Valley Water
SANTA CLARA VALLEY WATER DISTRICT

NON-AGENDA

July 2, 2021

Board Policy EL-7 Communication and Support to the Bard
The BAOs shall inform and support the Board in its work.

Page		
		CEO BULLETIN & NEWSLETTERS
		CEO Bulletin: None
		BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS
		BMR/IBMR Weekly Reports: None
5		Memo from Rick Callender, CEO, to the Board of Directors, dated 6/24/21, regarding Purified Water Project Procurement Protocols per the District Act and Board Governance Process.
7		Memo from Vincent Gin, DOO, Water Supply Division, to the Board of Directors, dated 6/24/21, regarding Delta Conveyance Project Environmental Justice Survey.
14		Memo from Vincent Gin, DOO, Water Supply Division, to the Board of Directors, dated 6/25/21, regarding Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407.
		INCOMING BOARD CORRESPONDENCE
18		**Board Correspondence Weekly Report:** 07/01/21
19		Email from Avi Gingold, to Director Varela, dated 6/23/21, regarding the Gray Water Irrigation (C-21-0083).
20		Email from Ashis Roy, to Director Varela, dated 6/23/21, regarding Water Conservation (C-21-0084).
21		Email from John Kolski, to the Board of Directors, dated 6/28/21, regarding Water Use (C-21-0085).
22		Email from John Kolski, to the Board of Directors, dated 6/28/21, regarding Water Use (C-21-0086).
28		Email from Parul Malik, to the Board of Directors, dated 6/28/21, regarding the Landscape Conversion Rebate Program (C-21-0087).
		OUTGOING BOARD CORRESPONDENCE
32		Email from Director Keegan, to Bob, dated 6/23/21, regarding Water Rates, Comments and Concerns (C-21-0064).
38		Email from Vice Chair Kremen, to Brett Tucker, dated 6/28/21, regarding Water Conservation (C-21-0075).
40		Email from Director Varela, to Swanee Edwards, dated 6/23/21, regarding Woodland Estates Retirement Community in Morgan Hill (C-21-0077).
43		Email from Chair Estremera, to Nanoo Salvato, dated 6/23/21, regarding Water Restrictions (C-21-0078).

45		Email from Director Hsueh, to John Kolski, dated 6/28/21, regarding Water Rights (C-21-0079).

Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/ attachments are available by submitting a public records request to publicrecords@valleywater.org.

CEO BULLETIN

BOARD MEMBER REQUESTS and Informational Items

Valley Water

MEMORANDUM

FC 14 (08-21-19)

TO: Board of Directors **FROM:** Rick L. Callender, Esq.

SUBJECT: Purified Water Project Procurement Protocols per the District Act and Board Governance Process **DATE:** June 24, 2021

The Purified Water Project is currently in an active procurement process phase. The Request for Qualifications (RFQ) was released on April 30 and RFQ submissions are due by July 23. Per the Board's direction, this will be Valley Water's first Public Private Partnership (P3) capital project using a Design Build Finance Operate Maintain (DBFOM) delivery method. The RFQ will result in a shortlist of bidders that will then be invited to respond to a RFP later this year. As this is a high-profile project and procurement, the following guidance is provided to Board members to ensure a defensible procurement:

- As an active procurement, communication restrictions stated in Section 8. (c) of the District Act and GP 6.3.3 of the Board Governance Policies both apply (full content of both pasted below) to the current status of this process. Section 8.(c) provides that "*No director shall contact staff on behalf of a party who is bidding or intends to bid on a district contract or who has or intends to submit a response to a request for proposals or request for qualifications.*"
- Section 3.6 of the Purified Water Project P3 RFQ (RFQ No. C0674) includes the following requirement: "*Prospective Respondents may only direct questions in writing [to the Valley Water Representative] and any attempt to arrange individual meetings with Valley Water staff, Board members, advisors, contractors, vendors or any other relevant official to discuss this RFQ during the procurement period may result in the disqualification of the Respondent.*"
- If any prospective respondent or potential member of a P3 entity team contacts you with comments, concerns, or feedback on the RFQ or the RFP, before or after it is issued, please advise staff as soon as reasonably practical, as this information is critically important to ensuring the integrity and transparency of the procurement.
- All interested parties are provided the opportunity to submit questions, comments, or requests for clarification and/or amendment regarding the procurement documents, however, such comments must be submitted in writing and directed to the Valley Water Representative identified in the RFQ (Ken Wong, Deputy Administrative Officer). As such, there is no reason for Bidders to contact Board members or other officials to discuss procurement issues. These communications could potentially jeopardize the procurement.
- The communication restrictions stated in Section 8.(c) shall remain in place as long as this procurement is active, which is the earlier of the date upon which either a contract is fully executed (expected in Q3 of 2022) or the procurement is formally terminated by Valley Water.
- Staff will be developing a process to ensure that interested Board members are briefed on the development of the RFP and any concerns addressed, and that decisions regarding policy issues relevant to the initial draft Water Services Agreement or otherwise addressed in the RFP, such as risk allocation and financial issues, are brought to the Board for approval prior to release of the RFP.
- Public procurement is based upon a requirement of fair and open competition and requires that the competitive process preclude favoritism and fraud and avoids the misuse of public funds. All participants must be treated equitably with access to the same information throughout the procurement process. Ensuring communication is centralized through a designated procurement point of contact eliminates the occurrence of anyone receiving information that everyone did not receive.

