



March 21, 2013

Mr. Charlton H. Bonham, Director
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Dear Mr. Bonham:

The March 11, 2013 letter to you from Thomas Howard, Executive Director of California's Water Resource Control Board (CWRCB), has come to my attention. In his letter, Mr. Howard recommends the permanent closure of the gold mining industry in California. On behalf of all the People of Rural America, I offer this response.

SUMMARY

Mr. Howard's recommendation would cause harm to an entire industry and all the families in it, without offering any relevant evidence in support. Indeed, if his wishes are fulfilled, no such analysis will ever be required or provided.

Mr. Howard's actions lacks integrity. On the one hand, he wants to forbid gold mining because it allegedly mobilizes dangerous amounts of mercury in stream beds, causing harm to fish and humans. On the other hand, CWRCB supports the mobilization of more than 20 million cubic yards of heavy-metal and phosphate laden sediments into the Klamath River Basin.

Mr. Howard's proposal also flies in the face of a recent Ninth Circuit decision in the case of Drakes Bay Oyster Farm, in which the Court ruled the Department of Interior would have to prove its case:

*"Appellants' emergency motion for an injunction pending appeal is granted, because there are serious legal questions and **the balance of hardships tips sharply in appellants' favor.**"*

Mr. Howard's recommendation is not only arbitrary and capricious, it is malicious. His organization appears to be joining a conspiracy of several government organizations committed to pre-determined outcomes regardless of the facts. He is asking your department to be complicit.

WHERE'S THE BEEF?

A copy of Mr. Howard's letter is enclosed ([Exhibit 1](#)). He argues that mercury is harmful, builds up in fish and the humans that eat them, and blames the gold miners. A careful reading of his letter, however, reveals he stops short of actually saying the miners' activities cause harmful

amounts of mercury in the water, fish, or humans, for the simple reason he cannot make this allegation. His letter does not include or cite any actual measurements to support such a conclusion.

- NO actual measurements of allegedly mobilized mercury downstream of a gold miner's portable filtration devices
- NO actual measurements of mercury accumulations in fish
- NO actual measurements of mercury accumulations in humans
- NO actual cases of harm to fish or humans
- NO actual data proving causation between harm and the miners, even if any harm could be found.

Mr. Howard wants your department—without any proven justification—to make criminals of miners that are lawfully exercising their property rights, rights that in many cases go back to patents in the 1800s signed by U.S. presidents.



WHERE'S THE INTEGRITY?

CWRCB's integrity is highly questionable. This becomes obvious in a discussion of water quality vs. dam destruction.

Klamath River Dams

For years, the Department of Interior and other government agencies have been blowing up dams across the country. To date, they have succeeded in destroying over 1,000 such dams,

including the Gold Ray Dam in Oregon and the Bonner Dam in Montana. The Columbia River Basin and Klamath River Basin hydroelectric dams are among those now targeted.

The four Klamath River Dams are directly relevant because they affect nine counties, five of which are in California. They lie within CWRCB's jurisdiction.

The alleged motivation for the destruction of the Klamath River Dams is to save the Coho salmon. The arguments put forth are far too extensive to include here. Suffice it to say, all of these arguments have been discredited, as [this documentary film](#)¹ exposes. Indeed, we are experiencing record salmon runs in both river systems .

Measurements show 20 million cubic yards of sediment will be mobilized by the destruction of the Klamath River Dams. To put this number in perspective, 20 million cubic yards is enough to cover a 2-lane road, 1-foot deep in muck, over a distance of more than 1,600 miles. The actual number may be twice that. This amount of sediment mobilization dwarfs anything the gold miners' portable filtration units do.



If the dams were destroyed, these sediments would be violently released into the downstream river, estuary, and ocean. Further massive amounts of sediment would be mobilized by the flooding that would return without the dams' protection.

TDMLs would increase. Measurements² show the water leaving the dams is clearer and colder than the water coming in. The dams and reservoirs act as sediment tanks, coolers, and water flow regulators—all beneficial to water quality and the salmon. Without the dams, these benefits would be lost. Mr. Howard is, or should be aware of this information.

Draughts would also return, making fish migrations nearly impossible in the worst draught years, as history proves. And the primary source of salmon rearing in this part of the river would be destroyed, i.e., the Iron Gate Dam Hatchery that produces 6 million salmon each year.

Gold Ray Dam

The Gold Ray Dam on the Rogue River in Oregon is another case in point. Although it is in Oregon, Mr. Howard is, or should be aware of its relevance to the Klamath River Dams. The Gold Ray Dam was blown up for the similar false reasons. That destruction mobilized 400,000 cubic yards of heavy-metal laden sediment. As large as that number is, it is only 1/50th of the Klamath River Dams accumulation.

