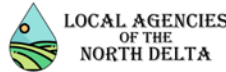


CA Save Our Streams Council



March 19, 2019

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

In advance of Mr. Bernhardt's Senate confirmation hearing on March 28, we draw your attention to the dark ethical cloud that hangs over his nomination. Questions about a broad range of potential conflicts have been submitted by other Senators to the Inspector General and there have been numerous, publicly-reported conflicts of interest, violations of ethics recusals, and a pattern of repeated favoritism Mr. Bernhardt has extended to almost all of his former clients.¹

¹ CNN reports *15 times former clients of the acting Interior secretary got favorable decisions* <https://www.channel3000.com/news/politics/national-politics/congress-wants-to-see-acting-interior-secretarys-calendar/1054264232>. Bettina Boxall LA Times Trump's pick for a top Interior post has sued the agency on behalf of powerful California water interests <https://www.latimes.com/local/lanow/la-me->

All of the potential conflicts need to be assessed, but our specific emphasis herein is to urge you to investigate two concerns of unique importance to California: (1) Westlands' pending request for a permanent water supply contract for more than 1 Million Acre-feet (MAF) and (2) the repayment of \$84.8 million in federal taxpayer dollars, paid by Interior to cover Westlands' (and three other federal water contractors') Delta water tunnel costs.

Issue #1: Westlands' pending request for a permanent water supply contract for more than 1 Million Acre-feet (MAF) without regard to acreage limits or full cost pricing.

This very current and pending matter will set a precedent for future water supply contracts throughout California without public disclosure of water, finance, and repayment terms, including acreage limitations and full cost pricing. Westlands is currently seeking final approval from the Department of the Interior for a permanent Central Valley Project water contract for over one million acre feet (MAF).

Westlands' aggressive pursuit of a conversion to a permanent water supply contract — replacing their existing two-year interim water supply contract — was confirmed in a letter to Westlands, dated June 29, 2018,² from the Bureau of Reclamation. Terms of the proposed permanent water contract, however, were not made public. If approved, this water comes at the expense of other irrigators throughout the Delta and areas south of the Delta, along with Native Americans, fisheries and numerous environmental protection policies. According to public records, the Secretary of Interior could rule as soon as April 2019 on these “secret” (or “non-public”) new terms and financial conditions for a permanent water supply contract. Currently, records show Reclamation is awaiting approvals for delegation of this authority from David Bernhardt.³

We believe the public needs to know if Reclamation Commissioner Burman will testify under oath and answer the following questions: Did Mr. Bernhardt participate in determining the water

trump-bernhardt-20170517-story.html Lance Williams & Matt Smith, *Inside the secret lobbying of Trump's nominee for a top Interior spot.* <https://www.revealnews.org/blog/inside-the-secret-lobbying-of-trumps-nominee-for-a-top-interior-spot/>

² <https://www.usbr.gov/mp/wiin-act/documents.html>

³ http://sldmwa.org/OHTDocs/pdf_documents/Meetings/Board/Minutes/2018_1108_Board_Minutes_Approved.pdf "Mizuno reported that Reclamation has received their delegation of authority for contracts of less than 100,000 acre-feet from the Commissioner, but is still waiting on another delegation of authority for larger contracts from the Assistant Secretary of Interior." pg 6.

supply contract conversion debt amount owed by Westlands either directly or indirectly? Did Mr. Bernhardt participate in changes to the Coordinate Operations Agreement (COA) that granted roughly 100,000 acre feet to Westlands and other federal contractors? Finally, did Mr. Bernhardt participate in changes to rules and regulations maximizing water exports to Westlands and other south of the Delta exporters?

These water supplies are public resources. It is unacceptable that the terms and conditions for this pending contract conversion have not been made public. Negotiating millions – of dollars and acre feet of water – behind closed doors will encourage regional conflict, litigation, and promote water policy instability. Please investigate the permanent granting of over a million acre feet of water to Westlands, including disclosure of full cost pricing and the impacts of removing the current 960 acre limitations, before the Senate acts on Mr. Bernhardt’s confirmation hearing.

Issue #2: The \$84.8 million in federal taxpayer dollars potentially illegal paid by Interior to cover Westlands' (and three other federal water contractors’) Delta water tunnel project costs must be paid back by Westlands.

Subsidizing these contractor costs is a hidden tax on Americans, to the benefit of Westlands and a few other federal water contractors, and taxpayers must be repaid. The Interior Department’s Acting Inspector General, Mary Kendall, repeatedly raised questions regarding the lucrative federal water contract repayment provisions afforded to Westlands.⁴ Most recently, in 2017, Kendall found \$84.8 million of federal appropriations redirected to fund Westlands’ (and three other federal contractors’) share of the Delta tunnels project.⁵ We are unable to identify, under Federal Reclamation law, any legal authority for this action.

⁴ Final Evaluation Report- Central Valley Project, California: Repayment Status and Payoff Report No. WR-EV-BOR-0003-2012. Office of Inspector General, U.S. Department of the Interior, No. W-IN-BOR-0016-2004, “Central Valley Project Contract Renewal Process,” (August 2004). Congress enacted the Coordinated Operations Act of 1986 to address the CVP repayment issues setting a firm deadline of 2030 pursuant to the Coordinated Operations Act of 1986, Pub. L. No. 99-546, 100 Stat. 3050-56 (1986). See page 6: “We determined that if recent CVP water delivery trends continue, repayment of the capital investment in the CVP irrigation facilities could be short by between \$330 and \$390 million by 2030..”

