



ATTACHMENT 10



OFFICE OF
INSPECTOR GENERAL
 U.S. DEPARTMENT OF THE INTERIOR

INVESTIGATIVE ACTIVITY REPORT

Case Number OI-PI-19-0434-I	
Reporting Office Program Integrity Division	Report Date July 12, 2019
Report Subject Interview of David Bernhardt	

On July 12, 2019, Special Agent (b) (7)(C) and Special Agent in Charge (b) (7)(C), with the Office of Inspector General, U.S. Department of the Interior, interviewed David Bernhardt, DOI Secretary, in the office (b) (7)(C). Present during the interview from (b) (7)(C) was (b) (7)(C), and (b) (7)(C). The purpose of the interview was to discuss allegations that DOI Secretary David Bernhardt improperly influenced FWS consultations related to pesticides. Bernhardt acknowledged that the interview was being recorded. The following is a summary of the interview.

Agent's Note: Bernhardt did not sign the Warnings and Assurances for Voluntary Interviews (Garrity) form.

Bernhardt said that in the fall of 2017 he sent an email to (b) (7)(C), FWS (b) (7)(C) (b) (7)(C), in which he requested data related to the pesticide consultations that FWS was working on. He said he did not recall why he submitted this request. He said the reason may have been that he was told about the draft biological opinion by the U.S. Environmental Protection Agency (EPA) but he said he did not remember. He said the issue of pesticide consultation stood out generally because they were "the most complex consultations on the planet." He said the agencies working on the consultations had a 20-year history of struggling with the ideas involved.

Bernhardt said (b) (7)(C) him the FWS draft biological opinion and he reviewed it. He said he was "extremely troubled" by the information because a "massive" amount of work had gone into the consultation process and the draft biological opinion was "completely and totally inconsistent" with the "regulatory paradigm." He said he thought the FWS work on the consultations had been a "pathetic" waste of energy, effort, and resources without legal intervention.

Bernhardt said 50 Code of Federal Regulations (CFR) § 402.02 listed keywords such as action area, effects of the action, indirect effects, and cumulative effects. He said each of these words had legal meaning during a consultation.

Reporting Official/Title (b) (7)(C) /Special Agent	Signature Digitally signed.
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At some point, Bernhardt said, he requested to meet with the DOI attorneys that had worked on the draft biological opinion document. He said he then learned that although FWS had spent around four years working on the pesticide consultations, FWS had only given the draft document to the DOI attorneys around a couple of weeks earlier. He said his understanding was that the DOI attorneys had the same concerns he did.

Bernhardt said that when he read the FWS documentation he found that FWS did not convey very well where the proposed activity was going to take place or how the proposed activity was going to occur. He said the proposed activity FWS was talking about in the draft biological opinion was putting a label on a pesticide. He said FWS struggled with how to perform their analysis, so they developed a “scheme” in which they came up with assumptions. He said the FWS “scheme” did not fall within the law. He recalled that the DOI attorneys agreed with him. He said they also had substantive conversations in which they discussed the need to find data on where the pesticides had been applied in the past and what the effects were so they could begin to work in a way that was required by the regulations.

Bernhardt said his actions related to the pesticide consultations did “absolutely not” violate his Ethics Pledge or any other federal ethics regulations.



ATTACHMENT 11

CASE NUMBER: 19-0434
INTERVIEWER: SA (b) (7)(C)
INTERVIEWEE: DAVID BERNHARDT
ALSO PRESENT: (b) (7)(C), SAIC

(b) (7)(C)

(b) (7)(C)

LOCATION:

(b) (7)(C)

DATE: JULY 12, 2019

TIME: 8:56 AM

1 (INTERVIEW OF DAVID BERNHARDT, #19-0434, JULY 12, 2019)

2 (The following may contain unintelligible or misunderstood
3 words due to the recording quality.)

4 INFO SHEET

5 (b) (7)(C): Okay. Good morning. I just turned on the
6 recorder. My name is (b) (7)(C). I'm a
7 special agent with the Officer of Inspector General for
8 the Department of Interior. Right now, it's 8:56 a.m.,
9 here, on Friday morning, July 12th, 2019. And today I'm
10 doing an interview with, uh, Mr. David Bernhardt. Also
11 present from the OIG this morning is (b) (7)(C).

12 (b) (7)(C): Uh, (b) (7)(C), (b) (7)(C).

13 (b) (7)(C): And, uh, Mr. Bernhardt, can you please just
14 introduce yourself for the recording?

15 DAVID BERNHARDT: Sure. My name is David Bernhardt.

16 (b) (7)(C): And, uh, (b) (7)(C) --

17 (b) (7)(C): Sure.

18 (b) (7)(C): -- can you introduce yourself, please?

19 (b) (7)(C): (b) (7)(C) Mr. Bernhardt.
20 And, uh, with me in the -- in the room is (b) (7)(C),

21 (b) (7)(C).

