

# POTENTIAL VIOLATIONS OF THE FEDERAL VACANCIES ACT

**SUMMARY:** The Federal Vacancies Reform Act places limits on how long acting officials, appointed by the president, can serve. But there are (potentially) twelve Trump appointees who have served in acting roles longer than allowed. (NOTE: Acting officials are not required to go through the senate confirmation process.)

As White House Acting Chief of Staff Mick Mulvaney recently stated: Trump “could fire any of us tomorrow. So what difference does it make if you’re ‘acting’ or ‘permanent?’”

## Federal Vacancies Reform Act: Acting Officials Can Only Remain In Their Position For 210 Days, Before The Office Must Be Vacated

**Federal Vacancies Reform Act Of 1998 Mandated That “The First Assistant To The Office” Of An Officer That Has Died, Resigned, Or Otherwise Become Unable To Perform The Functions Of The Office “Shall Perform The Functions And Duties Of The Office Temporarily In An Acting Capacity.”** ““(a) If an officer of an Executive agency (including the Executive Office of the President, and other than the General Accounting Office) whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate, dies, resigns, or is otherwise unable to perform the functions and duties of the office- ‘(1) the first assistant to the office of such officer shall perform the functions and duties of the office temporarily in an acting capacity subject to the time limitations of section 3346.” [U.S. General Services Administration - The Federal Vacancies Reform Act of 1998, accessed [4/8/19](#)]

**Federal Vacancies Reform Act Of 1998 Mandated That An Acting Official May Serve In Office For “No Longer Than 210 Days Beginning On The Date The Vacancy Occurs.”** ““(a) Except in the case of a vacancy caused by sickness, the person serving as an acting officer as described under section 3345 may serve in the office - ‘(1) for no longer than 210 days beginning on the date the vacancy occurs.” [U.S. General Services Administration - The Federal Vacancies Reform Act of 1998, accessed [4/8/19](#)]

- **The Act Mandated That An Acting Official May Serve In Office “Once A First Or Second Nomination For The Office Is Submitted To The Senate, From The Date Of Such Nomination For The Period That The Nomination Is Pending In The Senate.”** ““(2) subject to subsection (b), once a first or second nomination for the office is submitted to the Senate, from the date of such nomination for the period that the nomination is pending in the Senate.” [U.S. General Services Administration - The Federal Vacancies Reform Act of 1998, accessed [4/8/19](#)]
  - **The Act Allowed An Acting Officer To Remain In Office For 210 Days After The Date Of A First Or Second Nominees’ Rejection, Withdrawal, Or Return To The President Of The Senate.** ““(b) (1) If the first nomination for the office is rejected by the Senate, withdrawn, or returned to the President by the Senate, the person may continue to serve as the acting officer for no more than 210 days after the date of such rejection, withdrawal, or return.’ (2) Notwithstanding paragraph (1), if a second nomination for the office is submitted to the Senate after the rejection, withdrawal, or return of the first nomination, the person serving as the acting officer may continue to serve- ‘(A) until the second nomination is confirmed; or ‘(B) for no more than 210 days after the second nomination is rejected, withdrawn, or returned.” [U.S. General Services Administration - The Federal Vacancies Reform Act of 1998, accessed [4/8/19](#)]
  - **“If A Vacancy Occurred During An Adjournment Of The Congress Sine Die,” The 210 Day Clock Would Begin On The Date The Senate Reconvenes.** ““(c) If a vacancy occurs during an adjournment of the Congress sine die, the 210-day period under subsection (a) shall begin on the date that the Senate first reconvenes.” [U.S. General Services Administration - The Federal Vacancies Reform Act of 1998, accessed [4/8/19](#)]

## May 2019: There Were 12 Acting Officials Potentially In Violation Of The Federal Vacancies Reform Act

May 2, 2019: There Were 12 Acting Officials Potentially In Violation Of The Federal Vacancies Reform Act. See details in below table:

VACANCY	ACTING APPOINTEE	TITLE	START DATE
Inspector General	Jill M Matthews	Acting Inspector General	<a href="#">9/21/17</a>
Inspector General	Norbert E Vint	Acting Inspector General	<a href="#">2/2016</a>
Deputy Administrator	Henry R Darwin	Acting Deputy Administrator	<a href="#">7/2018</a>
Assistant Secretary for Financial Markets	Monique YS Rollins	Acting Assistant Secretary	<a href="#">2017</a>
Special Trustee for American Indians	Jerold L Gidner	Acting Special Trustee	<a href="#">2017</a>
Director, Office of Surface Mining Reclamation and Enforcement	Glenda H Owens	Acting Director	<a href="#">2017</a>
Assistant Secretary for Fish, Wildlife and Parks	Dr Andrea Travnicek	Acting Assistant Secretary	<a href="#">8/2018</a>
Chief Financial Officer and Assistant Secretary for Budget and Programs	Lana T Hurdle	Acting Chief Financial officer and Assistant Secretary for Budget and Programs	<a href="#">2017</a>
Chairman, U.S. Parole Commission	Patricia K Cushwa	Acting Chairman	<a href="#">8/5/18</a>
Administrator, Drug Enforcement Administration	Uttam A Dhillon	Acting Administrator	<a href="#">6/2/18</a>
Assistant Attorney General for the Justice Programs Division	Matt Michael Dummermuth	Acting Assistant Attorney General	<a href="#">9/2018</a>
Inspector General	Glenn A Fine	Acting Inspector General of Office of the Inspector General DODIG	<a href="#">2016</a>

[Washington Post, [4/29/19](#); Leadership Connect, Accessed [5/2/19](#); DEA – Leadership, Accessed [5/2/19](#); Department of Influence – Andrea Travnicek, Accessed [5/2/19](#); Tennessee Valley Authority, Accessed [5/3/19](#); LinkedIn – Henry Darwin, Accessed [5/2/19](#)]

