



TAPInternational

Draft Report

**REAL ESTATE
SERVICES CAN BE A
MORE EFFECTIVE
RESOURCE FOR
VALLEY WATER**

May 2020



Date: July 15, 2020

Memorandum For: Board Audit Committee

From: Independent Auditor, TAP International, Inc.

Subject: Transmittal of TAP International Performance Audit Report

Attached for your information is our draft report, *Real Estate Services Can be a More Effective Resource for Valley Water*. The audit objective was to determine how the Real Estate Services Unit (RESU) could improve its financial and service delivery performance.

Our audit identified a range of opportunities for Valley Water, across the agency, to improve its delivery of real estate services. The report offers recommendations to minimize undue hardships to property owners, enhance the timeliness of real estate transactions, increase revenue, and improve transparency and accountability of RESU current operations. Finally, the report offers a matter for consideration by the Board of Directors describing that RESU can become a strategic partner in addressing Valley Water’s future water resources needs. **Management’s response to the recommendations in this audit report is included in Appendix I of this report. (This sentence to be included in the final report)**

TAP International, Inc.

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Audit Highlights

AUDIT HIGHLIGHTS

Why the Audit Was Conducted

Efficient and effective service and delivery are key priorities for the Santa Clara Valley Water District (Valley Water) to accomplish the goals of providing safe and clean water, environmental stewardship, and flood protection. To support Valley Water priorities, the Real Estate Services Unit (RESU) buys, sells, and leases property for water supply, flood protection, and land stewardship projects. Until a specific property is needed for a project, RESU may lease or license the use of the property in accordance with Valley Water policies and public laws. Since 2015, RESU has acquired 249 properties through purchase or lease agreements.

Identified as having high potential to improve RESU operations, the Valley Water Board of Directors (Board) approved a planned performance audit of RESU that was conducted by the Independent Auditor (Auditor). The specific objective of the audit was to identify how RESU could improve its performance for financial and service delivery. It is important to note that the real estate transaction process for public agencies differs from that of the private commercial real estate sector.

How the Audit Was Conducted

The performance audit included an examination of organizational structures, operational effectiveness, employee roles and responsibilities, information collection and sharing, and policies and procedures. The audit work included: (1) interviews with staff working across Valley Water that have a role in the delivery of real estate and/or property management services; (2) analysis of a sample of 35 real estate transactions; and (3) analysis of service delivery and financial data and other documentation related to residential and non-residential property management.

What the Audit Found

RESU has successfully avoided the acquisition of property through the use of eminent domain laws, utilizing its authority 10 times since 2015. Adding to this accomplishment, RESU has implemented efforts to improve its service delivery by examining the workload of its staff, providing training on its acquisition process to some divisions when authorized to do so, and by closing acquisition files faster from about two years to 30 days. Further, RESU collected \$1.6 million in Fiscal Year 18-19 on 114 income-producing properties, but better reporting on expenses and other costs are needed to assess fiscal sustainability of RESU's property management activities. Other improvement opportunities include enhancing forms to document sound explanations for "just compensation" decisions and developing policies and procedures for ensuring insurance compliance by tenants on non-residential property.

Although RESU averages almost a year and half to complete a property acquisition, challenges exist both within and outside of RESU's control to speed up the process. Key challenges include:

- The willingness of a property owner to sell their property, extent of negotiations and an owner's desire to request their own appraisal.
- Delays in project funding for property acquisitions and by other Valley Water Units in completing environmental assessments.
- Extensive involvement by the District Counsel's office in the acquisition process.

Greater participation by RESU in capital project planning meetings and use of other tools can address other challenges that impact RESU's delivery of services. For instance, updating fee schedules and re-examining flat rate lease agreements would close the gaps of lost revenue opportunities, and use of better software applications can provide useful performance monitoring.

This audit report finally describes that while RESU is generally operating and performing in accordance with its role as a support unit, RESU can be a useful resource to position Valley Water strategically to meet its future watershed and water utility needs.

Twelve recommendations described on page 8 are designed to increase the efficiency and effectiveness of the RESU's property maintenance and acquisition processes. In addition, the Auditor presents one matter for consideration by the Board of Directors that would better position RESU to meet future needs.



Recommendations

RECOMMENDATIONS

1. To improve RESU’s timeliness of the real estate transaction process, Valley Water’s CEO should ensure annual training is provided to all Valley Water divisions about the Valley Water real estate acquisition process, key steps, common pitfalls, and strategies to avoid these pitfalls. The training should include a planning guide for use by Valley Water that shows the timeline for requesting services, the information needed by RESU staff, and the time required to complete the service request.
2. To enhance transparency and accountability of RESU current operations, the RESU Manager should:
 - (A) stipulate which form is to be used across all projects and acquisitions that RESU, project managers, and project owners come to an agreement on “just compensation”.
 - (B) define what information defines “just compensation”,
 - (C) establish and routinely monitor and report on key performance measures, such as acquisition turn around times, status of project manager requests, and outstanding “acquisition related” items needed by other Valley Water units.
3. To increase the effectiveness of RESU’s property management, the RESU manager should update Valley Water’s RESU policies and procedures for property management to include residential property management, including procedures to ensure tenants have updated insurance, how staff will conduct physical inspections, and the payment of HOA fees when needed.
4. To increase the effectiveness of RESU’s property management, the RESU manager should establish procedures to track all staff costs, property maintenance expenses and revenue for all rental properties. RESU’s annual report to the CEO should include financial analysis to determine whether Valley Water is covering its costs to maintain the leased/licensed properties it owns and the cost to lease/license property owned by others is fiscally prudent.
5. To facilitate effective delivery of RESU services, the RESU Manager should develop a risk assessment process to help Valley Water staff identify real estate transactions that will need extensive participation and review by District Counsel and a plan for key consultation points.
6. To increase service delivery timeliness, Valley Water’s CEO, in coordination with RESU’s Manager, should work with District Counsel to evaluate the costs and benefits of developing additional templates for the different types of right-of-way agreements, with a goal of

minimizing changes to these pre-approved standard contracts and reducing District Counsel's review time.

