

March 26, 2019

The Honorable Lisa Murkowski
Chairman , Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Joe Manchin
Ranking Member, Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

Re: Please Oppose David Bernhardt For Secretary of the Interior

Dear Chairman Murkowski and Ranking Member Manchin:

The undersigned organizations, representing millions of members and supporters, are writing to express our strong opposition to the nomination of David Bernhardt for Secretary of the Department of the Interior. We strongly urge you to oppose his nomination to this top post charged with overseeing our nation's public lands and irreplaceable natural heritage.

In his 18 months serving as the Interior Department's deputy secretary, Mr. Bernhardt has been at the center of a culture of corruption that has been the Interior Department's hallmark under the Trump administration. He consistently puts private profit above the public interest, crafting policies to benefit past clients and rolling back longstanding rules to protect habitat, imperiled species and public health. These actions come straight from the fossil fuel and mining industry's wish list, including some corporations for which Bernhardt used to work as a lobbyist and lawyer.¹ The following highlights how Bernhardt has worked overtime to provide certainty for the fossil fuel, mining and other extractive industries at the expense of our public lands, wildlife and climate.

Siege On Science

During Bernhardt's tenure, scientific research has come under relentless attack at the Interior Department, undermining the agencies' missions of conservation and responsible management of our public lands. For example, in a December 2017 Secretarial Order, the Interior Department rescinded four climate-change policies² instituted during the Obama administration and halted a

¹ <https://www.politico.com/magazine/story/2019/03/23/trump-big-oil-industry-influence-investigation-zinke-226106>

² https://www.washingtonpost.com/news/energy-environment/wp/2018/01/05/interior-rescinds-climate-conservation-policies-because-theyre-inconsistent-with-trumps-energy-goals/?utm_term=.ad7e3d1844ac

study by the National Academies of Sciences, Engineering and Medicine looking at links between surface mining and human health.³

Putting Fossil Fuels First

In the past two years, aided by secretarial orders and administrative memorandums that undermine laws requiring disclosure of environmental harm and public input, the Interior Department's Bureau of Land Management has auctioned off a record-breaking 16.8 million acres of public lands for fracking and drilling. A 2018 court injunction⁴ against the Interior Department found significant evidence that the BLM was intentionally shutting the public out of oil and gas leasing decisions affecting 67 million acres of greater sage grouse habitat. One of Bernhardt's directives has resulted in a rushed environmental review to open the Arctic National Wildlife Refuge to oil and gas drilling. The directive arbitrarily attempts to limit the length and time to complete required environmental impact statements.

Similarly, in an unprecedented move, the Interior Department proposed to open nearly all U.S. coasts,⁵ including the Pacific, Atlantic and Arctic Oceans, the Gulf of Mexico and other waters off Alaska to drilling while also rolling back critical safety regulations put in place following the deadly Deepwater Horizon oil spill. Last March a group of oil interests, led by one of Bernhardt's former clients, the Independent Petroleum Association of America, wrote to Bernhardt thanking him for his work on actions including those "that rescinded and revised mitigation policies that far exceeded statutory authority."

Imperiling Wildlife

During the 2018 summer, the Interior Department proposed sweeping regulatory changes that will severely undermine implementation of the Endangered Species Act, the popular law credited with successfully keeping 99 percent of listed species from going extinct, including bald eagles and Yellowstone grizzly bears. The proposed changes include stripping threatened species of lifesaving protection, introducing economic considerations into purely scientific decisions about whether species receive protection, and undermining key safeguards for critical habitat. Bernhardt's notorious efforts to weaken protections for our nation's most vulnerable wildlife are consistent with his time as Interior's top lawyer in the Bush administration, wherein he authored several policies that sharply limited protections for endangered species. One policy even precluded species like polar bears from protection against greenhouse gases, the primary threat to their survival.

Throughout 2018 Bernhardt also oversaw revisions to plans to protect tens of millions of acres of habitat for the imperiled sage grouse, an iconic bird associated with the health of the West's Sagebrush Sea ecosystem. The new plan would strip protection from over 30 million acres of sage grouse habitat, while significantly expanding exemptions from enforceable protections for oil and gas drilling and other harmful activities.

³ <https://www.nytimes.com/2017/08/21/climate/coal-mining-health-study-is-halted-by-interior-department.html?module=inline>

⁴ https://www.biologicaldiversity.org/news/press_releases/2018/oil-and-gas-leasing-09-21-2018.php

⁵ <https://www.charlotteobserver.com/news/state/south-carolina/article226930159.html>

Bernhardt was also personally involved in a 2017 Interior Department decision to reduce protections for migratory birds.⁶ The Department's new legal opinion significantly weakens the Migratory Bird Treaty Act, a 100-year-old law, credited with saving millions of birds from unnecessary death and harm. The MBTA has been used to hold industries accountable for activities that inadvertently kill birds, including by deploying preventative measures. However, the administration's new policy revokes that ability by eliminating the enforcement for unintentional bird deaths, giving oil and gas companies a free pass to kill birds.

