

August 17, 2009

Ms. Sally Spener
Public Affairs Officer
U.S. Section
International Boundary and Water Commission
The Commons Building C, Suite 310
4171 N. Mesa Street
El Paso, TX 79902

Dear Ms. Spener:

I can understand your dismay upon reading our August 10, 2009 press release “Obscure Border Agency Worst in Federal Government” detailing some of the ongoing problems within the U.S. Section of the International Boundary and water Commission (USIBWC). Your letter of August 13th, however, only reinforces our concerns.

The thrust of these concerns are that 1) USIBWC management has a history of being incompetent and abusive; and 2) Lack of oversight threatens horrendous water pollution, disastrous flooding and waste of tens of millions of dollars in federal stimulus funds. Since our press release, we have heard from current and former USIBWC employees who have applauded our effort to draw attention to the conditions within this agency and to bring even more concerns to our attention.

In defending USIBWC, you make several points:

1. A follow-up review by the State Department Inspector General (IG) found that the problems identified in its 2005 report have been “resolved”.

While the 2006 IG follow-up did find that action had been taken on several of the more minor recommendations, the gist of its criticisms about lack of oversight and management effectiveness remained unchanged. The IG follow-up report found –

“Since the 2005 inspection and the departure of the previous Commissioner a year ago, the USIBWC has been unsettled as an organization...This was due to a wholesale departure of senior and mid-level managers under the previous Commissioner.”

“The USIBWC is out of the national limelight, but a major storm and flood could overwhelm the barriers and cause considerable damage. This would usher in bouts of finger pointing between Departments, agencies, and jurisdictions concerned.”

“The OIG inspection team does not believe that measures short of full integration of the agency into the Department will resolve the oversight issue, based on its observations of the experience of recent years in USIBWC history.”

These over-arching conclusions do not provide any comfort for those concerned about potential catastrophic failures resulting in major loss of life and property due to USIBWC mismanagement. Significantly, you did not dispute our reporting on the original 2005 IG report which concluded –

“Internal management problems have engulfed USIBWC, threatening its essential responsibilities for flood control and water management in the American Southwest.”

The depth of management meltdown at USIBWC is such that it could not credibly be dispelled in a matter of months with low-level personnel changes. The persistence of these problems is reflected by the fact that in 2009 Commission employees ranked their agency near the bottom on every category and dead last in “effective leadership” on the annual survey by the Partnership for Public Service.

2. International dams maintained by the USIBWC are not unsafe.

You do not deny the February 2009 FEMA report (appended to our release) classifying three of the seven international dams operated by USIBWC in the “high hazard” category for risk of failure. Nor do you deny that there would be significant loss of life and property in the event that one of these dams failed.

Instead, you issue a non-denial denial that “dam safety issues are not due to agency negligence...” Your agency cannot shift responsibility for hazards at the very facilities that you operate.

Further, you argue that various inspections “recommended additional study” prior to making a definitive finding on the degree of hazard at these dams. These recommendations were made back in 2007 but you are suggesting that in 2009 your agency is still undecided about how to address these major public safety risks. In the event of a dam breach, such a stance will not assuage a justifiably angry public.

3. “Litigation and lack of funding had made it impossible for the Commission” to remedy sewage effluent violations at its water treatment facilities.

Your statements appear to corroborate our statement that “Two water treatment plants located in the U.S., located in Nogales, Arizona and San Ysidro, California, are both under court orders to clean up their effluent”. Moreover, the reason that USIBWC was successfully sued was that it was operating these facilities in violation of the Clean Water Act, placing public health at risk. For you to contend that these lawsuits prevented the Commission from acting is ludicrous – these lawsuits are the reason that the Commission is finally acting on deplorable conditions which you note were known “in the 1990s”.

Moreover, it is difficult to give the Commission much credit for progress in Nogales as you acknowledge that in fact it was the City of Nogales and not the USIBWC that ultimately paid to upgrade the wastewater treatment plant.

4. Recent flooding in the Nogales, Sonora area was not the Commission's fault.

Your main point was that USIBWC was not responsible for the flooding. Yet you do not deny our claim of “a crumbling USIBWC-built flood channel whose needed repairs were not on the agency's priority list”.

Instead, you attempt to shift responsibility onto local governments in Mexico and Arizona, yet the statutory authority for USIBWC clearly encompasses this project. Nonetheless, the USIBWC chose not to allocate any funds for emergency repairs. Again, the City of Nogales was left to fend for itself in making emergency repairs to a collapsed tunnel that posed an immediate threat of further flooding.

Meanwhile, in violation of its own policies and treaty obligations the USIBWC allowed the U.S. Customs and Border Patrol to erect the border barrier in the floodway, which as you concede, contributed to the flooding in Mexico.

Parenthetically, you contend that “Ambos” does not exist. The reference was to Ambos Nogales (both Nogales), a common name for two border towns of Nogales, Arizona and Nogales, Sonora, in reference to the fact that most serious flood damage occurred on the Mexican side.

5. Recovery Act funds are not being wasted.

You do not dispute our contention that the USIBWC is spending Recovery Act funds on agricultural levees in Texas and New Mexico – only that such expenditures are “questionable”. PEER never suggested that USIBWC was building new levees in these agricultural areas (this is a straw man you raised in your letter).

Our point, which you do not address, is that with admitted needs on projects with potentially dire public safety consequences, that diversion of funds to agricultural levees is questionable. As you note, these projects have “broad stakeholder support” (no surprise there) but support from the landholders who directly benefit should not be the gauge for assigning priorities for tax-supported public works projects.

6. Employee morale is not an issue.

Your characterization of these abysmal survey results as “some dissatisfaction with agency leadership” indicates that employee morale is not a priority at USIBWC. On category after category, your employees rated your leadership lower than virtually any other comparable agency.

Your letter indicates that to address the survey results “Commissioner Ruth hired a consultant to assess agency leadership and is in the process of contracting for a comprehensive independent analysis of the agency’s effectiveness...” With all due respect, let me suggest that Commissioner Ruth refrain from wasting more taxpayer funds on consultants in order to obfuscate glaring problems.

President Obama should quickly appoint a new Commissioner who is willing to admit mistakes, confront problems (rather than hiring yet another consultant) and put the public interest above petty bureaucratic politics.

7. USIBWC does not suffer from lack of oversight and complies with all applicable laws.

As you point out, State Department oversight is limited to “foreign policy guidance” (thankfully, USIBWC does not have its own separate foreign policy) but is not otherwise subject to any other agency control. As the State Department IG concluded in its 2006 follow-up report:

“The agency is simply too small, too isolated, and too vulnerable to management abuse to continue without the protection and oversight of a major government department.”

An indication of the lack of oversight is that the USIBWC Commissioner set his or her own salary range (a point made in the PEER press release upon which you did not comment), an extraordinary departure from ordinary prudent practice in federal service.

For the personal self-interest of USIBWC managers, the agency has resisted calls for greater oversight. PEER urges the Obama administration to finally act on this matter.

8. There is new leadership at USIBWC.

Ms. Spener, you yourself are part of a holdover executive leadership at USIBWC that has been in place since before 2005. PEER is targeting several of the upper-management positions filled by persons who are largely responsible for the numerous and admitted operational failures and abuses that have occurred over the past few years – and which continue to this day.

In conclusion, PEER reiterates its call for a house-cleaning at USIBWC and for a reining in of the agency by placing it under direct management control of the State Department.

Sincerely,

Jeff Ruch
Executive Director