7. To enhance the effectiveness of capital project planning, the CEO should ensure the inclusion of RESU staff in early project design meetings for capital projects to assist project delivery teams with budgeting for real estate transactions and planning for adequate time to process those transactions, identify potential challenges for transactions given the project design, and allow RESU time to plan for these transactions and potential property management needs.
8. To improve planning for the costs of real estate acquisitions, the RESU Manager should complete a one-time study on (A) the impact of property owner appraisals on acquisition purchase prices over the past five years to identify the differences in appraisal methodologies that led to different appraised values, and (B) the impact of a property owner's appraisal on the time to complete an acquisition. The RESU manager should share the research with District Counsel and Valley Water management to determine what changes, if any, should be made to the Valley Water acquisitions process.
9. To ensure that Valley Water adheres to "just compensation" principles on delayed real estate acquisitions, Valley Water's CEO should ensure the development of criteria that would require the ordering of an updated appraisal, especially when there is a potential conflict between project deadlines and the need for additional time to finish the acquisition process in accordance with Valley Water goals and state laws.
10. To facilitate effective communication with property owners and those wanting to use Valley Water owned land, Valley Water's CEO should leverage use of the existing Customer Resources Management Information System. The CEO should allow its use by RESU and all divisions/units (Community Projects Review Unit (CPRU), Watersheds, Utility) that deliver real estate services to track all external stakeholder contacts (dates, purpose, status) and to be able to research those contacts before connecting with property owners; and develop communication protocols/scripts for use by RESU, Watersheds, and Utility when contacting property owners about the need to use or acquire parcels.
11. To improve public confidence in its real estate services, the CEO should expand the information available on the Valley Water website about real estate services to describe generally the real estate acquisition process; provide brochures that explain the acquisition process and rights of property owners; provide a guide for property owners and other external parties showing which unit to call—either RESU or CPRU—depending on the service needed; and a frequently asked questions section.
12. To enhance Valley Water's fiscal performance and asset management strategy, the CEO should:
 - (A) conduct an annual review of the fee schedules maintained by Valley Water to ensure that the fees cover the costs to lease, license, and permit the use of its, and

- (B) shorten the duration and establish regular fee adjustments on future longer term lease agreements.

Other Matter for Consideration

Should the Valley Water Board desire to update the current role of RESU from providing support services only to be a proactive partner in strategy planning for future water management activities, the Board could consider the following:

1. Direct the CEO to develop a five-year strategic plan that includes a new mission, goals, and objectives for all Valley Water Real Estate Services (including asset management) that proactively meets the needs of future Valley Water projects, goals, and objectives. The strategic plan should include an implementation plan that addresses the following:
 - Define the future roles and responsibilities for each unit that delivers or helps to deliver real estate and asset management services. If Valley Water continues to use its current organizational structure to deliver real estate services, roles and responsibilities should be identified by each type of real estate service and asset management function and function performed, clear lines of accountability created for each unit performing each task, and key points of coordination and collaboration across the units defined.
 - Assess the feasibility of consolidating the delivery of its real estate services and permitting services by combining the RESU and CPRU into a single unit to leverage opportunities. Consolidation will make the real estate transaction process and property management activities more efficient and effective, as well as providing a one-stop shop to constituents.
 - Describe how Valley Water will collect, analyze, and verify the accuracy of data about its real property to allow Valley Water management to perform effective business analytics.
 - Develop a communication strategy that addresses how Valley water will promote a culture of information sharing and enterprise-wide decision making, both internally and externally, for delivery of its real estate services
 - Develop an asset management strategy.
2. Direct the CEO to begin a plan to implement a new, off-the-shelf real property and asset management software to track and capture all real property activities, including transactions, encroachment permits, contact management, lease/permit management, and workflow management performed by RESU and CPRU. The system should support business analytics for real property management, enhancing delivery of real estate services using technology.

A landscape photograph showing a field of tall grasses in the foreground, a dense line of trees in the middle ground, and a clear sky. The trees include several tall, thin cypresses. A large yellow rectangular box is overlaid on the lower half of the image, containing the text 'Background and Methodology' in a bold, black, sans-serif font.

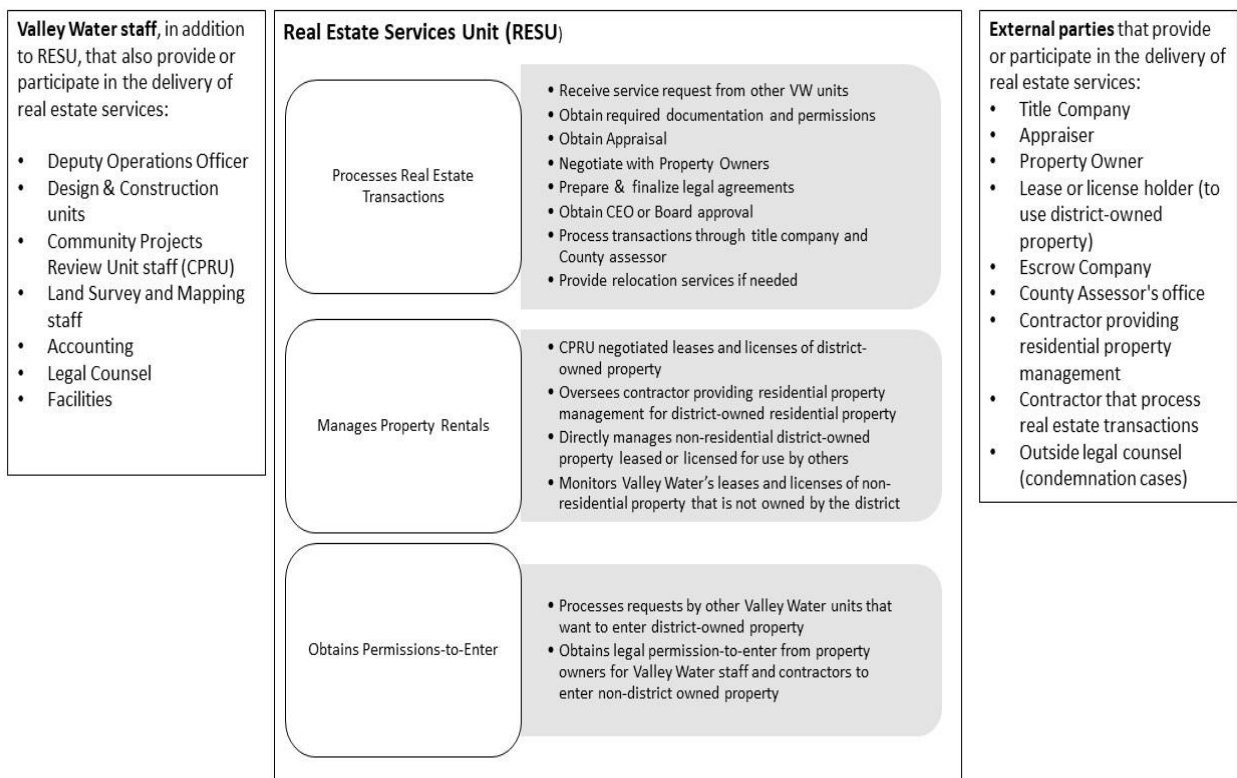
Background and Methodology

BACKGROUND

Who Delivers Real Estate Services at Valley Water?

