

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

August 19, 2019

The Honorable David Bernhardt
Secretary of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Bernhardt,

We write to express concerns regarding the ongoing process at the Department of the Interior to revise the biological opinions for water deliveries from the Central Valley Project (CVP). In light of recent investigative reporting and the fact that your former client, the Westlands Water District, is a significant beneficiary of increased water deliveries from the CVP, we are concerned that your ties to your former clients are influencing the development of the CVP biological opinions in an improper manner that will undermine important environmental protections. Because of this, we are requesting the Department of the Interior release to the Natural Resources Committee key information regarding the biological opinion development process. We also ask that you confirm or clarify details reported last month by the Los Angeles Times regarding the Administration's work on the biological opinions.

According to public reporting, on July 1, 2019 the National Marine Fisheries Service (NMFS) prepared a biological opinion outlining the negative impact that increased water deliveries from the Sacramento-San Joaquin Delta (Delta) for the CVP would have on Chinook salmon and other native fish. This July 1st biological opinion reportedly found that these water deliveries would jeopardize the survival of several Special Status Species, including winter-run Chinook salmon, spring-run Chinook salmon, and Central Valley steelhead. In response to this finding, the U.S. Fish and Wildlife Service (FWS) reportedly created a new review team in order to modify NMFS's July 1, 2019 biological opinion and requested a two-month extension.¹

We find the creation of this new review team troubling as it challenges claims that the Administration will be guided by the best available science. It also suggests that certain scientific findings are not welcome if they show that the Administration's stated objective to increase water deliveries to select water contractors will jeopardize the existence of listed species. We also find it troubling that the Bureau of Reclamation, the action agency, has reportedly been given a prominent role in this newly created review team charged with rewriting NMFS's biological opinion. This appears to be a highly irregular departure from common practice and obvious conflict of interest.

¹ <https://www.latimes.com/environment/story/2019-07-18/endangered-salmon-threaten-trump-delta-plan>

As you know, in 2006 during your previous tenure at the Department of the Interior, the Department was investigated by the Office of the Inspector General over complaints that Deputy Assistant Secretary Julie MacDonald was ignoring science and bullying staff to change documents and biological opinions for the very same water project.² We would hope the Department has learned its lesson since that unfortunate episode.

To demonstrate that your agency has not been impacted by improper political influence once again, we ask that you respond to the following questions and information requests as comprehensively as possible.

1. On or around July 1, 2019 did NMFS prepare a biological opinion finding that the Bureau of Reclamation's proposed operation of the Central Valley Project would jeopardize the existence of listed species? Please confirm or deny.
2. Has the review team reportedly convened by FWS's Paul Souza submitted a revised biological opinion for independent peer review on or around August 1, 2019, as is suggested in the attached email? Please confirm or deny.
3. Please provide our office with a copy of the July 1, 2019 biological opinion, as well as the July 2nd biological opinion that was shared with the federal review team.
4. Please provide our office with all records of discussion, meetings, emails, or other forms of comments and communication related to the biological opinions that were exchanged between the Department of the Interior and your former clients, including the Westlands Water District, and any other parties with whom draft biological opinions were shared. Pursuant to Section 4004 of Public Law 114-322, water agencies that have contracts with the Department of the Interior would have been given opportunities to review and participate in the development of the biological opinions. We ask that you provide the records of these communications.

When Margaret Everson, FWS's Principal Deputy Director Exercising the Authority of the Director, testified at the May 21, 2019 House Subcommittee on Water, Oceans, and Wildlife hearing, she was asked if she would release any emails that were sent between the Westlands Water District and FWS regarding the CVP biological opinions. She responded that FWS takes requests from Congress very seriously and said she would be happy to work with the Department of the Interior to fulfill our request. Despite this assurance, the Committee has yet to receive any information from the Department of the Interior or Ms. Everson regarding the requested emails.

Furthermore, in a letter to this Committee, the Administration noted that while the Executive Branch has an interest in protecting its internal deliberations, the draft deliberative documents associated with the Central Valley Project entail greater disclosure to Congress because they are "a unique case as set forth in Sec. 4004 of the Public Law 114-322, the "Water Infrastructure


² <https://www.doioig.gov/sites/doioig.gov/files/Macdonald.pdf>


Improvements for the Nation Act” (WIIN Act).”³ Sec. 4004 of the WIIN Act states that “the Secretaries of the Interior and Commerce shall ensure that any public water agency that contracts for the delivery of water from the Central Valley Project or the State Water Project that so requests shall ... (4) receive a copy of any draft biological opinion and have the opportunity to review that document and provide comment to the consulting agency through the action agency, which comments will be afforded due consideration during the consultation.”

Given this direction for expanded disclosure of the draft biological opinions, we expect that you will direct your staff to comply with my information request and provide Congress with the same level of information you have provided to numerous water contractors. This information will allow Congress to properly exercise its oversight functions and evaluate whether the biological opinions in question are being developed based on the best available science and what is best for the millions of Californians who depend on a healthy Delta ecosystem and not what is best for your former clients.

We look forward to your timely response.

Sincerely,


Raul M. Grijalva
Chair
House Natural Resources Committee


Jared Huffman
Chair
Subcommittee on Water,
Oceans, and Wildlife

³ Correspondence from the United States Department of Commerce to the Honorable Jared Huffman, June 24, 2019.