



Public Employees for Environmental Responsibility

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**WHISTLEBLOWER COMMENTS ON
DEPARTMENT OF INTERIOR SUPPLEMENTAL REPORT**

OSC Files DI-15-2383 and DI-15-2452

May 2, 2017

Todd Pederson and Keith Schultz, the Complainants in OSC Files 15-2383 and DI-15-2452, through their undersigned attorney, jointly file these comments on the Department of Interior's Supplemental Report (signed by the Acting Commissioner of the Bureau of Reclamation (BOR)) dated April 5, 2017. The consent forms for public release of these comments are attached. Exs. 1 and 2 hereto.

The Supplemental Report responds to OSC's question concerning why the BOR determined to discontinue the assistance agreement with the Klamath Water and Power Agency (KWAPA) that was the subject of the whistleblowers' disclosure. Presumably, OSC was attempting to determine why BOR terminated the contract during the course of OSC's investigation, yet still continues to assert that the contract was legal.

On June 26, 2015 the OSC had found a substantial likelihood of validity to the whistleblowers' complaint that the expenditure of funds under the KWAPA agreement constituted a gross waste of funds because the agreement did not serve a public purpose and funds were not expended in accordance with the claimed statutory authority to benefit fish and wildlife. BOR tasked investigation of the allegations to the Department of Interior Office of Inspector General (OIG). OIG issued draft reports in March and July 2016 and a final report on October 11, 2016. All versions of the report concluded the BOR did not have the legal authority to enter the agreement with KWAPA and that the \$32.2 million expended under that agreement was therefore a waste of funds.

During the process of finalizing the OIG report, KWAPA ceased operations at the end of March 2016 and the contract was closed out in May 2016. The OIG made three recommendations directed at preventing similar illegal conduct in the future. The BOR rejected the OIG's conclusion that the KWAPA agreement was not legally authorized and its recommendations.

The Supplemental Report is a study in unsupported and implausible claims, illogic, and non-sequiturs. BOR claims that it did not continue the Water Users Mitigation Program ("WUMP," the project funded by the KWAPA agreement) because "funding was unlikely to materialize due to other priorities within the Mid-Pacific region ...". Supplemental Report at 2. This claim is wholly unsupported and not credible. Nowhere does BOR explain what changed after seven years of funding the WUMP or what "other priorities" suddenly overtook it.



In fact, the reason given for extending the WUMP in 2012, “extreme uncertainty over waters supplies,” *id.* at 1, exists to this day. BOR cancelled the KWAPA contract after the OIG finished its investigation and issued a draft report confirming the whistleblower allegation that the contract was illegal. The most likely explanation is that BOR recognized that the illegality of its contract had been exposed and cancelled it to stem the damage.

The Supplemental Report goes on to describe in detail the Klamath Basin Restoration Agreement (KBRA) and the On-Project Plan (OPP), but never directly explains how they are relevant to the question of why the KWAPA contract was cancelled. The KBRA and OPP were intended to replace the WUMP, but they never went into force due to the lack of federal legislation to implement them. The KBRA would have provided funding for irrigators to “adapt” to reduced water supply by the same means funded by the WUMP – land idling and groundwater pumping. *Id.* at 2-3. The implication is that because Congress did not provide funding for the continuation of the WUMP in another form, the WUMP itself was discontinued. However, there was nothing in the WUMP contract or other documentation that indicated that its continued funding was contingent on passage of the KBRA. BOR’s explanation is an implicit admission that the WUMP did not previously have legally authorized funding, and only congressional appropriations could allow it to continue.

The whistleblowers continue to assert that a strong finding by OSC supporting the recommendations of the OIG and additional recommendations from the whistleblowers is essential, since BOR continues to assert that it did nothing wrong and reserves its right to enter similar illegal contracts in the future, and in fact continues to do so.

Respectfully submitted,



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