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August 7, 2017

Melinda Loftin  
Designated Agency Ethics Official and Director, Ethics Office  
U.S. Department of the Interior  
1849 C Street, NW, MS 7346  
Washington, DC 20240

CC: Shelley K. Finlayson, Chief of Staff & Program Counsel, OGE

**RE: Recusal of Deputy Secretary David Bernhardt from decisions that may benefit his former clients at Brownstein, Hyatt, Farber, and Schreck, LLP.**

Dear Ms. Loftin,

I am writing today on behalf of Greenpeace USA, and our more than half a million supporters across the United States. Greenpeace is a global and independent organization committed to exposing environmental problems and promoting solutions essential to a thriving planet and the human race.

Deputy Interior Secretary David Bernhardt must recuse himself from any decisions that may benefit his former clients he served while he worked as a partner at Brownstein, Hyatt, Farber, and Schreck, LLP. To date, we have seen little evidence that Mr. Bernhardt has recused or will recuse himself from critical upcoming decisions on the Antiquities Act, offshore drilling, the Endangered Species Act, and Bureau of Land Management oil and gas leasing. Therefore, we are writing to the Department of the Interior Ethics Office to publicly urge Deputy Secretary Bernhardt to recuse himself from these decisions and any discussions relevant to these issues. We also request that you make public any information relevant to this decision, including any information about recusals, waivers requested or sought, and further ethics disclosures.

Department of the Interior is currently considering changes to a number of fundamental safeguards and protections with serious implications for public lands and waters, climate change, and the fate of oil and gas producers. Among these are revisions to the Antiquities Act that could open national monuments like Bears Ears to oil and gas drilling, and a review of the 5-year offshore drilling plan that may open up coastal waters to new exploration. The public expects that these decisions will be made in accordance with the highest ethical standards, in a transparent and democratic process.

Until his recent confirmation, Mr. Bernhardt was a partner in the firm Brownstein, Hyatt, Farber, and Schreck, LLP (BHFS), where he ran the natural resources practice. Because he started and chaired the Natural Resources Department, most or all of BHFS's energy work was overseen by Mr. Bernhardt.<sup>1</sup> His former clients include companies and trade associations that will be impacted directly by Department of the Interior

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<http://www.bhfs.com/news/2013/BrownsteinHyattFarberSchreckAnnouncesEnergyEnvironmentandResourceStrategiesDepartment>

decisions involving oil, gas, and coal leasing, the Antiquities Act, and the Endangered Species Act. As Deputy Secretary, Mr. Bernhardt will likely have significant decision-making authority over these issues.

- The Colorado Oil and Gas Association (COGA) paid BHFS \$643,838 in 2014.<sup>2</sup> That same year Mr. Bernhardt ran a team of lawyers that successfully argued to overturn democratically approved regulations on the oil and gas industry. He directed litigation on behalf of COGA, which represents some of the largest onshore oil and gas corporations in the US, including companies drilling near national Monuments like Bears Ears, including the Bill Barrett Corporation.<sup>345</sup>
- The Independent Petroleum Association of America (IPAA) paid Mr. Bernhardt's firm \$158,494 in 2014. IPAA is a lobbying group funded by oil and gas corporations. Members of IPAA include companies with significant leases granted by Department of Interior. Corporations like Anadarko Petroleum and Devon Energy would stand to directly and substantially benefit from changes to the Antiquities Act, the opening up of more public lands to drilling, and the dismantlement of permitting rules.<sup>6</sup>
- Mr. Bernhardt is also closely tied to the Western Energy Alliance (WEA), a lobbying arm of the oil and gas industry. BHFS partner Mark Mathews is an advisor to WEA. Mr. Bernhardt worked closely with Mr. Matthews in BHFS's energy practice, and oversaw Mr. Matthews' work during the COGA litigation.<sup>7</sup> WEA promises "aggressive media and public relations messaging" and to "actively influence regulatory actions and legislation on behalf of your business." Alongside IPAA, WEA is a main driver of lawsuits against BLM oil and gas regulation. WEA meets and lobbies Department of Interior regularly.<sup>8910</sup>
- Mr. Bernhardt has worked with several groups that undermine protections for endangered species. COGA, IPAA, WEA, Safari Club International, and the Center for Environmental Science Accuracy and Reliability (CESAR) consistently sue and otherwise oppose listing species as endangered, and the protections for species already listed.<sup>1112</sup> Mr. Bernhardt has both litigated against ESA listings, as well as testified to Congress regarding the ESA on behalf of his clients. Any work by Mr. Bernhardt on ESA issues would violate the Ethics Pledge.

<sup>2</sup> <https://www.documentcloud.org/documents/3862768-COGA-990s-2009-2014.html>

<sup>3</sup> [http://www.timescall.com/longmont-local-news/ci\\_29839751/colo-supreme-court-strikes-down-longmont-fracking-ban](http://www.timescall.com/longmont-local-news/ci_29839751/colo-supreme-court-strikes-down-longmont-fracking-ban)

<sup>4</sup> <https://www.documentcloud.org/documents/3767021-Brownstein-S-Mark-Mathews-and-Wayne-Forman-Win.html>

<sup>5</sup> <http://www.coga.org/wp-content/uploads/2017/05/2017-Membership-Listing-5-3-17.pdf>

<sup>6</sup> <https://www.documentcloud.org/documents/3861664-David-Bernhardt-Financial-Disclosure-2014.html#document/p5/a357001>

<sup>7</sup> <https://www.google.com/url?q=https://www.documentcloud.org/documents/3767021-Brownstein-S-Mark-Mathews-and-Wayne-Forman-Win.html&sa=D&ust=1501778252381000&usg=AFQjCNFHYv2Vfho162ADKDyCerv70ft72w>

<sup>8</sup> <http://www.bhfs.com/services/practices/energynaturalresources>

<sup>9</sup> <http://www.bhfs.com/people/attorneys/l-o/mmathews>

<sup>10</sup> <https://www.westernenergyalliance.org/printpdf/507>

<sup>11</sup> <http://westernpriorities.org/2014/05/01/4332/>

<sup>12</sup> <http://www.ipaa.org/ipaa-comments-usfws-proposed-policy-voluntary-prelisting-conservation-actions/>



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President Trump's Executive Order 13770 states: "I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts."<sup>13</sup>

Likewise, Department of the Interior's Recusal Best Practices Guidelines state: "A recusal is appropriate when a conflict of interest exists between an employee's job duties and financial interests (including interests in future employment) or certain business or personal relationships or outside activities."<sup>14</sup>

Writing to the Senate, Mr. Bernhardt acknowledged the possibility of conflicts of interest, stating, "For a period of one year after my withdrawal, I also will not participate personally and substantially in any particular matter involving specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5C.F.R § 2635.502(d). In addition, I will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d)."<sup>15</sup>

However, to date, Mr. Bernhardt has refrained from recusing himself from any upcoming decisions. Major decisions on the Antiquities Act could come during the month of August, so we expect a clear and timely recusal.

Department of the Interior ethics officers have important roles to play in communicating with the Deputy Secretary and giving advice on how to comply with his stated commitments, when to recuse himself and what guidelines there are for waivers. As always, we expect that these decisions and the reasoning behind them will be transparently communicated to the public.

We respect your thorough and thoughtful consideration of this issue and trust you will respond with the urgency required in this short timeline.

Sincerely,

Annie Leonard  
Executive Director  
Greenpeace USA

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<sup>13</sup> <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>

<sup>14</sup> <https://www.doi.gov/ethics/conflicts>

<sup>15</sup> <https://www.documentcloud.org/documents/3862923-Bernhardt-Recusal-Letter.html>