oil and gas extraction continue in many cases without disruption — even though the shutdown has sent home many who enforce regulations designed to protect our lands and wildlife. While many people have traveled hundreds of miles and already paid for activities on public lands, like hotel or camping reservations, the Department of Interior has excluded them despite their reliance on those reservations. While private concessionaires serving the visitors have been forced to close on public lands, fossil fuel and timber companies continue to extract resources from those same lands.

Not only is it bad policy, but it is also unlawful to continue to permit offshore drilling and open the lands to other extractive activities during the shut-down. Interior is in violation of the Ant-Deficiency Act by expending government resources to allow these activities to continue during the shut-down:

- (a) (1) An officer or employee of the United States Government ... **may not**—
 - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;
 - (B) involve (the) government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law ...

31 U.S.C. § 1341 (emphasis added). Even if some of these activities are allegedly exempted “essential” or otherwise under various Office of Management and Budget (OMB) guidance, we don’t see how they can lawfully continue absent full staff to ensure robust compliance with safety and environmental laws, including those in the Outer Continental Shelf Lands Act, the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), Federal Land

Policy and Management Act (FLPMA), National Park Refuge Act (and related laws), the National Wildlife Refuge Act, and others.

For example, the decision to issue offshore permits to drill brings into question whether the agency is complying with the OCS Lands Act that provides for development of offshore resources "subject to environmental safeguards," 42 U.S.C. § 1332(3), with the mandate to "[p]revent damage to or waste of any natural resource, property, or the environment," 30 C.F.R. 250.301. In addition, Medford District BLM is letting Murphy Company log old growth in the Cottonwood timber sale while the contract administrator is on furlough, raising issues under FLPMA, NEPA and the ESA. Many other projects have been identified as "ongoing" as "authorized" despite lack of full oversight or compliance with conservation laws.¹

Indeed, most environmental compliance activities have been ceased pursuant to the agency contingency plans including endangered species consultations, monitoring of grazing allotments, and many environmental reviews. At a press conference Tommy Beaudreau, BOEM acting assistant secretary for land and minerals, said about offshore drilling that, "all of the safety bureau(s) permitting personnel and the personnel involved in inspections are excepted, and so *permitting will continue and inspections will continue. Environmental reviews, on the other hand, will be slowed. In the near term, I don't anticipate immediate effects in the pace of permitting.* Longer term, though, there could be."² (emphasis added). This raises significant concerns about the ability of the Department of Interior to comply with environmental laws while allowing industry activities on public lands that are otherwise closed.

In summary, we are writing to urge you to close the public lands to oil and gas drilling, mining, logging, and grazing during the government shut-down. If you believe that this letter is in error or would like to discuss actions that Interior can take to remedy these violations, please contact me per my contact below. Without rectifying these identified problems, or absent an end to the federal government shutdown, we plan on filing a writ of mandamus and/or complaint in federal court to stop these lawless extractive activities on our public's lands.

Sincerely,



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Cc: Sylvia Mathews Burwell, OMB Director

¹ <http://www.doi.gov/shutdown/fy2014/upload/BLM-FAQ.pdf>

² Gene Lockard, US Govt Shutdown: Offshore, Onshore Impacts Vary, Rigzone (Oct. 4, 2013) (available at http://www.rigzone.com/news/oil_gas/a/129440/US_Govt_Shutdown_Offshore_Onshore_Impacts_Vary).