



ATTACHMENT 41



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 June 14, 2019
Report Subject Interview of Scott de la Vega	

On June 11, 2019, Special Agent (b) (7)(C) and Investigator (b) (7)(C), with the Office of Inspector General, U.S. Department of the Interior (DOI), interviewed Scott de la Vega, Designated Agency Ethics Official and Director of the DOI Departmental Ethics Office, (b) (7)(C). The purpose of the interview was to discuss allegations that DOI Secretary David Bernhardt improperly influenced U.S. Fish and Wildlife Service (FWS) consultations related to pesticides. De la Vega signed a Warnings and Assurances for Voluntary Interviews (Garrity) form and acknowledged that the interview was being recorded. The following is a summary of the interview.

De la Vega said that he became a DOI employee in April 2018. He did not recall any instance in which Bernhardt or anyone else came to him or his office to discuss or question Bernhardt's involvement in the FWS pesticide consultations; review of an FWS draft biological opinion; or that anyone talked to him about any recusals or conflicts of interest that Bernhardt had related to pesticide consultations being conducted by FWS.

De la Vega said that he had no knowledge of any recusals or conflicts that Bernhardt had related to the pesticide manufacturers or knowledge of Bernhardt's actions related to the consultations that may have violated his ethics pledge or Federal ethics regulations.

De la Vega said that the process his office used to determine what Bernhardt, or any other federal employee can or cannot be involved in started with keeping employees away from particular matters involving specific parties. He said the Code of Federal Regulations (CFR) 2635.502 prohibited employees from dealing with any particular matter involving specific parties in relation to their former employer. He said Bernhardt was covered under this regulation for one year beginning from his start date regarding his former clients. Because Bernhardt was a political appointee, de la Vega said that Bernhardt was also required to recuse himself for two years from any particular matter involving specific parties in relation to his former clients or matters where his former law firm was representing somebody in accordance with Paragraph 6 of the Ethics Pledge. In addition, De la Vega said, as a former registered lobbyist Bernhardt was prohibited from dealing with or being involved in particular matters involving specific parties that he lobbied for under Paragraph 7 of the Ethics Pledge. He said

Reporting Official/Title (b) (7)(C)/Special Agent	Signature Digitally signed.
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that Bernhardt, along with all Federal employees, had obligations under 18 U.S.C. §208 to ensure he never had a financial conflict of interest.

De la Vega said that he did not know if his office ever checked whether Bernhardt had any conflicts related to the pesticide manufacturers involved in the FWS consultations. He said that if he were to check for potential conflicts related to the entities listed on Bernhardt's recusals, he would check if any of the recusal companies were a parent company of one of the pesticide manufacturers involved in the FWS consultations. De la Vega said that he would also check if Bernhardt's former employer, Brownstein Hyatt Farber Schreck, LLP (BHFS), represented any of the pesticide companies.

De la Vega said that he did not have enough information to determine whether Bernhardt's actions related to the FWS pesticide consultation violated the Ethics Pledge or other Federal ethics regulations. He said that most of the matters Bernhardt dealt with were considered matters or particular matters of general applicability, such as broad policy matters and that Bernhardt was permitted to engage in an issue that was legally considered a broad matter.

De la Vega said that there was no conflict of interest if Bernhardt's involvement in the FWS consultations did not relate to a former client of his or a BHFS client. Even if one of the pesticide manufacturers involved in the FWS consultations was a former client of Bernhardt's, De la Vega said that this would not end the legal analysis needed to determine if there was a conflict. According to de la Vega, Bernhardt's actions would need to be considered personal and substantial participation, such as directing employees and that his office would need to determine if Bernhardt was dealing with the matter at the general matter area level, general applicability, or party matter level. He opined that Bernhardt's involvement in the FWS pesticide consultations appeared to be at the matter level, which he said involved broad swaths of the economy, lots of people, large portions of the population, or a broad part of a single industry. De la Vega said that a conflict of interest would need to involve specific party matters and that legal authority considered biological opinions to be broad matters.



ATTACHMENT 42

CASE NUMBER: OI-PI-19-0434-I

INTERVIEWER: SA (b) (7)(C)

INV (b) (7)(C)

INTERVIEWEE: SCOTT DE LA VEGA

LOCATION: (b) (7)(C)

DATE: JUNE 11, 2019

TIME: 1:26 P.M.

1 (INTERVIEW OF SCOTT DE LA VEGA, #OI-PI-19-0434-I,
2 JUNE 11, 2019)

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

5

6 (b) (7)(C): Okay. Scott, I just turned on the recorder.
7 Uh, right now it's, uh, 1:26 p.m. here on Tuesday, June 11,
8 2019. My name is (b) (7)(C). I'm a special
9 agent with the OIG for the Department of Interior. Also
10 present from the OIG today --

11 (b) (7)(C): Is (b) (7)(C), (b) (7)(C).
12 I'm an investigator with the Department of Interior, Office
13 of Inspector General, Program Integrity Division.

