



David Longly Bernhardt

Shareholder

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Washington, DC

David Longly Bernhardt is chair of the firm's Natural Resources Department and represents a wide range of clients in rulemakings, regulatory enforcement proceedings, adjudications and permitting reviews. In addition, David provides comprehensive strategic counsel to several corporate, government and non-profit entities. His multi-disciplinary practice provides advocacy and advice to clients on issues originating from Federal administrative agencies, the White House, Congress and the courts, with special emphasis on issues, transactions and cases related to the environment, energy, natural resources and wildlife.

David has recently represented:

- The Nation's largest federal water contractor in the Ninth Circuit Court of Appeals regarding Endangered Species Act litigation involving the Bay-Delta in California, a case widely considered one of the most complex Endangered Species litigation cases in the country.
- A national trade association in Federal District Court interested in defending the U.S. government's decision to proceed with an offshore lease sale under the Outer-Continental Shelf Lands Act.
- An entity challenging the U.S. Fish and Wildlife Service for violating the Endangered Species Act in Federal District Court.
- Alternative energy developers involved in projects seeking to comply with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management, the Endangered Species Act, the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.
- An electric transmission facilities developer that crosses lands in federal jurisdiction.
- Mining companies who intend to develop potash or copper resources on private, state and Federal lands.
- A mining company undergoing an audit regarding royalty payments.
- An entity under investigation by a Federal Agency.
- An entity involved in energy development on Indian lands.
- Entities accused of violating the Department of the Interior's regulations.

David's practice is based on extensive experience gained from his public service both as the Department of the Interior's chief legal counsel and as a policymaker who led efforts related to species conservation, conventional and alternative energy development, natural resources planning, environmental compliance, climate change and Indian affairs.

In 2006, David was unanimously confirmed by the United States Senate to serve as the Solicitor of the Department of the Interior. Prior to serving as Solicitor, he held several high level positions with the Interior including: Deputy Solicitor, Deputy Chief of Staff, Counselor to the Secretary of the Interior, and Director of the Office of Congressional and Legislative Affairs.

As Solicitor, David was the Chief Legal Officer and third ranking official for the U.S. Department of the Interior. He provided advice and counsel on a wide range of legal and policy matters to each of the agencies that make up the Department of the Interior, while leading a team of nearly 500 attorneys and staff.

In addition to his responsibilities at the Department of Interior, in 2007 David was appointed by President

Bush to lead the International Boundary Commission between the United States and Canada where David was responsible, along with his Canadian counterpart, for maintaining the 5,525 mile international boundary between these two nations.

Throughout his tenure at the Department of the Interior, David played a lead role in several of the Department's most challenging and significant matters by:

- Serving as primary counsel for the determination that the polar bear was a threatened species under the Endangered Species Act (ESA) and developing a special rule for the application of Section 9 of the ESA to threatened polar bears.
- Issuing multiple M-Opinions formalizing the Department of the Interior's legal interpretation regarding various statutes including: the Endangered Species Act (ESA), the Mineral Leasing Act, the Outer Continental Shelf Lands Act (OCS), the Marine Mammal Protection Act, and the Indian Gaming Regulatory Act.
- Co-chairing the Department of the Interior's Energy Coordination Council, whose purpose was to facilitate the implementation of the Energy Policy Act of 2005.
- Successfully negotiating on behalf of the Department of the Interior and subsequently leading the implementation of the Arizona Water Rights Settlement Act of 2005, one of the largest Indian water rights settlements in U.S. history.
- Leading the Department of the Interior's team that worked with representatives of the environmental community, the State of Colorado, local governments and various water users to successfully resolve longstanding litigation regarding the federal reserved water right for the Black Canyon of the Gunnison National Park.
- Serving as the Department of the Interior's lead agency counsel on numerous litigation matters ranging from multi-billion dollar civil litigation cases to certain matters before the Supreme Court of the United States and other federal appellate courts.
- Playing a significant role in the development of multiple land use plans, offshore energy leasing programs, and developing new regulatory paradigms related to conventional and alternative energy development, including enhancing NEPA compliance practices and wildlife conservation measures.

