

Statement, attributable to Allison Febbo, General Manager

Westlands is proud that in 2020 it satisfied its Central Valley Project capital obligations by repaying to the United States its remaining share of construction costs for the Central Valley Project, resulting in approximately \$210 million being available to the United States to support investments in California's water infrastructure.

As background, Westlands and the United States Bureau of Reclamation, the operator of the federal Central Valley Project, converted Westlands' then-existing water service contract to a repayment contract in 2020 through a contract conversion process established by legislation co-authored by Senator Dianne Feinstein and signed into law by President Barack Obama. Westlands was not alone. The ability to convert water service contracts to repayment contracts was available in all Reclamation states to any entity that held a water service contract with Reclamation. Since the legislation's enactment in 2016, more than 80 contractors have converted their contracts.

A recent ruling from the Court of Appeal affirms a lower court judgment dismissing an action brought by Westlands that sought the Court's validation of the converted contract. Westlands continues to assess the ruling, but it is important to recognize that neither the Court of Appeal's ruling nor the lower court's judgment renders the contract invalid. The Court of Appeal in its ruling explains:

Westlands is appealing from a judgment of dismissal, not a judgment that determines the validity or legality of the WIIN Act contract... Westlands and the Bureau have been performing under that contract for the past three years. The Bureau accepted Westlands' lump sum repayment of its capital costs obligation, and the Bureau continues to defend the contract in federal court. As noted in a related case, "there is no suggestion that the United States disclaims its contractual obligations to Westlands (or any other WIIN Act repayment contract holder)." ... The Bureau has reportedly taken the position that the WIIN Act contract "will govern the rights and obligations of the United States and [Westlands] ... notwithstanding [Westlands'] inability to obtain a final decree confirming its proceedings to authorize the execution of [the WIIN Act contract]."

Key points

- On October 25, 2019, Westlands Water District initiated the court proceedings by asking the court for a validation judgment. Asking the court for a validation judgment is a common process that occurs in numerous industries across the US.
- In a ruling on October 29, 2021, the judge stated "the court lacks jurisdiction to grant the requested relief,"¹ of validation. The court made no ruling on the substantive issues of the valid, executed contract. The judge did not reject the contract.
- The contract is currently a fully executed, valid contract. Westlands and Reclamation have been operating under the terms of the repayment contract since the day of execution. Dismissal does not invalidate the contract.
- Westlands Water District appealed the judgement of dismissal, prompting the ruling on August 7th from the Court of Appeal.
- The District acted transparently and in accordance with the law and shared the details of the contract negotiations and final contract during numerous Board meetings in 2019 and 2020.

¹ Oct. 28, 2021 ruling- top of page 4.

- Westlands repayment vs water service contract:
 - The shortage provisions, which allow Reclamation to reduce the District's allocation when water is scarce, are the same in both contracts.
 - The amount and timing of water the District is entitled to are the same in both contracts.
 - Under both contracts, the District pays additional costs for the CVPIA restoration fund, energy, and O&M costs. These costs vary from year to year and are calculated by Reclamation.
- The District has already repaid, in full, its share of the construction costs for the Central Valley Project, which Reclamation calculated to be approximately \$210,000,000. The District is proud to repay this money early to do its part to support water infrastructure investments and improve water supply reliability.
 - The Bureau of Reclamation calculated the amount the District owed, just as it did for all others that converted their contracts (the amount was not subject to negotiation), and the District paid that amount as required under its contract.
- As a result of the contract conversion, the amount of money per acre-foot that the District now pays to Reclamation is less than it was previously because the District has repaid the capital costs of construction so those costs are no longer included in Reclamation's charges (however, those costs are now paid to the bank instead as part of our bond repayment).
 - Note- the cost of water on the open market is not the same as the cost of water under the District's, or any other contractor's, contract (whether repayment or the previous water service contract).

Additional Background Information

Although the court rulings have had no bearing on the validity of the contract or the contract conversion process, we'd like to provide some additional information on that process. The contract conversion process was established by legislation co-authored by Senator Dianne Feinstein and signed into law by President Barack Obama. The ability to convert water service contracts to repayment contracts was available in all Reclamation states to any entity that holds a water service contract with Reclamation. Since the bill's enactment in 2016, more than 80 contractors have sought to convert their contracts.

- A little history, Reclamation law requires that water contractors repay their proportionate share of the relevant water project's construction costs. In very general terms, a repayment contract requires all construction costs to be repaid within 40 years of execution while a water service contract offers a longer repayment period but requires the contract itself to be periodically renewed.
- Broadly speaking, this provision of the 2016 Water Infrastructure Improvements for the Nation Act allows water users to repay their outstanding share of construction costs early through a lump sum payment or by accelerated prepayment. Then, in accordance with reclamation law, once their share of the construction costs is paid, their water service contract will be converted to a repayment contract. This process is known as contract conversion.
 - Contractors are not required to repay their share of construction costs early. For instance, Westlands could have decided not to pursue early repayment. In that instance, the District would have instead continued under its current water service contract until construction costs were fully paid, which may have occurred in 2040. Under this scenario, the contract conversion process would have been initiated in 2040.
- The expedited Contract conversion process authorized under the WIIN Act has multiple benefits:
 - It lowers the federal government's risks and obligations – and therefore future taxpayer expense – for ongoing infrastructure upgrades to many aging water projects.
 - It creates a source of funding for future water infrastructure projects developed by Reclamation.
 - In this case, Westlands has contributed over \$200 million to desperately needed water infrastructure projects.
 - It provides greater certainty to water users.
 - A water service contract must be renewed periodically. This process takes time and money and is often the subject of litigation
 - A repayment contract provides a "permanent right" to a share of water. However, this permanent right does not mean the water user receives water every year. The amount of water allocated to a contractor is still subject to the relevant shortage provisions in the contract.
- Providing water users with a repayment contract after full payment of construction costs has a long precedent.
 - This approach is consistent with the Reclamation Act of 1902, which established the principle of giving water users that have repaid their proportionate share of construction costs a permanent right to a share of the water developed by and available as a result of the relevant water projects.

Many water users have converted and are working to convert to repayment contracts because it's good policy to do so.

- As President Obama said [when he signed the bill](#), “In the long-term, [the WIIN Act] invests in a number of water projects to promote water storage and supply, flood control, desalination, and water recycling. These projects will help assure that California is more resilient in the face of growing water demands and drought-based uncertainty.”
- Westlands is among [more than 80 water users](#) – including the California Department of Fish and Wildlife, the Contra Costa Water District, and the Sacramento Municipal Utility District – that requested to convert to repayment contracts under the WIIN Act.
 - The negotiating process for these contract conversions has been ongoing since 2016. Over 60 conversion contracts have been finalized, many of which have already received validation by a court.
- A very similar approach was taken in the San Joaquin River Restoration Settlement Act for the Central Valley Project’s Friant Division Contractors, which enjoyed broad support including from environmental advocates.
 - In that instance, nearly all of the more than 30 Friant Division contractors converted to repayment contracts, generating significant resources to support the restoration of the San Joaquin River.