

The New York Times

The Interior Secretary Wants to Enlarge a Dam. An Old Lobbying Client Would Benefit.

By Coral Davenport
Sept. 28, 2019



The spillway of the Shasta Dam in Northern California. Walter Bibikow/Denita Delimont, via Alamy

WASHINGTON — For years, the Interior Department resisted proposals to raise the height of its towering Shasta Dam in Northern California. The department's own scientists and researchers concluded that doing so would endanger rare plants and animals in the area, as well as the bald eagle, and devastate the West Coast's salmon industry downstream.

But the project is going forward now, in a big win for a powerful consortium of California farmers that stands to profit substantially by gaining access to more irrigation water from a higher dam and has been trying to get the project approved for more than a decade.

For much of the past decade, the chief lobbyist for the group was David Bernhardt. Today, Mr. Bernhardt is the Interior Secretary.

It is not the first time that the Interior Department under Mr. Bernhardt's leadership has taken actions that benefit his former client, the Westlands Water District, a state entity created at the behest of, and largely controlled by, some of California's wealthiest farmers. [Mr. Bernhardt also promoted the weakening of an endangered-species regulation](#) that would get Westlands more water, a move that has put him under scrutiny from his department's inspector general.

The Shasta is already one of the tallest dams in the nation, and preliminary work has begun to raise its height by 18.5 feet. That would allow it to hold about 14 percent more water, and the 1,000 or so Central Valley farmers that Westlands represents would receive more than anyone else.

"Prior to the Trump administration, this project was dead," said Jeffrey Mount, a water management expert with the Public Policy Institute of California. "Now it's coming to life. And Westlands would be the No. 1 winner here."

Under Mr. Bernhardt's leadership, the Interior Department has disregarded its own scientific and legal analysis showing that raising the Shasta not only would be environmentally damaging and cost-prohibitive, but it would also be illegal under California law. California's attorney general is now suing to stop it.

This year the Interior Department's Fish and Wildlife Service was told to prepare a new environmental review of the dam project, but this one will be much more limited in scope, according to a person familiar with the plans, who requested anonymity out of fear of retribution. The new plan would not analyze the effects on salmon habitat downstream or the effects on several rare species.

Excluding review of the dam's downstream effects is "like analyzing the impact of a loaded pistol without looking past the nose of the barrel," said Jon Rosenfield, a biologist at San Francisco Baykeeper, a conservation organization. The effects of storing more water behind the dam "are major and extend all the way down to San Francisco Bay," he said.

The Interior Department is also pursuing a deal, long sought by Westlands, whereby Westlands would help pay for the work to heighten the dam.

William K. Reilly, who ran the Environmental Protection Agency in the first George Bush administration, said the credibility of environmental decisions "always rests on good science." The decision to raise the Shasta Dam is an example of the Trump administration disregarding scientific evidence when making policy, he said. "When you see a pattern of not accepting scientific opinion, you lose trust in what the government has done, and it's very hard to get that back," Mr. Reilly said.



Interior Secretary David Bernhardt at a congressional budget hearing this year. Mark Makela for The New York Times

The Trump administration's ethics pledge requires former lobbyists to recuse themselves for two years from working on any specific issue area involving a particular party on which or for whom they lobbied in the two years before joining the administration.

The Interior Department's ethics office said it had reviewed Mr. Bernhardt's past lobbying for a law related to the Shasta Dam and concluded before his appointment that the law "was not a particular matter or specific issue area." As a result, it said, the ethics pledge did not prohibit him from decisions about the dam, unless they were on issues that were "a particular matter" involving his former client.

Mr. Bernhardt did not respond to detailed written questions.

Mr. Bernhardt's spokesman, Nicholas Goodwin, said, "Secretary Bernhardt is and has always been committed to upholding his ethical responsibilities, and he has fully complied with those obligations."

Thomas W. Birmingham, the general manager of Westlands Water District, said Mr. Bernhardt hadn't lobbied specifically on the issue of the enlargement of the Shasta Dam.

Mr. Bernhardt separately is [under federal investigation](#) not only for the allegations that he helped weaken Endangered Species Act protections to free up water for Westlands, but that he continued lobbying for Westlands after formally de-registering as a lobbyist, and that he [intervened to block a scientific report](#) showing a pesticide's harmful effects on some endangered species.