¹ http://www.defendruralamerica.com/DRA/Siskiyou_County.html

² The data and report are available.

Sediment analysis from the Gold Ray Dam removal site measured 8 pounds of chromium per ton of sediment, much of it hexavalent chromium, which is highly carcinogenic.³ The chromium-6 has gotten into both the river and the drinking water.

Bonner Dam

The Gold Ray Dam is “a repeat of the same tragic story told when environmentalists insisted that the Bonner Dam on the Clark Fork near Missoula, Montana be removed. Removal allowed thousands of tons of copper mill waste backed up behind the dam to flow downriver. Lord only knows what [other] pollutants drifted downriver, but arsenic would be a big factor.”⁴

Where’s The Integrity?

With all of this available information, one would expect CWRCB—if it is truly motivated by facts not politics—to take a lead in protecting the Klamath River Dams. Instead, CWRCB appears willing to approve the mobilization of 20 million cubic yards of sediments into the Klamath River system; destroy these dams and their proven beneficial effects; and hasten the economic ruin of communities and counties already economically ravished by the spotted owl listing.

SCIENTIFIC MISCONDUCT

The Klamath River Dams

The false “facts” and arguments made in favor of destroying the Klamath River Dams were exposed by none other than a science integrity officer within the DOI.

On February 24, 2012 Dr. Paul Houser—the Science Advisor and Scientific Integrity Officer for the Bureau of Reclamation, and Professor at George Mason University—released an 11-page letter ([Exhibit 2](#)) that alleged intentional falsification of scientific results and intentional circumvention of policy within the Bureau. His letter was accompanied by no less than 30 documents in support.⁵

Dr. Houser’s letter included the following statements:

Motivated by Secretary Salazar’s publicly stated intention to issue a Secretarial determination in favor of removing four dams on the Klamath River ... the Department of the Interior has likely followed a course of action to construct such an outcome. ... on September 19, 2011, Ms. Kira Finkler, Deputy Commissioner for External and Intergovernmental Affairs, told me directly that “the Secretary wants to move those dams.”

...

On September 15, 2011, I expressed concern via written disclosure relating to the scientific integrity of a draft press release on the draft environmental analysis for removing four Klamath River dams, and via verbal disclosure about the integrity of the larger Klamath River dam removal Secretarial determination process. My disclosure was never directly addressed, and supervisors have enacted and used 1-year probationary

³ Source: Dr. John Menke.

⁴ Source: Jim Peterson in an email dated March 19, 2013.

⁵ Available upon request.

status to enact reprisal culminating in the termination of my employment (effective February 24, 2011). The details leading to the termination show a pattern of hindering and not being supportive or honest about the scientific integrity process; the details themselves are not the scientific integrity issue but are rather a case of subsequent reprisal that show intentional actions that compromise the scientific and scholarly integrity codes called out above.

Following his disclosure, Dr. Houser was fired, but later given a satisfactory settlement due to congressional intervention; his boss was replaced; and Ken Salazar stepped down as Secretary.

Drakes Bay Oyster Farm

The Drakes Bay Oyster Farm story is also relevant to our topic.

The farm has been in continuous operation since 1934. It is located in a Pacific Ocean bay called Drakes Estero located just north of San Francisco. The farm produces 40% of California's oysters, and is beloved by this environmentally-committed county. Over the years, the National Park Service, the Marine Mammal Commission, the Department of Interior, and other government organizations offered numerous, allegedly "scientifically-based" reasons for closing down the Drakes Bay Oyster Farm.

By studying the actual data being reported, Dr. Corey Goodman⁶ discovered that every argument put forward was not only false, but intentionally so. [This is a link to a documentary video interview of Dr. Goodman explaining his findings.](#)⁷ Here are a few of the false arguments he exposed:

Allegation: The farm endangers the red-legged frog.

Fact: Frogs don't live in salt water. It kills them. They live only in fresh water.

Allegation: Cars driving into the farm might kill an endangered subspecies of butterfly.

Fact: These butterflies are not present around the farm, and due to the nature of the driveway into the farm—a winding, cliff-hugging, potholed, dirt, 1-lane road—cars typically travel at 5-10 mph. No similar claim or action has been taken against a high-speed, paved road a few miles away that actually has these butterflies and sufficient traffic speed to potentially hit one. If bugs on windshields becomes criminal, cars and highways will have to be outlawed.

Allegation: Oyster poop endangers the bay.