14 (b) (7)(C): And today we're doing a quick interview with
15 Mr. Scott de la Vega.

16 And, Scott, uh, can you please just introduce
17 yourself, just give your name and spell your last name,
18 please?

19 SCOTT DE LA VEGA: Sure. I am, uh, Scott de la Vega, Scott
20 with two T's, de la Vega, D-E, space, L-A, space, V-E-G-A.
21 I'm the director of the Departmental Ethics Office and the
22 designated agency ethics official for the Department of the
23 Interior.

24 (b) (7)(C): Perfect. Thank you. All right. Um, we
25 talked a little bit about the -- the purpose of the
26 interview. Um, I -- I talked a little bit about, uh, the

1 Fish and Wildlife Service, uh, consultations related to
2 pesticides that they're consulting the EPA on.

3 Um, just in your position, Scott, have you had any
4 direct involvement in -- in those consultations or, uh,
5 working with Fish and Wildlife Service on those
6 consultations?

7 SCOTT DE LA VEGA: Um -- uh, no. Uh, to my recollection,
8 that particular issue has not been brought before me, um,
9 as DAEO. However, uh, that is not to say that someone on
10 my staff within Departmental Ethics Office, uh, would not
11 have looked at this issue or dealt with this, uh, specific
12 issue for -- or with the Secretary. Uh, the most likely
13 people, uh, who would have done that, uh, if they were
14 consulted, uh, would be (b) (7)(C), uh, (b) (7)(C)
15 the DEO, or (b) (7)(C), uh, also another (b) (7)(C)
16 (b) (7)(C) the DEO.

17 (b) (7)(C): Perfect. And, Scott, is it accurate that
18 you've been in -- you started in your current position in,
19 uh, April 2018.

20 SCOTT DE LA VEGA: That's right.

21 (b) (7)(C): Okay. Perfect. All right. And I'm just
22 gonna kinda jump in just to save time. Uh --

23 SCOTT DE LA VEGA: Uh-huh.

24 (b) (7)(C): Has Mr. Bernhardt or -- or anyone, really.
25 Has anyone come to you and -- and talked to you about, um,
26 any recusals or conflicts that Mr. Bernhardt has had, uh,

1 related to, um, any of the, uh, companies involved in this
2 consultation, the pesticide companies, the registrants or
3 manufacturers of the pesticides that the Fish and Wildlife
4 Service is consulting on?

5 SCOTT DE LA VEGA: Okay. Um, so, again, no, not in -- in
6 particular, uh, in regards to the, uh, pesticide issue to
7 my recollection. I'm -- I'm dealing with lots of issues
8 every day. It is -- I cannot, uh, raise my right hand and
9 swear that no one has ever approached me to discuss the
10 matter. But, uh, to my recollection at this point, I -- I
11 don't recall.

12 Um, however, uh, we, this office, and I personally am
13 dealing with the Secretary's recusals as a whole on a daily
14 basis. On a minute-by-minute basis, it is, uh, the single,
15 uh, biggest, um, portion of time that I spend on
16 substantive ethics matters. I -- I deal with -- well,
17 obviously with a lot of organizational issues in running
18 the ethics program but on substantive ethics matters, I
19 deal with the Secretary's, uh, recusals, um, the clear, um,
20 you know, bulk of my time.

21 Uh, you can see up there in those two, uh, posters,
22 uh, it has D.B. recusals until 8/3/2019. And I have a
23 revolving door (unintelligible) one. That is, uh, so that,
24 uh, we have the discipline in this office, uh, so that
25 whenever a recusal issue comes up regarding the Secretary,
26 uh, we just don't wing it from the top of our head. We go

1 through that decision tree. Uh, we have all of his, uh,
2 former clients listed on there. Uh, we have all of the,
3 uh, common clients of his former firm listed on there, uh,
4 common issues that come up. Uh, so, you know, I -- I've
5 made it a very big point in this office particularly
6 because you guys may, uh, remember having, uh, read the,
7 uh, New York Times articles and others about the Westlands
8 matter and how in that instance the Secretary, uh, probably
9 just got, uh -- uh, verbal advice, uh, which is not a best
10 practice. And I'm not having that in this office anymore.
11 So we are very disciplined about how we approach any
12 questions that -- that the Secretary gets. Um, and we --
13 we don't wing it back to him verbally. Uh, if he doesn't
14 get it in writing, he's not gotten it. So --

15 (b) (7)(C) Okay. Great. Thanks for explaining that.

16 SCOTT DE LA VEGA: Yep.

17 (b) (7)(C): So at this point I'm gonna give just a -- a
18 quick little briefing, quick summary of, uh, some of the
19 information that we've collected during our case.

