

C A M P A I G N F O R

ACCOUNTABILITY

July 20, 2017

Honorable Channing D. Phillips
U.S. Attorney for the District of Columbia
555 4th Street, NW
Washington, DC 20530

Re: Violation of the Lobbying Disclosure Act

Dear Mr. Phillips:

Campaign for Accountability, a nonprofit dedicated to advancing accountability in public life, respectfully requests that the U.S. Attorney's Office investigate whether David Bernhardt, President Trump's nominee to be Deputy Secretary of the Department of the Interior, has continued to lobby despite formally withdrawing his registration in 2016.

Prior to his nomination, Mr. Bernhardt had been a lobbyist with Brownstein Hyatt Farber Schreck, LLP. He was registered as a lobbyist for Westlands Water District, a California agricultural entity, between June 2011 and Nov. 18, 2016.¹ Thereafter, he began leading the Trump administration's Interior Department transition team.² He was formally nominated for his position in April.³

On January 23, 2017, Brownstein Hyatt Farber Schreck, LLP filed a Lobbying Report with the Clerk of the House and Secretary of the Senate that declared that Mr. Bernhardt had terminated his lobbying for Westlands Water District on November 18, 2016.⁴

Despite this de-registration, on November 28, 2016, Mr. Bernhardt sent an e-mail to Tom Birmingham, Westlands Water District's General Manager, and others with his edits on a proposed "draft executive order" for then-President-elect Donald Trump. The Executive Order addressed water issues in California.⁵

¹ Brownstein Hyatt Farber Schreck, LLP, 2011-2016 Lobbying Disclosure Reports on behalf of Westlands Water District, Secretary of the Senate, Office of Public Records.

² Michael Doyle, Election Over, California Water District May Get Win With Controversial Drainage Plan, *McClatchy*, November 15, 2016, available at <http://www.mcclatchydc.com/news/politics-government/congress/article115010283.html>.

³ Michael Doyle, Deputy Nominee Still Advising California Water District, *E & E News*, July 18, 2017, available at <https://webcache.googleusercontent.com/search?q=cache:whX3YKL4gOsJ:https://www.eenews.net/greenwire/2017/07/18/stories/1060057527+&cd=1&hl=en&ct=clnk&gl=us>.

⁴ "Lobbying termination effective as of filing on 11-18-16." See Brownstein Hyatt Farber Schreck, LLP, Fourth Quarter 2016 Lobbying Disclosure Report on behalf of Westlands Water District, Secretary of the Senate, Office of Public Records, available at <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=74C70A3E-8A1A-4CFF-B90C-89DF3C2F66FE&filingTypeID=82>.

⁵ Email from David L Bernhardt to Tom Birmingham, et. al., November 28, 2016, attached as Exhibit A.

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Later, on December 9, 2016, Matt Kellogg, Senior Policy Advisor and Counsel to House Majority Leader Kevin McCarthy, sent an e-mail to Mr. Bernhardt thanking him for his help and stating, “we will see what happens in the Senate.”⁶ Mr. Bernhardt then forwarded that email to Johnny Amaral, the Deputy General Manager for External Affairs at Westlands Water District. The next day, the Senate passed a substantial water bill, which *McClatchy* described as a major victory for Westland Water District.⁷

News reports also indicate that Mr. Bernhardt has continued to advise California’s Westlands Water District. About six weeks after dropping his registration, in an email sent on January 2, 2017, Mr. Bernhardt offered Westland officials “a short draft letter that is intended to be consistent with the discussion we had on the phone this afternoon.”⁸ Westlands General Manager Tom Birmingham responded to the email about three hours later thanking Mr. Bernhardt for “taking the lead” on the letter.⁹

Emails obtained by California environmental activists also indicate Mr. Bernhardt continued to work with Westlands. On January 2, 2017, Congressman David Valadao’s Legislative Director, Kristina Dunklin, sent Mr. Bernhardt and Westlands Water District’s General Manager 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.” Mr. Bernhardt then forwarded the e-mail to Johnny Amaral, the Deputy General Manager for External Affairs at Westlands Water District.¹⁰ Also, on January 2, 2017, David Bernhardt drafted a letter to Congressman Valadao for and on behalf of Westlands Water District regarding HR 23. The final letter that Westlands sent to Rep. Valadao contained several identical passages from the letter Mr. Bernhardt drafted.¹¹

The same day, at 11:41am, Cole Rojewski, Chief of Staff for Rep. Valadao, sent an e-mail to Tom Birmingham, Westlands Water District’s General Manager, and others outlining a bill to be introduced which was “essentially HR2898.” The e-mail asked the recipients to “let us know by 3 PM PST TOMORROW if your agency will be writing a letter of unequivocal support for this bill without conditions.” Minutes later, Johnny Amaral, Westlands’ Deputy General Manager for External Affairs, responded to Mr. Rojewski asking, “What is the name of the bill?” Mr. Rojewski replied, “It will be ‘H.R. 23 Guiding Responsibility On Water Act of 2017.’ (The GROW Act)”. The email chain was forwarded to Mr. Bernhardt.¹²

⁶ E-mail from Matt Kellogg to David L. Bernhardt, December 9, 2016, attached as Exhibit B.