Fact: This allegation appeared in a NPS-sponsored 2007 report called the *Drakes Estero Report*. It contained measurements alleged to justify its position. It turns out the numbers were NOT taken from actual measurements of Drakes Estero, but rather from a 1995 Japanese report of waters in Japan in a completely different situation. The report failed to mention proxy data was being used. To make the deception worse, the report ignored the findings of a 2005 study—sponsored by the very same NPS department—that had actually studied Drakes Estero, and found no problem.

⁶ Dr. Goodman is a highly-respected scientist, a member of the National Academy of Sciences, and a well-respected venture capitalist. He has a goat farm in Marin County that produces high-quality, award-winning cheese, according to sustainable agriculture criteria.

⁷ http://www.defendruralamerica.com/DRA/Drakes_Bay.html

Allegation: The oyster sorter creates noises loud enough to disturb the seals.

Fact: The oyster sorter consists of a plastic tube rotated by a 1/4-hp electric motor. Oysters fall out at different holes in the tube depending on size. Actual measurements show the noise cannot be heard above ambient background for at most 100 feet. Indeed, ABC-7 TV filmed an interview of Ken Salazar standing next to the operating tumbler, with no problem.

No actual measurements were taken. Rather, the report used proxy data—without indicating the substitution—taken of a 400hp dump truck engine to allege the oyster sorter could be heard 2.4 miles away. When challenged, the NPS released an updated report claiming the sorter could be heard from only 1.85 miles away—but once again failing to mention this conclusion too was based on proxy data, this time from a study taken in Hawaii of a portable U.S. Army concrete mixer tumbling gravel and rock in a metal tub.

If noise is to be used elsewhere to justify shutting down human activities, mankind becomes the enemy. San Francisco's wharf would have to be closed down in favor of its harbor seal population, and all boating and shipping in Monterey Bay—indeed throughout the ocean—would have to be shut down.

Allegation: The noise of the oyster skiff's engine disturbs the seals.

Fact: The oyster skiff uses a 25hp, 4-cycle motor that cannot be heard above ambient noise beyond 100-200 yards maximum⁸. The boat comes no closer to the seals than 750 yards. Government used—without disclosing the substitution—proxy data taken from a 1995 study sponsored by the New Jersey police of a 75hp, 2-cycle JetSki.

In any case, the whole noise issue is moot because oyster farming is suspended during the seals' breeding season.

Over the years, Dr. Goodman made numerous good-faith attempts to work with the respective government agencies to correct their errors. They didn't listen. They didn't care.

On November 7, 2012 Dr. Corey Goodman wrote a request to Todd J. Zinser, Inspector General, Department of Commerce, requesting an investigation of Dr. Timothy Ragen, Executive Director, Marine Mammal Commission ([Exhibit 3](#)). Dr. Goodman's allegations bear striking resemblance to Dr. Houser's allegations. Here are portions of Dr. Goodman's letter.

This complaint alleges:

- *Publicly Dr. Ragen claimed to be transparent, inclusive, and to provide equal access, and to be independent, unbiased, and without conflict, but*
- *Privately Dr. Ragen was secretive, exclusive, dependent upon NPS, biased, and conflicted, and gave NPS inappropriate access, and veto power including*
 - *Access to documents not provided to other parties,*
 - *Ability to critique work of other parties without disclosure or comment,*
and
 - *Power to not respond to questions and not participate in open discussions.*

⁸ Based on actual measurements, not proxy data.

As a result of Dr. Ragen's inappropriate actions, the MMC Report was:

- *Not an independent review of NPS science as claimed by MMC, and*
- *Not a legitimate independent peer review of the draft EIS as claimed by NPS.*

...

Dr. Ragen decided the public to believe he was independent, and in so doing, violated his own MMC policies and misled elected officials in an ongoing public policy decision. There are profound implications in the misconduct described here, not just for the MMC and NPS, but for all Federal agencies that rely upon impartial and scholarly science for policy decisions.

On March 4, 2013 Dr. Goodman and others elevated the issue by asking the White House Office of Science and Technology Policy to conduct an independent investigation. The report they released was entitled *Keeping Entrepreneurship at Bay: How the Department of the Interior Uses Flawed Science to Foreclose the American Dream* ([Exhibit 4](#)).

The Executive Summary starts:

The Marine Mammal Commission (MMC), the National Park Service (NPS), the U.S. Geological Survey (USGS) and the Department of the Interior (DOI) significantly lack oversight, accountability, and transparency, and as a result have gone unchecked in their manipulation of scientific data. This misrepresentation of data influenced a Cabinet member's decisions, was quoted in a Department of Justice filing in the U.S. Court of Appeals for the Ninth Circuit, and is negatively affecting multiple businesses around the United States.