- Failure to comply with these procurement protocols could subject Valley Water to protests and legal challenges. Valley Water may face an undesirable outcome of having to cancel the procurement and reissue a new solicitation. This action is costly for both Valley Water and the interested firms. Canceling a solicitation causes a significant negative impact on proposers and potential proposers as the resources deployed to prepare an RFQ and/or RFP response may be hundreds of thousands of dollars on complex procurement. A repeat of the processes may also result in a decreased number of interested firms and an increased cost to Valley Water as those who participate in a subsequent process will likely price into their proposal a higher level of procurement risk.

District Act Section 8. Compensated employment; regulations governing lobbyists; prohibited contact; severance pay; public reporting; expense reimbursements

(c) (1) No director shall contact staff on behalf of a party who is bidding or intends to bid on a district contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant.

(2) Paragraph (1) does not prohibit a director from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by the district.

Board Governance Process Section 6.3. Board members may not attempt to exercise individual authority over the organization.

Board Governance Process 6.3.3. No member shall contact staff on behalf of a party who is bidding or intends to bid on a District contract or who has or intends to submit a response to a request for proposals or request for qualifications, nor shall a Director inquire about the identity of bidders or proposers prior to the time that staff has made a recommendation for selection of a contractor, vendor, or consultant. Members are not prohibited from making general inquiries about the status of a particular procurement, or from providing a member of the public with information about the appropriate staff contact concerning procurement of goods and services by the District.

Rick L. Callender, Esq.
Chief Executive Officer

ks/dho

Valley Water

MEMORANDUM
FC 14 (08-21-19)

TO: Board of Directors

FROM: Vincent Gin, P.E.

SUBJECT: Delta Conveyance Project Environmental Justice Survey

DATE: June 24, 2021

The California Department of Water Resources (DWR) recently published the results of an environmental justice community survey entitled *Your Delta, Your Voice*. The Executive Summary is provided as Attachment 1. This survey was launched in Fall 2020 as a part of the Delta Conveyance Project (DCP) planning process. Its goals were to gather input and perspectives from disadvantaged communities in the Delta region to understand their relationship with the Delta region and their priorities, values, and needs.

Over the course of the survey, 2,117 people responded, of which 979 were identified as living or working in the Delta region. The survey was available in English, Spanish, and Chinese on a digital platform. The report provides an overview of survey participation, a summary of responses and comments, survey outreach methods, lessons learned, and analysis. Some results highlighted in the report include:

1. The Delta's waterways are central to the region's identity. People in the community indicated interest in water quality and healthy habitats and frequently spend time visiting the Delta's waterways and natural areas.
2. Two-thirds of disadvantaged community members indicate that more community services such as food and homeless services are needed in the Delta region.
3. There is a strong "no tunnel" sentiment expressed, however 95% of disadvantaged community members selected "I don't know enough to have a strong opinion at this time" in response to the question, "what is your opinion about the proposed project?".
4. More than 60% of the disadvantaged community members that participated in the survey indicated that they have never participated in a public process related to a Delta tunnel proposal before.

Survey results will be used to inform DWR's work towards developing the DCP Community Benefits Program. The full report can be read at: https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Environmental-Justice.

