



PROTECT the PUBLIC'S TRUST

VIA ELECTRONIC MAIL

July 20, 2021

TO: The Honorable Mark Lee Greenblatt
Inspector General
U.S. Department of the Interior
1849 C Street NW – MS 4428
Washington, D.C. 20240

Heather C. Gottry
Director and DAEO
Departmental Ethics Office
Office of the Solicitor
U.S. Department of the Interior
1849 C Street NW – MS 5311
Washington, D.C. 20240

CC: Emory A. Rounds
Director
U.S. Office of Government Ethics
1201 New York Ave NW #500
Washington, D.C. 20005

Corey Amundson
Chief
Public Integrity Section
U.S. Department of Justice
1331 F Street NW
Washington, D.C. 20005

Re: Request for Investigation into Possible Ethics Violation by Daniel Cordalis, Deputy Solicitor for Water Resources

Dear Mr. Greenblatt and Ms. Gottry,

Protect the Public's Trust (PPT) is a non-profit organization dedicated to promoting integrity in government and restoring the public's trust in government officials. In pursuit of this mission, it has been brought to our attention that a current high-ranking official may be acting inconsistently with his ethics obligations and violating the law.



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Overview

In January 2021, the Associate Solicitor for Water Resources at the Department of the Interior, issued a memorandum (Career SOL Memo) pertaining to collection of user fees associated with the Central Valley Project Improvement Act (CVPIA). The action, later concurred with by then-Secretary David Bernhardt, would have resulted in reduced revenue for the CVPIA's Restoration Fund. On June 11, 2021, Daniel Cordalis, the new Deputy Solicitor for Water Resources, personally rescinded the Career SOL Memo and directed career staff to reconsider the decision so as to be consistent with an Executive Order issued by President Biden (Cordalis Memo).

The action of withdrawing the career attorneys' legal determination by political appointee Cordalis is a particular matter focused on a discrete and identifiable class, including the Yurok Tribe, which is both a former client of Mr. Cordalis and the current employer of his spouse. As a long-standing recipient of CVPIA funding and partner in Section 3406 projects, Cordalis' withdrawal of the legal opinion determining when the Secretary's legal obligations under the CVPIA were satisfied has a direct and predictable effect on the financial interests of the Yurok Tribe, and in turn a disqualifying financial interest of Mr. Cordalis. This appears to be inconsistent with Mr. Cordalis' ethics obligations and potentially a violation of 18 U.S.C. § 208. It also may run afoul of Mr. Cordalis' obligations under 5 CFR § 2635.502(a)(2) and/or the Biden Ethics Pledge if he did not properly consult with ethics officials prior to engaging in the particular matter.

Background

Relevant History of the CVPIA

In 1992, Congress passed the CVPIA, which mandated changes in management of the Central Valley Project (CVP), particularly for the protection, restoration, and enhancement of fish and wildlife, and associated habitats in the Central Valley and Trinity River basins of California.¹ Section 3406 of the CVPIA includes specific restoration activities the Department is required to undertake to further these purposes. Section 3407 established the Central Valley Project Restoration Fund (Restoration Fund) for donations from any source and revenues provided through payments by CVP water and power customers for carrying out the fish and wildlife provisions of the CVPIA. There are several authorized programs funded by the Restoration Fund.

Due to the importance of the Restoration Fund to local Tribes and fishermen who benefit from the revenue attached to the perpetual projects, a strong constituency has formed over the years. In particular, the Hoopa Valley Tribe and the Yurok Tribe have been

¹ Public Law 102-575 Title XXXIV (October 30, 1992) (CVPIA).



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involved in extensive litigation efforts over the years with agricultural users, power companies, and the entities at the Department responsible for the Act's implementation.²

Specifically, the Yurok Tribe has been very active in matters related to implementation of the CVPIA, particularly section 3406(b)(23), which authorized and directed the Secretary of the Interior to implement a program in the Trinity River watershed for "the purposes of fishery restoration, propagation, and maintenance." Indeed, the Yurok Tribe serves as a member of the Trinity River Restoration Program Management Council, which was created by the U.S. Bureau of Reclamation (Reclamation) for purposes of implementing section 3406(b)(23). The Yurok Tribe has also participated in litigation related to operations of the Trinity River Division of the Central Valley Project, the release of Trinity Division water to augment flow in the Klamath River, and implementation of section 3406(b)(23). In at least one of these cases, *San Luis & Delta-Mendota Water Auth. v. Haugrud*, 848 F.3d 1216 (9th Cir. 2017), the Yurok Tribe was represented by Amy Cordalis, the spouse of Daniel Cordalis.

