

# Congress of the United States

Washington, DC 20515

January 8, 2019

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

Dear Acting Secretary Bernhardt:

The U.S. Department of the Interior (DOI) has one of the widest range of responsibilities among the departments that comprise the federal government. DOI's breadth of responsibilities includes the management of more than 400 million acres of federal land, an amount equal to almost one fifth of all the land in the United States.<sup>1</sup> Among one of DOI's most public-facing and important responsibilities is the management of approximately 85 million acres of National Park Service (NPS) properties.<sup>2</sup>

Given this vast responsibility, DOI's efforts to resume operations to the fullest extent practicable under the law during the current partial lapse in appropriations is greatly appreciated. As you may recall, during the October 1-17, 2013 lapse in appropriations, the NPS, at the direction of the Obama Administration, took extraordinary measures to deny the public access to our nation's open-air monuments, memorials, and parks.<sup>3</sup>

For example, starting on the first day of the October 2013 lapse in appropriations, the Obama Administration's NPS began physically barricading open-air monuments and memorials on the National Mall going as far to even turn off its fountains.<sup>4</sup> While the Obama Administration claimed such actions were taken to safeguard "life and property,"<sup>5</sup> it could not prevent the suicide of a man who set himself on fire the afternoon of October 4, 2013 on the National Mall.<sup>6</sup>

---

<sup>1</sup> Carol Hardy-Vincent, Laura A. Henson, Carla N. Argueta, CONG. RESEARCH SERVICE, R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA (2017), available at

<http://www.crs.gov/Reports/R42346?source=search&guid=9b34e8bf4fdd4d5a985c0088d15f0547&index=0>.

<sup>2</sup> National Park Service, Land Resources Division Summary of Acreage (Dec. 31, 2017), available at <https://irma.nps.gov/Stats/FileDownload/11402>.

<sup>3</sup> *As Difficult as Possible: The National Park Service's Implementation of the Government Shutdown: Joint Oversight Hearing Before the H. Comm. on Natural Resources and the H. Comm. on Oversight and Government Reform*, 113th Cong. (Oct. 16, 2013).

<sup>4</sup> Michael E. Ruane, *During a Shutdown, Mall Visitors Will See Barricades, Not Landmarks*, WASH. POST, Oct. 1, 2013, [https://www.washingtonpost.com/local/national-mall-visitors-may-face-barricades-instead-of-welcomes/2013/09/30/8935c22e-29ec-11e3-b139-029811dbb57f\\_story.html?utm\\_term=.b50f9f5c1b5a](https://www.washingtonpost.com/local/national-mall-visitors-may-face-barricades-instead-of-welcomes/2013/09/30/8935c22e-29ec-11e3-b139-029811dbb57f_story.html?utm_term=.b50f9f5c1b5a).

<sup>5</sup> *As Difficult as Possible: The National Park Service's Implementation of the Government Shutdown: Joint Oversight Hearing Before the H. Comm. on Natural Resources and the H. Comm. on Oversight and Government Reform*, 113th Cong. 112 (Oct. 16, 2013) (written testimony of Jon Jarvis, Director, National Park Service).

<sup>6</sup> Max Ehrenfreund, *Man Who Sets Himself on Fire on Mall Dies*, WASH. POST, Oct. 5, 2013, [https://www.washingtonpost.com/local/man-who-set-himself-on-fire-on-mall-dies/2013/10/05/2fc2932e-2ddf-11e3-b139-029811dbb57f\\_story.html](https://www.washingtonpost.com/local/man-who-set-himself-on-fire-on-mall-dies/2013/10/05/2fc2932e-2ddf-11e3-b139-029811dbb57f_story.html).

During the two-week duration of the current partial lapse in appropriations, media reports covered three recent tragic losses of life at NPS sites.<sup>7</sup> In one case, a 14-year-old girl fell to her death at the Horseshoe Bend Overlook, which is part of the Glen Canyon Recreation Area. At Yosemite National Park, a man succumbed to a head injury from falling at the park. Another woman was killed at Great Smoky Mountains National Park by a falling tree. Four other deaths during the current partial lapse in appropriations at NPS sites reportedly occurred from suicides. Media has reported these deaths in the context of the “decision by Trump [A]dministration officials to leave . . . [some] parks open . . . .”<sup>8</sup>

Unfortunately, with approximately 330 million annual visitors, some instances of death and injury at the 418 NPS sites are inevitable regardless of the federal government’s operational status. In some parks, such as Yosemite National Park, deaths are common enough to spur documentation there for nearly 170 years and even become the subject of a book.<sup>9</sup> According to one report, “1,025 people died in national parks from 2007 to 2013.”<sup>10</sup> In other words, during that seven-year period, approximately three deaths a week occurred at NPS sites, which is not a significant departure from the death rate reported during the current partial lapse in appropriations.

In October 2013, the Obama Administration potentially violated appropriations law in its attempt to maximize the shutdown’s punitive impact on the American people for political gain. Contrary to the Antideficiency Act’s requirements, NPS made expenditures in excess of the amount available in its appropriation by acquiring and erecting barricades at NPS sites beyond cases of imminent threat to the safety of human life or the protection of property as permitted under 31 U.S.C. §1342. During an October 16, 2013 congressional hearing, then-Representative Trey Gowdy asked then-NPS Director Jon Jarvis, if Mr. Jarvis could cite “the regulation that required [NPS] to erect barricades to prevent veterans from accessing [the World War II memorial].”<sup>11</sup> In response, Mr. Jarvis partially testified, “The Anti-Deficiency Act requires that I reduce all employees down to only those that are necessary for life and property.”<sup>12</sup> Subsequently, I asked if Mr. Jarvis could provide a “specific threat to . . . property or life . . . on the [National] [M]all that is different now than before the shutdown.”<sup>13</sup> Mr. Jarvis could not provide specifics and further testified that erecting such barricades was an abnormal practice.<sup>14</sup> Based on Mr. Jarvis’ failure to testify to the contrary, I concluded that NPS had “created a new

---

<sup>7</sup> Darryl Fears and Juliet Eilperin, *Three Dead in National Park System Accidents as Shutdown Wears On*, WASH. POST, Jan. 5, 2019, [https://www.washingtonpost.com/energy-environment/2019/01/04/three-dead-national-parks-shutdown-wears/?utm\\_term=.ddf69e89688f](https://www.washingtonpost.com/energy-environment/2019/01/04/three-dead-national-parks-shutdown-wears/?utm_term=.ddf69e89688f).