Additionally, Bernhardt was the longtime lobbyist for the powerful Westlands Water District in California, where he fought endangered species protection. Bernhardt began work on a controversial plan to roll back environmental protections and send more water to Central Valley farmers, including those in the Westlands Water District at least six months before his recusal period ended in the summer of 2018.⁷ Despite available alternatives, this plan, if executed, will be the nail in the coffin for Delta smelt, Sacramento River salmon runs and the Bay Delta ecosystem.

Developing The Arctic Refuge

In 2014, the State of Alaska hired Bernhardt to sue the Interior Department and force it to consider plans for seismic exploration in the Arctic Refuge. The judge sided with the Interior Department, but the State of Alaska paid Bernhardt's firm at least \$250,000 for the work. As Interior's Deputy Secretary and Trump's nominee for Interior Secretary, Bernhardt is now attempting to fast track approvals for seismic blasting that could kill imperiled polar bear cubs - just like those he tried to force via litigation in 2014.

While working as director of congressional and legislative affairs at the Interior Department in 2001, Bernhardt assisted Interior Secretary Gale Norton and senior counselor Ann Klee in doctoring answers to questions in a letter to Senator Frank Murkowski, the chairman of the Energy and Natural Resources Committee, concerning the impacts of potential Arctic Refuge oil and gas drilling on caribou herds. Though the answers were initially written by U.S. Fish and Wildlife Service biologists and approved with few changes, the trio's letter instead relied on data from a report funded by BP oil, omitted FWS data suggesting caribou could be affected by oil drilling, and left data that supported exploring the refuge. After the changes were highlighted in a Washington Post piece, Bernhardt and Norton each acknowledged the errors, but faced few repercussions. As the Interior Department is conducting a rushed environmental review to precipitously lease the Arctic National Wildlife Refuge, it calls into question his ability to conduct a full and fair environmental review that honors science and the law.

Harming Parks and National Monuments

Many of Bernhardt's actions will acutely affect our national parks, in addition to the landscapes, wildlife and communities that surround them. Bernhardt played a key role in one the largest rollbacks of land protections in history, resulting in recommendations for President Trump to slash protections for 2 million acres of Bears Ears and Grand Staircase-Escalante National

⁶ <https://www.revealnews.org/article/trumps-choice-for-interior-department-secretary-had-big-role-in-eliminating-bird-protections/>

⁷ <https://www.nytimes.com/2019/02/12/climate/david-bernhardt-endangered-species.html>

monuments to open the land to resource extraction, development and other potentially incompatible uses.

Bernhardt's aforementioned and well-documented distaste for the Endangered Species Act and his leadership in the proposed changes to the implementation of the Act will inevitably affect the 600 plant and animal species protected under the law that have habitat in our national parks. Parks act as refugia for imperiled species and host some of our nation's most extreme and extraordinary environments — from Arctic to arid. These environments are also disproportionately affected by climate change, making management considerations of its impacts even more important. Unfortunately, Secretarial Order 3360, signed by Bernhardt, eliminated dozens of measures that scientists and public land managers determined are necessary to safeguard our national parks from climate change including a 2015 Landscape Scale Mitigation Policy and a 2012 Climate Adaptation Policy.

Most recently, during the partial government shutdown in January, our national parks were kept open under Bernhardt's direction — allowing them to suffer irreparable damage and robbing important funding accounts to keep the gates open while parks remained unstaffed. Instruction from Bernhardt told park managers to use parks' fee dollars to bring on additional staff to clean restrooms, remove trash, patrol the parks and open areas closed during the shutdown. Yet superintendents could not use the fee money to bring on extra staff, resulting in direct negligence of park resources and a violation of the fundamental mission of the National Park Service Organic Act. Disturbingly, in the midst of the longest federal shutdown in history, Bureau of Land Management staff, under Bernhardt's leadership, continued to process applications for oil and gas drilling permits.

Blocking Transparency And Cutting People Out Of The Process

Transparency is a pillar of our democracy. But Bernhardt has gone out of his way to avoid public scrutiny and stifle public input, while undermining congressional oversight. Like his predecessor, Bernhardt has sanitized his calendars, making it impossible to know who he is meeting with and why; he rarely communicates via email, which is subject to public scrutiny; he has instructed his staff to not take notes or send emails during meetings; he has shortened the amount of time the public has to protest oil and gas leasing; and Interior Department's proposed changes to Freedom of Information Act requests would make it harder for the public and reporters to get information from the government.⁸ The sum of his actions should prompt concern regarding all that the ways in which the public is being kept in the dark. The American people deserve to know more, including whether or not Bernhardt has complied with ethics requirements, such as his pledge to recuse himself from working on matters involving his former clients, several of whom have benefitted from Interior Department decisions after Bernhardt took office.

While Bernhardt has recused himself from matters involving former clients for one to two years, that period will soon expire. As his nomination is considered, so too should be clarity around his compliance with recusals over the last 18 months. However, given the magnitude of Bernhardt's conflicts they cannot be adequately addressed by mere recusals.

⁸ <https://www.apnews.com/173110b3a357407d8ab32398befc1e3c>

The Department of the Interior is charged with protecting our public lands, waterways and wildlife for future generations. David Bernhardt's conflicts of interest, industry ties and questionable judgment make him ill-suited to lead the Department, and his confirmation would place our most cherished natural and cultural resources at even greater risk.

