

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Washington, DC 20240

March 1, 2004

The Honorable John F. Kerry
United States Senate
Washington, DC 20510-2102

Dear Senator Kerry:

This is in response to your August 6, 2003 letter in which you requested that the Office of Inspector General (OIG) conduct an investigation into the Department's management of water resources in the Klamath Basin. You directed our attention to a July 30, 2003 article in the *Wall Street Journal* entitled, "Oregon Water Saga Illuminates Rove's Methods with Agencies" and called into question the Interior Department's ability to meet its legal responsibilities in the Klamath Basin.

In your letter, you aptly observe that "[c]ommercial fishermen, Native Americans, irrigators, conservationists and federal officials have been engaged in a contentious regulatory proceeding over water management in the Klamath Basin that dates back several years." Clearly, the management of the water resources in the Klamath River Basin Project by the Department of the Interior has been fraught with criticism and contention from all sides, two of which are within the Department of the Interior itself. The concerns you advanced based on the issues raised in the *Wall Street Journal* article, as well as those raised in other venues, made the Klamath matter ripe for investigation by the OIG.

As outlined in my letter to you dated August 28, 2003, the OIG focused its investigation on three areas:

1. What would be the normal regulatory process in a matter such as this, assuming that this was an Administrative Procedures Act-governed regulatory matter.
2. What actually did happen in the administrative process in the Klamath Basin matter.
3. How the Klamath Basin matter deviated from the norm (if at all) with special attention being paid to:
 - a. The science
 - b. Any suppressed information
 - c. Any evidence of political interference

In conducting our investigation, we interviewed all of the key individuals – some of them several times – who were involved with the Klamath River Basin Project. These individuals

represent all aspects of involvement in the Klamath Project – from staff-level employees of the Bureau of Reclamation (BOR), the Fish and Wildlife Service (FWS) and the U. S. Geological Survey (USGS) to the highest-level decision makers within the Department; the independent scientists charged with reviewing competing reports and information; and the government scientist who filed for Whistleblower protection with the Office of Special Counsel. We reviewed hundreds of documents, including the documents contained in the Administrative Record supporting BOR’s final decision regarding the Klamath Project’s Operations, as well as documents filed with the United States District Court for the Northern District of California where suit had been filed challenging BOR’s decision-making process.

As a result of our investigation, we found fiercely competing interests among the Klamath Tribes, irrigators, fishermen, environmentalists and even among opposing Federal officials relating to the use and/or conservation of limited water resources in the Klamath Project. We also found that these interests have highly charged differences of opinion concerning what constitutes the best scientific and commercial data available, how the Project should be operated, and how to accommodate specific, diverse and competing interests. Unfortunately, when the competing interests are mutually exclusive of one another – as in the Klamath matter – accommodation becomes impracticable.

We determined that the administrative process followed in this matter did not deviate from the norm. Our review of the available documents and the rulings of the U.S. District Court for the Northern District of California support the conclusion that the Department had compiled the necessary information to support its various decisions related to the Klamath Project.

None of the individuals we interviewed – including the Whistleblower – was able to provide any competent evidence that the Department utilized suspect scientific data or suppressed information that was contained in economic and scientific reports related to the Klamath Project. To the contrary, the National Research Council of the National Academy of Sciences in its Final Report, issued October 2003, specifically disagrees with the criticism that had been directed against the Federal agencies for using “junk science”. This position is bolstered by the findings of the U.S. District Court for the Northern District of California, which concluded that in light of the conflicting state of scientific evidence, the decisions were based on the best available science at the time.

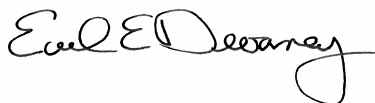
Finally, we found no evidence of political influence affecting the decisions pertaining to the water in the Klamath Project. The individuals at the working-levels denied feeling pressured at all. Based on our experience in past OIG investigations, these would have been the most likely sources to provide evidence of such influence. Higher-level decision makers, both political and career, also denied feeling any political pressure to render a decision one way or another. Collectively, these decision makers described a process of thorough and thoughtful consideration of all the competing interests and requirements, although frustrated by the fact that certain interests and requirements were mutually exclusive. The consistent denial of political influence by government officials was corroborated by the view of the outside scientists and one former DOI official, all of whom denied feeling any pressure – political or otherwise.

While we confirmed a passing reference to the Klamath River Basin Project during an otherwise-unrelated presentation to senior Interior officials, we found nothing to tie Karl Rove's comments or presentation to the Klamath decision-making process. The former DOI official, who had spoken to the *Wall Street Journal* about Rove's presentation, clarified to our investigators that his use of the term "chilling effect" was not related to the Klamath Project. Of the multiple DOI officials we interviewed who attended the presentation, only one person specifically recalled the context in which Rove mentioned Klamath. This official recalled that Rove merely cited Klamath as an example of the complex problems the Department had to deal with.

The complexity of the issues involved and the ferocity of the debate clearly fueled the flames of suspicion and distrust in this matter. Based on the results of our investigation, however, we conclude that the Department conducted itself in keeping with the administrative process governing the Klamath Project, that the science and information utilized supported the Department's decisions, and that no political pressure was perceived by any of the key participants.

I hope this information puts to rest your concerns. If you have any questions, please do not hesitate to call me at (202) 208-5745.

Sincerely,

A handwritten signature in black ink, reading "Earl E. Devaney". The signature is fluid and cursive, with a large, stylized "E" at the beginning and a long, sweeping underline.

Earl E. Devaney
Inspector General