20 SCOTT DE LA VEGA: Uh-huh.

21 (b) (7)(C): Uh, basically, uh -- so the Fish and Wildlife
22 Service has been, uh -- was focused on consulting on three,
23 uh, kind of key pesticides, uh, diazinon, malathion, and
24 chlorpyrifos. And in the -- they developed -- you know,
25 they do their work and they develop -- uh, develop, draft
26 biological opinion documents.

1 SCOTT DE LA VEGA: Uh-huh.

2 (b) (7)(C): You know, they're great big documents. Uh, I
3 think it's like thousands of pages --

4 SCOTT DE LA VEGA: Uh-huh.

5 (b) (7)(C): -- including all the appendices and that type
6 of thing.

7 SCOTT DE LA VEGA: Right.

8 (b) (7)(C): And it has their analysis and their, uh,
9 conclusions or findings.

10 And in the -- in the summer or fall of 2017, prior to
11 your time here, uh, what we're told is that, uh, Mr.

12 Bernhardt kinda reached out or requested, uh, one of the
13 draft documents. Uh, there was a meeting or meetings with
14 -- with Fish staff and solicitor attorneys --

15 SCOTT DE LA VEGA: Uh-huh.

16 (b) (7)(C): -- and kinda -- the bottom line, some of what
17 came out of it, was, uh, Mr. Bernhardt questioned, Hey, is
18 this -- has this document, uh, been reviewed by the
19 Solicitor's Office? Has -- has -- have lawyers kinda given
20 -- given this a legal review?

21 SCOTT DE LA VEGA: Right.

22 (b) (7)(C): And, uh, we were told that that -- that had
23 not happened yet and that -- the other thing is he kinda of
24 -- he had questions about, uh, kinda the -- the basis of
25 the consultation. It gets a little complicated. But, um,
26 you know, he had -- he had questions about the, uh -- some

1 of the aspects of -- of how they did their work --

2 SCOTT DE LA VEGA: Sure.

3 (b) (7)(C): -- how they based it from, uh -- and -- and -
4 - and that type of thing.

5 SCOTT DE LA VEGA: Okay.

6 (b) (7)(C): So our question is did, um -- did -- has
7 anyone ever come to you, uh, and just questioned his
8 involvement and said, Hey, I -- you know, something doesn't
9 seem right about this. I question the ethics of him being
10 involved in -- in this -- this consultation or the review
11 of this document.

12 SCOTT DE LA VEGA: Yeah.

13 (b) (7)(C): I think, you know, whether they were
14 questioning his impartiality or -- or questioning whether
15 it was a -- a former client or -- or, um, anything like
16 that. Has that ever --

17 SCOTT DE LA VEGA: Yeah.

18 (b) (7)(C): -- come up at all?

19 SCOTT DE LA VEGA: So, again, not in this specific case
20 with the biological opinions with the pesticides. Okay?
21 Not to my recollection. However, people are always coming
22 to us, um, in -- in all kinds of instances asking, Hey, is
23 it okay for the Secretary to be involved in this? Uh, I'd
24 like to brief him on that. Um, and so that's, you know,
25 part of our purpose here --

26 (b) (7)(C) Okay.

1 SCOTT DE LA VEGA: -- is to make sure that, uh, people do
2 not -- staffers do not go and start talking to the
3 Secretary about matters, okay, that -- uh, particular
4 matters that he is recused from.

5 Now, back in that period of time, in 2017 --

6 (b) (7)(C) Sure.

7 SCOTT DE LA VEGA: -- okay, I can't speak for that period
8 of time.

9 (b) (7)(C) Okay.

10 SCOTT DE LA VEGA: Honestly, from having talked to staffers
11 here and everything, I think -- it was a little bit of the
12 wild west --

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

14 SCOTT DE LA VEGA: -- when it came to ethics compliance at
15 the time. There was a lot more discipline from (b) (7)(C)
16 of 2018 going forward, okay, because of what (b) (7)(C)
17 and I have instituted as far as policies and procedures to
18 make sure that, you know, we're -- we're handling this
19 right.

20 This issue of what the Secretary is -- is recused from
21 and what he is not, uh, is a common and -- and multi, uh --
22 multiple times a day issue that comes up. All right? Uh,
23 the Secretary -- a lot of people think, uh, that, uh, you
24 know, novice people, uh, staffers think that Oh, gosh. Um,
25 the Secretary represented water districts and -- as an
26 example. Secretary represented water districts so I can't

1 talk to him about anything in water, right? You know? And
2 they'll come -- and I'm like, Uh, no. That's not the way
3 it works. Let's get specific. Let's get some facts. What
4 do you wanna talk to him about? Oh, you wanna talk to him
5 about the, uh, you know, uh, Yellowstone Water District?
6 Well, he never represented Yellowstone Water District. His
7 former firm never represented them, had nothing to do with
8 them. Um, it, uh -- it does not involve the Colorado River
9 and all of the pacts, uh, regarding the drought contingency
10 plan. So you're talking about a totally different water
11 district? Sure, you can talk to him about that, you know.

