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July 20, 2017

The Honorable Lisa Murkowski
Chairwoman, Committee on Energy and Natural Resources
United States Senate
522 Hart Senate Office Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member, Committee on Energy and Natural Resources
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

Dear Chairwoman Murkowski and Ranking Member Cantwell:

As you may be aware, earlier today, Campaign for Accountability filed a complaint with the United States Attorney for the District of Columbia requesting an investigation into whether David Bernhardt, nominee for Deputy Secretary of the Department of Interior, violated the Lobbying Disclosure Act. Western Values Project also has discovered that Mr. Bernhardt may not have provided truthful answers in response to questions submitted to him by this Committee. Therefore, Western Values Project respectfully requests that a vote on Mr. Bernhardt's nomination be delayed until a full investigation of this matter has been conducted.

The complaint against Mr. Bernhardt was based on emails recently uncovered that show Mr. Bernhardt continued to advise Westlands Water District on legislative affairs after he withdrew his registration as a lobbyist for the organization on November 18, 2016.

If Mr. Bernhardt did, indeed, violate the Lobbying Disclosure Act, he also may have committed the additional violation of lying to Congress.

On May 18, 2017, in response to a question for the record from Ranking Member Maria Cantwell regarding whether Mr. Bernhardt continued to advise any members of Congress or congressional staff on behalf of the Westlands Water District, Mr. Bernhardt responded, "I have not engaged in regulated lobbying on behalf of Westlands Water District after November 18th, 2016."

E-mails that first came to light after E&E News reported on the results of a public records request seem to contradict this statement. Specifically, the emails show the following:

On November 22, 2016, David Bernhardt confirmed he could attend a conference call concerning “legislation for next year” with a Westlands representative and two members of Congress, Rep. Devin Nunes and Rep. David Valadao.

On November 22, 2016, Westlands Water District’s Deputy General Manager for External Affairs, Johnny Amaral, asked David Bernhardt if he was available to call into a meeting “with David Valadao and Devin Nunes” to “talk about legislation for next year.” Bernhardt responded “Yes, but we need legislation for this year.” [See Exhibit 1]

On November 30, 2016, David Bernhardt confirmed his availability for a conference call that day with Rep. Devin Nunes’s Chief of Staff Anthony Ratekin.

On November 30, 2016, Westlands Water District’s Deputy General Manager for External Affairs, Johnny Amaral, asked David Bernhardt if he had “time to do a call with [him] and Anthony Ratekin from Nunes office... around 9:15 PST” Bernhardt replied that he would only have 15 minutes, and when further asked if the group could “use the Monday morning conf call line” Bernhardt responded in the affirmative. [See Exhibit 2]

On December 9, 2016, Rep. Kevin McCarthy’s then Senior Policy Advisor and Counsel, Matt Kellogg, sent David Bernhardt an e-mail thanking him for “all of [his] help with this.”

On December 9, 2016, Matt Kellogg sent an e-mail from his House of Representatives E-Mail address to David Bernhardt. The e-mail was regarding “Successor Biological Opinion Language” and Kellogg said “I just wanted to thank you for all of your help with this.” That same day, David Bernhardt forwarded the e-mail to Westlands Water District’s Deputy General Manager for External Affairs, Johnny Amaral. [See Exhibit 3]

On January 2, 2017, Legislative Director for Rep. David Valadao e-mailed David Bernhardt and a Westlands official for their opinion on legislative language.

On January 2, 2017, Kristina Dunklin, Legislative Director for Congressman David Valadao, sent David Bernhardt and Westlands Water District’s General Manager Tom Birmingham an e-mail requesting their “take on the San Joaquin River Settlement language in H.R. 2898 (sec. 313) as replacement for the language in the draft bill sent in early December.” Bernhardt then forwarded the

e-mail to Johnny Amaral, the Deputy General Manager for External Affairs at Westlands Water District. [See Exhibit 4]

These same emails also show that Mr. Bernhardt, among other things, was involved in work that included drafting language for an executive order by then president-elect Donald Trump on behalf of Westlands Water District.

In short, these emails suggest that Mr. Bernhardt was continuing to advise congressional staff and potentially members of Congress after November 18, 2016 in contradiction of his response to Senator Cantwell on May 18, 2017.

Pursuant to 18 U.S.C. § 1001(a)(2), it is a crime to “knowingly and willfully . . . make any materially false, fictitious, or fraudulent statement or representation” to Congress. Further, under 18 U.S.C. § 1505 and § 1515(b), it is a crime to obstruct an inquiry of Congress by making of “a false or misleading statement.” It appears that Mr. Bernhardt’s statement that he had “not engaged in regulated lobbying on behalf of Westlands Water District after November 18th, 2016” was untrue.