Relevant Department action on CVPIA restoration activities and its likely impact

Under 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.³ According to a 2020 report, Reclamation anticipated obligations on CVPIA authorities from the Restoration Fund to be \$62,684,467.⁴

As briefly noted above, on January 14, 2021, the Associate Solicitor for Water Resources wrote a memorandum titled "Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407" (Career SOL Memo). 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)."⁵ The Career SOL Memo, among other things, provided direction to Reclamation on how it should analyze certain CVPIA restoration activities when determining whether those activities could be declared complete pursuant to the CVPIA. This action was followed by a January 19 Memorandum signed by Secretary Bernhardt concurring in the

² Most notably, a case pending before the 9th U.S. Circuit Court of Appeals is *Yurok Tribe et al. v. Bureau of Reclamation*, Case No. 3:20-cv-05891-WHO (N.D. Cal.); see also *San Luis & Delta-Mendota Water Auth. v. Haugrud*, 848 F.3d 1216 (9th Cir. 2017).

³ January 14, 2021, Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407, Daniel Cordalis, Deputy Solicitor for Water Resources (June 11, 2021) (Cordalis Memo).

⁴ Fiscal Year 2020 Obligation Plan for CVPIA Authorities, Public Draft Workplan, Central Valley Project, California, Interior Region 10 – California-Great Basin, March 2020, found at: <https://www.usbr.gov/mp/cvpia/docs/2020-obligation-plan.pdf>

⁵ Solicitor's Office Memorandum Interpreting Central Valley Project Improvement Act Sections 3406 and 3407, Carter Brown, Associate Solicitor for Water Resources (January 14, 2021) (Career SOL Memo).



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interpretation, which would trigger reduced revenues to be collected from water users, power companies and other contributors required to financially support such activities.

The policy has been estimated to save irrigators at least \$15 million and potentially much more, according to a recent E&E News article.⁶ The reduced revenue would likely impact many ongoing and future restoration projects planned and proposed. For instance, projects such as the Salmon Habitat Projects along the Sacramento River at Anderson River Park may be similar in nature or itself impacted by the Career SOL Memo. As a 2020 press release describes, Reclamation partnered with the Yurok Tribe and a handful of other non-governmental organizations:

[to] complete[] a new side channel habitat improvement project in Anderson River Park, south of Redding, at the end of 2019...

The project re-established an historic side channel through Anderson River Park providing year-round flow through the channel for juvenile salmon rearing habitat. The Yurok Tribe served as construction contractor, excavating one-half mile of side channel. Total new habitat established is a nearly one-mile long side channel flowing year-round...

This is the first phase of this project with future plans to excavate two additional channels nearby in the same park area...

Funding was provided through the Central Valley Project Improvement Act. The CVPIA recently began implementation of a structured decision-making process guided by experts in aquatic habitat, biology and engineering to help prioritize habitat actions. The process identified the upper Sacramento River as a high priority action area for increasing Central Valley salmon production and to work towards the salmon doubling goal of the CVPIA. This prioritization resulted in five upper Sacramento River habitat actions completed in 2019: two spawning gravel/coarse substrate replenishment projects in the Redding area and three side channel habitat projects from Anderson to Red Bluff.⁷

These projects demonstrate the ongoing engagement with the Yurok Tribe and those federal and state comanagers charged with implementing CVPIA programs. It also demonstrates the financial interests of the Yurok Tribe in maintaining restoration activities.

⁶ "Biden admin set to ditch Trump's Calif. irrigation policy," Jeremy Jacobs and Michael Doyle, E&E News (July 1, 2021).

⁷ Salmon Habitat Projects completed along Sacramento River at Anderson River Park, U.S. Bureau of Reclamation News Release (Jan. 10, 2020).



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Mr. Cordalis is bound by numerous ethics restrictions as a political appointee

As a political appointee, Mr. Cordalis is bound by applicable ethics laws, regulations, and the Biden Administration Ethics Pledge (the Ethics Pledge). One of the most serious restrictions is 18 U.S.C. § 208, which concerns potentially criminal conflicts of interest involving the personal financial interests of executive branch employees. Section 208 prohibits such employees from participating personally and substantially in a particular government matter that will affect his own financial interests, as well as the financial interests of one's spouse, among other parties.

The disqualifying financial interest can be found where there is a close causal link to the particular matter the employee participates in and any effect on the asset or other interest (direct effect) and if there is a real possibility for gain or loss as a result of development in or resolution of that matter (predictable effect). In short, there must be a direct and predictable effect between the action taken by the employee and the likelihood of financial gain. The possibility of a benefit or detriment must be real, not speculative.