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Vincent Gin, P.E.
Deputy Operating Officer
Water Supply Division

Attachment 1: Environmental Justice Survey Executive Summary

SURVEY FINDINGS

your DELTA your VOICE

Environmental Justice Community Survey
EXECUTIVE SUMMARY

Report prepared by Ag Innovations for the
California Department of Water Resources
Delta Conveyance Project

Published May 2021

Ag Innovations
101 Morris St #212, Sebastopol, CA 95472
www.aginnovations.org
(707) 823 6111
genevieve@aginnovations.org

Ag Innovations is a 501(c)(3) nonprofit that facilitates collaboration and community engagement related to the complex agricultural and natural resource challenges facing California today. Ag Innovations has been supporting environmental justice outreach for the Delta Conveyance Project since January 2020.

EXECUTIVE SUMMARY

In Fall 2020, the California Department of Water Resources (DWR) launched an environmental justice community survey entitled ***Your Delta, Your Voice***. The survey was live from September 30 through December 11, 2020. Survey development and outreach was led by Ag Innovations and supported by numerous partners and agency staff.

The survey had the following goals:

1) to gather information from disadvantaged communities in the Delta region about how they work, live, recreate and experience the Delta,
2) to understand how the community values and uses its natural, economic, and social resources, and
3) increase awareness of the proposed project and interest in participating in public engagement among disadvantaged community members in the Delta region.

These goals were pursued in order to inform the proposed Delta Conveyance Project environmental review and planning process, with a particular emphasis on the environmental justice chapter of the CEQA Environmental Impact Report. Ag Innovation's intent was to faithfully reflect the input and perspectives gathered via the survey within this report.

In January 2021, DWR began developing a Delta Conveyance Project Community Benefits Program. The information gathered from the survey will also be used to inform DWR's efforts to work towards community benefits in the Delta region, although that was not part of the original intent of the survey as the program did not exist at that time.

Who Responded to the Survey?

The survey sought direct input from disadvantaged communities, or historically burdened, underrepresented, people of color, and low-income communities of interest, including indigenous and Tribal members—that may be disproportionately affected by the proposed Delta Conveyance Project—in the Sacramento-San Joaquin Delta region (Delta). For simplicity, we refer to these communities as "disadvantaged communities" (DAC) and "severely disadvantaged communities" (SDAC) throughout this report, and we defined the "Delta-region" as slightly larger than the Delta.

Of the 2117 survey participants, 979 were categorized as living or working (or both) in the Delta region. Of those, 540 were categorized as disadvantaged community (DAC) respondents, and 166 of them were further subcategorized as severely disadvantaged community (SDAC) respondents. For more information on how Delta-region DAC and SDAC respondents were identified and categorized, please refer to chapter 2 and Appendix B: Analytical Assumptions.

Survey Outreach

We promoted the survey in English, Spanish, and Chinese on DWR's website and via postcards, eblasts, social media posts, radio, and more. To disseminate the survey as widely as possible and capture the attention of minority, low-income, or otherwise vulnerable community members who live and work in the Delta, we also conducted extensive grassroots outreach to build partnerships with community-based organizations, local leaders, schools, social service providers, and Tribes. Many volunteered to distribute flyers at school meals distribution sites and food banks, post the survey to social media, send postcards and text messages, and more. More details on the outreach goals, results, and lessons learned can be found in Appendix A.

About the Survey

The survey was designed in MetroQuest (www.metroquest.com). It was designed to be highly interactive and engaging, ask many questions in a short amount of time, and to perform equally well on computers, smartphones, and tablets. The survey was made available in English, Spanish, and Chinese. A hotline was provided to respond to inquiries and provide assistance as needed, such as for those who do not have access to or comfort with digital devices. A demonstration of the survey can be found here (http://demo.metroquestsurvey.com/fc5r5w).

The survey invited participants to provide information about their priorities, favorite aspects and concerns about the Delta, economic wellbeing, experiences in nature, and project opinions. It also contained a mapping exercise that enabled participants to share the locations of the places that matter most to them as well as to share their thoughts about these places, how they interact with them, and more. The survey contained quantitative questions – such as multiple choice, ranking, checkboxes, etc. – that allowed participants to make choices among the available options. It also included many open-ended questions and other opportunities to provide input in their own words.

The survey was organized into five sections, each of which were tied to the following screens.

- Screen 1: Welcome and Overview
  This screen describes the purpose, goal, and potential timeline of the proposed Delta Conveyance Project.

