



(Credit: Bet Hannon Business)

While there's a great deal that's dysfunctional and downright wrong about water law and policy in California, occasionally there are positive developments to report. So it's most satisfying to end 2023 with some good news regarding water in the Golden State.

This is the saga of how the Westlands Water District tried to privatize a permanent supply of massive amounts of California water from a government-operated water project; the remarkable coalition of interests that joined together to foil Westlands' efforts; and the California trial and appellate courts that soundly rejected Westlands' Grinch-like plan.

Westlands is a quasi-local government agency formed in 1952, and the largest agricultural water district in the United States. It provides water to irrigate over 600,000 acres of farmland in California's San Joaquin Valley—a district roughly as large as the state of Rhode Island. Westlands also has a well-deserved reputation as one of the most powerful, arrogant and litigious water actors in California—the “neighborhood bully” of the state's water community. (If you're interested in the rather sordid details, I recommend the iconic book, [\*Cadillac Desert\* by the late Marc Reisner](#) and the more recent and equally insightful work, [\*The Dreamt Land\* by Mark Arax](#).)

Westlands doesn't itself hold substantial surface water rights, but instead primarily obtains its water via contracts with the U.S. Bureau of Reclamation, operator of the Central Valley Project (CVP) and California's State Water Project. The Bureau's CVP water delivery contract with Westlands was originally 40 years in length. Since that contract expired in 2007, the Bureau and Westlands have entered into numerous successive “interim renewal” contracts.

Beginning in the early 20th century, Congress attempted to limit deliveries of heavily-subsidized federal water to “family” farms no larger than 160 acres. But over the years,

Westlands and other water districts across the American West stretched, circumvented or simply ignored those acreage limits in order to obtain CVP water sufficient to irrigate their much larger industrial farming operations. (Congress also envisioned that water districts and users—including Westlands—would eventually reimburse federal taxpayers for the enormous costs of building and operating the CVP and other massive federal water storage and delivery systems in the West. But that financial obligation has never been satisfied either.)

In 1982 Congress bowed to the wishes of Westlands and other water contractors by raising the acreage limitation for CVP water deliveries from 160 to 960 acres. And in 2016 legislation, Congress created a five-year window for Westlands and other water contractors to convert their water delivery contracts to more favorable terms, conditioned upon: 1) those contractors' agreement to belatedly pay off their share of CVP construction costs; and 2) obtaining timely approval of a new, completed Bureau-Westlands water delivery contract from a California state court.

Westlands seized upon this 5-year window of opportunity to begin negotiating a new water delivery contract with the Bureau that it hoped would *make permanent* its access to over one million acre-feet of federally-subsidized water annually to resell to Westlands' San Joaquin Valley customers.

So what's wrong with this picture?

The Bureau's longtime practice of offering Westlands and other water companies 40-year water delivery contracts made little sense even decades ago, given California's historically unpredictable and erratic precipitation patterns. But in a modern era of climate change—making California droughts more frequent, severe and protracted—such long-term water supply contracts make no sense whatsoever. And allowing Westlands to exploit Congress' misguided five-year window in order to lock in a guaranteed, permanent supply of CVP water would have the effect of placing Westlands and its agribusiness customers at the front of the water line—ahead of urban water users, local governments, tribes, commercial fisheries and California's environmental needs.

In 2019, Westlands filed a "validation" action in Fresno County Superior Court seeking judicial approval of its proposed CVP water delivery contract with the Bureau of Reclamation. (California law allows public agencies to seek formal judicial approval of final agency actions.) Critically, a broad coalition of groups appeared in the case to oppose the Westlands-Bureau "agreement": two California counties; two competing San Joaquin Valley water districts; commercial fishing interests; a Native American tribe; and numerous local

and national environmental groups. (The federal government chose-wisely, as it turned out-not to participate in the case.)

And that's where Westlands' Grinch-like water grab efforts became especially interesting.

That's because the "agreement" Westlands asked the trial court to approve was not a final contract it had actually agreed to with the Bureau. Instead, it was-in the words of the court-merely an "incomplete, uncertain, *proposed* contract."

The trial court proceedings read like a Keystone Cops misadventure by Westlands: over many months, its attorneys offered up to the court different drafts of the proposed agreement, shifting financial terms, conflicting effective contract dates, and illegible or missing exhibits to the contract. Unsurprisingly, the trial court refused to validate Westland's proffered agreement and dismissed its validation action.

Undeterred, Westlands appealed the adverse trial court ruling to the California Court of Appeal. [In a lengthy, thoughtful and \(for Westlands\) blistering opinion](#), a unanimous panel of appellate justices affirmed the trial court decision in August 2023.

Westlands fought on, petitioning the California Supreme Court to take up the case and reverse the lower court decisions. Earlier this month, however, the Supreme Court issued a curt order declining to hear the case. Game over.

Through the effective advocacy of a broad coalition of local governments, water districts, Native Americans, commercial fishing interests and environmental groups-along with dispassionate and predictable rulings by multiple California courts-Westlands' attempted water privatization scheme was defeated. And since the five-year window Congress created in its 2016 water legislation has now expired, Westlands will presumably be permanently foreclosed from securing CVP water supplies in perpetuity. Instead, it will need to get in line and share finite, shrinking California water resources with competing users and environmental interests.

One important caveat: Westlands claims to have belatedly finalized a permanent water supply contract with the Bureau of Reclamation in late 2020, after the state trial court had dismissed Westlands' validation lawsuit. (This was likely facilitated by Department of the Interior Secretary David Bernhardt, the Bureau's overseer who worked as Westlands' lobbyist in Washington, D.C. before former President Trump appointed him DOI Secretary in the latter part of Trump's term in office.) But, as the California publication [Water Maven](#) aptly observes, the court ruling "maintains the non-obligatory nature of the

unenforceable contract.” And that’s a contract the Biden Administration would do well to void and rescind in light of the adverse court rulings.

The fact that the Westlands Water Grinch has apparently been foiled in 2023 is a most satisfying note on which to end the year.