Signed,

350.org

Alaska Wilderness League

American Bridge 21st Century

Animal Welfare Institute

Animals Are Sentient Beings, Inc.

Another Gulf Is Possible

Anthropocene Alliance

Arizona Mining Reform Coalition

Arizona Wilderness Coalition

Athens County's Future Action Network aka Athens County (OH) Fracking Action Network

Basin and Range Watch

Battle Creek Alliance & Defiance Canyon Raptor Rescue

Born Free USA

Broward group of the Sierra Club

California Native Plant Society

Californians for Western Wilderness

CAPE CORAL FRIENDS OF WILDLIFE

Cascades Raptor Center

Cascadia Wildlands

CatholicNetwork.US

Center for Biological Diversity

Clean Energy Action

Clean Water Action

Climate Hawks Vote

Coalition for Sonoran Desert Protection

Coalition to Protect America's National Parks

Coast Range Association

Coastal Plains Institute

Colorado Citizens Against Toxic Waste (CCAT)
Colorado Interfaith Power & Light
Conejos Clean Water
Conserve Southwest Utah
Corporate Accountability
Defenders of Wildlife
Delaware Ecumenical Council on Children and Familiesa
Earth Action, Inc.
Earthjustice
Earthworks
Elders Climate Action
Endangered Habitats League
Endangered Small Animal conservation fund
Endangered Species Coalition
Environmental Protection Information Center
Fairbanks Climate Action Coalition
Food & Water Watch
Footloose Montana
FORPA Forest Protection Allies
Friends of Alaska National Wildlife Refuges
Friends of Arthur R. Marshall Loxahatchee National Wildlife Refuge
Friends of Ironwood Forest National Monument
Friends of the Earth US
Friends of the Kalmiopsis
Friends of the Wisconsin Wolf & Wildlife
Fund for Wild Nature
Geos Institute
Golden West Women Flyfishers
Grand Canyon Trust
Grand Canyon Wildlands Council
Grand Staircase Escalante Partners
Great lakes wildlife alliance
Greater Hells Canyon Council
Greenpeace USA

High Country Conservation Advocates
Hip Hop Caucus
Howling For Wolves
I am Wolf Nation
IndivisAbility
Indivisible FL-13
Indivisible Kansas City
Indivisible San Bernardino
Indivisible SF
Indivisible St Johns FL
Indivisible Ventura
Institute for Policy Studies
Iowa Audubon
Kate and Co
Kettle Range Conservation Group
Klamath Forest Alliance
Klamath Siskiyou Wild
League of Conservation Voters
Livelihoods Knowledge Exchange Network
Living Rivers & Colorado Riverkeeper
Living with Wolves
Los Padres ForestWatch
Malach Consulting, LLC
Maricopa Audubon Society
Massachusetts Forest Watch
Mining Impact Coalition of Wisconsin
MOVCA
National Parks Conservation Association
Native Plant Conservation Campaign
Natural Resources Defense Council
NC Interfaith Power & Light
NC League of Conservation Voters
Northeast Oregon Ecosystems
Northern Jaguar Project

Nuclear Information and Resource Service
NY4WHALES.org
Oil Change U.S.
Oregon Natural Desert Association
Oregon Wild
OVEC-Ohio Valley Environmental Coalition
Partnership for Policy Integrity
PDA-CA (Progressive Democrats of America - California)
Philadelphia PSR
Physicians for Social Responsibility
Physicians for Social Responsibility - Pennsylvania
Pivot Point
Plan B to Save Wolves
Predator Defense
Project Coyote
Protect Our Winters
PSR Arizona
Public Citizen
Public Employees for Environmental Responsibility
Rachel Carson Council
Raptors Are The Solution
Rocky Mountain Wild
Save Our Ancient Redrocks
Save Our Sky Blue Waters
Save Our Sky Blue Waters
Save the Dells
SAVE THE FROGS!
Save Wolves Now Network
Sierra Club
SOAR
Soda Mountain Wilderness Council
South Umpqua Rural Community Partnership
Southeast Alaska Indigenous Transboundary Commission
Southern Oregon Climate Action Now

Southern Utah Wilderness Alliance
Swan View Coalition
The Climate Reality Project
The Lands Council
The Maine Wolf Coalition, Inc.
The Rewilding Institute
The Wilderness Society
Toxic Free NC
Tropical Audubon Society
Tucson Audubon Society
Turner Endangered Species Fund
Umpqua Valley Audubon Society
Upper Gila Watershed Alliance
Upper Peninsula Environmental Coalition
Urban Bird Foundation
Utah Moms for Clean Air
Ventana Wilderness Alliance
Waterkeeper Alliance
Western Environmental Law Center
Western Organization of Resource Councils
Western Values Project
Western Watersheds Project
Western Wildlife Conservancy
WILD HORSE EDUCATION
Wild Watershed
WildEarth Guardians
Wilderness Workshop
Wildlands Network
Wildlife Alliance of Maine
WildWest Institute