Mr. Bernhardt is an architect of President Trump's efforts to roll back environmental regulations. [Those rollbacks have benefited numerous parties](#), among them some of Mr. Bernhardt's former lobbying and legal clients, including oil companies and Halliburton Energy Services, the oil and gas extraction firm once led by former Vice President Dick Cheney.

Mr. Bernhardt was initially appointed by Mr. Trump in 2017 as the Interior Department's deputy secretary. This year he rose to the top job after his predecessor, [Ryan Zinke, resigned following allegations of ethical misconduct](#).

Mr. Zinke's resignation was one of several high-level departures from the administration amid ethics scandals. Mr. Trump's first pick to lead the Environmental Protection Agency, Scott Pruitt, [resigned last year amid federal investigations into alleged improper activities](#). He, too was succeeded by a former lobbyist, Andrew Wheeler, who previously had represented coal companies.

Mr. Pruitt and Mr. Zinke have denied wrongdoing.

Rejecting Established Science

The 602-foot Shasta Dam tames the Sacramento River 200 miles north of San Francisco. Built by the Interior Department from 1938 to 1945, it captures the annual snowmelt from Mount Shasta, creating a vast reservoir that anchors California's federally operated irrigation system, routing water from the state's verdant north to the almond and pistachio farms of its arid Central Valley.



The Shasta Dam, with Mount Shasta in the background. Warmer winters mean less snowpack, and less meltwater in spring. Walter Bibikow/Jon Arnold Images Ltd., via Alamy

Today, however, California is suffering dire water shortages. For years, water demand has increased but supply has fallen as the warming climate diminishes Mount Shasta's snowpack. Westlands, the state's largest agricultural water user, has for decades pressed state and federal lawmakers for changes to provide it with more water.

Opponents of raising the Shasta say that, among other things, it would violate state law prohibiting construction that harms pristine waterways such as the McCloud River, which drains into Lake Shasta. "It is explicitly against California law," said Mr. Mount of the Public Policy Institute. "The federal government needs a permit from the state in order to enlarge the Shasta."

Major concerns about the Shasta Dam have come from the Interior Department's own scientists, lawyers and economists. In November 2015, staff biologists at the Interior Department's Fish and Wildlife Service concluded in a [215-page report](#) that raising the dam "would result in the loss, degradation, and fragmentation of habitat" in and around Shasta Lake and the Sacramento River, and throughout the San Francisco Bay Delta.

The report said the project would harm the habitat of many species including not only the bald eagle but northern spotted owl and the Shasta snow-wreath, a delicate white flower. A higher dam also would cut off one of the main routes used by salmon to spawn by reducing the flow of water downstream. That could shrink the Pacific Coast salmon population, the report said, which scientists and fishermen say could devastate the west coast salmon fishing industry.

"That Fish and Wildlife report tells us that raising the dam would choke the life out of the Sacramento River, and what that means for the west coast salmon industry I shudder to think," said John McManus, president of the Golden Gate Salmon Association.

For these reasons, the report concluded that Fish and Wildlife was "unable to support" raising the dam. A separate Interior Department report, in July 2015, found that [raising the dam would also be too costly](#), at roughly \$1.5 billion, given budget constraints.

Neither report has been publicly updated with new findings.

The Long Game

Westlands has played the long game, preparing for a moment when political winds might shift in its favor. They have pursued creative strategies large and small to help nudge the Shasta project forward while preparing to act quickly if the opportunity arose.

That strategy explains why, back in 2007, Westlands made an unusual purchase, spending \$35 million to buy [Bollibokka](#), a 3,000-acre fishing lodge along the McCloud River, just above the Shasta Dam.

“It was a real ‘What the heck?’ moment,” said Mr. Mount, the California water policy expert. “What is a water irrigation utility in the San Joaquin Valley doing taking money from their ratepayers to buy a fishing lodge on the McCloud River, 300 miles away?”

Westlands’ strategy: It wanted to eliminate opposition from landowners along the McCloud, who could see their property flooded if the dam were raised. So they bought the land themselves.

“If there were valuable vacation homes along the McCloud River, it would have had the potential to create additional opposition,” said Mr. Birmingham, the general manager of Westlands Water District.



A fallow field in the Westlands Water District. Damon Winter/The New York Times

Westlands, as far back as 2009, also came up with a plan to offset the high cost of raising the dam by offering to help pay for it. Westlands in 2011 also hired a powerful advocate: Mr. Bernhardt, then a lobbyist with the firm Brownstein Hyatt Farber Schreck, and previously a top Interior Department official in the George W. Bush administration. During his five years as lobbyist and lawyer for Westlands, the water district paid his firm at least \$1.3 million in lobbying fees, his disclosure reports show.