- Screen 2: Priorities: What's important to you?
  This screen provides respondents an opportunity to rank six of twelve different possible priorities, in response to the question, "What is most important to you for maintaining or improving the quality of your life in the Delta? ," with an option to suggest another priority and provide comment.

- Screen 3: Special Places: Places that matter to you
  This screen was an opportunity to drag markers onto a map-based survey. This screen was intended to help the state investigate potential impacts and understand more about historic and cultural sites, fishing, gathering spots, outdoor activities, businesses or services, or other special places in the statutory Delta.

- Screen 4: Delta Community Needs
  This screen included four sub-screens of multiple choice and open-ended questions about what respondents like best and have concerns about the Delta region; economic wellbeing and identifying social services; experience in nature, including frequent activities and what would make respondents spend more time visiting Delta waterways or natural areas; and the respondents' opinion about the project, including concerns about its effects as well as inquiring about potential benefits.

- Screen 5: Demographics
  This screen included multiple choice questions about ethnicity, language, zip code, income, and how the respondent learned about the Delta Conveyance project. This information was used during the survey outreach effort to target outreach and to analyze the survey afterwards.

Survey Highlights

Following are global highlights from the survey.

1. People who live in the Delta region recreate, fish, and travel to visit friends, restaurants, and other towns by boat. Day-to-day life happens on the water, and the Delta's waterways are central to the region's identity.
   Many Delta-region DAC participants indicated that they routinely gather and recreate on the water as well as travel via the water. In fact, of the outdoor activity sites participants added to the Special Places map, most were places where they participated in water activities. In addition, when participants placed gathering spots and businesses on the map, one of the most common types was restaurants located at marinas.

2. Fishing in the Delta is a way of life. For 90% of the fishing locations respondents identified, they indicated that they eat fish from the Delta four or more times per week.
   After outdoor activity sites, the second most frequently chosen sites were locations where participants fish. At 90% of the fishing locations identified by Delta-region DAC respondents, the respondent indicated that they or their family eat fish from the Delta four or more times per week. For almost half (47%) of the fishing spots identified, the respondent indicating fishing throughout the year. In comments there was a strong desire for "fishing to continue," and many spoke about how fishing is "a way of life."

3. Throughout the survey, participants consistently expressed interest in the natural environment; clean air and drinking water; maintenance of flows and water quality in the Delta waterways; and healthy habitat for fish, migrating birds; and other wildlife.
   Survey responses also mentioned water quality concerns related to diversion of Delta water flows, harmful algal blooms or invasive species, trash, and pollution. Participants felt these issues impacted the continued health of the Delta, and the local community, economy, agriculture and recreation.

4. There is a strong desire to preserve the Delta and the communities that make up the Delta.
   There is concern that construction impact would alter the way of life in the Delta, as well as present risks to important places in the Delta, including historic sites such as Locke, historic homes, fishing sites, businesses, and other places. The town of Locke was by far the most identified historic site in the "Special Places" mapping section. Many respondents drew a connection between preserving regional agriculture – including multi-generational farms – and preserving the history of the Delta and its community.

5. The majority of Delta-region DAC respondents visit the Delta's waterways and natural areas at least monthly. More than half spend their time hiking, walking, or running or participating in water activities, such as boating, fishing, and swimming.
   More than 60% of Delta-region DAC (including SDAC) respondents visit the Delta's waterways and natural areas at least once per month. More than half of Delta-region DAC (including SDAC) respondents participate in hiking, walking or running (59%) or water activities (53%) most frequently.[1] The region's SDAC participants similarly chose indicated participating in hiking, walking in running most frequently (58%). For this subset of respondents, there was a much larger gap between this most frequent activity and other activities. For SDAC participants, only 40% indicated participating in water activities most frequently, and in fact, 42% indicated that their most frequent activity is just hanging out (picnicking, sunbathing, etc.). In response to a question about what would make them want to spend more time outdoors, 68% of Delta-region DAC (including SDAC) respondents selected "better

[1] Note that respondents could select their first and second most frequent activity, so responses total to more than 100%.

parks, trails, or other recreational amenities." Participant comments focused strongly on wanting clean, safe, accessible outdoor recreation, particularly around walking and biking trails, parks, and fishing spots.