12 Now, if we -- and I'm -- I'm sure you're on top of
13 this. But the analysis that we use as to what the
14 Secretary or any federal employee can be involved in and
15 what they can't, okay, if they have recusals, is we start
16 at the top. What is a matter? Right? Then the second
17 category. What is a particular matter of general
18 applicability? And the third category is what is a
19 particular matter involving specific parties. That last
20 category is the category that we have to keep former, uh,
21 employees, current employees, away from in regards to their
22 recusals. Okay? So if John, new federal employee, worked
23 at Acme Corporation, uh, prior to joining the Department of
24 the Interior, uh, John automatically, pursuant to the
25 standards of conduct, 2635.502, right, is -- that's the
26 impartiality regulation -- John is prohibited from dealing

1 with any particular matter involving specific parties in
2 relation to his former employer, okay, Acme Corporation.

3 So the Secretary was also, uh, under 502 for a year
4 with regards to any of his former clients. And his former
5 clients -- I've got this little sheet up here. You've seen
6 his former clients. Okay?

7 **(b) (7)(C)**: Uh-huh.

8 SCOTT DE LA VEGA: So in regards to any of these things, he
9 had a 502 obligation for his first year. Then because he
10 is a political appointee of the Trump Administration, he
11 had the Ethics Pledge requirements to deal with. And so
12 there we're dealing with paragraph 6 of the Ethics Pledge.
13 And he had an affirmative -- has, okay, an affirmative
14 obligation to recuse himself not for one year -- that's the
15 standard of conduct provision -- but for two years, under
16 paragraph 6 of the Ethics Pledge, to recuse himself from
17 any particular matters involving specific parties in
18 relation to his former clients or, uh -- um -- uh, matters
19 where his former law firm is representing somebody. All
20 right? So that's -- that's the decision tree thing we --
21 we go into over there.

22 In addition, because the Secretary is a former
23 registered lobbyist under the Lobbying Disclosure Act he
24 has an additional obligation under paragraph 7 of the
25 Ethics Pledge to not deal with or be involved in particular
26 matters involving specific parties that he lobbied on,

1 okay, so any lobbying clients. Plus there is a little bit
2 of an additional obligation, uh, involving matters of
3 general applicability which -- you don't have to get into
4 those details. But -- so he's essentially got those, uh,
5 three, uh, non-criminal recusal obligations, 502, paragraph
6 6 of the pledge, paragraph 7 of the pledge. And then, of
7 course, he along with all federal employees has his
8 criminal, uh, obligations under, uh, mostly 208 to make
9 sure that he never has a -- a financial conflict of
10 interest, you know. So if -- if the Secretary still has,
11 you know, represented, um, Acme Corporation and then he
12 comes here and he does something in his official capacity
13 that impacts, you know, Acme, uh, then, you know, he's in
14 208 criminal territory. So -- you know. So then a bunch
15 of other criminal laws, conflict of interest that -- that
16 can come up. But 208 is the big one.

17 So those are really the -- the four legal authorities,
18 if you will, that we're constantly looking for. With 208
19 we're just not concerned with the Secretary at all because
20 he is -- all of his -- I have -- uh, I can probably give
21 you his financial assets off the top of my head, you know.

22 He is involved with widely held, widely (b) (7)(C)
23 (b) (7)(C). He doesn't have any (b) (7)(C). Uh, his
24 (b) (7)(C) is not with a law firm or a private company. So we
25 don't have to worry about that from a conflict perspective.

26 (b) (7)(C). Uh, his (b) (7)(C) don't

1 have a, uh, (b) (7)(C) or anything like that. So we don't
2 have to worry about that. So we're not worried about
3 criminal conflicts with the Secretary. And we're not
4 worried about 502 any longer with him either because that
5 one year passed in August of 2018. So, nowadays, we're
6 just concerned about paragraph 6 and 7 obligations, and
7 those expire on August 3rd of 2019. So --

8 (b) (7)(C) Great. Thanks for explaining that.

9 SCOTT DE LA VEGA: Yeah.

10 (b) (7)(C): That was helpful. So from your office I
11 received, uh, the list of Mr. Bernhardt's recusals. It
12 lists all the companies. And I went through and I just
13 compared that to the -- the list that I received during
14 this case about the -- the registrants, the manufacturers
15 of the pesticides involved. I didn't see any of the
16 pesticide manufacturers on this list.