RESU’s mission is to provide real estate expertise in the acquisition, relocation, appraisal, and asset management services on behalf of Valley Water for current landholdings and land required for projects and operations. RESU provides three types of real estate services: (1) purchase, sale, exchange or dedication of property, (2) obtaining permission-to-enter property not-owned by Valley Water, and (3) property management.¹

Figure 1. The Real Estate Services Unit (RESU) Depends on the Collaboration of Other Stakeholders to Deliver Real Estate Services



The activities implemented by RESU are in response to requests by other Valley Water units. These other units decide whether to begin the processing of buying or selling property or issuing

¹ Real property includes land and improvements to the land. Easements provide access to and/or use of the land.

encroachment permits and continue to have key responsibilities throughout the process. For example, project delivery units request property descriptions from the Land Surveying & Mapping Unit, obtains environmental assessments of the identified property, approve the cost of the acquisition and provide information about the project to RESU for the Board or CEO review and approval process.

The actions of other Valley Water divisions and units, including other external parties, can impact RESU's financial and service delivery performance. If these other units delay their acquisition related activities, then RESU in turn experiences delays. See Figure 1 for other units like District Counsel, General Accounting, and Facilities Management that help RESU in completing these requests for services.

RESU does not initiate the lease or permit process that allow for external parties either to enter or use Valley Water owned property. CPRU has this responsibility. RESU's role is to prepare lease agreements and monitor compliance of the terms and conditions authorized by CPRU. Accounting tracks the payment of the fees associated with each lease or permit, notifying the project owner of payment issues.

RESU uses contractors to assist when needed with real estate transaction processes. RESU maintains standing contracts with local vendors for title reports, appraisals, and escrow services. Valley Water also has a standing contract with Associated Right-of-Way Specialists (ARWS) to provide complete real estate transaction processing services.

What are the Legal Requirements and Valley Water's Goals to Process a Real Estate Transaction?

The California Constitution gives public agencies in California, like Valley Water, the power to acquire property rights for public purposes under state law.² State law requires Valley Water to notify the property owner of their rights, pay the property owner "just compensation" for the property based on an appraisal of its value, and make every reasonable effort to negotiate with the property owner before entering the condemnation process. Valley Water has incorporated the state requirements into its service delivery goals, as shown in Figure 2.

² California Constitution Article 1, Section 19(a): "Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation."

Figure 2. Valley Water Goals and Objectives for Real Estate Services

Valley Water Goals	Objectives
Promote “public confidence” in its real estate and relocation practices.	<ul style="list-style-type: none"> ■ Valley Water real property shall not be leased to employees, Board members, or their immediate family members. ■ Pay “just compensation”, based on an appraisal prepared by a qualified appraiser, for all real property except property dedicated to the District. ■ The Board approves all real estate transactions except for those delegated to staff for approval.
Provide uniform and equitable treatment to all property owners and Displaced Persons.	<ul style="list-style-type: none"> ■ Comply with federal and state legal requirements for displaced persons.
Minimize litigation with affected members of the public.	<ul style="list-style-type: none"> ■ Use reasonable efforts to acquire property. ■ Timely acquisition processes. ■ Acquire property through negotiated agreements. ■ Acquire property in a manner that minimizes undue hardship to property owners and occupants. ■ Assure consistent treatment to all owners and tenants. ■ Minimize unwarranted litigation.

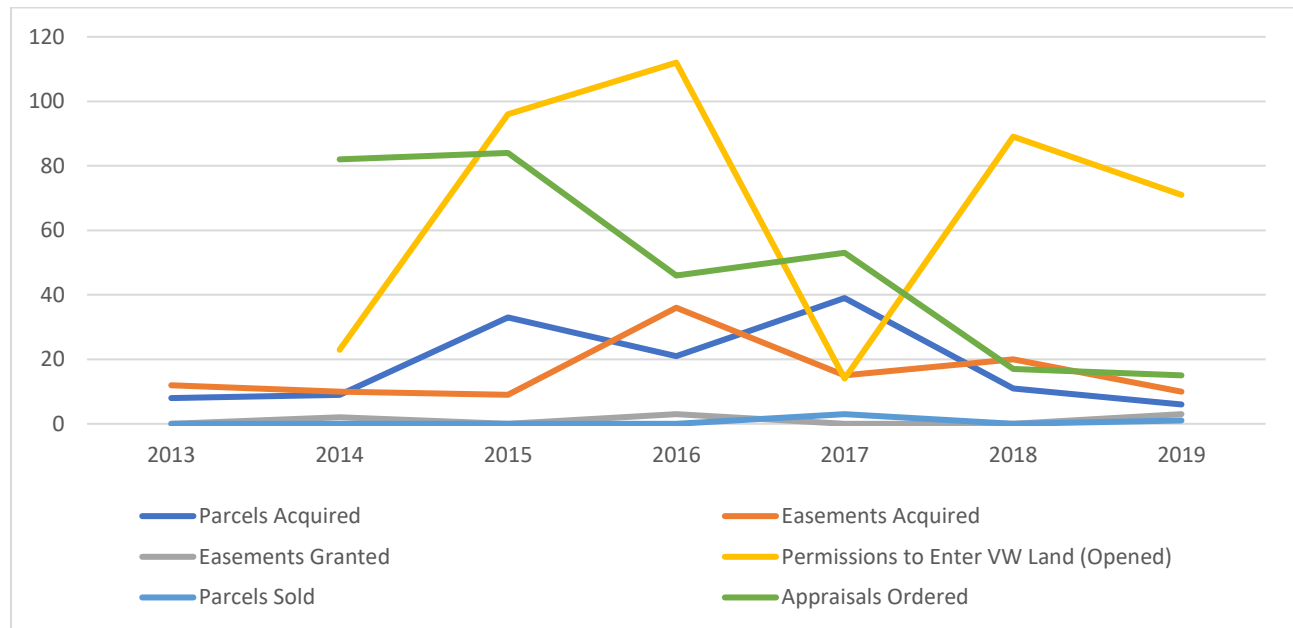
What Real Estate Services Has Valley Water Delivered?