6. Two thirds of Delta-region DAC respondents indicated that additional community services are needed in the Delta. Services to support the homeless (e.g., affordable housing and other basic services) and the food insecure (e.g., food banks) were the most frequently cited.
   In addition to services for related to food and homeless residents, other services frequently identified included youth programming, health and medical services, affordable and quality housing, mental health and substance abuse programs, and senior services, and accompanying facilities to support these services.

7. There was a strong "no tunnel" sentiment expressed by Delta-region DAC respondents in several comment sections of the survey. Simultaneously, 95% of Delta-region DAC (including SDAC) selected "I don't know enough to have a strong opinion at this time" in response to the question, "what is your opinion about the proposed project?"
   The "no tunnel" sentiment against the Delta Conveyance Project was a theme throughout comments and was related to concerns about the Delta Conveyance Project benefiting only places outside of the Delta, and potential impacts to the natural environment, community and economy of the Delta. Concerns about the tunnel were extensive throughout the survey. However, of the Delta-region DAC and SDAC group who answered the question, "what is your opinion of the proposed project," 95% responded, "I don't know enough to have a strong opinion at this time."

8. Almost three-quarters of Delta-region DAC respondents said "no benefits" in response to the question "What potential benefits [of the Delta Conveyance Project] could you see for your community?"
   Nearly 70% of Delta-region DAC and SDAC commenters stated that no benefits are possible for the Delta region from the project. Others suggested that there would be 'short term' jobs, or reflected a hope that that the project could support cleaner water, air and restoration. At the time of the survey, the DWR Community Benefits program was not in existence.[2]

9. The survey drew in new participation.
   In response to a survey question that asked, "Have you ever participated in a public process related to a Delta tunnel proposal?," more than 60% of both Delta-region DAC and SDAC respondents responded "no." This indicated that there was significant increased participation from those who had never participated in the Delta Conveyance Project planning process before.

10. Outreach by individual community leaders generated more survey participation than any other outreach approach.
    We did extensive, traditional outreach as well as what face to face outreach we could in a time of the Covid-19 pandemic. However, local leaders were the most important means for inviting participation from disadvantaged communities in the Delta. (Read more in Appendix A). From that experience and others, it was clear that working with embedded community leaders and organizations was an effective avenue for outreach in the community.

[2] As of 2021, DWR is developing a Community Benefits Program (https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Community-Benefits-Program) for the proposed Delta Conveyance Project which will ultimately identify and implement commitments, if the Delta Conveyance Project is approved, to help protect and enhance the cultural, recreational, natural resource and agricultural values of the Delta. More information can be found about the Delta Community Benefits Program at https://water.ca.gov/Programs/State-Water-Project/Delta-Conveyance/Community-Benefits-Program.

The survey input was rich and varied, with strong themes around the preservation of the Delta, its water ways, and way of life; about the Delta community and how it uses and depends on the Delta; and concerns about the impact of the proposed Delta Conveyance Project on the Delta.

This report provides an overview of survey participation, including key definitions, as well as a summary of the responses and comments for each section for DACs, SDACs and all respondents. It also includes two appendices: Appendix A outlines survey outreach and marketing methods, including lessons learned and samples of outreach collateral; Appendix B details analytical assumptions of the survey and report.

Valley Water

MEMORANDUM
FC 14 (08-21-19)

TO: Board of Directors

FROM: Vincent Gin, P.E.

SUBJECT: Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407

DATE: June 25, 2021

On June 11, 2021, the U.S. Department of Interior Deputy Solicitor for Water Resources issued a memorandum (Memorandum) to Ernest Conant, Regional Director of the U.S. Bureau of Reclamation's (Reclamation) California-Great Basin Region rescinding the January 14, 2021, memorandum issued by the then Associate Solicitor for the Division of Water Resources entitled *Interpretation of the Central Valley Project Improvement Act Sections 3406 and 3407* (January 14 Memorandum). The January 14 Memorandum provided direction on how Reclamation should analyze certain Central Valley Project Improvement Act (CVPIA) restoration activities when determining whether those activities could be declared complete. The decision to rescind the January 14 Memorandum was based on the lack of Departmental coordination required by the 1993 Central Valley Project Improvement Act (CVPIA) implementation agreement between Reclamation and the U.S. Fish and Wildlife Service, and for being a potential impediment to achieving the purposes of CVPIA. The Memorandum is included as attachment 1 to this Memo.