22 (b) (7)(C): Perfect. And, um, great. And, um, uh,
23 before we turned on the recording, I -- I just talked a
24 little bit about the purpose of the interview. Um, I,
25 uh, provided Mr. Bernhardt with a copy of the, um -- our
26 Voluntary Interview form. I let everyone know that the

1 interview's being recorded, uh, per our policy. And, uh,
2 I'll let you know, um, and we just ask everyone just --
3 just be honest and truthful with us.

4 Um, I talked a little bit about, um, uh, what we
5 found so far in our investigation, what -- what people
6 told us. So I'm just gonna start out with, um, Mr.
7 Bernhardt, can you just, um, just kind of describe for
8 us, kind of walk us through, why you decided to, uh,
9 either request a review of Fish and Wildlife Service
10 Draft Biological Opinion related to, uh, the pesticide
11 consultation that they were working on, um, in kind of,
12 uh, the fall of -- around the fall of 2017?

13 DAVID BERNHARDT: Uh, do you guys use Iridiums[sic]?

14 (b) (7)(C): The email --

15 DAVID BERNHARDT: -- or --

16 (b) (7)(C): -- uh --

17 DAVID BERNHARDT: Right.

18 (b) (7)(C): -- Iridiums we -- we pull email through
19 Iridiums.

20 DAVID BERNHARDT: Right. Right. So, um, so it's my
21 recollection that, at some point in the fall of 2017, I
22 sent, uh, (b) (7)(C) uh, (b) (7)(C) an email that probably said,
23 um, hey, I need to get up to speed on this issue and
24 please provide me, um, the documentation for me to
25 review.

26 Um, I have no specific recollection of what

1 triggered that. Um, it could have been a couple things.
2 It could have been, um, there was some, uh, some other
3 agencies had, um, talked to CEQ and there was a separate
4 CEQ process going on. Um, it also could have frankly
5 been that I was told that the document was, uh, coming or
6 in process, and I may have even been told that by EPA. I
7 just don't remember.

8 (b) (7)(C): Okay. And you used the acronym --

9 DAVID BERNHARDT: But -- but, at some point, I did
10 contact (b) (7)(C) and say, "Give me the data." I certainly
11 remember that.

12 (b) (7)(C): Okay. You used a acronym CEQ. Can you
13 spell that out?

14 DAVID BERNHARDT: Uh, Counsel for Environmental Quality.

15 (b) (7)(C): Okay.

16 DAVID BERNHARDT: Environmental Protection Agency is EPA.
17 USDA is Department of Agriculture.

18 (b) (7)(C): Perfect. And, um, uh, specifically with,
19 uh, with this consultation, you know, uh, I hear you're
20 saying, you know, you requested, um, uh -- you requested
21 data on this. Uh, did this, uh, consultation stand out
22 among all the -- all the consultations that Fish did?
23 Was this one different? Is that why you requested it?

24 DAVID BERNHARDT: Well, this issue --

25 (b) (7)(C): Okay.

26 DAVID BERNHARDT: -- of, um, pesticide consultation, um,

1 stands out, generally, and that is because these are
2 probably, in my opinion, the most complex consultations
3 on the planet. And they have had a, um, a 20-year
4 history of struggling with these ideas. So it's not, um,
5 in my -- it's my, uh, recollection that's not your
6 average, uh, Section 782 consultation.

7 **(b) (7)(C)**: Okay. Thanks for explaining that. And
8 then, uh, Mr. Bernhardt, can you, uh, tell us a little
9 bit about, um, about your review of that Draft Biological
10 Opinion when -- when you -- or that data when you got
11 involved? Can you tell us, um, you know, kind of what
12 you saw, what -- what your thought process was?

13 DAVID BERNHARDT: Well, it's been a while, um, but I've -
14 - I'm fairly confident that **(b) (7)(C)** would have brought me
15 the requested material. Um, whether he brought me in on
16 a Thursday or not, I'm certain that I took it home on a
17 Friday and sat down and went through the entire contents
18 of -- of what I'd been provided. And it was a massive
19 amount of information.

20 Um, and as I went through it, I was very troubled.
21 Um, that's certainly my recollection. I was extremely
22 troubled. And, um, I was troubled, um, because, um, as I
23 read it, a massive amount of work had gone into a process
24 that I looked at and thought this is completely and
25 totally inconsistent with our regulatory paradigm, and,
26 um, what a pathetic waste of energy, effort and resources

1 without legal intervention. But then I thought, well,
2 maybe I'm just wrong about that, you know. Maybe I've
3 misread it.

4 So, um, uh, you know, if you go to our regulations,
5 uh, 50 CFR 402.02, you will find a great description of
6 keywords. Um, the keywords are action area, effects of
7 the action, indirect effects, and cumulative effects.
8 And each of those words has a legal meaning during your
9 consultation.

10 And so my reaction -- and I don't know if it was
11 Monday or Tuesday or a week later. I have a lot of stuff
12 going on in my job. But, at some point, I turned back to
13 this and I basically said, "I wanna see the lawyers that
14 worked on this." And here's what happened when I said
15 that.