Mr. Cordalis is also bound by regulatory restrictions that include 5 CFR § 2635.502(a)(2) which requires appointees to consult with ethics officials and receive approval prior to participating personally and substantially in a matter where a reasonable person with knowledge of the relevant facts would question their impartiality. Based on the language in 502(a)(2) that expands the impartiality concern to "circumstances other than those specifically described in this section," particular matters of general applicability may present such concerns for an agency in the face of bias being at issue. Additionally, a spouse's employment will typically be considered a covered relationship for these considerations. Failing to consider this appearance of bias by not consulting with agency ethics officials may likely be a violation of an appointee's ethics obligations.

Further, Paragraph 2 (The Revolving Door Ban – All Appointees Entering Government) of the Ethics Pledge prohibits political appointees from participating in particular matters involving specific parties that are directly and substantially related to their former employer or former clients, including regulations and contracts. This prohibition extends for a period of two years after joining the government.⁸

Daniel Cordalis has a covered relationship with the Yurok Tribe

The Department announced that Daniel Cordalis would become the next Deputy Solicitor for Water Resources in a press release on February 22, 2021. According to his official biography, Mr. Cordalis represented the Yurok Tribe prior to joining the Department. From judicial records, it appears that Mr. Cordalis represented the Yurok Tribe in matters

⁸ While Section 2(k) of the Ethics Pledge exempts Native American tribes from the definition of "former employer," this is likely irrelevant since Mr. Cordalis represented the Yurok Tribe as one of his former clients. Specifically, Section 2(l) of the Ethics Pledge, which defines "former client," does not contain any such exemption for Native American tribes.



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related to water and flow in the Klamath River at least through August 21, 2020, when he filed on behalf of the Yurok Tribe a complaint in *Yurok Tribe et al v. Bureau of Reclamation*, Case No. 3:20-cv-05891-WHO (N.D. Cal.). The complaint, among other things, sought a temporary restraining order to compel Reclamation to allocate an additional water to augment flow in the Klamath River.⁹

Separately, his wife, Amy Cordalis, is a Yurok member and the Tribe's General Counsel.¹⁰ However, her ties to the Tribe appear to go deeper than mere employment. Chief Justice of the Yurok Tribe Abby Abinanti has praised Cordalis in a 2018 expose, saying she "believe[s] [Amy Cordalis] is the future" of the Tribe.¹¹ This implies that the Yurok Tribe's future success, financial and otherwise, is considered at least partially tied to Mrs. Cordalis' professional contributions. In other words, the financial interests of the Yurok Tribe and Mrs. Cordalis are intertwined.

Accordingly, as both a former client of Mr. Cordalis and the employer of his spouse, the Yurok Tribe should be considered a covered relationship and constitute a disqualifying financial interest for purposes of Mr. Cordalis' ethics obligations.¹²

Mr. Cordalis has an imputed financial interest in the Yurok Tribe based on his spouse's employment and leadership role

Given the Yurok's long-standing interests in water policy at the Department, both in Klamath and the Trinity River Basin, Mrs. Amy Cordalis has been a notable voice in the new Administration's discussions about water policy.¹³ She testified before a House Natural Resources Subcommittee on May 25, 2021, alongside Senior Counselor to the Secretary Liz Klein, to discuss water policy on behalf of the Yurok Tribe. In her submitted testimony, she repeatedly referenced infrastructure and funding needs of the Yurok Tribe deriving in part from CVPIA funds (emphasis added):

⁹ According to the docket of the United States District Court for the Northern District of California, Mr. Cordalis filed the pleading on behalf of the Yurok Tribe as recently as January 13, 2021, and on May 10, 2021, the District Court entered an Order re Notice of Withdrawal for Attorney Daniel James Cordalis, thus terminating Mr. Cordalis' representation of the Yurok Tribe in that litigation. The potential that Mr. Cordalis may have been an attorney of record in litigation against an agency within the Department of the Interior after his appointment as Deputy Solicitor for Water Resources is also troubling.

¹⁰ <https://professionaltales.com/unstoppable-native-american-attorney-amy-cordalis-fights-for-her-tribal-community/>

¹¹ "How the Yurok Tribe is reclaiming the Klamath River," Anna V. Smith, High Country News (June 11, 2018).

¹² 5 C.F.R. § 2635.502; 5 C.F.R. § 2635.402(b)(1)(i).

¹³ In response to a question from Chair Huffman during the May 25, 2021 hearing before the House Natural Resources Subcommittee on Water, Oceans, and Wildlife, Amy Cordalis said she has been "pleased to engage the Biden administration on exercising its trust responsibility," and "as we look forward, we have to think about ecosystem resiliency, we have to think about what fish need, and we have to be able to plan and use our best available science to plan for how we are going to expand the benefits that these resources can provide."



