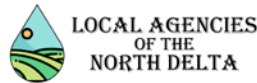


**CA Save Our Streams Council**



March 11, 2018

Senator Elizabeth Warren  
309 Hart Senate Office Building  
Washington, DC 20510

Senator Richard Blumenthal  
706 Hart Senate Office Building  
Washington, DC 20510

Senator Kamala Harris  
112 Hart Senate Office Building  
Washington, DC 20510

Dear Honorable Senators Warren, Blumenthal and Harris:

Thank you for your recent demand for a full and comprehensive investigation into *conflicts-of-interest* between David Bernhardt, Acting Secretary of the Interior and Secretary-Designate (Notice of Intent issued March 8<sup>1</sup>), and Mr. Bernhardt's former client the Westlands Water

<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-72/>

District (Westlands).<sup>2</sup> In addition to the broad range of potential conflicts you outline in your request to the Inspector General, we would like to draw your attention to two items in need immediate investigation: (1) Westlands' predictable pending request for a permanent water supply contract for more than 1 Million Acre-feet (MAF), and (2) the urgent need for repayment of the \$84.8 million in federal taxpayer dollars that were paid by Interior to cover Westlands' (and three other federal water contractors) Delta water tunnel planning costs.

As the Bernhardt nomination comes to the US Senate, a dark ethical cloud hangs over the nomination. Numerous conflicts of interest, violations of ethics recusals, and a pattern of repeated favoritism--extended to almost all of Bernhardt's former clients--has been extensively reported.<sup>3</sup>

No matter how the Bernhardt nomination is addressed, further investigation is required for a very current and pending matter—the conditions under which Westlands is seeking final approval for a permanent Central Valley Project water contract.

That contract, for over a million acre-feet of water from Interior, is aimed at eliminating federal oversight. These current negotiations are being done without standard water, finance, and repayment policies that normally apply to federal water contractors in the western states--including limitations on acreage to be irrigated with federally subsidized water and when full cost pricing rules are applicable.

Westlands is aggressively pursuing this permanent water contract to replace their existing two-year interim water supply contract. If approved, it comes at the expense of other irrigators in and South of the Delta, Native Americans, the fisheries and numerous environmental protection policies. According to public records, the Secretary could rule as soon as April 2019 on the new

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<sup>2</sup> <https://www.latimes.com/business/hiltzik/la-fi-hiltzik-warren-bernhardt-conflicts-20190227-story.html>  
LA Times Hiltzik *Elizabeth Warren demands investigation of Interior nominee's alleged conflicts* . NY Times Coral Davenport <https://www.nytimes.com/2019/02/12/climate/david-bernhardt-endangered-species.html> "Top Leader at Interior Dept Pushes a Policy Favoring His Former Client."  
<https://www.eenews.net/stories/1060122205> *Did Bernhardt once try to blow up Endangered Species Act?*

<sup>3</sup> 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-trump-bernhardt-20170517-story.html>

terms and financial conditions for this permanent water supply contract. Currently records show Reclamation is awaiting approvals for the delegation of this authority from Deputy Assistant Secretary and Secretary Nominee, David Bernhardt.<sup>4</sup>

Yet, the terms and conditions for this pending Westlands' contract have not been made public. These are public resources. The lack of public disclosure and lack of transparency is worse than alarming. These secret negotiations (of millions of dollars and acre feet of water) will lead to more conflict and litigation--pitting one region against another-- resulting in water policy instability.

The almost total lack of public disclosure for over a million acre feet of water to be permanently granted to Westlands needs to be investigated prior to any final decision. This is roughly enough water to serve 1-2 million households. Before such a permanent title to over 1 million acre feet of water is decided, full disclosure and all the impacts need to be disclosed. Further, the impacts of the allowing irrigators who farm in excess of 960 acres and the elimination of full cost pricing must be disclosed.

In fact, Interior Department's Acting Inspector General Mary Kendall has repeatedly raised questions about the lucrative federal water contract repayment provisions afforded to Westlands.<sup>5</sup> Most recently, in 2017, Kendall found \$84.8 million of federal appropriations were redirected to fund Westlands' (and three other federal contractors') share of the Delta tunnels

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<sup>4</sup>[http://sldmwa.org/OHTDocs/pdf\\_documents/Meetings/Board/Minutes/2018\\_1108\\_Board\\_Minutes\\_Approved.pdf](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.