Property Acquisitions

Valley Water’s acquisitions of parcels and easements has fluctuated over time. In 2013-14, RESU averaged 51 acquisitions per year between 2015-2017 that declined to about 24 per year between 2018 and 2019, as shown in Figure 3 below. However, the number of appraisals declined steadily between 2013-2019, from 82 appraisals in 2014 to 15 appraisals in 2019. The number of permissions-to-enter privately owned parcels averaged 67 per year between 2018 and 2019 after completing 14 in 2017.

The size and timing of capital projects drive RESU’s acquisition activities. Other activities performed by RESU (but not represented below) include ordering title reports, relocating tenants, and processing cases of eminent domain. Valley Water has filed 10 condemnation cases in court since 2015; nine of these cases occurred in 2015 and 2016.

Figure 3. RESU Real Estate Transaction Processing Activities



Lease and Licensing Management

RESU reported it administers leases and licenses for 78 non-residential properties: 55 properties owned by Valley Water and for 23 properties where Valley Water is the tenant. The 55 non-residential rental properties owned by Valley Water include two bridges, one building, and 20 parcels of land. Valley Water’s leases and licenses of property owned by others include 11 parcels of land and one building. RESU staff said that its primary responsibilities are to (1) ensure that renters of Valley Water properties have up-to-date insurance and (2) conduct routine inspections of the property.

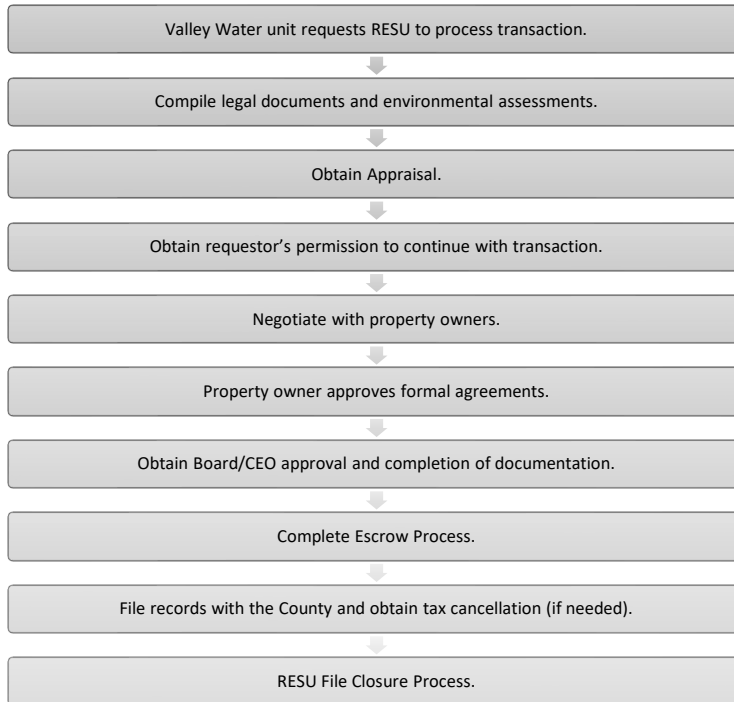
Valley Water outsources property management for 53 residential rental properties. RESU staff approves maintenance requests, and the Valley Water vendor performs all other property management activities, including the setting of rental rates.

Valley Water has budgeted about \$2.7 million for District Real Property Administration between FY 18 and FY 20 to provide real estate services. For FY20, Valley Water has budgeted about \$1.5 million for operations and \$1.2 million for capital expenses. The budget includes expenses for appraisals performed by contracted appraisers, environmental assessments performed by contractors, professional services support for processing real estate transactions, RESU’s labor hours. Funding for RESU, Office of District Counsel, CPRU, and Land Surveying & Mapping is budgeted under the FY20 budget for District Property Administration.

How does the Valley Water Real Estate Acquisition Process Work?

RESU does not start the real estate transaction process. Instead, a project delivery unit must request RESU's help for RESU to start a real estate transaction. Figure 4 below shows the steps involved in RESU's property acquisition process.

Figure 4. Overview of the Valley Water Acquisition Process



AUDIT METHODOLOGY



Audit Objective

In 2018, Valley Water’s Auditor (TAP International, Inc.) conducted an enterprise-wide audit risk assessment and identified real estate services as an area that needed further review. Our specific audit objective was to determine how the RESU could improve its service delivery and financial performance.

Scope of Work

The scope of this audit examined the business processes implemented by RESU to deliver property management and acquisition services. The audit included data collection efforts among other Valley Water units that participate directly in RESU’s business processes, such as CPRU, District Counsel, Facilities Management and Valley Water project managers and engineers.

Project Approach

To address our audit objective, the Auditor performed the following activities:

- Examined the following Valley Water documents and work product to assess service delivery and financial performance and how activities should be performed:
 - RESU organization chart
 - RESU policies and procedures
 - Valley Water Executive Limitations and other Board Policies
 - RESU job descriptions
 - RESU annual reports for FY17 to FY19 (Rental Property Income and Expense reports for the past three fiscal years)
 - RESU budgets for the past three years (FY20 Adopted)
 - Real Estate Transaction processing forms
 - SCVWD Standard Rate Schedule
 - Tracking sheet used to monitor the status of leases and licenses of non-residential property owned by Valley Water
 - Checklist used to purge files for preparation for closing Executive Limitation reports 6.7.1 for both anticipated and completed real estate transactions
 - Timeline to complete a real estate acquisition
 - Report of completed appraisals, appraisers over the past five years

- Interviewed RESU staff, project managers, unit managers and management in Valley Water’s Watershed Design & Construction Division, CPRU and Design & Construction units, Office of District Counsel, Facilities Management, Contractors, and Associated Right-of-Way Services to discuss RESU services.
- Examined the files (electronic and hard copy) for 34 total real estate transactions, including 24 acquisitions and 10 sales, exchanges, and dedications including one correction. Files were examined to assess the accuracy and completeness of the documentation and the timeliness of the real estate transaction process.
- Examined the leases and licenses of Valley Water-owned land, fee schedules, and terms and conditions to assess the financial performance of Valley’s Water’s property management activities.
- Reviewed the industry practices of California Department of General Services for acquisitions, Los Angeles Metropolitan Transportation Authority Program Management Plan (capital improvement infrastructure program), San Francisco Water Power Sewer–Land Use Framework; and U.S. Government Accountability Office Federal Real Property Asset Management (Leading Practices) to determine the approach of real estate service delivery of other government entities that deliver large capital projects. We also reviewed the websites of California water districts and the California Department of Water Resources to identify what right of way and property acquisition information is provided on their external websites.

