

# David Bernhardt

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David Bernhardt has deep and conflicting ties to the oil and gas industry. If confirmed, David Bernhardt's clients in the oil and gas industry could directly benefit from decisions made by the Department of the Interior. While Bernhardt has publicly stated that he will recuse himself from certain decisions directly impacting his former clients,<sup>1</sup> industry could see Bernhardt as their back door into influencing the decision-making and priorities of the Administration's Interior Department.

For multiple reasons detailed below, David Bernhardt **should not be confirmed** as the next Deputy Secretary of Interior. His close ties to oil and gas and his prior client list make him deeply conflicted on the most pressing and significant priorities of this Administration, including the Antiquities Act, onshore and offshore leasing reform, the Endangered Species Act, and beyond.



## Summary Findings

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- Bernhardt will be highly conflicted on actions relating to the Antiquities Act, the review of the offshore and onshore oil and gas leasing, all issues pertaining to oil, gas, and coal leasing by the Bureau of Land Management, and all issues relating to the Endangered Species Act.
- Bernhardt has had a multitude of clients in the oil and gas industry that will be directly affected by decisions relating to oil, gas, and coal leasing, the Antiquities Act, and the Endangered Species Act. As Deputy Secretary, Bernhardt could have significant decision-making authority over these issues.
- Approval of oil, gas, and coal leases, reviews of the Antiquities Act, and decisions regarding ESA listings could substantially and materially benefit Bernhardt clients.

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<sup>1</sup> <https://www.documentcloud.org/documents/3862923-Bernhardt-Rescusal-Letter.html>

# Ties to the Oil and Gas Industry

Bernhardt has been a partner in the firm Brownstein, Hyatt, Farber, and Schreck, LLP (BHFS) since 2009, where he runs the natural resources practice. Because he started and chaired the Natural Resources Department, most or all of BHFS's energy work was directed by Bernhardt.

<http://www.bhfs.com/people/attorneys/a-b/dbernhardt>

Bernhardt's oil and gas clients and connections include the following:

## Bernhardt's Lobbying Clients

According to Bernhardt's filing with the Energy and Natural Resources Committee, he has personally registered to lobby for the following oil and gas clients in the last 10 years:

<b>Access Industries</b>	2011
<b>Coastal Point Energy</b>	2009-2010
<b>Freeport LNG Expansion</b>	2010
<b>Cobalt International Energy</b>	2010-2013
<b>Strata Production Company</b>	2010
<b>Samson Resources Company</b>	2012-2013

<https://www.documentcloud.org/documents/3862922-Bernhardt-Letter-to-Energy-and-Natural-Resources.html#document/p7/a358322>

The same disclosure lists the following fossil fuel companies as legal clients:

<b>Archer Daniel Midland Company</b>	2013-2014
<b>American West Potash</b>	2012-2014
<b>Halliburton Energy Services</b>	2011-2013
<b>Samson Resources Company</b>	2012-2013

<https://www.documentcloud.org/documents/3862922-Bernhardt-Letter-to-Energy-and-Natural-Resources.html#document/p4/a358123>

According to Bernhardt's financial disclosure, he was paid more than \$5,000 by each of the following oil and gas clients:

- Targa Resources Company
- Noble Energy Company
- NRG Energy
- Sempra Energy
- Statoil Gulf Services
- Cobalt International Energy
- Independent Petroleum Association of America
- Taylor Energy Services
- Safari Club International Foundation

<https://www.documentcloud.org/documents/3861664-David-Bernhardt-Financial-Disclosure-2014.html>

## Other Brownstein Hyatt Farber and Schreck LLP Lobbying Clients

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According to lobbying disclosures, BHFS lobbied for the following clients while Bernhardt led energy policy for the firm:

- **Access Industries** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300857312.xml>
- **CITGO** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q2/300820833.xml>
- **Cobalt Energy** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300854492.xml>
- **Freeport LNG**
- **Lario Oil and Gas** <http://disclosures.house.gov/ld/ldxmlrelease/2016/1T/300803174.xml>
- **Statoil** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300854483.xml>
- **Taylor Energy Company** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300854493.xml>
- **Chamber of Commerce** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300854515.xml>
- **WPX Energy Inc** <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300854484.xml>

## Colorado Oil and Gas Association

In 2014, Bernhardt ran a team of lawyers that successfully overturned democratically approved regulations on the oil and gas industry. He directed litigation on behalf of the Colorado Oil and Gas Association (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.

[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)  
<https://www.documentcloud.org/documents/3767021-Brownstein-S-Mark-Mathews-and-Wayne-Forman-Win.html>  
<http://www.coga.org/wp-content/uploads/2017/05/2017-Membership-Listing-5-3-17.pdf>

In 2016, BHFS again represented COGA in front the CO Supreme court. This time the law firm won their suit to strip the right to local control over oil and gas regulation from towns, cities and communities.  
<https://www.law360.com/articles/791420/colo-supreme-court-kills-cities-fracking-restrictions>

COGA paid Bernhardt's firm Brownstein Hyatt Farber and Schreck \$643,838 in 2014.  
<https://www.documentcloud.org/documents/3862768-COGA-990s-2009-2014.html>

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## Independent Petroleum Association of America

Bernhardt lists the Independent Petroleum Association of America (IPAA) as a client in his financial disclosure.