CVPIA was passed in 1992 for the purposes of protection, restoration, and enhancement of fish, wildlife, and associated habitats impacted by the construction and operation of the Central Valley Project. A determination that the restoration activities contemplated in CVPIA are deemed complete would be significant as it would mean that CVPIA goals have largely been met. It would also result in the reduced collection of Restoration and Mitigation Payments by CVP water and power contractors to fund future CVPIA activities.

Vincent Gin, P.E.
Deputy Operating Officer
Water Supply Division

Attachment 1: Solicitor's Office Memorandum

United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

June 11, 2021

Memorandum

To: Ernest Conant
Regional Director, California-Great Basin Region
Bureau of Reclamation

From: Daniel Cordalis, Deputy Solicitor for Water Resources
Office of the Solicitor

DANIEL CORDALIS Digitally signed by DANIEL CORDALIS Date: 2021.06.11 08:07:56 -07'00'

Subject: January 14, 2021, Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407

On January 14, 2021, the Associate Solicitor for the Division of Water Resources issued a memorandum entitled "Interpretation of Central Valley Project Improvement Act Sections 3406 and 3407" (Memorandum). The Memorandum, among other things, provided direction to the Bureau of Reclamation (Reclamation) on how Reclamation should analyze certain Central Valley Project Improvement Act (CVPIA) restoration activities when determining whether those activities could be declared complete pursuant to the CVPIA. I reviewed the Memorandum consistent with Executive Order 13990,[1] "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," and am now rescinding it for lack of Departmental coordination required by the 1993 CVPIA implementation agreement between Reclamation and the Fish & Wildlife Service (Service) and for being a potential impediment to achieving the purposes of the CVPIA.

Congress passed the CVPIA in 1992 and modified Central Valley Project (CVP) management by including as Reclamation management purposes the protection, restoration, and enhancement of fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California. Accordingly, CVPIA section 3406 includes specific restoration activities the Department is required to undertake to further these purposes. Under CVPIA section 3407(d)(2), the Secretary can determine whether the restoration activities in section 3406 funded by these payments are "complete." The determination is significant because if all the restoration activities are deemed complete, the Secretary must reduce the sums collected from water and power contractors that fund CVPIA restoration activities.

[1] Section 1 of Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," articulates that it is national policy "to improve public health and the environment," and directs that the heads of all agencies "shall immediately review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policy set forth in section 1 of this order."

The Memorandum discussed how Reclamation should interpret whether the restoration activities were complete. Critically, the analysis in the Memorandum did not include Service input even though the Memorandum's conclusions would affect significantly the Service's implementation of CVPIA restoration activities. Moreover, the Service has joint lead authority in CVPIA implementation. Reclamation and the Service signed a CVPIA implementation agreement in 1993 that reinforced a collaborative approach to restoration efforts—particularly anadromous fish restoration—where the agencies would share decision making. The lack of coordination between Reclamation and the Service in issuing the Memorandum violated the 1993 implementation agreement.

Further, the Memorandum's explanation of what constitutes a completed restoration activity is inconsistent with the intent of the CVPIA and the Department's obligation to carry out the policies in Executive Order 13990 to "protect our environment; to ensure access to clean air and water;" and "to bolster resilience to the impacts of climate change," within the Central Valley and Trinity River basins. In its completion analysis, the Memorandum expressly rejected consideration of whether an ongoing restoration program was, and had the ability to continue, making progress toward its intended outcome. Instead, the Memorandum concluded that an ongoing program should be deemed complete after the initial development and implementation of a program (i.e., the startup of a program). This legal conclusion fails to support the fish and wildlife protection and restoration purposes expressed in CVPIA sections 3402(a) and (b). These purposes likely cannot be achieved by merely setting up the required restoration programs; some level of ongoing effort and progress toward meeting the program goals should be considered in a completion determination framework. Otherwise, funding could be reduced prematurely and impair the program's ability to meet its intended purpose.

In summary, because the Memorandum is not reflective of necessary Departmental collaboration and decision-making regarding important fish and wildlife restoration decisions affecting CVPIA implementation, I am rescinding it and directing the Division of Water Resources and the Division of Parks & Wildlife to work collaboratively and with the appropriate bureaus to determine whether additional guidance is needed. Please let me know if you have any questions or concerns about this action.

cc: Camille Touton, Deputy Commissioner
Martha Williams, Principal Deputy Director
Carter Brown, Associate Solicitor – Water Resources
Peg Romanik, Associate Solicitor – Parks and Wildlife