A SWOT analysis was applied to assess the service delivery and financial performance of the RESU and the other units that provide real estate services at Valley water, as illustrated in Figure 5 below. SWOT analysis identifies the strengths (S) and weaknesses (W) of the services delivered by the RESU and the broader opportunities (O) and threats (T) that challenge the delivery of real estate services by RESU and other Valley Water units. Once identified, the Auditor then evaluated the impact of each factor—helpful or harmful—toward the achievement of Valley Water’s goals for the delivery of its real estate services and financial performance. Finally, the Auditor identified who at Valley Water had the authority and responsibility for maximizing strengths, improving areas of weakness, taking advantage of opportunities, and addressing threats to service delivery and financial performance of real estate services.

Figure 5. SWOT Analysis of the Delivery of Real Estate Services by RESU and Other Valley Water Units

	Factor	Potential Impact on Valley Water’s goals	Change Agent at Valley Water
Within RESU’s direct control	S Strength	Helpful	RESU Manager & staff: Maximize strengths & improve areas of weakness
	W Weakness	Harmful	
Outside RESU’s control	O Opportunity	Helpful	VALLEY WATER management: Take advantage of opportunities & address threats
	T Threat	Harmful	

Assessment of the Reliability of Data

Section 9.2 of generally accepted government auditing standards require auditors to describe any limitations or uncertainties with the reliability or validity of evidence if: (1) the evidence is significant to the findings and conclusions within the context of the audit objectives; and (2) such disclosure is necessary to avoid misleading the report users about the findings and conclusions. The Auditor assessed the reliability of RESU’s database and found key limitations affecting the sufficiency of the data for performance reporting. To address limitations in the data, such as missing data and other records, the Auditor manually reviewed files to extract needed information and/or relied on information provided by RESU management and staff.

Assessment of Internal Controls

Section 9.20 of generally accepted government auditing standards require auditors to assess the adequacy of internal controls when internal controls are significant within the context of the audit objectives. A review of internal controls was not within the context of this audit. However, during our review, when internal controls could be strengthened, such as fee schedule reviews, those issues were identified.

This audit is known as a performance audit. A performance audit evaluates the economy, efficiency, and effectiveness of programs, services, and operations. TAP International conducted this performance audit per generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The Auditor believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. A draft report was provided to Valley Water for review. Comments were incorporated as applicable throughout the report. [See Appendix 1 for formal agency

comments to the recommendations included in this report. [*To be included in the final report version, only*]



Key Findings

Finding 1: RESU Has Worked to Improve Operations; Other Changes are Needed to Enhance Financial and Service Delivery

RESU Successfully Accomplished Board Guidance to Minimize Use of Eminent Domain to Acquire Property

One of Valley Water's goals for RESU is to minimize litigation with affected members of the public. Valley Water has successfully worked to prevent the use of the condemnation process (e.g. eminent domain) to acquire property. Since 2015, RESU, in coordination with the District Counsel's Office, triggered the process to acquire 10 properties or about four percent of its 249 acquisitions. RESU staff explained that its efforts to follow the Board's direction to exhaust all options to negotiate with property owners has minimized Valley Water's use of the legal process of condemnation for property acquisitions. When RESU used eminent domain, the agency's decisions were not due to failed voluntary negotiations with property owners. Instead, the agency chose to use eminent domain when property owners did not respond to Valley Water's requests to negotiate or when the property owner was not clearly stated in public records.

RESU has Self-Initiated Efforts to Improve the Timeliness of Real Estate Transactions

RESU staff cited two specific efforts to improve the timelines of real estate transaction processing, a Valley Water goal for real estate services. First, RESU has conducted training sessions, although on a limited basis. RESU depends on project delivery units to actively participate in the real estate transaction process, from promptly notifying RESU of its need for property transactions to participating in the transaction review and approval process. Capital projects staff said some of them have extensive experience working with RESU to process real estate transactions while other staff are less experienced. Capital projects staff added that understanding how the real estate transaction process works and the information requirements can prevent delays in processing. Recognizing the need for knowledge transfer, RESU had delivered training to Capital Projects staff within the Watersheds Division. RESU executive management has not yet authorized RESU to continue offering its training sessions to other Divisions.

Second, RESU staff has initiated efforts to close its files of completed transactions every month. Based on a review of 24 acquisitions, RESU took more than two years on average to update the

RESU database (RESUdb) and check the Geographic Information System (GIS) layer and officially close the file. Delays in closing files could result in delays in correcting errors in the GIS or key documents missing from the files. Valley Water staff said that it could take months to close a real estate file because once closed, the file cannot be modified in the RESUdb system. RESU staff said that, until recently, staff had performed the file closure process bi-annually, but at the time of our review, staff were to perform file closure monthly.

In another area, RESU has attempted to change how it provides reports to the Valley Water Board to better align with its current practices. The Executive Limitation 6.7.1 states, “to provide public transparency, the CEO will provide a written report to the Board, in open session, before the acquisition, of anticipated properties to be acquired under EL6.7.1.” This Executive Limitation does not specify at what stage of the acquisition process (e.g. at the time preliminary project planning or when the property owner has agreed to the purchase price) the CEO should provide the Board a written report. Presently, the CEO discloses the information during the preliminary project planning phase of capital projects in a quarterly report to the Board. RESU would like to discontinue including the Assessor’s Parcel Number (APN) number in their reports to the Board. RESU staff explained that disclosing the APN number at this point in the process could prematurely disclose agency intentions given that Valley Water may or may not ultimately acquire the property, needlessly alarming property owners. Our review of the issue determined that disclosing the APN number on the 6.7.1 reports may aid in the Board’s oversight responsibility to ensure that no potential conflicts of interest exists between Valley Water and the potential seller. There may exist an opportunity to both provide the Board the information needed to execute their oversight responsibility for these acquisitions by potentially increasing the frequency of 6.7.1 reporting to avoid disclosing potential properties too early in the process .

Opportunity to Enhance Key Forms that Document “Just Compensation”

State law requires public agencies to pay the property owner “just compensation” when acquiring property, based on its fair market

value and to give the property owner the right to obtain their own appraisal paid for by the public agency. RESU variously uses several key documents that determine and support the acquisition price under California’s “just compensation” requirements. These documents include the:

1. Appraisal Report,
2. Appraisal Review Form completed by RESU staff,
3. Engineer Approval Form (EUMA),
4. Right-of-way Review and Approval Form or Board Agenda Memorandum, and,
5. Just Compensation memo.

For example, a Just Compensation memo, EUMA and appraisal was used for some acquisitions but not for others. RESU policies and procedures do not stipulate which forms are required, but RESU tries to include the EUMA form on all acquisitions.