17 SCOTT DE LA VEGA: Uh-huh.

18 (b) (7)(C): Um, so based on that, do you think that it
19 would be accurate to say that he doesn't have any recusals
20 related to the, uh, pesticide manufacturers?

21 SCOTT DE LA VEGA: Um, I couldn't say that -- uh, make a
22 statement as broad as that --

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

24 SCOTT DE LA VEGA: -- uh, outright because that's just one
25 part of -- of the analysis when we look at his recusal. So
26 if -- on that list you see all of his former clients,

1 right? That's great. Um, we also like to -- to check --
2 because we're very conservative in this office.

3 **(b) (7)(C)**: Sure.

4 SCOTT DE LA VEGA: And this is my policy -- that -- I would
5 wanna see -- and we go on Google all the time for this --
6 um, if one of those companies is a parent company of maybe
7 one of your pesticide manufacturers. Okay? So we look at
8 -- at that, also. Um, and there are various ethics rules
9 in regards to, Oh, well. If you have a wholly-owned
10 subsidiary or, you know, partially or whatever, how that
11 would apply. But I just like to know. Um, so we do that.
12 And you're not gonna see parent companies just from that
13 list.

14 **(b) (7)(C)**: Sure.

15 SCOTT DE LA VEGA: So that would require a little bit of --
16 of research. But if we see a chemical company on there and
17 the issue is pesticides, then I'm gonna wanna go onto
18 Google and say, Oh, let me see that -- um, that's Acme
19 Chemical that's there? Let me -- let me see what Acme's
20 all about. And then I'll see that Acme's owned by, you
21 know, Acme -- Super Acme -- and -- and, you know, see, Oh,
22 did he make a decision in regards to Super Acme? you know.
23 So we would do that. So that's one angle that we would do.

24 Then the other thing we always have to ask ourselves,
25 because he was a lawyer at a big law lobbying firm, is we
26 ask question number two. Is BHFS, his former firm,

1 Brownstein, High -- uh -- uh --

2 (b) (7)(C) : -- Hyatt, Faber.

3 SCOTT DE LA VEGA: I forget all of them.

4 (b) (7)(C) : Hyatt, Farber and --

5 SCOTT DE LA VEGA: Yeah, right.

6 (b) (7)(C) : Yeah.

7 SCOTT DE LA VEGA: -- are they, um -- is -- is the law firm
8 itself a former client, uh, or a party. And the further
9 question we ask is does Brownstein, BHFS, or a former
10 client represent a party? So, if Brownstein represents
11 your pesticide company, okay, we wanna know that. And that
12 could be a problem. That could be a pledge violation. Um,
13 or, um -- uh, if one of his former clients -- let's say one
14 of his former clients represents somehow, uh, one of the
15 pesticide companies, um, not just in a fiduciary sense but
16 I -- I don't know. Maybe they're -- maybe they're a former
17 client of his somehow represented, uh, with a lobbyist and
18 -- and represented something. We'd wanna know that. That
19 could be a violation of paragraph 6, um, also. So yeah.
20 That -- we have to ask those questions also in relation to
21 privacy.

22 Now, very important when you talk about his former law
23 firm. Um, there is no legal obligation obviously on the
24 part of the law firm to tell the Secretary or the
25 Secretary's staff on any regular basis, uh, that, um -- who
26 their client list is. So this is a very, um, sometimes

1 uncomfortable, uh, area for ethics officials because we
2 want to know as much information as possible about, you
3 know, a client's former firm yet the former firm doesn't
4 have to give us any information and we don't want the
5 employee, in this case the Secretary, reaching out to his
6 former firm and having discussions with his former firm
7 about, Hey, are you guy representing Acme? Right? We
8 don't want that. And so you ask yourself, Well, how do we
9 know, then, whether the Secretary's former firm represents
10 a party who may have official business before the agency?
11 And the answer to that is -- and 'cause we're dealing with
12 this all the time. Right? We -- and the way this usually
13 comes about is we have one of our deputy solicitors, right,
14 who wants to go in and brief the Secretary on whatever.
15 And they -- and -- and -- let's say in a litigation matter,
16 on a new litigation matter, right? And they're not sure if
17 the former -- if the Secretary's former firm represents the
18 party. If the Secretary's former firm represents the -- a
19 party who's in litigation, right, against DOI, we don't
20 want that person going in and briefing the Secretary on
21 that, okay, 'cause then the Secretary now is listening --
22 within his two-year period he's listened to information
23 about his former firm and -- and their client. Okay? That
24 would be a violation of paragraph 6.

25 So what we instruct people to do -- and the Secretary
26 has a screener but he also has us. We're his super

1 screeners, right? We don't let him meet with anybody these
2 days. This is not the land of Zinke anymore, okay, where
3 Zinke met with everybody. All right? Secretary Bernhardt
4 will not -- does not meet with anybody, okay, unless we
5 sign off on it in Ethics. All right?

