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August 19, 2020

Heather Gottry  
Designated Agency Ethics Official  
U.S. Department of Interior  
1849 C Street, NW, Mail Stop 7352  
Washington, D.C. 20240

Dear Ms. Gottry:

On March 20, 2018, and again on February 12, 2019, Public Citizen wrote to your office expressing concern that David Bernhardt, now Secretary of Interior, worked on particular issues on behalf of specific parties as part of his previous occupation as an energy lobbyist that seem to pose serious conflicts of interest with his official duties. Public Citizen requested that your office investigate whether such conflicts of interest may present violations of paragraphs 6 and 7 of President Donald Trump's ethics Executive Order No. 13770 and perhaps the conflict of interest code itself.

Both requests for an investigation went unanswered and so, presumably, were dismissed.

Last week, the independent Office of Inspector General for the Interior Department found that department staff deliberately withheld 253 pages of documents from the Senate and House Natural Resources Committees as well as the public that may have provided further insight into Bernhardt's potential conflicts of interest.<sup>1</sup> Following Bernhardt's confirmation as Secretary of the Interior in April 2019, the department staff eventually released redacted versions of all but 38 pages of these documents. Rep. Raul Grijalva (D-Ariz.), chairman of the House Natural Resources Committee, and Sen. Ron Wyden (D-Ore.), member of the Senate Energy and Natural Resources Committee, called for a criminal investigation as to whether Interior Department staff orchestrated a cover-up to protect Bernhardt during his confirmation hearing.<sup>2</sup>

The withholding of these documents from congressional and public view may well have unduly influenced the confirmation of Bernhardt as Interior Secretary. In the same vein, if these documents were kept from your office, the withholding of pertinent information related to Bernhardt may also have unduly influenced the decision by the Interior Designated Agency Ethics Official (DAEO) *not* to carry through with an investigation of potential conflicts of interest.

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<sup>1</sup> Office of Inspector General, U.S. Department of Interior, *Alleged interference in POIA litigation process* (Aug. 11, 2020) available at: <https://www.doiig.gov/reports/alleged-interference-foia-litigation-process>

<sup>2</sup> Chair Raul Grijalva, House Natural Resources Committee, *Press release* (Aug. 11, 2020), available at: <https://naturalresources.house.gov/media/press-releases/wyden-and-grijalva-on-new-interior-inspector-general-report-officials-orchestrated-a-cover-up-to-protect-secretary-bernhardt-during-his-confirmation>

In light of these recent revelations of withheld information regarding Bernhardt, Public Citizen requests that the ethics office of the Department of Interior scrutinize these recently-released documents and other relevant information and investigate whether David Bernhardt's previous occupation as a lobbyist on energy affairs and other natural resources issues<sup>3</sup> involves sufficient conflicts of interest to cause violations of paragraphs 6 and 7 of Trump's ethics Executive Order or the conflict of interest code (18 U.S.C. §208).

Public Citizen's previous complaints are attached.

Respectfully Submitted,



Craig Holman, Ph.D.  
Government affairs lobbyist  
Public Citizen  
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<sup>3</sup> Public Citizen, *Bernhardt Buddies: Conflicts of Interest Abound at Trump's Interior Department* (January 15, 2020) <https://www.citizen.org/article/bernhardt-buddies/>



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February 12, 2019

Scott de la Vega  
U.S. Department of Interior  
Designated Agency Ethics Official  
1849 C Street, NW  
Mail Stop 7352  
Washington, D.C. 20240

Dear Mr. de la Vega:

On March 20, 2018, Public Citizen wrote to your office expressing concern that David Bernhardt's conduct as Deputy Secretary of the Interior appears to be in violation of Paragraph 7 of President Donald Trump's ethics Executive Order No. 13770.

Bernhardt had served as a registered lobbyist at Brownstein Hyatt Farber Schreck LLP from 2011 through 2016. Bernhardt lobbied on a wide range of issues involving development projects and environmental issues, including the Bureau of Reclamation, the Endangered Species Act, and energy and water appropriations. (LD-2 disclosure form is attached.)

Bernhardt's oversight of matters involving issues on which he lobbied appears to run afoul of Paragraph 7 ethics restrictions that prohibit a former lobbyist appointed to a position in the Trump administration from participating, for two years after his appointment, in the same specific issue areas lobbied on within the two years preceding his appointment. We received no response from your office.