There is no requirement for how Valley Water should document the details of how “just compensation” was determined. Enhancing one of the existing documents to include sound explanations will make the determination more transparent, easier to monitor, and ensure consistent treatment of affected property owners across transactions and projects.

Other opportunities are present to enhance key documents. For example, the Appraisal Review Form does not document the reason the RESU staff person, as the appraisal reviewer, did not inspect the property as part of the review. For example, 11 of the deed-in-acquisitions in the sample reviewed did not have a reason stated why there was no inspection. RESU staff said that, because appraisers now routinely include digital photos in their reports, a physical inspection of the property by the RESU reviewer is not needed except under unique circumstances.

Opportunity to Update RESU’s Property Management Policies and Procedures to Reflect Current Practices

There are currently opportunities to update the policies and procedures for property management. RESU began the process to develop formal policies

and procedures for RESU’s management of residential property, given that for FY20, Valley Water management had transferred responsibility for residential property management to RESU from Facilities Management. An area in need of policy development include Valley Water’s current practice for the payment of HOA fees from RESU’s budget (District Property Administration) on residential properties. Currently, the RESU agent assigned to the acquisition is responsible for noting the fee in the file and ensuring that those are being paid. RESU staff said they would not incorporate this practice into their policies and procedures because the payment of HOA fees is very rare.

Another area in need of attention is when to inspect non-residential properties. Current policies require RESU staff to “physically check (non-residential) properties at least every six months. RESU had last visited (within the last six months) 65 percent of the 55 non-residential properties that it owns. RESU had no record of a visit date for 12 of these properties, and six properties were last visited in 2018. RESU staff said that certain non-residential properties are inaccessible or not easily accessed, making physical inspection difficult to conduct every six months.

Finally, how RESU monitors insurance compliance needs policy development. Current policies and procedures state that “insurance must be up-to-date and in compliance with lease terms.” Six tenants of non-residential properties had expired insurance at the time RESU’s records were reviewed. RESU staff said they had developed practices to monitor these properties and had recently completed their update of the policies and procedures to reflect that practice.

Opportunity to Expand Financial Analysis of Valley Water's Rental Properties

residential and non-residential rental properties. In FY19, RESU staff managed a total of 114 income-producing properties owned by Valley Water with a total net income of \$1.612 million (\$1.27 million from residential properties and \$345,780 from non-residential properties) according to RESU's annual report of the income and expenses from residential and non-residential rental properties. Although the report shows that RESU collects more revenue in comparison to expenses, the financial information in the report does not capture all necessary costs to help assess the operational efficiency of RESU. The data could include:

- (1) costs to maintain the property it has leased or licensed to others;
- (2) trends in the rental income and expenses;
- (3) expenses for Valley Water's non-residential property management including staff costs; and,
- (4) costs for the property that it leases from others.

In an annual report to the CEO, the Deputy Operations Officer for Watershed Design & Construction and RESU present the income, expenses, and net income for

Finding 2: Acquisitions Take Longer Than Expected

The actual time to complete the acquisition process varied significantly from the 8-10 months estimated by the RESU acquisition timeline to complete the acquisition process. Applying the method recommended by RESU³ to determine the average time required to complete a real estate acquisition to a sample of transactions reviewed by the Auditor, the average number of days from the date of appraised value to escrow closing was 500 days or about 16 months. RESU's acquisition timeline estimates 181 days or about 6 months to complete the transaction process from the date of appraised value to the close of escrow, a difference of almost a year.

Key Factors Outside of RESU's Control Affect Acquisition Timeliness

According to RESU staff, when estimating the amount of time needed to complete a property acquisition, the estimate is based on four assumptions: (1) the property owner is willing to sell to Valley Water, (2)

the environmental assessments (EIR & CEQA & HSLA) are completed before the acquisition process begins, and (3) no hazardous substance liabilities are present on the property. Fourth, RESU staff further explained that they also assume the acquisitions planned for a project are funded, however delays in the funding for a project have occurred and lengthened the amount of time needed to complete a property acquisition, a factor outside of RESU's control. Some delayed acquisitions are eventually terminated because of the unanticipated cancellation of a project. Valley Water staff explained that it is hard to predict when these assumptions will not hold for the acquisition which affects the completion time.

RESU staff said property owners are not always willing to sell, which adds time to the acquisition process, because the Board has directed RESU to acquire property using negotiated agreements. California law requires public agencies to make an offer to purchase property prior to beginning the condemnation process. If a property owner is unwilling to sell their property or does not respond to Valley Water's proposals, RESU staff said that the property owner's delay in their response could increase the amount of time for negotiations. Information was not readily

³ RESU staff said measuring from the date staff received a request for services and opened a corresponding RESU file for the acquisition is not an accurate measure of the timeliness of the acquisition process because the requestor often is still deciding whether to acquire the property when requesting RESU's assistance and may wait to decide to proceed with the acquisition until after the appraisal is completed. RESU staff said that a better measure is from the date of appraised value to the date escrow closes (or when the County Assessor records the transaction). During this period the bulk of the transaction processing occurs—Valley Water staff notify and negotiate with property owners, prepare, and sign the agreement documents, obtain CEO or Board approval for the acquisition agreement, and close escrow.

available in the RESU files to verify the extent to which property owners are non-responsive or unwilling to negotiate with Valley Water.

RESU staff said additional time is also needed for negotiations, beyond what the RESU acquisition timeline estimates, when the property owner obtains their own appraisal. While information was not readily available to determine the total number of property owners that obtained their own appraisal or the impact on the acquisition timeline when this happens. Analysis of EL 6.7.1 quarterly reports of completed acquisitions found that 20 percent of 96 property owners obtained their own appraisal and when an owner obtained their own appraisal, the purchase price always increased. For all 19 acquisitions on the EL 6.7.1 report, the owner's appraised value for these 19 acquisitions was, on average, \$218,287 more than the District's initial offer. (Median difference was \$62,100.) Further research is needed to develop a more accurate estimate of the impact on the acquisition timeline when an owner obtains their own appraisal and the effect on the purchase. This information could be used to help project delivery units in their budgeting and planning for property acquisitions. The RESU acquisition timeline does not address how much time would be expected for the property owner to obtain an appraisal.