6 (b) (7)(C): And how long has that policy been in effect?

7 SCOTT DE LA VEGA: Uh, when did I get here? April 16th of
8 -- well, that -- that's a little bit -- I started that with
9 Secretary Zinke on April 16th, uh, of -- of last year.

10 But, um -- uh, I was not reviewing everything with
11 Secretary Bernhardt until about July or so of last year.

12 (b) (7)(C) was still, you know, kinda just dealing with
13 the -- the deputy secretary at the time. But (b) (7)(C)
14 was -- was being good and -- and, you know, rather
15 vigilant. Because my first week here I had informed (b) (7)(C)
16 (b) (7)(C) that, uh, our standards were changing dramatically
17 and that we are not simply signing off on things without
18 all the information, you know.

19 For instance, you guys remember your whole
20 investigation with the charter plane, right --

21 (b) (7)(C): Uh-huh.

22 SCOTT DE LA VEGA: -- where nobody in this office asked,
23 Well, why is the Secretary going out to Nevada? And nobody
24 bothered to ask that it wasn't an official thing, right?
25 It was for him to talk to a freaking hockey team about
26 personal stuff. Why would we -- using official

1 appropriated funds for that. Well, quite frankly, this
2 office should have caught that and did not. Okay?

3 So, uh -- and that -- that report of yours came out on
4 April 16th. I remember because it was my first day here.

5 (b) (7)(C): Uh-huh.

6 SCOTT DE LA VEGA: And I called (b) (7)(C) in and I said,
7 "This will never happen again," you know.

8 So, uh, how do we keep all of, uh, these staffers who
9 wanna talk to the Secretary, I -- uh, from talking to him
10 about matters that, uh -- where his former firm was
11 involved? I tell them, The best we can do is due
12 diligence. What does that mean? In this case it means you
13 go online to Google and you plug in the name of the parties
14 and then the law firm name, see if something comes up.
15 Maybe they're a confidential client of the law firm. Okay.
16 We wouldn't know that. Plug in the name of the parties,
17 plug in the, um -- you go onto, uh, the, uh -- the database
18 for new litigation, the -- the --

19 (b) (7)(C): Pacer?

20 SCOTT DE LA VEGA: What is it? Acer.

21 (b) (7)(C): Acer.

22 SCOTT DE LA VEGA: Thank -- thank you. Yes. Go on there,
23 all right, or ask your DOJ, uh, attorneys who you're in the
24 --

25 (b) (7)(C): Uh-huh.

26 SCOTT DE LA VEGA: -- litigation with to go on there and

1 check. Okay? Do something as simple as go to the last
2 page of your pleadings and see what law firm is signing,
3 you know. So, these are -- are not foolproof methods but
4 it's -- it's due diligence.

5 **(b) (7)(C)**: Scott, do you know -- you know, the -- you're
6 explaining what -- what you would do. Do you know if the
7 office here has -- whether it was before you or since you
8 has ever done that analysis for -- on behalf of Mr.
9 Bernhardt for these pesticides?

10 SCOTT DE LA VEGA: Oh, for the pesticides? Um -- uh,
11 factually, no, I don't know. Um, but just by the time
12 period that you're talking about -- you're talking about
13 the fall -- uh, summer and fall of 2017?

14 **(b) (7)(C)**: Yeah, yeah.

15 SCOTT DE LA VEGA: Uh, I can almost guarantee you no.

16 **(b) (7)(C)**: Sure.

17 SCOTT DE LA VEGA: We've had -- people weren't doing any of
18 that --

19 **(b) (7)(C)** Sure.

20 SCOTT DE LA VEGA: -- at the time. So, um -- but that's
21 not a fact. That's just an opinion.

22 **(b) (7)(C)**: Sure. Thanks for explaining that.

23 And then, um -- I know you -- you have a limited, uh,
24 amount of knowledge about this, you know. But just --
25 based on what I, uh -- based on what you know or don't
26 know, do you know if, um, any of Mr. Bernhardt's -- just

1 based on what you know, do you know if any of Mr.
2 Bernhardt's actions related to, uh, the pesticide
3 consultations or his, uh, involvement in the review of the
4 draft biological opinion, uh, violated either his ethics
5 pledge or any ethics regs?

6 SCOTT DE LA VEGA: Right. Yeah. So, you know, again,
7 impossible for -- for me to answer that based on the
8 information that -- that I've got right now which is next
9 to nothing. I don't know what it is.

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

11 SCOTT DE LA VEGA: If you told me what it is that he did or
12 was involved with or opined on, um, specifically, then I
13 could take that and say, Oh, he -- these are the facts. He
14 opined on X.