⁷ Michael Doyle, *After years of drama, farmers score a big win in California water battle*, *McClatchy*, December 10, 2016, available at <http://www.mcclatchydc.com/news/politics-government/congress/article120131428.html>.

⁸ Doyle, *E & E News*, July 18, 2017.

⁹ *Id.*

¹⁰ E-Mail from David L. Bernhardt to Johnny Amaral, January 2, 2017, attached as Exhibit C.

¹¹ https://naturalresources.house.gov/uploadedfiles/hr_23_support_letter_-_westlands_water_district_01.03.17.pdf.

¹² E-Mail from Johnny Amaral to David Bernhardt, January 2, 2017, attached as Exhibit D.

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Later that day at 3:49pm, Mr. Bernhardt wrote an email to Mr. Amaral, Mr. Birmingham and others directing them to “a short draft letter that is intended to be consistent with the discussion we had on the phone this afternoon.”¹³

The following day, Rep. Valadao introduced the Gaining Responsibility on Water Act of 2017 (HR23). The bill passed the House of Representatives on July 12, 2017.¹⁴

In February 2017, Brownstein, Hyatt, Farber, Schreck sent Westlands Water District an invoice “Re: Federal Lobbying” that included \$582.09 worth of services itemized for “Westlands Trip – David Bernhardt.” Included on the invoice were the following items:

- 01/31/2017 - Delivery/Ground Transportation - David L. Bernhardt - Taxi/Car Service - Westlands Trip - David Bernhardt - \$20
- 01/31/2017 - Delivery/Ground Transportation - David L. Bernhardt - Taxi/Car Service - Westlands Trip - David Bernhardt - \$33
- 02/01/2017 – Business Meals - David L. Bernhardt - Hotel - Breakfast - Westlands Trip - D. Bernhardt - \$22.49
- 02/02/2017 – Delivery/Ground Transportation - David L. Bernhardt - Taxi/Car Service - Westlands Trip - David Bernhardt - \$25
- 02/02/2017 – Lodging - David L. Bernhardt - Hotel - Lodging - Westlands Trip - David Bernhardt - \$481.60

In total, BHFS billed Westlands Water District \$582.09 for services and expenses incurred by David Bernhardt in January and February of 2017.¹⁵

As you know, the Lobbying Disclosure Act (“LDA”), 2 U.S.C. § 1601 *et. seq.* requires all persons and or organizations engaged in lobbying activities before the United States Congress to register with the Secretary of the Senate and the Clerk of the House. 2 U.S.C. § 1603. The purpose of the Act is to increase “public awareness of the efforts of paid lobbyists to influence the public decision making process in both the legislative and executive branches of the Federal Government” and to increase public confidence in the integrity of government. 2 U.S.C. § 1601.

Further, registrants who fail to timely file an LD-2 or LD-203 are subject to civil fines of not more than \$200,000 for each violation and imprisonment of not more than 5 years or both for knowingly and corruptly failing to comply. 2 U.S.C. § 1606.

¹³ E-Mail from David Bernhardt to Johnny Amaral, et al, January 2,2017, and E-Mail from Tom Birmingham to Johnny Amaral, et al, January 3, 2017, attached as Exhibits E and F.

¹⁴ <https://www.congress.gov/bill/115th-congress/house-bill/23?q=%7B%22search%22%3A%5B%22hr+23%22%5D%7D&r=1>.

¹⁵ Federal Lobbying Invoice from BHFS to Westlands Water District, February 2017 attached as Exhibit G.

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It has been widely reported that Trump administration nominees and employees frequently have failed to adhere to ethics rules.¹⁶ Based on the available evidence, it appears that Mr. Bernhardt may have followed this now well-worn path by failing to maintain his lobbying registration as required by the LDA. As a result, Campaign for Accountability respectfully requests that your office promptly initiate an investigation into this matter.

Thank you for your attention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

¹⁶ Karen Tumulty, John Wagner, and Ed O'Keefe, [Trump Cabinet Nominees Meet Growing Ethical Questions](https://www.washingtonpost.com/politics/trump-cabinet-nominees-meet-growing-ethical-questions/2017/01/18/a7d82af8-ddaf-11e6-acdf-14da832ae861_story.html), *The Washington Post*, January 18, 2017, available at https://www.washingtonpost.com/politics/trump-cabinet-nominees-meet-growing-ethical-questions/2017/01/18/a7d82af8-ddaf-11e6-acdf-14da832ae861_story.html.