RESU said that delays by other Valley Water units in completing environmental assessments requires additional time to complete the acquisition process. Appraisers use the information found in the environmental assessments, in particular the hazardous substance liability assessment (HSLA), to help determine the appraised value of the subject property. The RESU property acquisition process requires, as appropriate, that the project manager/engineer order the HSLA. Analysis of real estate transactions selected for review found that completion of the HSLA memo did not occur until after the appraisal was performed for eight of the acquisitions in the sample reviewed. A delay in the completion of the HSLA memo until after the appraisal poses a risk to Valley Water when the HSLA finds potential liabilities that would require the appraisal to be updated, requiring extra time and potentially additional costs for ordering the updated appraisal to include the HSLA memo's findings.

An additional factor outside of RESU's control that adds time to the acquisition process is working with District Counsel, RESU staff explained that District Counsel's involvement in an acquisition is often not limited to review of the final agreement documents prepared by RESU and, depending on the acquisition, may require extensive participation by District Counsel in acquisition planning, property owner negotiations, and review of RESU prepared preliminary offers and agreements.⁴ At a minimum, for example, modification by RESU of the standard right-of-way agreement to reflect the type and negotiated terms of an acquisition requires more time for District Counsel to complete its review, compared to when a standard, pre-approved template is completed unmodified.

⁴ RESU's files did not contain sufficient detailed information for the Auditor to verify the extent and effect of District Counsel involvement for each acquisition.

RESU staff reported initiating efforts to help reduce the frequency and extent of District Counsel’s review throughout the real estate transaction process, including requesting District Counsel’s assistance to create a set of standard pre-approved templates that would reduce the need and extent for modifications to the current standard template for right-of-way agreements. Efforts to increase the efficiency of District Counsel’s review of key documents used in the acquisition process, like those initiated by RESU or to better plan for District Counsel involvement, will require the collaboration of Valley Water management, project delivery units, and District Counsel to execute successfully.

Finding 3: Better Engagement and Use of Other Tools Can Address Challenges that Impact Delivery of Real Estate Services

RESU Needs to Participate in Project Delivery Units’ Planning & Budgeting for Property Acquisitions

Valley Water policies and procedures state that project owners should invite RESU to coordinate and collaborate in the planning and budgeting for real estate transactions. Project delivery unit staff do not routinely invite RESU staff to participate in the planning or budgeting for real estate acquisitions. To reduce the amount of time it takes RESU to process planned acquisitions, RESU staff identified the need to be involved in project planning phases to help project staff identify potential challenges and alternative solutions for potential properties and real estate transactions. Efforts to troubleshoot potential challenges or delays in the acquisition process, during project planning, can reduce the administrative costs that Valley Water incurs when challenges or delays are encountered.

Valley Water Needs to Establish Criteria for Updating Appraisals

RESU policies and procedures provide, in part, that six months after the date of an appraisal, “staff” will determine whether there is enough volatility in the real estate market for an updated appraisal of the value. While RESU staff said that they would make a recommendation to project delivery staff for an appraisal to be updated, it is the responsibility of the project delivery staff to request that RESU order an updated appraisal.

Competing priorities occur for project delivery staff when deciding whether to order an updated appraisal because ordering the updated appraisal may take several additional weeks, potentially bringing the acquisition process into conflict with project delivery goals. For example, on one acquisition reviewed by the Auditor, correspondence between project delivery staff and RESU staff showed concerns about how an updated appraisal could jeopardize the project delivery staff's ability to meet project deadlines. The correspondence cited concerns about the extra time and cost to complete an updated appraisal. Project delivery staff decided not to obtain an updated appraisal at that time. Division management explained that after the acquisition was complete, project delivery staff later obtained an updated appraisal for project reimbursement purposes. Valley Water management action would be needed to set criteria that triggers implementation of a second appraisal.

Enhanced Communication Activities Can Help Increase Public Confidence

A Valley Water goal for real estate services is to promote “public confidence” in its real estate services. Effective communication

is a critical success factor for this goal. Opportunities to enhance communication are present in four areas. One of these opportunities present the need to continuously inform affected property owners of the status of capital projects while Valley Water administers community meetings and workshops to discuss planned Valley Water capital construction and maintenance projects. These projects often take years for them to begin. Meanwhile, some property owners have sold their properties. For these new property owners, their first notification of Valley Water's plans could be the acquisition notice sent by RESU.

Another opportunity is the need for better education and training of Valley Water staff on the roles and responsibilities of CPRU and RESU. Property owners often contact RESU for services to be provided by CPRU and vice versa. As a result, RESU staff have serviced customers because of confusion between the roles and responsibilities of CPRU and RESU.

In addition, there is a need to increase use of customer relations management (CRM) software applications. RESU staff explained that Valley Water's customer relations management system (Access Valley Water) is not available for their use, but they individually track their correspondence with property owners and do not have any information of project delivery staff's contacts with property owners. Valley Water can expand CRM use to include all staff, including real estate services. Such a system could systematically track contacts with customers/property owners across all the Valley Water units that may interact with a customer/property during a real estate transaction process. The CRM could track correspondence between project delivery staff, RESU staff, contracted environmental assessors, contracted appraisers over the course of several years during a real estate transaction.

Finally, another opportunity to promote public confidence in Valley Water’s real estate services is to provide more information on the external Valley Water website and intranet. While there is information about leasing or purchasing of Valley Water’s properties on the Valley Water website, it is challenging to find information about Valley Water’s property acquisition process. Posting this information on the Valley Water website could help inform and promote confidence in the process. Expanding the use of the Valley Water’s Intranet, Aqua.gov, could help other units learn more about RESU’s responsibilities and how responsibilities for real estate services are allocated among Valley Water units. For example, on Aqua.gov, RESU’s intranet site has a link to request real estate services through the On-Line Request System (OLRS) and a link to the “permission to enter” form but no explanation of the acquisition process or other real estate transactions. Posting more information on the intranet like the acquisition timeline and the explanations of the services provided could help staff (especially project owners) better understand RESU services.

Updating Old Fee Schedules Can Increase Revenue

Fee schedules are commonly used by public agencies to set and charge fees to constituents uniformly. In the review of lease agreements

prepared by RESU, the fee table used to set rates in lease agreements for telecommunication activities on Valley Water property (which are initiated by CPRU) has not been updated since 2010. In a review of a limited number of transactions, the Auditor identified 14 lease agreements and 10 licenses without a rate adjustment date, meaning the lessor or licensee could have paid the same low fee for years. As a result, Valley Water has lost revenue opportunities on agreements. In one agreement allowing placement of fiber optic cables on Valley Water property, the term of the agreement was for 99 years at a flat rate of \$216 annually. Underground use fees in nearby City of Morgan Hill was 750 percent more. At this city’s rate, Valley Water could yield up to \$53,559 more over the 99 years. RESU staff said that the rate had recently been increased to \$500 annually, but we could not verify if the related lease agreements had also been updated. The new rate does not include labor charges, permit processing, and accounting services to manage the agreement. Given the limited reported capability of the RESU’s database (RESUdb), we could not determine the full magnitude of potential opportunities to enhance revenue on the various agreements. RESU and CPRU staff both said that they had not initiated requests to update the fee schedule, explaining that fee schedule development was not within their area of responsibility. Valley Water management needs to clarify the maximum term of the lease agreements, when and how rate schedules should be updated, and which unit is responsible for setting and updating the fee schedule.