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

16 SCOTT DE LA VEGA: And then I can run that into our
17 analysis and determine whether X was a matter -- particular
18 matter of general applicability or a party matter. Most of
19 the matters that the Secretary deals with at his level are
20 considered matters or particular matters of general
21 applicability. Okay? So matters are broad policy matters.
22 Is -- is it okay for -- even if the Secretary, uh -- let's
23 say in your case here that one of these pesticide companies
24 was a former client of his and the -- the issue before the
25 Secretary or what he opined on was considered legally a
26 matter, a broad matter, he is perfectly fine in being

1 involved in that --

2 (b) (7)(C) Okay.

3 SCOTT DE LA VEGA: -- and talking about that.

4 (b) (7)(C): Okay. So -- in this case, you know, what
5 we've -- the information we've received in our case is
6 that, you know, they -- uh, folks from Fish -- from Fish
7 and Wildlife Service went, did a briefing, had a meeting
8 with Mr. Bernhardt. There were some solicitors there. Uh,
9 they talked about, uh, this draft biological opinion, uh,
10 about one of the pesticides, you know. They don't always
11 work. For -- for one of the three pesticides.

12 SCOTT DE LA VEGA: Uh-huh.

13 (b) (7)(C): And he questioned, um, one, did it have a
14 legal review. But, two, he kinda -- they said he kinda
15 went through an analysis of -- of their document. They
16 said, um, he said, you know -- asked questions about the
17 basis. And they told us they based their entire
18 consultation on the -- the label of the pesticide, so,
19 like, the label on the can of the pesticide, you know --

20 SCOTT DE LA VEGA: Uh-huh.

21 (b) (7)(C): -- or -- or label -- you know, that type of
22 label that says, you know, This is the authorized use.
23 This is how much you can use it and this is the area in
24 which you can use it --

25 SCOTT DE LA VEGA: Uh-huh.

26 (b) (7)(C): -- and how you can spray it and that type of

1 thing. And the ESA, Endangered Species Act regulations
2 that are -- that are working allows them to make
3 assumptions. So they -- they made an assumption that over
4 the course of 15 years, um, people might use the total --
5 use this pesticide up to the authorized amount. And the
6 action area, where it might be used, uh, based on the --
7 the label could be used anywhere in the U.S. --

8 SCOTT DE LA VEGA: Uh-huh.

9 **(b) (7)(C)**: -- with -- with a few small exceptions. And
10 they -- what we've received is that Mr. Bernhardt
11 questioned, uh, the kind of reasonableness of that
12 assumption, of the assumption that, Well, it's gonna be
13 used pretty much anywhere in the U.S. up to the authorized
14 amount --

15 SCOTT DE LA VEGA: Uh-huh.

16 **(b) (7)(C)**: -- where, um, he -- he asked them -- you
17 know, kinda the guidance or questions that they received
18 from him was take a look at how it has actually been used
19 over the past, um, 15 years --

20 SCOTT DE LA VEGA: Okay.

21 **(b) (7)(C)**: -- and what it -- what usage data exists out
22 there in terms of, um, you know, uh -- in what states, what
23 counties was it used? How much was it used? that type of
24 thing.

25 SCOTT DE LA VEGA: Okay.

26 **(b) (7)(C)**: So, uh, we kinda heard that they, uh -- they

1 kinda had to start a -- you know, they kinda hard to -- the
2 work that they had done, they kinda had to start over, go
3 back out, uh, work with different federal --

4 SCOTT DE LA VEGA: Uh-huh.

5 (b) (7)(C): -- agencies, state agencies, uh, different,
6 uh, organizations out there, collect as much data as they
7 can to kinda, uh, start -- start working all over. Um --

8 SCOTT DE LA VEGA: And this is in regards to one particular
9 pesticide?

10 (b) (7)(C): Well, the draft biological opinion that he
11 requested or reviewed, that -- that was on one, you know.

12 SCOTT DE LA VEGA: Uh-huh.

13 (b) (7)(C): It's a great big document, you know,
14 thousands of pages on -- on one. I think they had two
15 others that were in a draft stage.

16 SCOTT DE LA VEGA: Uh-huh.

17 (b) (7)(C): Um, and this was also a draft. Um, but I
18 think his -- his idea or guidance going forward in terms of
19 collecting data that was gonna be applied to all
20 consultations and they were focused on -- on one, you know.

21 SCOTT DE LA VEGA: Okay.

22 (b) (7)(C): One was, uh, a priority.

23 SCOTT DE LA VEGA: And how does -- what you're describing,
24 how does that relate to, uh, any -- does it relate to any
25 particular -- any former client of his or, uh, client of
26 BHFS?

