

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 29, 2022

The Honorable Debra Haaland
Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Haaland:

We are disappointed that you have not appeared before the Committee on Natural Resources (Committee) this year. While Committee Democrats initially signaled that you would testify at a Committee hearing on September 29, 2022, they have now postponed this hearing. Throughout the 117th Congress, Committee Republicans have been committed to robust oversight of your Department, and I plan to continue vigorously fulfilling my oversight duties in the 118th Congress.

I write to bring to your attention *West Virginia v. EPA*, a recent Supreme Court decision that clarified the limitations of certain agency action.¹ Although Article I, Section 1 of the United States Constitution vests “all legislative powers” in Congress,² the Biden administration has largely relied on executive action to advance its radical agenda. For example, in his first year, President Biden issued more executive orders³ and approved more major rules⁴ than any recent president. Such reliance on the administrative state undermines our system of government. Our founders provided Congress with legislative authority to ensure lawmaking is done by elected officials, not unaccountable bureaucrats. Given this administration’s track record, I am compelled to underscore the implications of *West Virginia v. EPA* and to remind you of the limitations on your authority.

In *West Virginia v. EPA*, the Court invoked the “major questions doctrine” in rejecting an attempt by the EPA to exceed its statutory authority.⁵ As the Court explained, “[p]recedent teaches that there are ‘extraordinary cases’ in which the ‘history and breadth of the authority that [the agency] has asserted,’ and the ‘economic and political significance’ of that assertion,

¹ *West Virginia v. Environmental Protection Agency*, 597 U.S. ___ (2022).

² U.S. Const. art. I, § 1.

³ Federal Register, *Executive Orders* (accessed Aug. 2022), available at <https://www.federalregister.gov/presidential-documents/executive-orders>

⁴ Deep Dive, *How Biden Has Made Policy With Short-Term, Costly Rules: Charts*, Bloomberg Law (May 2022), available at <https://news.bloomberglaw.com/environment-and-energy/how-biden-has-made-policy-with-short-term-costly-rules-charts>

⁵ *West Virginia*, 597 U.S. at 5-6.

provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.’”⁶ Under this doctrine, an agency must point to “clear congressional authorization for the authority it claims.”⁷ However, the EPA could not point to such authorization. Rather, the EPA “discover[ed] an unheralded power representing a transformative expansion of its regulatory authority in the vague language of a long-extant, but rarely used, statute designed as a gap filler.”⁸ Notably, such discovery “allowed [EPA] to adopt a regulatory program that Congress had conspicuously declined to enact itself.”⁹ As a result, the Court rejected the EPA’s attempt to so plainly exceed its statutory authority.

Unfortunately, EPA’s attempt to invent new authorities is not unusual for the Biden administration. Recently, the Court struck down the Centers for Disease Control and Prevention’s attempt to impose an eviction moratorium¹⁰ and the Occupational Safety and Health Administration’s attempt to impose a vaccine or testing mandate.¹¹ Thankfully, in *West Virginia v. EPA*, the Court made clear that such reliance on the administrative state will no longer be allowed. To be clear, “the Constitution does not authorize agencies to use pen-and-phone regulations as substitutes for laws passed by the people’s representatives.”¹² In the United States, it is “the peculiar province of the legislature to prescribe general rules for the government of society.”¹³

Numerous actions taken by the Department of the Interior (DOI) during the Biden administration, raise significant concerns about the Department exceeding its authority or circumventing regular rulemaking processes. For example, DOI’s refusal to comply with statutorily mandated lease sales ignores the Congressional intent of both the Mineral Leasing Act and the Outer Continental Shelf Lands Act.¹⁴ Utilizing Executive Order 14008 and Secretarial Order 3395, DOI executed a moratorium on oil and gas leasing.¹⁵ As our nation faces an energy crisis, the economic and political consequences of halting leasing and permitting are clear.¹⁶ If the Biden administration had issued new leases in 2021, new production could be happening today.¹⁷

⁶ *Id.* at 4 (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 129, 159-160).

⁷ *West Virginia*, 597 at 4.

⁸ *Id.* at 5.

⁹ *Id.* at 5.

¹⁰ *Alabama Assn. of Relators v. Department of Health and Human Servs.*, 594 U.S. ___ (2021).

¹¹ *National Federation of Independent Business v. Occupational Safety and Health Administration*, 595 U.S. ___ (2022).

¹² *West Virginia*, 597 at 56 (Gorsuch, J., concurring).