The use of flawed and non-transparent science represents a serious failure by NPS to uphold the White House Scientific Integrity Policy, which was designed to ensure that facts, rather than political agendas would drive scientific analysis. Cause of Action and Dr. Corey Goodman, Ph.D., an independent scientist and elected member of the National Academy of Sciences (NAS), have uncovered deficiencies in the MMC, NPS, USGS and DOI, which demand a thorough review of these entities, their approach to reporting scientific data, and the lack of enforced oversight in DOI.

If upheld, the Secretary's decision will inflict enormous consequences on the Lunny family, their employees, the San Francisco Bay area community, and the oyster market in the state of California.

The Executive Summary ends with:

The findings in this report demonstrate the substantial misrepresentation and manipulation of scientific facts by NPS, MMS, USGS, and DOI and highlight the need for intense review and scrutiny. The corruption, lack of transparency, and void of accountability among these agencies are occurring on the dime of American taxpayers and demand serious and thorough review.

The report concludes:

Considering the substantial impact that flawed science had on the Lunnys, it is imperative that a thorough review of the above findings is conducted in order to prevent similar scenarios from occurring. By ensuring appropriate oversight of DOI, NPS, USGS, and the MMC, the public's confidence in the integrity of science can be restored and

individuals like the Lunnys will be able to build businesses, grow local commerce, and pursue the American dream without improper interference from the federal government.

On March 11, 2013 Dr. Corey Goodman followed up with a letter to Dr. John Holdren, Science Advisor to the President, and Director, White House Office of Science and Technology Policy ([Exhibit 5](#)). Here are various statements from that letter.

The political process can be dangerously misled by bad or misused science. One of my greatest concerns when I see science being invoked in public policy debates is to make sure that it is good science and not pseudo-science or—even worse—a blatant misuse of science.

For NPS and their supporters, this is ideology, not science. Their goal is to get rid of the oyster farm from Drakes Estero by any means necessary. They are oblivious or are unconcerned that their false science also threatens the shellfish industry nationally and internationally, in contrast to a large body of good science showing that shellfish aquaculture is environmentally beneficial. Their agenda is to turn Drakes Estero into ‘wilderness’— whatever the cost or collateral damage.

What we as scientists rely on as facts and data, they see as simply fungible inconveniences. If the real data get in the way, they can be changed as they wish. To them, data are a means to an end.

The cover-up of scientific misconduct, when coupled with these ongoing ad hominem attacks, has had a corrosive impact on scientists throughout government. It sends a chilling message not to report the facts and data objectively as you find them, but rather to report data as someone else in a powerful position wants them to be reported. The cover-ups and attacks send a powerful message to keep quiet. Is this to be the outcome and legacy of President Obama’s Scientific Integrity Policy?

This issue before OSTP is not about an oyster farm, and it is not about oysters or harbor seals. It is also, in contrast to what EAC wrote to you, neither about the Secretary’s decision, nor the Federal Court rulings. Rather, it is about whether we as a nation are truly committed to returning science to its rightful place in the federal government.

State Water Resources Control Board

This background information brings us back to Mr. Howard’s letter. Is CWRCB committed to a pre-determined outcome regardless of the facts? It appears so. The only difference between his letter and the Klamath River Dams and Drakes Bay Farm situations is the fact that Mr. Howard offers no scientific support whatsoever for his request to harm American families and shut down California’s gold production.

THE NINTH DISTRICT COURT

Fortunately, the Ninth District Court has brought some sanity to bear. Just 3 weeks ago—on February 21, 2013—it ruled the DOI would have to defend its arguments in court ([Exhibit 6](#)), stating ...

Appellants’ emergency motion for an injunction pending appeal is granted, because there are serious legal questions and the balance of hardships tips sharply in appellants’ favor.⁹

⁹ Case 13-15227, Drakes Bay Oyster Farm and Kevin Lunny v. Kenneth L. Salazar

IN CONCLUSION

Common decency requires that a sound, scientific, open, and peer-reviewed analysis be conducted before causing harm to fellow Americans and destroying yet another American industry. If that is not argument enough, then perhaps the logic of the court will prevail.

In my opinion, denial of property rights without due cause and due process constitutes criminal behavior with civil liability for actual and punitive damages.

Government can constitutionally act only with the support of the People. To date, public opinion has been based on trust in our government representatives and agencies. That trust is rapidly eroding.

If you have questions, feel free to contact me at Kirk@DefendRuralAmerica.com.

Sincerely,

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