Our concern that Bernhardt's oversight of specific issues on which he lobbied violates the President Trump's ethics order has become even more pressing because of a recent news report that Bernhardt not only may have been actively influencing public policies concerning issues on which he previously lobbied, but also may have taken official actions favoring the same clients who hired him.

Bernhardt has reportedly opened a broad, national effort to overhaul the Endangered Species Act. In an interview, Bernhardt acknowledged that, four months after joining the Interior Department, he directed David Murillo, Interior's senior water-resources official, to weaken protections for smelt fish and the Chinook salmon, to free up river water for agriculture – the same issues on which he had previously lobbied.

Furthermore, Bernhardt's official actions appear to directly and substantially benefit the Westlands Water District, a California state-chartered organization, as well as its members, who were Bernhardt's clients. As noted in the news article: "At the same time, [Bernhardt] has taken a hands-on approach in the narrow policy change of removing protections for the delta smelt, which could deliver an economic win in the

Westlands Water District.... Westlands would likely be the main beneficiary, according to Jeffrey Mount, a water management expert with the Public Policy Institute of California.”<sup>1</sup>

This action involving the interests of Bernhardt’s former client would mean that Bernhardt may also be in violation of Paragraph 6 of Trump’s ethics Executive Order No. 13770, which prohibits appointees to the Trump administration from taking official actions in the first two years after their appointment involving any particular matter that directly and substantially relates to their former clients.

Once again, Public Citizen requests that your office investigate whether David Bernhardt’s actions as Deputy Secretary of the Interior violate Paragraph 7 of Trump’s ethics Executive Order prohibiting former lobbyists from taking actions in an official capacity overseeing the same specific issue areas they lobbied, and now also requests that you investigate whether Bernhardt’s official actions benefiting the Westlands Water District violate Paragraph 6 of Trump’s ethics Executive Order prohibiting an appointee from taking official actions that directly and substantially relate to particular matters on which they lobbied.

Respectfully Submitted,



Craig Holman, Ph.D.  
Government affairs lobbyist  
Public Citizen’s Congress Watch division  
215 Pennsylvania Avenue SE  
Washington, D.C. 20003

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<sup>1</sup> Coral Davenport, “Top leader at Interior Dept. pushes a policy favoring former client,” New York Times (Feb. 12, 2019), available at: <https://www.nytimes.com/2019/02/12/climate/david-bernhardt-endangered-species.html>



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March 20, 2018

Melinda Loftin  
1849 C Street, NW  
Mail Stop 7352  
Washington DC 20240

Dear Ms. Loftin:

Public Citizen is writing to express its concern about the implementation and enforcement of paragraph 7 of President Donald Trump's ethics Executive Order No. 13770. Paragraph 7 of the executive order expressly prohibits former lobbyists from working in the administration on the same "specific issue area" they had lobbied within the previous two years, unless a waiver has been issued. A recent study by Public Citizen has identified that David Bernhardt, Deputy Secretary of the Interior, appears to be working on the same specific issue areas he had lobbied on within the last two years, and has not received a waiver from the ethics rules.

Public Citizen requests an explanation from your office for this anomaly.

Paragraph 7 of Executive Order No. 13770 requires political appointees into the Trump administration to pledge:

If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

Using a partial list of 572 political appointees into the administration, Public Citizen has documented dozens of former lobbyists who appear to be overseeing the same specific issue areas they had lobbied in the previous two years, but only four have been recognized as such by the administration and received ethics waivers. At least 32 others appointees appear to be in violation of the executive order with no publicly disclosed waivers from the conflict of interest rule. The study is available at: <http://bit.ly/2wpZ0JV>

Paragraph 7 is a critical provision of Trump's ethics executive order designed to prevent former lobbyists from unduly influencing official actions of the administration solely in the interests of their paying clients. It is important that the White House Counsel and agency ethics officers take the necessary steps to ensure compliance to this conflict of interest rule.

The fact that so many appointees appear not to be in compliance raises serious questions about

the commitment of the administration to its own ethics rules.

Public Citizen respectfully requests a response to this query at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig B Holman".

Craig Holman, Ph.D.  
Government affairs lobbyist  
Public Citizen's Congress Watch division