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

IPAA is a lobbying group funded by oil and gas corporations. Members of IPAA include companies with significant leases granted by the DOI. 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.

IPAA, on behalf of their oil and gas clients, lobbied to increase drilling on federal land, reduce methane pollution reporting and controls and prevent Endangered Species protections.

### ESA:

<http://esawatch.org/>

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

### Methane:

<http://www.ipaa.org/ipaa-welcomes-withdrawal-epa-information-collection-request/>

<http://disclosures.house.gov/ld/ldxmlrelease/2014/Q4/300707017.xml>

According to IPAA filings, IPAA paid Bernhardt's firm \$158,494 in 2014.

## Center for Environmental Science Accuracy and Reliability

Bernhardt was a Director of the center for Environmental Science Accuracy and Reliability (CESAR). CESAR is a group dedicated to opposing the Endangered Species Act when ESA protections conflict with BHFS clients. CESAR contracts scientific seeming, yet not peer-reviewed scientific papers that challenge FWS species protections. CESAR's lead scientist is Rob Ramey, an ex-DOI employee who now writes anti-ESA papers for oil and gas lobbyists, including the Western Energy Alliance and the Colorado Oil and Gas Association.

[http://www.bestscience.org/uploads/4/3/7/3/43733283/hookless\\_cactus-cesar\\_report-downsized.pdf](http://www.bestscience.org/uploads/4/3/7/3/43733283/hookless_cactus-cesar_report-downsized.pdf)

<http://westernvaluesproject.org/your-money-their-gain-colora->

[do-county-pays-industry-consultants-to-prepare-pro-industry-sage-grouse-plan/](http://westernvaluesproject.org/your-money-their-gain-colora-do-county-pays-industry-consultants-to-prepare-pro-industry-sage-grouse-plan/)

## Western Energy Alliance

Bernhardt is also closely tied to the Western Energy Alliance (WEA), a lobbying arm of the oil and gas industry. The group promises “aggressive media and public relations messaging” and to “actively influence regulatory actions and legislation on behalf of your business.”

<https://www.westernenergyalliance.org/alliance/membership-benefits>

Alongside IPAA, WEA is a main driver of lawsuits against BLM oil and gas regulation. WEA meets and lobbies the Department of Interior regularly.

BHFS partner Mark Mathews is an advisor to WEA. Bernhardt worked closely with Matthews in BHFS's energy practice, and oversaw Matthews' work during the COGA litigation.

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

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

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

Both the IPAA and WEA are suing to overturn methane pollution rules issued by BLM.

<https://www.westernenergyalliance.org/press-room/western-energy-alliance-disappointed-senate-cannot-rein-executive-branch-overreach>

## Safari Club International

Safari Club International (SCI) is a group that opposes Endangered Species Act listings and protections alongside the oil and gas industry.

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

Bernhardt lists SCI as a client that paid him over \$5,000. BHFS received \$185,738 from SFI Foundation in 2014.

SCI has long running contracts with Pac/West Communications, a PR and lobbying firm serving the oil and gas industry. Pac/West Communications is also behind the Western Energy Alliance, with whom it shares an address. Pac/West was integrally involved (alongside WEA and COGA) in the oil and gas industry campaign against regulation in Colorado.

<https://www.opensecrets.org/pacs/expenditures.php?cmte=C00122101&cycle=2016>

<http://www.greenpeace.org/usa/fracking-colorado-this-is-what-buying-a-democracy-looks-like/>

## BHFS and Coal

Bernhardt's has worked with several groups that undermine endangered species protections. COGA, IPAA, WEA, Safari Club International, and CESAR consistently sue and otherwise oppose listing species as endangered, and the protections for species already listed. Bernhardt has both litigated against ESA listings, as well as testified to Congress regarding the ESA on behalf of his clients. Any work by Bernhardt on ESA issues would violate the Ethics Pledge.

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## BHFS and Coal

BHFS is a creditor to Peabody Energy, and has litigated a number of coal and mining cases.

<https://www.documentcloud.org/documents/2907108-Peabody-Creditor-Matrix-6-24-16.html#document/p186/a356718>

Samson Resources and American West Potash are both clients as well.

# Context on Conflict of Interest Rules

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Below are relevant ethics laws and pledges pertaining to David Bernhardt:

President's Executive Order 13770, known as the "Ethics Pledge." The Pledge 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."

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

### **Bernhardt's recusal letter to the Senate:**

"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 5 C.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)."

<https://www.documentcloud.org/documents/3862923-Bernhardt-Recusal-Letter.html#document/p1/a357440>

### **Congress's criminal conflict of interest law, 18 U.S.C. § 208:**

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

This law prohibits work on an assignment that will affect ... "the financial interests of... an organization that you serve as an officer, director, employee, general partner, or trustee; or someone with whom you have an arrangement for employment, or with whom you are negotiating for employment."

### **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."

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