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If the Trinity Division of the Central Valley Project is to remain in place, the federal government must reinvest to make it less impactful to the environment and honor the federal laws which are in place to prevent damages to fish and wildlife.

Recommendations:

6. Support funding for restoration projects throughout the Klamath Basin. Critical to any drought relief legislative package is funding for restoration projects through the Klamath Basin. The Yurok Tribe, and other community stakeholders, have numerous “shovel ready” projects that could be implemented if funding were made available. Such projects would benefit the ecosystem overall health and thereby reduce the stress of the system and fish caused by drought.

The following long-term solutions should be pursued:

6. Authorize funding to address infrastructure improvements, detailed in USBR report (Bender 2012), and needed to make the Trinity River Division of the Central Valley Project more resilient and capable of meeting the needs of the fish, wildlife, and people downstream.¹⁴

Mrs. Cordalis' deep involvement in the CVPIA, related water funding issues on behalf of the Yurok Tribe, and her leadership role in the Tribe, all support the notion that Mr. Cordalis has an imputed financial interest in the Yurok Tribe's CVPIA funding under 5 C.F.R. § 2635.402(b)(2)(i).¹⁵

CVPIA restoration activities and its funding are particular matters

Under Section 208, employees are prohibited from participating in particular Government matters as defined at 2635.402(b)(3). The provision states, “particular matter encompasses only matters that involve deliberation, decision, or action that is focused

¹⁴ Yurok Tribe, Written Testimony for Hearing entitled “The Status of Drought Conditions Throughout the Western United States,” U.S. House of Representatives Subcommittee on Water, Oceans, and Wildlife (May 25, 2021).

¹⁵ It is worth briefly addressing the potential exemptions or waivers that may be raised. There are exemptions that can be granted for financial interests that may be considered too remote or inconsequential to affect the integrity of the employee's services. These are codified in regulations at 5 C.F.R. part 2640. In addition, the statute builds in an exemption for employees that have certain Native American or Alaska Native birthrights. While this may initially appear to be relevant to Mr. Cordalis' particular circumstances, the exemption pertains to birthrights, not employment. As a former client of Mr. Cordalis and the employer of Mrs. Cordalis, it is irrelevant to this analysis that Mrs. Cordalis may be a Yurok Tribal member by birthright. Additionally, based on the importance of the CVPIA's restoration activities to the Yurok Tribe and Mrs. Cordalis' role as the “future of [the Yurok Tribe]” these interests are neither too remote nor inconsequential.



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upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons.”

The matter at issue in the action taken in the Career SOL Memo (and the rescission in the Cordalis Memo) meets this definition of a particular matter due to its focus on the interests of a discrete and identifiable class of persons. CVPIA restoration activities draw revenue from the Restoration Fund as well as appropriations on an annual basis. The eligibility of the funds depends on project needs and determinations by state and federal comanagers charged with implementing CVPIA, specifically Section 3406 in this instance. If Restoration Fund contributions are altered, it will almost certainly impact the duration, scale, and viability of projects that are planned or proposed under Section 3406. Further, the state, local, tribal, and private parties that typically receive these funds are a relatively consistent and limited set of organizations (i.e., a discrete and identifiable class). Determinations that would impact such funding should thus be considered particular matters under Section 208 and 2635.402(b)(3).

Mr. Cordalis’ rescission of the Career SOL Memo will directly benefit the Yurok Tribe

As noted earlier, on June 11, 2021, Daniel Cordalis issued a memorandum “rescinding [the Career SOL Memo] 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.” He pointed to the earlier memo’s inconsistency with a Biden Administration Executive Order and stated, “[S]ome 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.”

Section 402(b)(1)(i) states that: “A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter.”

In this instance, there is a close causal link between Mr. Cordalis’ action and the expected effect of the matter on his imputed financial interest. It is neither attenuated nor contingent upon the occurrence of events that are speculative.

As the largest tribe in California and one of the two tribes located next to the Trinity River Basin, the Yurok Tribe is a frequent recipient of Restoration Fund dollars within the discrete and identifiable class receiving such funds. For instance, the Salmon Habitat



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Projects described earlier in the complaint are a few such projects that have delivered (and may continue to deliver) federal financial resources to the Yurok Tribe. Whether this specific project was going to be impacted is an open question. Regardless, it is emblematic of the continued financial interests of the Yurok Tribe in deferring any determinations by the Department that restoration activities under Section 3406 are complete. Thus, while the effect may not occur immediately, it is direct.¹⁶ By rescinding the Career SOL Memo and reversing the determination that restoration activities are “complete,” Mr. Cordalis provided a direct benefit to the Yurok Tribe. Additionally, as “the future” of the Yurok Tribe as well as the architect and face of its public lobbying efforts, Mrs. Cordalis is indisputably linked to such interests, in the short and long-term.