¹³ *Fletcher v. Peck*, 6 Cranch 87, 136 (1810).

¹⁴ 30 U.S.C. 181 et seq.; 43 U.S.C. 1331 et seq.

¹⁵ See Exec. Order No. 14008, 86 Fed. Reg. 19, 7619 (2021); U.S. DEP’T OF THE INTERIOR, Secretarial Order 3395 (2021).

¹⁶ See Christopher M Matthers & Katherine Blunt, *America’s New Energy Crisis*, THE WALL ST. J., Aug. 1, 2022, <https://www.wsj.com/articles/americas-new-energy-crisis-11659153633>.

¹⁷ Memorandum from Republican Staff, Subcomm. on Energy and Mineral Res., H. Comm. on Nat. Res., to H. Comm. on Nat. Res. Members, *Skyrocketing Energy Costs are Hurting Americans*, (June 20, 2022) (On file with Comm.).

Additionally, in contravention to the Biden administration's renewable energy goals, DOI canceled federal leases held by Twin Metals Minnesota even though the leases were in place since 1966 and reviewed multiple times by the Department.¹⁸ By blocking the development of the Duluth Complex, DOI's actions will prevent the domestic production of minerals, increasing our nation's dependence on foreign-source minerals, often produced without regard for labor and environmental standards.

Moreover, DOI was directed to propose the guidelines and mechanisms to implement the Biden administration's arbitrary policy decision of conserving 30 percent of lands and waters by 2030 (30 by 30 initiative).¹⁹ Committee Republicans sought to clarify the parameters of this vague, ill-defined proposal, however, DOI failed to answer basic questions.²⁰ DOI officials could not adequately define "conservation" under the 30 by 30 initiative, nor could officials provide a baseline assessment of lands and waters already protected.²¹ Further, officials indicated that no economic analyses were conducted in conjunction with DOI's development of recommendations.²² Committee Republicans have significant concerns surrounding the consequences of the 30 by 30 initiative, including the potential to prevent resource development on multiple use lands and revenue loss for local communities.²³ The 30 by 30 initiative is another example of DOI exceeding its authority and ignoring the consequences for the American public.

Further, and disconcertingly, DOI appears to make politically motivated decisions and ignore court orders and precedent. For example, the Trump administration promulgated rules requiring the U.S. Fish and Wildlife Service to conduct an exclusion analysis when designating critical habitat to minimize economic impacts and created a definition of "habitat" under the Endangered Species Act.²⁴ These regulations reflected the Trump administration's response to *Weyerhaeuser Company v. United States Fish and Wildlife Service*.²⁵ However, in the Summer of 2022, the Biden administration finalized rules rescinding these regulations.²⁶

These examples are indicative of my larger concerns about the overall operations and decision-making processes at DOI.

As a member of the committee of jurisdiction overseeing DOI, I assure you I will exercise our robust investigative and legislative powers to not only forcefully reassert our Article I responsibilities, but to ensure the Biden administration does not continue to exceed

¹⁸ Press Release, U.S. DEP'T OF THE INTERIOR, *Interior Dep't Takes Action on Mineral Leases Improperly Renewed in the Watersheds of the Boundary Waters Wilderness* (Jan. 26, 2022), <https://www.doi.gov/pressreleases/interior-department-takes-action-mineral-leases-improperly-renewed-watershed-boundary>.

¹⁹ Exec. Order No. 14008, 86 Fed. Reg. 19, 7619 (2021).

²⁰ See Letter from Rep. Bruce Westerman, Ranking Member, H. Comm. on Nat. Res., et. al, to the Honorable Debra Haaland, Sec'y, Dep't of the Interior, (Apr. 14, 2021) (on file with Comm.).

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 85 Fed. Reg. 244, 82376 (Dec. 18, 2020); 85 Fed. Reg. 242, 81411 (Dec. 16, 2020).

²⁵ *Weyerhaeuser Company v. United States Fish and Wildlife Service*, 139 S.Ct. 361 (2018).

²⁶ See 87 Fed. Reg. 121, 37757 (June 24, 2022); 87 Fed. Reg. 139, 43433 (July 21, 2022).

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Congressional authorizations. Accordingly, to assist in this effort, please answer the following no later than October 13, 2022:

1. As it relates to your agency, please provide the following:
 - a. A list of all pending rulemakings and the specific Congressional authority for each rulemaking.
 - b. A list of all expected rulemakings and the specific Congressional authority for each rulemaking.

Sincerely,



Bruce Westerman
Ranking Member
Natural Resources Committee