## Trump Acting Chief Of Staff Made Light Of Requirement To Nominate Permanent Appointees

Mulvaney: Trump “Could Fire Any Of Us Tomorrow. So What Difference Does It Make If You’re ‘Acting’ Or ‘Permanent?’” “Mulvaney brushed off the fact he is still serving in an acting capacity, saying of Trump ‘he could fire any of us tomorrow. So what difference does it make if you’re ‘acting’ or ‘permanent?’” [The Hill, [4/25/19](#)]

## **ANDREA TRAVNICEK, A CONFLICTED “ACTING” OFFICIAL WHO SERVED WITHOUT SENATE CONFIRMATION**

**SUMMARY:** Andrea Travnicek has been serving as the Acting Assistant Secretary of the Department of Interior, without Senate confirmation. Her tenure has potentially placed her in violation of the Senate Vacancies Act.

This potentially poses a conflict of interest, as Travnicek previously served as a lobbyist for a company with coal mining interests prior to joining the Department of Interior.

Furthermore, less than one month after Travnicek was named an Acting Assistant Secretary within DOI, the BLM opened nearly 2.4 million tons of federal coal for to be leased by industry at the request of a subsidiary of the very company Travnicek lobbied for.

### **Andrea Travnicek Served As Acting Assistant Secretary For Fish and Wildlife And Parks At The Department Of Interior**

**January 2019: Andrea Travnicek Was Still Serving As An Acting Assistant Secretary Without Senate Confirmation.**

“Acting Interior Secretary David Bernhardt must soon decide whether to maintain eight temporary agency directors, as the Trump administration presses into its third year without appointees for a slew of top posts at the department...Environmental advocacy groups have disparaged the White House over its failure to put forth nominees and asserted that the Trump administration is in violation of the Federal Vacancies Reform Act by allowing nonconfirmed officials to lead agencies for extended periods...Others include Principal Deputy Assistant Secretary for Water and Science Andrea Travnicek, who is acting assistant secretary for fish and wildlife and parks; BLM is being led by Deputy Director of Policy and Programs Brian Steed; and NPS is temporarily helmed by Deputy Director P. Daniel Smith.” [E&E News, [1/11/19](#)]

**August 9, 2018: Andrea Travnicek Was Named Acting Assistant Secretary For Fish, Wildlife, and Parks.** “The media also reported this week that Andrea Travnicek has been named as Acting Assistant Secretary for Fish, Wildlife, and Parks, overseeing USFWS and the National Park Service. Prior to this new role, Travnicek had been serving as Principal Deputy Assistant Secretary for Water and Science for DOI. She replaces Trump appointee Susan Combs, who will now serve as Acting Assistant Secretary for Policy, Management, and Budget. Combs had been serving as Acting Assistant Secretary for Fish, Wildlife, and Parks since late March while awaiting confirmation of her role as Assistant Secretary for Policy, Management, and Budget.” [Nossaman LLP, [8/9/18](#)]

### **Andrea Travnicek Was An Energy Lobbyist In North Dakota For An Energy Company That Owns At Least One Coal Mining Operation.**

**July 2016 – June 2017: Andrea Travnicek Was A Registered Lobbyist In North Dakota For Allete.**

Lobbyist Registration - 12/30/2016			
Amendment Type	Field Name	Changed From	Changed To
<b>Lobbyist Registration</b> SOS Control ID# <b>0002554634</b> Date <b>12/30/2016</b>	Entity Added	None	Entity: ALLETE 30 W SUPERIOR ST DULUTH, MN 55802-2191 Payor: Date Range: 07/01/2016-06/30/2017
	Entity Added	None	Entity: NEXUS 505 HIGHWAY 169 N STE 500 PLYMOUTH, MN 55441-6447 Payor: Date Range: 07/01/2016-06/30/2017

[North Dakota Secretary of State Lobbying Disclosure, accessed [5/23/19](#)]

**Allete Owned BNI Coal, A Coal Mining Operation In North Dakota.** “ALLETE is the corporate parent of BNI Energy, which owns and operates BNI Coal, LTD., a lignite mine near Center, North Dakota. Two electric generating cooperatives, Minnkota Power and Square Butte, which operate the Milton R. Young Generating Station, consume virtually all of the coal produced by BNI Energy under long-term agreements.” [Allete, accessed [5/23/19](#)]

## One Month After Andrea Travnicsek Was Named An Acting Assistant Secretary Within DOI, The BLM Opened “Nearly 2.4 Million Tons Of...Federal Coal” For Leases Following A Request From A Subsidiary Of A Company Tavnicek Lobbied For

**September 6, 2018: The Bureau Of Land Management Offered Coal Leases On 160 Acres Of Federal Land, Making Available “About 2.4 Million Tons Of Mineable Federal Coal” Following A Request From BNI, An Allete Subsidiary.** “About 2.4 million tons of mineable federal coal will be offered for competitive lease in Oliver County, N.D. in response to a lease by application submitted by BNI Coal Ltd. BNI, a subsidiary of ALLETE Inc., initially submitted an application for a federal coal lease in North Dakota in November 2014 to lease the tract of federal coal at its Center mine, a lignite-producing surface mine. The mine produced about 4.3 million tons of coal in 2017 and 2.1 million tons in the first half of 2018, according to the U.S. Mine Safety and Health Administration. The Bureau of Land Management wrote in a Sept. 6 notice that a lease sale for the 160-acre tract will be held at 11 a.m. on Oct. 10 in the BLM's Billings office. Bids are due at least an hour beforehand. The offered lease will require an annual \$3 per acre rental fee and a royalty of 12.5% of the coal's value payable to the federal government.” [S&P Global, [9/6/18](#)]

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