Mr. Cordalis’ memorandum will have a predictable benefit on his financial interests

Section 402(b)(1)(ii) states that: “A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.”

In this instance, Cordalis’ action rescinding the Career SOL Memo’s determination that restoration activities were “complete” will have a few predictable effects: 1) It will increase revenues paid into the Restoration Fund and made available for ongoing development of CVPIA projects, 2) Those increased revenues and corresponding project opportunities will be available to and benefit the Yurok Tribe as a regular partner and recipient of funds. While the extent of the gain or dollar amount is unknown now, the effect is real and predictable. As a sophisticated lawyer who represented the Yurok Tribe – and whose spouse is the face and future of the Tribe’s legal efforts – Mr. Cordalis is well aware of the benefit being provided by his action regardless of whether pro forma additional steps must be taken by the Department.

Indeed, the Cordalis Memo demonstrates an awareness of the predictable effect of the Career SOL Memo and the intentions of his rescission. Cordalis writes, “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” (emphasis added). In sum, Mr. Cordalis’ actions had the predictable effect of benefiting the Yurok Tribe’s financial interests, as Mr. Cordalis himself predicted.

The Cordalis Memo raises impartiality concerns

Mr. Cordalis’ former relationship with the Yurok Tribe as its lawyer and his spouse’s current employment relationship independently raise impartiality concerns with his involvement in issues that impact or benefit the Tribe. Their dual existence only heightens the need for Mr. Cordalis to take steps to avoid the appearance of bias. It is

¹⁶ 5 C.F.R. § 2635.402(b)(1)(i).



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unknown whether consultation with ethics officials occurred at all, nonetheless prior to, his deliberation and decision resulting in the Cordalis Memo. Given the apparent direct and predictable benefit to the Tribe, and in turn his imputed financial interests, in rescinding the Career SOL Memo, it would be surprising to learn that ethics officials were consulted and signed off on such personal and substantial engagement. Accordingly, we believe this presents another area worthy of investigation.

Conclusion

Mr. Cordalis came to the Department with significant litigation experience representing the Yurok Tribe and its interests in the CVPIA. His spouse continues to be the Tribe's General Counsel, openly advocating for the Tribe before the Department, testifying on its behalf before Congress, and presented as "the future" of the Tribe's long-term success. While the Department has provided assurances that its senior appointees are adhering to all ethics responsibilities, the facts laid out in this complaint significantly undermine that pledge. The decision by Mr. Cordalis to participate personally and substantially in a particular matter involving a discrete and identifiable class, so clearly linked to the financial interest of his former client and his spouse's current employer, have the expected result of undermining the public's trust in the Department leadership's commitment to a clean, transparent, and impartial government.

The Cordalis Memo demonstrates more than simply bad judgment or a lack of impartiality (which is prohibited itself); it likely constitutes a violation of 18 U.S.C. § 208 and possibly 5 C.F.R. § 2635.502(a)(2), if no consultation and approval by ethics officials occurred prior to participation.

The American public deserves to be assured that political appointees are carrying out their duties in an ethical, impartial manner without favoritism or unjust personal enrichment to their former clients or their family members. Protect the Public's Trust therefore asks your office to begin an immediate and thorough investigation into the following issues:

1. Whether or not the Cordalis Memo constitutes a violation of 18 U.S.C. § 208 and thus warrants a referral to the appropriate authorities within the Department of Justice;
2. Whether or not Mr. Cordalis sought or received guidance from the Ethics Office as to whether he should participate in the CVPIA issues addressed in the Cordalis Memo;
3. If he did not, whether Mr. Cordalis should have sought or received guidance or approval from the Department Ethics Office (DEO) to participate in this matter given the strong potential for actual or perceived conflicts of interest;
4. What guidance, if any, the DEO provided to Mr. Cordalis on this matter; and



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5. Whether or not Mr. Cordalis received a waiver to participate in this matter and, if not, whether his participation constitutes a violation of his ethics obligations Section 208, 502(a)(2) or the Biden Administration Ethics Pledge.

Protect the Public's Trust appreciates your dutiful attention to this important issue, and looks forward to the outcome of your investigation.

Sincerely,

Michael Chamberlain
Director
Protect the Public's Trust
Michael@protectpublictrust.org