Better Software Applications and Other Tools Can Provide Useful Performance Monitoring

RESUdb is the information system used by RESU to support the delivery of its real estate services. RESU uses the system to electronically file key documents,

capture correspondence, and monitor the progress of each real estate transaction. Limitations in the RESUdb have created challenges to the consistent filing of key documents across RESU electronic files. Approximately two-thirds of the transaction files (electronic and hard copy) reviewed by the Auditor appeared to be missing (or have misfiled within) at least one or more key documents. For example, the Parcel Record, which is required for every file, was missing from eight of the 34 real estate transaction files reviewed. RESU staff explained that RESUdb had a limited number of document names that can be used to upload electronic files, resulting in maintaining documents in paper files. At the time of our review, RESU's database administrator said that RESUdb has 1,000s of files with the status "pending acquisition", which means that a file was created but the acquisition had not occurred. At present, there is no sunset process or segregation of these records from the production database. An employee from the Information Technology Unit, who has since retired, developed the RESUdb. The database, itself, does not have user-friendly reporting capability, nor was it configured for ease of understanding. A RESU vendor explained that despite receiving training, the RESUdb took too much time for the vendor to use and relied on RESU staff to file documents on their behalf. A separate management study would be needed to identify if other off the shelf software applications would meet RESU's needs.

Monitoring overall performance is key to ensuring effective service delivery. While a standard practice for many Valley Water units, RESU has not formally implemented a standard set of performance measures that could communicate the status of their transactions (e.g. pending, initiated, partially complete, complete) or their overall success (e.g., average acquisition price, number of right-of-way agreements completed, etc.). Project engineers participating in this audit reported the desire to have better information on the status of RESU's pending acquisitions. RESUdb limits RESU ability to use performance management because it cannot generate reports to measure RESU performance, such as the time to complete steps in the transaction process, which has hindered RESU's ability to implement performance management principles. In the absence of data sharing, project engineers said that the frequency of communication with RESU staff varies. Some RESU staff actively monitor and share information while others do not share information as often.

Other Issues Identified

Use of Real Estate Services Unit as a Strategic Partner Could Bring Significant Benefits to Valley Water

Valley Water's five-year plan describes plans for many large-scale projects—67 projects totaling \$6.4 billion for water supply, flood protection, and water resources stewardship projects. Although RESU is implementing tasks and activities

consistent with its support role to respond to service requests, RESU can be restructured to proactively plan for and meet Valley Water's future real estate needs.

If RESU can serve the role of a strategic partner in Valley Water's plans for water storage and property management, then financial and other timeliness risks associated with property acquisitions and rights-of-way can be more effectively mitigated and built into Valley Water planning. However, RESU staff will need the support and assistance of Valley Water management to transform operations, especially implementing those activities that require coordination and collaboration across multiple units.

RESU would need to have a comprehensive strategic plan to help identify and lay the groundwork on how RESU could better serve Valley Water. A strategic plan for real estate services could serve as one option to help create opportunities for continuous improvement by streamlining responsibility for real estate services especially where confusion occurs across Valley Water staff, Board members, and the public about the role and responsibilities of RESU, CPRU, Land Management Unit, and Facilities Management. Having fragmented business processes, including a lack of a clear designation of responsibilities can undermine effective decision making and limit the ability of each unit to make improvements.

Valley Water may want to consider consolidating real estate services into a single unit. The California Department of Water Resources (DWR) and California Imperial Irrigation District (IID) have combined encroachments and permitting—functions that are currently performed by CPRU—with permissions-to-enter, acquisitions, easements right-of-way and property management—functions that are currently performed by RESU—into a unified Real Estate unit. Under Valley Water's organizational structure, these units share the same Deputy Operating Officer (DOO) that would make consolidation feasible. RESU staff said that they did not think it necessary to integrate RESU and CPRU into the same unit for the fact both share the same DOO, who can resolve issues of coordination and collaboration. Nonetheless, consolidating into one unit can better serve constituents and facilitate effective communication with property owners.

Revamping RESU could help improve financial performance by maximizing the value from Valley Water's real property assets. While a landlord of many types of property, Valley Water does not have a comprehensive and innovative asset management plan for these properties that could help enhance revenue received from these properties. Although current policies and procedures

assign responsibility to RESU for “asset management services for current landholdings and land required for projects and operations,” RESU staff said that formal delegation of this responsibility had not occurred even though no other Valley Water unit is responsible for coordinating, identifying, and implementing value enhancement solutions for unused and underutilized Valley Water owned properties. Without a clear strategy for asset management Valley Water risks underutilizing properties, not routinely identifying surplus property promptly, and not collecting proper fees for leases and licenses.

A new look for RESU could advance the use of business analytics. Quality data is a component of an effective government asset management framework.⁵ At present, RESU uses a home-grown system—RESUdb—that serves more as a data warehouse. More advanced software could allow analytics on historical acquisitions to help leverage negotiations, provide for up-to-date status information on pending acquisitions to Capital and Watershed Divisions project managers and engineers, and provide for performance reporting on the efficiency and effectiveness of RESU services.

Valley Water will need a communication strategy to define roles and responsibilities and to help management hold accountable the different units responsible for real estate services. A communications plan defines: (1) the message; (2) who communicates that message; (3) when the message will be communicated; (4) the tools and format of the communications; and (5) how the organization will track and maintain the connections created by the communications. Valley Water staff said the organization had established pieces of the communication plan, such as pre-approved templates for written communications with property owners and brochures describing Valley Water’s real estate process and property owner rights.

If Valley Water’s Board would like RESU to have a more strategic role in accomplishing Valley Water’s mission, then it should consider directing the CEO to address other matters for Board consideration described on page 10 of this report.

⁵ Asset management, according to the GAO, is “the coordinated activity of an organization to realize value from assets.” GAO defined asset management activities include: (1) developing an understanding of how each organization’s assets contributes to its successes; (2) managing and investing in those assets in such a way as to maximize that success; and (3) fostering a culture of effective decision making through leadership support, policy development, and staff training.



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