<sup>5</sup> 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.."

project.<sup>6</sup> This redirection of funds was not sanctioned under state law which similar to federal statute required beneficiaries to pay for the construction and planning of such projects.<sup>7</sup>

We urge you to request a full investigation and public disclosure specifically into this particular aspect of the pending permanent water contract and required repayment amounts. Kendall and her IG's staff found Reclamation improperly redirected \$84.8 million of Congressional funds, but then no effort was made to get Westlands and the three other federal contractor to pay the funds back.<sup>8</sup>

Not only were federal laws violated, but also state laws were not followed. Claims that no public funds were being spent on planning for the tunnel expenditures were false. These public subsidies by Reclamation were unauthorized payments of Westlands' share of planning costs for the current and controversial and now abandoned Delta tunnels project, counter to requirements of State law that all costs, including planning costs, are to be paid by project beneficiaries.<sup>9</sup> Another matter to be investigated.

The Bernhardt nomination should not be considered by Congress until full disclosure is made, an investigation into the Westlands permanent water contract is conducted and reported, ethical issues directly related to the nominee are fully resolved, and the public is given its rightful place at the table.

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<sup>6</sup> [https://www.doioig.gov/sites/doioig.gov/files/FinalAudit\\_BayDeltaPlan\\_Public.pdf](https://www.doioig.gov/sites/doioig.gov/files/FinalAudit_BayDeltaPlan_Public.pdf)

<sup>7</sup> 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".*

<sup>8</sup> [https://www.doioig.gov/sites/doioig.gov/files/FinalAudit\\_BayDeltaPlan\\_Public.pdf](https://www.doioig.gov/sites/doioig.gov/files/FinalAudit_BayDeltaPlan_Public.pdf) "USBR's submission of inaccurate annual Calfed Bay-Delta certified financial reports has now been disclosed through our report. Further, we believe USBR's commitment regarding appropriated funds for the BDCP is acknowledgement of the validity of our findings that the actions it took to fund BDCP planning costs and subsidize CVP water contractors were neither transparent nor consistent with the "beneficiaries pay" principle underlying Reclamation Law." pg 2

<sup>9</sup> Section 85089 of the Water Code, relating to the Sacramento-San Joaquin Delta.

These subsidies, paid by the (Interior) Department, were actually unauthorized payments of Westlands' share of planning costs for the current and pending state-wide water tunnels projects in direct contraction of the beneficiary pays policy adopted under State law. This is yet another matter to be investigated.

Please demand a full investigation and public disclosure specifically into this particular aspect of the pending permanent water supply contracts and required repayment amounts. The David Bernhardt nomination for Secretary of Interior nomination should not be considered until (1) full disclosure is made regarding all his potential conflicts and federal activities have been fully vetted, (2) an investigation into the pending Westlands permanent water contract is conducted and reported, (3) ethical issues directly related to the nominee are fully resolved, and (4) the public is given its rightful place at the table before any permanent public water supplies are dedicated to these roughly 350 specific irrigators.<sup>10</sup>

Further documentation of the above-cite facts are readily available and we stand ready to assist, 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 or Patricia Schifferle at 530-550-0219.

Sincerely,




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<sup>10</sup> [https://www.pacificresearch.org/wp-content/uploads/2017/06/6\\_Trading\\_An\\_Example\\_from\\_California.pdf](https://www.pacificresearch.org/wp-content/uploads/2017/06/6_Trading_An_Example_from_California.pdf) pg 4



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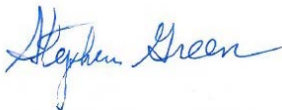
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Senator Chuck Schumer (D-NY), Senate Minority Leader  
Senator Dick Durbin (D-IL), Senate Minority Whip  
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Senator Sanders (I-VT)  
Senator Stabenow (D-MI)  
Senator Heinrich (D-NM)  
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Speaker Nancy Pelosi  
Congressman Grijalva  
Congressman Huffman