16 Um, they had spent four years on this project.
17 They, being the Fish and Wildlife Service, to my -- best
18 of my recollection. And, um, they had only two weeks
19 before, I -- I think approximately two weeks before, it
20 was certainly some time in the middle of September, they
21 had given it to, uh, some lawyers to look at it. And
22 it's my recollection that those lawyers had exactly the
23 same concerns I did when I raised it with the experts
24 under the Endangered Species Act. And we are a nation of
25 laws.

26 **(b) (7)(C)**: Okay. Thank you for explaining that.

1 Those are helpful.

2 Um, during your review or during any of the
3 conversations that you had, did you find that there was a
4 discrepancy between, uh, the authorized use, uh, listed
5 on the label for the pesticide and the actual use, uh,
6 that -- what was being actually used in the -- in the
7 field?

8 UNIDENTIFIED SPEAKER: Uh-huh.

9 DAVID BERNHARDT: Uh, what I -- it's my recollection that
10 my concern was this; that when I read the documentation,
11 they didn't know -- and -- and these are all things a
12 person, um, should know. I mean, not should know, but,
13 ideally, in a normal consultation, what you know.

14 You know -- you know what's about to -- what is the
15 proposed action. Okay? Um, what is the action area,
16 what are -- what are the effects of the proposed action,
17 what are the effects -- the cumulative effects that are
18 gonna happen in that action area, and what are the, um,
19 the -- the consequences of your action before and after
20 the event?

21 So, in general -- in general, if you were like
22 building a road, okay, you'd know we're building a road
23 from point A to point B, theoretically. Okay? Well,
24 that is a discretionary action, authorizing funding or
25 carrying it out.

26 If you go look at the regs, those are very important

1 words 'cause they mean action. So when you build this
2 road, before an agency can build it, they have to ask
3 themselves is my activity likely to, uh, lead to jeopardy
4 or destruction of critical habitat? Okay.

5 In doing that, what they do is they like take a
6 snapshot of this before, okay, look at all the activities
7 that are happening in that -- in that area, and then
8 theorize what would happen if we add this other activity
9 to it and what are the consequences of that. And they're
10 very defined terms, direct effects, indirect effects,
11 cumulative effects, very defined.

12 So when you're doing a road -- and that's really
13 what our regs were designed to do, sort of. Not roads,
14 in particular, but you identify where the activity's
15 taking place and then what's going on with it and how's
16 that gonna affect a species.

17 Here, when I read the documentation, they don't know
18 with any -- they -- they didn't convey very well where
19 the activity was gonna take place, how it was gonna
20 occur, uh, what were the cumulative effects in the area
21 before the activity took place, what was afterwards?
22 Basic, oh, we have a process. And the reason is, is
23 because the proposed activity they were talking about was
24 putting a label on a pesticide. Okay?

25 And so what they had is they had a real problem, in
26 my opinion, in reading it. My opinion was they struggled

1 with, okay, what do we do with this. So they came up
2 with a scheme. Okay? The scheme was here's -- we're
3 gonna make all these sorts of assumptions. That scheme,
4 in my legal opinion, doesn't fall within the law. So
5 what I said to them is, first off, lawyers look at it.
6 And it's my recollection -- I may be wrong about this,
7 but it's, uh, my recollection that the lawyers agreed
8 with me.

9 So we had some other substantive conversations and
10 the conversations were shouldn't we try and figure out
11 where this stuff is applied, because we know it's been
12 applied in some instances for 50 years. There must be
13 data that supports where it's being applied. So then --
14 and at least we can begin to look at where, um, and what
15 the effects are, uh, and do something that looks more
16 like what the -- our regulations require. So that's my
17 recollection.

18 **(b) (7)(C)**: Okay. Thank you for explaining that. And
19 then, um, Mr. Bernhardt, uh -- uh, did your actions, any
20 of your actions related to either, uh, a review of the
21 opinion or any conversations you had or any, um, any
22 involvement or influence you had related to the
23 consultations -- do you think that, um, any of your
24 actions in any way, um, violated any -- either any
25 federal ethics regulations or -- or your federal -- your
26 ethics pledge?

1 DAVID BERNHARDT: Absolutely not.

2 (b) (7)(C): Okay. Okay. Um, that's all the questions
3 that I had, Mr. Bernhardt.

4 UNIDENTIFIED SPEAKER: Great.

5 (b) (7)(C): Thank you very much --

6 DAVID BERNHARDT: Great.

7 (b) (7)(C): -- for taking the time.

8 DAVID BERNHARDT: All right.

9 UNIDENTIFIED SPEAKER: Yeah.

10 (b) (7)(C): What we'll do right now is I'll go ahead
11 and end the interview and turn off the recorder. Right
12 now it's 9:07 a.m.

13 (CONCLUSION OF INTERVIEW)

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26 Transcribed by: (b) (7)(C)

1 I hereby certify that the attached proceeding conducted
2 by Special Agent (b) (7)(C), in the interview of David
3 Bernhardt associated with OI Case No. 18-0434, was held
4 as herein appears, and that this is the original
5 transcript thereof for the file of the Department of the
6 Interior's Office of Inspector General.

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10 _____ (b) (7)(C))

11 (Signature of Transcriber)

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13 (b) (7)(C)
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17 (July 15, 2019)

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