1 (b) (7)(C) Well, that's -- and that's what we're --
2 we're looking to -- into --

3 SCOTT DE LA VEGA: Okay.

4 (b) (7)(C): -- and what's what we're kinda --

5 SCOTT DE LA VEGA: 'Cause that's -- that's the connection,
6 right?

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

8 SCOTT DE LA VEGA: If they're -- if it doesn't relate to
9 any of that, then there's -- this all means nothing, right?

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

11 SCOTT DE LA VEGA: It has to relate to a former client, uh,
12 or BHFS. If it doesn't -- oh, I'm sorry. That's -- I have
13 (unintelligible). I'm -- I'm so sorry. I just -- I --
14 yeah. Scott de la Vega.

15 (b) (7)(C): And I'm just gonna pause the recording.

16 Right now it's 1:56.

17 Scott, I just restarted the recording. Right now it's
18 1:58 p.m. We're just gonna finish up here.

19 SCOTT DE LA VEGA: Right, right. So you want to know, um -
20 - you -- you -- you know, what the connection is to any of
21 his former clients, you know, what -- what -- where is the
22 conflict? Um, if you determine that there is some
23 connection, in fact, that -- let's say that this pesticide
24 company was a former client of his, that doesn't end
25 obviously the analysis. Then the question is what was the
26 issue that the Secretary was dealing with personally and

1 substantially. Okay? Now, the -- what you're describing,
2 the actions that he took, that would be considered personal
3 substantial participation, right? Because he is directing
4 people. He is talking to them. He's involved in it. So
5 you -- you cleared that hurdle.

6 Then the question is was he dealing with the matter at
7 the general matter area level, general applicability, or
8 party matter? What you're describing is not a party
9 matter. That is a -- at the matter level. Uh, most that
10 is at the matter level. And at the matter level, we're
11 talking about, um -- uh, issues that impact, uh, broad
12 swads of the economy or lots of people, large portions of
13 the population, etc., or -- or a broad part of even a
14 single industry. Um, if you get a little bit more specific
15 than that and -- and saying, Oh, well, there's only one
16 pesticide manufacturer in the world that -- that we're
17 talking about here and one regulation, then maybe you're
18 dealing with matter of general applicability --

19 **(b) (7)(C)**: Okay.

20 SCOTT DE LA VEGA: -- you know. But to get to a conflict
21 of interest, um, you would really have to get down to that
22 party matter level because even at the general
23 applicability level, the -- the legal authority that would
24 really be impacting him there would be paragraph 7 and --
25 yeah, it -- it could be but it's more likely at the party
26 matter level. So that -- what you're describing there, I

1 just don't -- you know, I don't see that party matter.

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

3 SCOTT DE LA VEGA: But it -- it's a fact that -- a fact.
4 It is legal authority out there that biological opinions
5 and biological assessments are -- BiOps, okay, are, um,
6 considered broad matters. And there is actually a federal
7 case on that issue, and if you -- have you guys read the,
8 uh -- the Westlands legal opinion that -- that we did in
9 this office on the Westlands matter? Um, there's --

10 (b) (7)(C): I've gotten -- I've read one draft.

11 SCOTT DE LA VEGA: Okay. So if you -- if you read that --

12 (b) (7)(C): Well, I -- I read it once. Yeah.

13 SCOTT DE LA VEGA: If you read that, you'll, uh -- and
14 then. I'm sorry. I hate to rush you. And I know I was
15 late to this so I'm happy to, you know, have another
16 meeting with you guys on this. But I would encourage you -
17 - you could Google it 'cause this is all over the Internet
18 now. Um, this is a legal categorization of the -- the
19 Secretary's problems that he had in Westlands based on that
20 New York Times article. Okay? And the reason I'm showing
21 you this is because this office worked on this memo, okay,
22 that (b) (7)(C) and (b) (7)(C) worked on with the -- well, the three
23 of us worked on it but they sent it to me. Okay. And this
24 breaks down when -- what is a party matter, general
25 applicability, and -- and, uh --

26 (b) (7)(C): I have that.

1 SCOTT DE LA VEGA: -- and broad matter. Okay. And this
2 also discusses and -- and puts the biological opinions and
3 stuff like that in the broad -- broad matter category and
4 it gives the -- the legal -- the federal case law that says
5 that. So, um, you can generally talk about biological
6 opinions even if it's with a former client.

7 (b) (7)(C): Okay. All right. Great.

8 (b) (7)(C): I'm good.

9 SCOTT DE LA VEGA: All right?

10 (b) (7)(C): That's very helpful. Thank -- thank you very
11 much, Scott.

12 SCOTT DE LA VEGA: Okay. Absolutely.

13 (b) (7)(C): End the recording right now. It's 2:01.

14 (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 **(b) (7)(C)**, in the interview of Scott de la
3 Vega associated with OI Case No. OI-PI-19-0434-I 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.

7

8

9

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

11 (Signature of Transcriber)

12

13 **(b) (7)(C)**
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17 (June 12, 2019)

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