

United States Senate

WASHINGTON, DC 20510

April 9, 2019

The Honorable David Bernhardt
Acting Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Acting Secretary Bernhardt:

As the United States Senate continues to consider your nomination for Secretary of the Interior, we are extremely concerned about actions taken by the Department of the Interior (DOI), under your direction, to limit opportunities for the public to meaningfully participate in oil and gas leasing and development decisions for public lands. Meanwhile, as public comment and environmental review has been curtailed or dismissed, DOI and the Bureau of Land Management (BLM) pursued a reckless push for so-called “energy dominance” that put over 18 million acres of public lands on the auction block for the oil and gas industry. We urge you to immediately commit to reverse actions that limit public comment and to ensure that all stakeholders have their rightful say in how our shared public lands are used.

Since you were confirmed as Deputy Secretary in July 2017, DOI and BLM have instituted policy changes that systematically eliminated or reduced opportunities for meaningful engagement by members of the public – as well as Tribes and state or local governments – in the oil and gas leasing and permitting processes. For instance, on January 31, 2018, BLM issued a new oil and gas leasing policy that only requires 10 days of public input on proposed oil and gas lease sales, at the administrative protest stage, while making all other environmental review and public input optional. Another policy, issued on June 6, 2018, encourages BLM to employ all tools to avoid environmental review and the associated public participation, such as categorical exclusions and determinations of NEPA adequacy “to the greatest extent possible” to evaluate leasing and drilling proposals.

Providing meaningful public participation in the oil and gas leasing process is a binding legal requirement. In September 2018, a federal district court enjoined provisions of BLM’s new oil and gas leasing policy (Instruction Memorandum 2018-034) that dramatically curtailed public participation in the leasing process.^[1] The court’s central finding in the case was that “the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales.” While this decision focused only on future lease sales in greater sage grouse habitat, the same legal rationale would apply to all BLM leasing decisions.

In addition to being legally mandated, public input is critical for identifying and avoiding conflicts – such as impacts to historic or sacred sites, recreational opportunities, wildlife and

^[1]*Western Watersheds Project v. Zinke*, 2018 U.S. Dist. LEXIS 162279

other natural resources, surface or neighboring properties, and community health – before leases are issued or development occurs. For example, last September, BLM offered and sold oil and gas leases within a few miles of Petrified Forest National Park in Arizona, and only provided 10 days for the public to provide input on this proposal. Insufficient comment periods were also employed for recent lease sales that included parcels near Canyonlands National Park in Utah, between a neighborhood and town park in Cañon City, Colorado, and in sensitive big game habitats in Wyoming and other states, including migration corridors. The rush to lease has also resulted in failures to consult with affected Tribes, which the Department acknowledged when deferring lease sales in Colorado and in the Greater Chaco Landscape in New Mexico but only after these glaring oversights were brought to its attention.

As Deputy Secretary, Acting Secretary, and now nominee to be the nation’s primary steward of our national lands and waters, you are expected to serve the public interest and not the narrow interests of one industry. Yet, as a recent CNN story^[2] and other reporting has detailed, under your direction, BLM went to great lengths during the recent government shutdown to approve over 260 oil and gas permits, continue with oil and gas planning, and service oil and gas industry requests. At the same time, members of the public and other stakeholders were left without an avenue to engage in DOI decisions, and employees charged with ensuring the protection of cultural resources, wildlife, and environmental resources were furloughed. Your attempts to justify these decisions, including during your nomination hearing, have not dispelled the clear impression of bias.

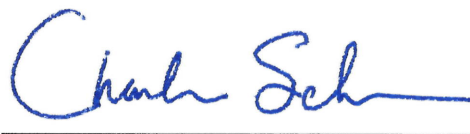
Before the full Senate votes on your nomination, we urge you to commit to restoring meaningful public participation and environmental review for all oil and gas leasing activities. Specifically, please commit to striking BLM’s Instruction Memorandum 2018-034, which limits public participation, and replacing it with requirements that restore a formal environmental review process for proposed lease sales and guarantee public participation opportunities. These should include a minimum 30-day public comment and 30-day protest period for lease sales, as well as any other measures necessary to fully engage Tribes, local governments, state wildlife agencies, affected landowners, and other members of the public. Rushing to lease public lands by undercutting and ignoring public input is a failure to comply with the law and the Department of the Interior’s responsibilities to the American people.

Please provide the courtesy of a reply expeditiously as the Senate considers your nomination prior to a vote on the Senate floor. We look forward to working with the Department of the Interior on these important issues that impact our constituents and shared public lands.

Sincerely,

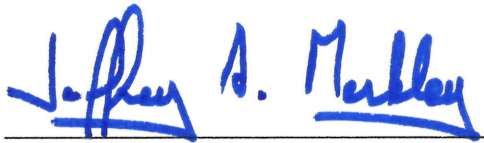


Catherine Cortez Masto
United States Senator

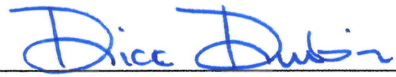


Charles E. Schumer
United States Senator


^[2] <https://www.cnn.com/2019/03/27/politics/bernhardt-interior-approved-permits-shutdown/index.html>



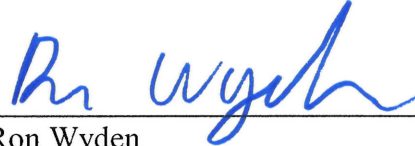
Jeffrey A. Merkley
United States Senator



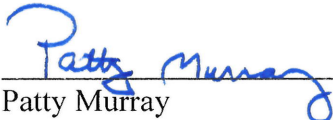
Richard J. Durbin
United States Senator



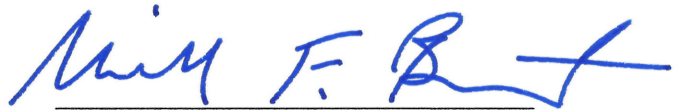
Tom Udall
United States Senator



Ron Wyden
United States Senator



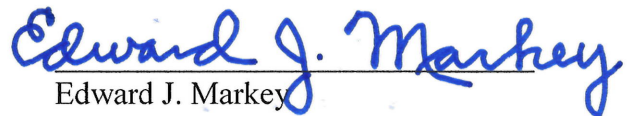
Patty Murray
United States Senator



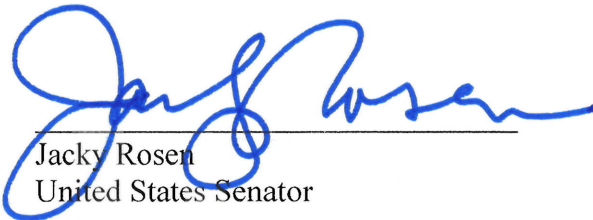
Michael F. Bennet
United States Senator



Bernard Sanders
United States Senator



Edward J. Markey
United States Senator




Jacky Rosen
United States Senator



Kamala D. Harris
United States Senator



Kirsten Gillibrand
United States Senator



Jon Tester
United States Senator