As the chief lobbyist for Westlands, Mr. Bernhardt lobbied in favor of a federal water law that, among its many provisions, lets the Interior Department undertake expensive dam expansions provided that it finds an outside cost-sharing partner. Today, that provision, supported by Westlands, is what has enabled the [Interior Department to expand the Shasta Dam](#), paid for under a cost-sharing plan with Westlands. Preliminary construction work has begun.

Westlands could help cover one-third of the projected \$1.5 billion cost and perhaps more, according to Mr. Birmingham, the water district’s general manager. The water district could end up paying “the lion’s share,” he said. He also said he did not consider his group to be the biggest beneficiary of the Shasta project. “If it’s built the way it’s described, Westlands will benefit,” but the state of California as a whole also stands to gain, he said.

A spokeswoman for Mr. Bernhardt, Molly Block, wrote in an email that the agency’s ethics officials concluded that Mr. Bernhardt had lobbied on the broader bill, which included thousands of provisions having nothing to do with Westlands, and therefore it was not necessary to distinguish which specific issues he had lobbied on within the bill.

Ethics experts said the Interior Department’s reversal on Shasta raised ethics questions.

Marilyn L. Glynn, who served as general counsel and acting director of the United States Office of Government Ethics during the George W. Bush administration, said it did not

look as if Mr. Bernhardt had violated ethics rules in the Shasta matter, but that the decision “creates the appearance that this administration is interested in favoring only the administration’s supporters, instead of the overall public good.”

Shasta Moves Forward

Mr. Bernhardt stopped lobbying for Westlands in November 2016 and began work at the Interior Department in August 2017, first as its deputy secretary. Soon thereafter, the agency moved ahead on Shasta, explicitly naming Westlands in their budget request to Congress.

In February 2018, the agency asked Congress to pay [\\$75,000 for “supporting activities” related to the 2015 study of expanding the dam, and also requested \\$20 million for preconstruction and design work](#). The budget documents noted that the Interior Department had to find a cost-sharing partner, and also noted that Westlands had previously signed an agreement in principle to share construction costs, although that agreement had expired in 2017. Congress approved that funding.

The same month, [Westlands’ board met in Fresno](#) and [voted to enter into a new deal](#) to help pay for the project. One month later, in March, Mr. Bernhardt discussed the heightening of the Shasta Dam with an agency ethics official, according to that official.

With the project’s funding in motion, in May 2018, Mr. Bernhardt spoke at the Association of California Water Agencies, [telling attendees](#) that raising the Shasta was “a high priority.” This year, [the Interior Department asked Congress to nearly triple the spending on enlarging the Shasta, to \\$57 million](#), although Congress has not yet approved that request. The Interior Department’s website [now says it expects by December to issue the first construction contract](#) to raise the Shasta Dam by 18.5 feet.

Westlands officials said that they simply saw Mr. Bernhardt moving forward with policy to help bring water to those who need it. “Enlarging the Shasta Dam is a project that engenders conflict,” said Westlands’ general manager, Mr. Birmingham.

<https://www.nytimes.com/2019/09/28/climate/bernhardt-shasta-dam.html>

For more news on climate and the environment, follow [@NYTClimate on Twitter](#).



Coral Davenport covers energy and environmental policy, with a focus on climate change, from the Washington bureau. She joined The Times in 2013 and previously worked at Congressional Quarterly, Politico and National Journal.
[@CoralMDavenport](#) • [Facebook](#)



The critically endangered delta smelt is typically only a couple of inches long but [may once have] occupie[d] an important place in the food chain. B. Moose Peterson/U.S. Fish and Wildlife Service

A version of this article appears in print on Sept. 27, 2019, Section A, Page 1 of the New York edition with the headline: Interior Chief Pushes Project Client Wanted. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)

FOR addendum: The article says that preliminary construction work has begun. It is true that pre-construction and design activities have started. However, construction (as the word is defined for federal budget purposes) for the Shasta Dam raise has not yet started. A caption in the original Delta Smelt image says that Delta Smelt occupies an important part of the food chain. The Delta Smelt may once have occupied an important part of the Delta food chain. Their numbers have been reduced so drastically, however, that they can only be described as once having an important part of the Delta food chain. This version makes that revision in square brackets.