⁵ https://www.doioig.gov/sites/doioig.gov/files/FinalAudit_BayDeltaPlan_Public.pdf

This hidden redirection of Congressional funds to subsidize Westlands and other participating contractors circumvented California law.⁶ Whether the tunnels are built or not, agreements and public promises required contractors to pay these costs, not the taxpayers. For that reason alone, we urge you to fully investigate and publicly disclose this particular aspect of Westlands' pending permanent water contract and required repayment amounts.

After Kendall and her IG staff discovered Reclamation improperly redirected \$84.8 Million of Congressional funds, but they were silent when the Department did not (according to limited public records available) correct the credits back for existing costs — the majority of which subsidized Westlands.

We ask this specific question be resolved prior to the confirmation hearing: What is the status of the Inspector General's referral to Scott Cameron, Assistant Secretary for the Office of Policy, Management and Budget, relating to the lack of repayment for subsidies granted to Westlands' for the tunnel-planning effort?

Finally, beyond the specific issues outlined above, we ask you to insist on full public disclosure of the terms and conditions of Mr. Bernhardt's financial relationship relating both to and with Westlands, before Mr. Bernhardt's nomination is considered by the Senate. That disclosure must include any involvement by Mr. Bernhardt in the recent Westlands' permanent water supply contract conversion, specifically allowed by §4011 of the WIIN Act, and determination of whether or not Mr. Bernhardt continued to lobby and/or provide legal or consulting services to Westlands during the Trump transition and/or after the Trump Administration began.

⁶ Audit: *US misuses taxpayer cash for California water project*, Associated Press, Ellen Knickmeyer September 9, 2017. <https://apnews.com/3bd4ba28a69448cebff3dbdd15a8c5d1>
“USBR could not provide us with a rationale for its decision to subsidize (California) water contractors, other than the water contractors asked USBR to pay,” the audit noted.
The actions by the Bureau of Reclamation, which is part of the Interior Department, mean that federal taxpayers paid a third of the cost of the project's planning up to 2016, the audit said. Meanwhile, Central Valley water districts that were supposed to pay 50 percent of the tunnels' planning costs contributed only 18 percent, the audit found”.

A complete record and full documentation is readily available and we stand ready to assist any way we can. If you have any questions or need further information please contact Jonas Minton, Planning and Conservation League Senior Water Policy Advisor at 916-719-4049.

Sincerely,



Jonas Minton
Senior Water Policy Advisor
[Planning and Conservation League](#)
jminton@pcl.org



Noah Oppenheim
Executive Director
[Pacific Coast Federation of Fishermen's Asso.](#)
noah@ifrfish.org



Kathryn Phillips
Executive Director
Sierra Club California
kathryn.phillips@sierraclub.org



Barbara Barrigan-Parrilla
Director
Restore the Delta
Barbara@restorethedelta.org



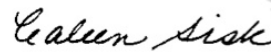
Carolee Krieger
Executive Director
California Water Impact Network
caroleekrieger7@gmail.com



Osha Meserve
Counsel
Local Agencies of the North Delta
Osha@semlawyers.com



Conner Everts
Executive Director
Southern California Watershed Alliance
[Environmental Water Caucus](#)
connere@gmail.com



Caleen Sisk
Chief and Spiritual Leader of the
[Winnemem Wintu Tribe](#)
caleenwintu@gmail.com



Bill Jennings
Chairman Executive Director
California Sportfishing Protection
deltakeep@me.com



Barbara Vlamis,
Executive Director
AquAlliance
barbarav@aqualliance.net



Stephen Green
President
Save the American River Association
gsg444@sbcglobal.net



Lloyd G. Carter
President, Board of Directors
California Save Our Streams Council
lcarter0i@comcast.net

Frank Egger
President
North Coast Rivers Alliance
fegger@pacbell.net



Larry Collins
President
Crab Boat Owners Association
papaduck8@gmail.com



John McManus
Executive Director
Golden Gate Salmon Association
john@goldengatesalmon.org



Eric Wesselman
Executive Director
Friends of the River
Eric@friendsoftheriver.org

Cc:

Senator Murkowski, Chairman of the Senate Energy and Natural Resources Committee
Senator Joe Manchin (D-WV), Ranking Minority Member, Senate Energy & Natural Resources Committee
Senator Tom Udall (D-NM), Ranking Minority Member, Senate Appropriations Subcommittee on Interior, Environment and Related Agencies
Senator Chuck Schumer (D-NY), Senate Minority Leader
Senator Dick Durbin (D-IL), Senate Minority Whip
Senator Wyden (D-OR)
Senator Cantwell (D-WA)
Senator Sanders (I-VT)
Senator Stabenow (D-MI)
Senator Heinrich (D-NM)
Senator Horono (D-HI)
Senator King (I-ME)
Senator Cortez-Masto (D-NV)
Speaker Nancy Pelosi
Congressman Grijalva
Congressman Huffman
Governor Gavin Newsom
Interested Parties