



Public Employees for Environmental Responsibility

962 Wayne Avenue • Suite 610 • Silver Spring, MD 20910 • 202-265-PEER(7337) • fax: 202-265-4192
e-mail: info@peer.org • website: www.peer.org

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Senator Lisa Murkowski
Chairperson
U.S. Senate Committee on
Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Maria Cantwell
Ranking Member
U.S. Senate Committee on
Energy and Natural Resources
511 Hart Senate Office Building
Washington, D.C. 20510

**Re: Nomination of Brenda Burman to serve as Commissioner of Reclamation, U.S.
Department of Interior**

Dear Senators Murkowski and Cantwell,

I am writing you on behalf of Public Employees for Environmental Responsibility (PEER) to request that you ask Commissioner of Reclamation nominee Brenda Burman about her commitment to address illegal conduct and waste of funds that has been raised by whistleblowers represented by PEER at the Office of Special Counsel (OSC) and confirmed by the Department of Interior's Inspector General (IG). The OSC referred the matter for investigation by the Department of Interior, which tasked the investigation to its Office of Inspector General. The Inspector General issued reports confirming the whistleblowers' allegations, but the Bureau of Reclamation has refused to accept the IG's findings or follow any of its recommendations to prevent future abuses.¹ The OSC is expected to issue its report on the matter to the President and your Committee shortly.

In response to a complaint to the OSC by two Bureau of Reclamation whistleblowers, the IG found that Reclamation had entered into an illegal cooperative agreement with the Klamath Water and Power Agency (KWAPA). The agreement supplied \$32.2 million dollars in federal funds to purchase groundwater for irrigators and pay them for idling land.² Because of the

¹ The IG's Audit Report is available at

https://www.doioig.gov/sites/doioig.gov/files/FinalAudit_USB%27sKlamathBasinWaterUserMitigationProgram_101116%20%281%29.pdf

² Land idling, as used by Reclamation and KWAPA, simply means that the irrigator only agrees to not use surface water to irrigate their land. The land can still be worked for crops.



absence of legal authority for these expenditures, the IG found that all \$32.2 million was “wasted.”³ Evidence from the whistleblowers shows that Reclamation officials colluded with irrigators to create KWAPA and fund it to illegally funnel money to irrigators.

The Bureau justified these expenditures under the Fish and Wildlife Coordination Act, 16 U.S.C. § 661, *et seq.*, but the IG found that law did not apply because there was no benefit to fish and wildlife. In fact, the unsustainable groundwater pumping that occurred under the agreement reduced the total amount of water in the Klamath Basin, to the detriment of fish and wildlife, including endangered species. The record shows that excessive pumping caused groundwater in some areas of the Klamath Basin to drop 25 to 35 feet, causing private and municipal wells to run dry or produce insufficient amounts of water. The KWAPA agreement then funded well owners to deepen their wells or drill new ones to compensate them for their losses caused by the unsustainable pumping funded by the KWAPA agreement. The negative impacts to fish and wildlife from decreased groundwater table are well documented in literature. The Klamath Basin is considered an alpine desert. The recharge rate of the groundwater table will likely be slow and have long-term consequences.

The IG made recommendations for procedures to insure that future cooperative agreements are properly supported by applicable legal authority. Reclamation has so far refused to implement any of the IG’s recommendations, to hold any of its employees accountable, or to take any other action to avoid similar waste of federal funds and harm to the environment in the future.

Questions for Ms. Burman:

1. Will you implement and support the IG’s recommendations:
 - 1) USBR discontinue funding water supplementation and demand reduction activities in the Klamath Basin unless specific legal authority is provided or obtained; and
 - 2) USBR take steps to ensure that financial assistance agreements are not funded without specific and applicable legal authority and without a clear and accurate description of the activities to be performed; and
 - 3) The Department establish and implement new policies, procedures, and practices to ensure that financial assistance agreements are reviewed by the Solicitor for legal sufficiency and that the Solicitor’s basis for approval is thoroughly explained.
2. Will you commit to institute training in acquisition practices and ethics to prevent similar future abuses?
3. Will you commit to increased oversight of assistance and other contracts, such as requiring quarterly reports from vendors as to how objectives and goals are being met, to be reviewed by Reclamation contract officer representatives and grants officer representatives?

³ Prior to the creation of KWAPA, Reclamation operated a Water Bank Program for seven years at a cost of over \$32 million. The prior Water Bank Program is pertinent in that the Water Bank Program was similar to the Water User Mitigation Project (WUMP) operated by KWAPA and funded by Reclamation. Thus, it is likely that improper financial assistance to Klamath Project irrigators have been occurring since 2001 and is in excess of 60 million dollars.

4. Will you commit to insuring that all Reclamation employees receive training in whistleblower rights and laws?
5. What actions will you take to insure that the Fish and Wildlife Coordination Act is not abused as authority for other assistance agreements or Reclamation programs that are not in fact designed to benefit fish and wildlife?
6. What actions will you take to discipline Reclamation employees who are responsible for the illegal expenditure of federal funds in the KWAPA agreement?
7. Will you commit to directing additional funding to environmental protection, including support for fish biologists, river ecologists and other environmental specialists, to repair the harm that has been done by the KWAPA agreement and other similar agreements that assisted irrigators instead of benefitting fish and wildlife as their authorizing authority required?

Apart from being illegal, the KWAPA agreement funded an expensive, unsustainable and ultimately counter-productive response to the ongoing problem of water scarcity in the Klamath Basin. KWAPA provided only a short-term, a year-by-year bail-out to Klamath Project irrigators. In other words, federal funds have been wasted on stop-gap and unsustainable measures that only worsened the long-term problem, and served only to put money in the pockets of Klamath Project irrigators for the short term. The expenditure of these funds has diverted large amounts of time and money from the work needed to find long-term solutions to water scarcity in the Klamath Basin.

1. What will you do to develop long-term solutions for water scarcity in the Klamath Basin and elsewhere that will increase water use efficiency, reduce demand, and support agricultural activities appropriate for a water-constrained environment while protecting fish and wildlife and environmental quality?
2. Will you commit to utilizing and enhancing your own fisheries and natural resources expert staff to take the lead in developing these solutions?

In response to the whistleblower's complaint, Reclamation stated that it is "intended to discharge the obligation of the Secretary of Interior ... under 5 U.S.C. 1213(d)." However, the statute clearly does not allow this delegation, since the statute requires a "written report setting forth the findings of the agency head." The agency head in this case would be the Secretary of the Interior.

1. Will you commit to following the regulation by not allowing the delegation of the agency head's obligation for the written report under 5 U.S.C. 1213(d)?

We would appreciate your assistance in posing these questions to Ms. Burman, and would be glad supply any further information you may seek these matters.

Sincerely,

Paula Dinerstein

Paula Dinerstein
Senior Counsel