Adherence to a rule of law demands that those who deliberately lie or mislead Congress be held accountable. Further, Americans have a right to expect that those who seek top government positions will not lie to their elected representatives and that if they do, the consequences will be swift and severe. In 1977, when considering another matter involving a government official who lied to Congress, Judge Barrington D. Parker stated, “Public officials at every level, whatever their position, like any other person, must respect and honor the Constitution and the laws of the United States.”

Given the high office to which Mr. Bernhardt hopes to accede, it is imperative for the committee and the American people to have clarity as to whether he provided a truthful response to a clear question. Therefore, Western Values Project requests that you refer this matter to the Department of Justice for further investigation.

Sincerely,

Jayson O’Neill
Deputy Director
Western Values Project

CC:

The Honorable Mitch McConnell, Senate Majority Leader
The Honorable Chuck Schumer, Senate Minority Leader

Exhibit 1

From: Bernhardt, David L. <DBernhardt@BHFS.com>
Subject: RE: Conference call
Date: November 22, 2016 at 11:15:31 AM EST
To: 'Johnny Amaral' <jamaral@westlandswater.org>

Yes, but we need eggs at on for th s year.

-----Original Message-----

From: Johnny Amara [mailto:jamaral@westlandswater.org]
Sent: Tuesday, November 22, 2016 11:15 AM
To: Bernhardt, David L.
Subject: Conference call

I'm attending a meeting at 10:30 Pacific time and I may need you to convene a conference call. Are you available at 1:30 Eastern just in case?

It's a meeting with David Vadao and Devin Nunes at Devin's office in CA and they want to talk about eggs at on for next year

Best,

Johnny Amara
Deputy General Manager - External Affairs
Westlands Water District

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Exhibit 2

From: Bernhardt, David L. <DBernhardt@BHFS.com>
Subject: Re: Conf call
Date: November 30, 2016 at 12:12:51 PM EST
To: Johnny Amaral <jamaral@westlandswater.org>

Yes

David Bernhardt

> On Nov 30, 2016, at 12:08 PM, Johnny Amara <jamara@westlandswater.org> wrote:

>

> That's fine. It won't even take that long. Can we use the Monday morning conference?

>

> -----Original Message-----

> From: Bernhardt, David L. [mailto:DBernhardt@BHFS.com]

> Sent: Wednesday, November 30, 2016 9:07 AM

> To: Johnny Amara

> Subject: RE: Conf call

>

> I would have 15 minutes.

>

> -----Original Message-----

> From: Johnny Amara [mailto:jamara@westlandswater.org]

> Sent: Wednesday, November 30, 2016 12:04 PM

> To: Bernhardt, David L.

> Subject: Conf call

>

>

> Do you have time to do a call with me and Anthony Ratekin from Nunes office. Maybe around 9:15 PST?

>

> Best,

>

> Johnny Amara

> Deputy General Manager - External Affairs Westlands Water District

>

>

>

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Exhibit 3

From: Bernhardt, David L. <DBernhardt@BHFS.com>
Subject: Fwd: Successor Biological Opinion Language
Date: December 9, 2016 at 11:24:43 AM EST
To: Johnny Amaral <jamaral@westlandswater.org>

FYI

David Bernhardt

Begin forwarded message:

From: "Kellogg, Matt" <Matt.Kellogg@mail.house.gov>
Date: December 9, 2016 at 9:44:55 AM EST
To: "Bernhardt, David L." <DBernhardt@BHFS.com>
Subject: RE: Successor Biological Opinion Language

I just wanted to thank you for all of your help with this. We will see what happens in the Senate but I feel pretty good since we posted 360 over here on the bill.

-Matt

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Exhibit 4

From: [Bernhardt, David L.](#)
To: [Johnny Amaral](#)
Subject: Fwd: San Joaquin Repeal Language
Date: Monday, January 02, 2017 11:30:44 AM
Attachments: [ATT00001.htm](#)
[San Joaquin Settlement Language.pdf](#)

Have you seen this?

David Bernhardt

Begin forwarded message:

From: "Dunklin, Kristina" <Kristina.Dunklin@mail.house.gov>
Date: January 2, 2017 at 11:51:31 AM EST
To: "tbirmingham@westlandswater.org"
<tbirmingham@westlandswater.org>, "'Bernhardt, David L.'" <DBernhardt@BHFS.com>
Subject: San Joaquin Repeal Language

Hi Tom and David,

Hope you both had a great Christmas and New Year's Eve.

Wanted to get your take on the San Joaquin River Settlement language in H.R. 2898 (sec. 313) as replacement for the language in the draft bill sent in early December.

As a reminder, the Settlement language in 1837 made strong edits to the Settlement, but preserved some of the legislation for funding purposes.

In 2898, we included full repeal of the Settlement and included our warm water fishery language that stipulates a warm water fishery below Friant dam to satisfy CA fish and game code and the Settlement. This language is attached. We are planning on replacing the Settlement language with the language from 2898. Please let me know if there are any concerns from you guys.

Thanks,

Kristina Dunklin

Legislative Director

Congressman David G. Valadao (CA-21)

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