<sup>8</sup> *Id.*

<sup>9</sup> CHARLES R. FARABEE AND MICHAEL PATRICK GHIGLIERI, *OFF THE WALL: DEATH IN YOSEMITE*, (Puma Press) (2007), as cited in Julia Zorthian, *5 Times Yosemite National Park Turned Deadly*, TIME, Sept. 28, 2017, <http://time.com/4961347/yosemite-national-park-death-climbing-el-capitan/>.

<sup>10</sup> Mark Morgenstein, *Despite Recent Deaths, U.S. National Parks Generally Safe*, CNN, Aug. 11, 2015, <https://www.cnn.com/travel/article/national-park-deaths-grizzly-bear-attack-safety/index.html>.

<sup>11</sup> Hearing, *supra* note 5 at 56-57.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 68-69.

<sup>14</sup> *Id.*

obligation” through the barricading of NPS sites on the National Mall in violation of the Antideficiency Act.<sup>15</sup>

By contrast, yesterday, NPS Deputy Director Daniel Smith stated, “As the lapse in appropriations continues, it has become clear that highly visited parks with limited staff have urgent needs that cannot be addressed solely through the generosity of our partners.”<sup>16</sup> Specifically, you and Mr. Smith are seeking to “address the maintenance and sanitation issues that have arisen at a number of highly visited parks” through the use of fee balances from the Federal Lands Recreation Enhancement Act (FLREA).<sup>17</sup> As reemphasized in my letter to you also signed by representatives Chris Stewart and John Curtis, certain parks in Utah face public safety and property risks warranting an exception to the Antideficiency Act.<sup>18</sup> Representative Tom McClintock also wrote you a similar letter in regards to certain parks in California.<sup>19</sup>

As outlined in 31 U.S.C. §1342, I believe that there exists an emergency involving the safety of human life or the protection of property at some NPS sites. The growing garbage and sanitation issues at some NPS sites present a reasonable circumstance to utilize FLREA balances to ensure public safety and protect NPS property. I also appreciate that the decision to use FLREA funds was made after thorough deliberation and in consultation with DOI’s Office of the Solicitor. In sum, I concur with Mr. Smith’s statement that FLREA funds “can and should be used to provide immediate assistance and services to highly visited parks during the lapse in appropriations.”<sup>20</sup> I commend your actions to minimize the lapse in appropriations’ disruption to the American people’s safe enjoyment of our public lands.

To better understand NPS’s contingency plan for the current partial lapse in appropriations, please provide a briefing to Republican staff, and produce the following documents and information as soon as possible:

1. A document sufficient to show the number and manner of reported deaths at NPS sites from January 1, 2014 to present;
2. A document sufficient to show the number of deaths at NPS sites during the lapses in appropriations from November 14, 1995 through November 19, 1995; from

---

<sup>15</sup> *Id.*

<sup>16</sup> Miranda Green, *House Panel to ‘Demand Answers’ on Interior’s Move to Use Visitor Fees to Keep Parks Open*, THE HILL, Jan. 6, 2019, <https://thehill.com/policy/energy-environment/424092-house-committee-to-demand-answers-on-interiors-decision-to-use-fee>.

<sup>17</sup> *Id.*

<sup>18</sup> Letter from Hon. Rob Bishop, Hon. Chris Stewart, and Hon. John Curtis to Hon. David Bernhardt, Acting Secretary of the Interior (Jan. 4, 2019) available at <https://robbishop.house.gov/sites/robbishop.house.gov/files/Scanned%20from%20a%20Xerox%20Multifunction%20Printer.pdf>.

<sup>19</sup> Letter from Hon. Tom McClintock to Hon. David Bernhardt, Acting Secretary of the Interior (Jan. 4, 2019) available at <https://mcclintock.house.gov/sites/mcclintock.house.gov/files/Bernhardt%20Park%20Letter.pdf>.

<sup>20</sup> Nancy Trejos, *National Park Service Plans to Use Entrance Fees to Keep Major Parks Open During Shutdown*, USA TODAY, Jan. 6, 2019, <https://www.usatoday.com/story/travel/2019/01/06/national-park-service-use-entrance-fees-keep-parks-open/2496709002/>

The Honorable David Bernhardt

January 8, 2019

Page 4

December 16, 1995 through January 6, 1996; and from October 1, 2013 through October 16, 2013;

3. A document sufficient to show the number of illicit entries estimated during NPS site closures;
4. All documents and communications, including but not limited to, emails and memoranda, referring or relating to NPS's ability to use FLREA funds during lapses in appropriations; and
5. Documents sufficient to identify any and all circumstances deemed as emergencies involving the safety of human life or the protection of property during the current partial lapse in appropriations that warrant exception to the Antideficiency Act.

Please deliver your response to room 1329 of the Longworth House Office Building. If possible, it is preferred to receive your response in electronic format.

Please contact the Republican Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,



Rob Bishop  
Ranking Republican  
Committee on Natural Resources