

The Trump Administration Directives on Western Water

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On October 19, 2018, the Trump Administration released a [Presidential Memorandum](#) directing federal agencies to address regulations that burden federal water projects in California and complete biological opinions under the [Endangered Species Act](#) (ESA; 16 U.S.C. §§1531 et seq.) for specific federal water projects in the western United States. Affected projects include the California [Central Valley Project \(CVP\)](#), the Klamath Irrigation Project in Oregon, and the Columbia River Basin water system in the Pacific Northwest. The White House memorandum does not carry the force of law nor is it a federal regulation. Rather, it serves as a directive to federal agencies for these projects. Congressional interest in the directive arises from both specific interest in these projects and broader interest in managing water conveyance systems in the West and addressing their regulatory policies. This insight covers specific projects or water systems addressed by the memorandum.

California Water and the CVP

The CVP is a large water supply project in northern and central California operated by the Bureau of Reclamation (Reclamation), an agency in the Department of the Interior (DOI). The CVP's service area extends over a distance of approximately 400 miles in central California. The project delivers more than 7 million acre-feet of water per year, on average, to support irrigated agriculture, municipalities, and species, and is operated jointly with the State Water Project (SWP; owned and operated by the State of California). Water deliveries from the CVP and SWP are regulated through a series of laws and regulations. Biological Opinions (BiOps) issued under ESA and state water quality standards issued under the Clean Water Act are two primary factors affecting how much water can be delivered to users. BiOps addressing the CVP and SWP were issued in 2008 for Delta smelt by the U.S. Fish and Wildlife Service (FWS, in DOI) and, in 2009, by the National Marine Fisheries Service (NMFS, in the Department of Commerce) for salmon.

The White House memorandum directs the Secretary of the Interior and the Secretary of Commerce (Secretaries) to identify water infrastructure projects in California for which both Secretaries have responsibility for under ESA and the National Environmental Policy Act ([NEPA](#); 42 U.S.C. §§4321 et seq.). For each project, the Secretaries are to jointly

designate one official who, within 30 days, is to identify regulations or procedures that *burden* the project. The agencies are also to develop a plan to "appropriately suspend, revise, or rescind regulations or procedures that burden the project beyond the degree needed to protect the public interest or comply with the law." Public interest is not defined or discussed in the memorandum, but *burden* is defined as "to unnecessarily obstruct, delay, curtail, impede, or otherwise impose significant costs on the permitting, utilization, transmission, delivery, or supply of water resources and infrastructure."

The memorandum further directs the Secretaries to develop a timeline for completing the environmental compliance requirements for the identified projects within 40 days.

In addition, the memorandum also directs the Secretaries to ensure that the review of the long-term coordinated operations of the Central Valley Project and California State Water Project ([OCAP](#)) is completed with an updated operations plan and issued Record of Decision. The memorandum directs the biological assessment of OCAP to be completed before January 31, 2019, and a final BiOp to be issued within 135 days of January 31, 2019.

These directives follow a [memo](#), issued by Secretary Zinke on August 17, 2018, soliciting ideas from federal agency staff on how to address California water issues. The Secretary directed staff to develop a plan of action to maximize water supply deliveries, incorporate best science into real-time decision making, streamline ESA and NEPA processes, construct new storage for water, resolve issues with OCAP and other joint state and federal projects, and improve coordination between FWS and NMFS, among other actions.

Other Western Projects Addressed

The White House memorandum also directs the Secretaries to complete a joint consultation on the Klamath Irrigation Project by March 2019 and develop a schedule to complete the Columbia River System Operations Environmental Impact Statement and associated BiOps by 2020.

The [Klamath Project](#) is a federal irrigation project in Oregon owned and operated by Reclamation; it provides irrigation water for an estimated 1,400 farms in the Klamath River Basin. The current BiOps regulate water flows to the Klamath Project to provide more water to endangered fish.

The Columbia River Basin produces hydropower and regulates water flows through 31 federal dams owned and operated by the [U.S. Army Corps of Engineers](#) and [Reclamation](#). The basin supports 13 listed fish species or distinct populations (salmon and trout species). Basin dams have blocked fish passage in much of the basin, and hydropower generation leads to fish mortality due to fish passing through turbines. The current BiOp for the Columbia River dates to 2014. Court rulings have altered the system BiOps over time, and efforts are underway to create a new BiOp (a judge allowed NMFS until 2021 to finish the new document).

Potential Congressional Interest

Some in Congress are interested in the White House memorandum because it shows the intent and direction of the Administration for implementing laws associated with western water. The policies in the directive could result in expediting (and in some cases altering) the implementation of key laws governing the management of water supplies in the West. Some who support this approach contend that the direction to federal agencies will result in improved access to and certainty for water supplies, along with streamlining regulatory processes. Some critical of the memorandum contend that it could lower environmental standards for these projects and affect listed species. They contend that it might set a precedent for species affected by other projects. The effect of the memorandum's directive will depend on its implementation. For example, how the Administration applies the definition of *burden* to regulations or procedures when addressing the CVP, to what extent new BiOps for these projects alter existing requirements for environmental protection, and how regulatory processes will be streamlined, will largely determine how transformative the regulations will be.