Prior to his service within the Executive Branch, David was an associate at Brownstein from 1998-2001.

Practices

Endangered Species, Energy, Energy, Environment & Resource Strategies, Mining, Public Lands

Representative Matters

- Successfully represented oil and gas trade association in federal district court matter related to the Endangered Species Act, resulting in dismissal of the underlying action.
- Advocated for policy changes and funding related to water efficiency, water reuse, water supply, and groundwater management on behalf of a water agency serving nearly 4 million people.
- Brownstein is working alongside one of the largest federal water contractors in the United States to ensure that its members have a long-term dependable supply of water to meet project purposes.
- Given its significant experience related to the implementation of the Endangered Species Act, Brownstein was selected to provide strategic direction to a major national nonprofit foundation regarding the proposed determination of whether the African lion is an endangered species as defined by the Endangered Species Act.
- Brownstein is collaborating with a greenfield mining company to implement an infrastructure development program that minimizes the length of time necessary to complete the state and federal permitting process.
- The firm is assisting Rosemont in development of one of the largest copper mines in the world. Specifically,

we are advising the company on all aspects of obtaining NEPA and Endangered Species permitting issues. We are also working closely with Rosemont to promptly obtain all necessary air, water and land use approvals.

- Represented a uranium mining company in obtaining NEPA approval and to address federal and state stipulations regarding the Sage Grouse. Brownstein is working closely with the company to make sure that federal and state regulations are reasonable and permit ongoing production.
- Provide federal representation to a major western water district in connection with a dispute over the Department of the Interior's management of the district's water supply.
- Represent one of the largest water districts in the State of Arizona in connection with the NEPA review of a coal-fire powered plant.

News & Events

- Brownstein's Mark Mathews And Wayne Forman Win Challenge In Colorado Supreme Court
- David Bernhardt Testifies Before House Congressional Hearing on the Endangered Species Act
- Brownstein Hyatt Farber Schreck Announces Energy, Environment and Resource Strategies Department
- A View from Washington - The Current State of Natural Resources Law
- The Impact of the Midterm Election on Energy Policy
- From the Potomac to the Platte: How Public Policy Impacts Land Use and Real Estate NOW
- Brownstein Shareholder David Bernhardt Speaks on the Impacts of the Oil Spill
- The Promise & Peril of Oil Shale
- David Bernhardt to present at ALI-ABA Course of Study, "Species Protection: Critical Legal Issues"
- Renewable Energy Speaker Series: The Role of Transmission and Smart Grid Technology in the West

Community

Board of Trustees, The Keystone Center

Publications & Presentations

- National Water Resources Association Annual Conference 2015, National Water Resources Association Annual Conference 2015
- Fish and Wildlife Service: The President's FY 2016 Budget Request, Testimony before U.S. Senate Committee on Environment and Public Works, United States Senate, May 6, 2015
- 2015 Washington Outlook, *Brownstein Client Alert*, Feb. 2, 2015
- Republicans Won Control of the U.S. Senate—Now What?, *Brownstein Client Alert*, November 6, 2014
- 2014 Washington Outlook, *Brownstein Client Alert*, January 30, 2014
- Proposed Carbon Rules for New Power Plants: What They Are and What They Mean, *Brownstein Client Alert*, September 20, 2013
- Obama's Climate Change Agenda Revealed, *Brownstein Client Alert*, June 25, 2013
- The U.S. Fish and Wildlife Service Wants to Hear From You, but Don't Count Your Credits Too Quickly, *Irrigation Leader Magazine*, April 2012
- ESA News from Washington, DC, Speaker, 19th Annual Endangered Species Act Conference, Seattle, WA, January 26-27, 2012
- 2012 Water Users Conference, El Dorado Hotel and Casino, Reno, NV, January 25-27, 2012

Education

- J.D., with honors, The George Washington University Law School
- B.A., University of Northern Colorado

Admissions

- Colorado
- District of Columbia
- Arizona, 2013
- U.S. District Court, District of Columbia
- U.S. Court of Appeals, Ninth Circuit

Recognition

Board Member, Virginia Board of Game and Inland Fisheries