



Westlands Water District

FACT SHEET

Westlands Water District Conversion of Water Services Contract

In 2016, Congress passed, and President Barack Obama signed, legislation that directed the Secretary of the Interior to convert any water service contract to a repayment contract, upon the request of the contractor. Pursuant to that law, Westlands Water District and numerous other water agencies elected to convert their water service contracts to repayment contracts, which under provisions of federal reclamation law enacted in 1939 remain in effect so long as the contractor satisfies the terms of the contract. The process followed by the Bureau of Reclamation (Reclamation) to convert to repayment contracts the water service contracts of these numerous Central Valley Project (CVP) contractors has been utilized throughout many administrations and has been supported by environmental organizations. The permanent nature of these converted contracts is based on a principle of federal reclamation law enacted nearly 120 years ago: once water users have repaid their share of the construction costs of a project, they would have a permanent right to the use of water developed by the project for which they paid.

BACKGROUND

The American West is largely an arid region, and for that reason the availability of water was, and continues to be, a dominating factor in development of the West, including the establishment of farms, industry, and communities. In the jargon of the nineteenth century, irrigation projects were known as "reclamation" projects. The concept was that irrigation projects would "reclaim" or "subjugate" arid lands for human use. Before 1900, the United States Congress had invested heavily in America's infrastructure. Roads, river navigation, harbors, canals, and railroads had all received major federal investments. However, western states wanted more. They sought federal government direct involvement in irrigation projects. On **June 17, 1902**, President Theodore Roosevelt signed the **Reclamation Act of 1902**.

Details have changed in the nearly 120 years since the Reclamation Act of 1902 was passed, but fundamental principles have remained unchanged: (1) federal monies spent on reclamation water development projects, which benefit water users, would be repaid by the water users; (2) unless transferred by an act of Congress, projects would remain federal property even when the water users repaid federal construction costs; and (3) upon water users repaying their share of the construction costs of a project, they would have a permanent right to the use of their proportionate share of water developed by the project. In fact, the 1902 Act provided "[t]he right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."

The principle that water users who repaid their share of the construction costs of a project would have a permanent right to the use of water developed by a project has been reaffirmed by Congress multiple

times. In 1956, Congress passed an Act relating to the administration of contracts under section 9, Reclamation Project Act of 1939, which provides a water user would have “a permanent right to such share or quantity upon completion of payment of the amount assigned for ultimate return by the [water users] subject to payment of an appropriate share of such costs. . .” 70 Stat. 483.

Most recently, in December 2016, President Obama signed the Water Infrastructure Improvement for the Nation (WIIN) Act, which provides “[u]pon request of the contractor, the Secretary of the Interior shall convert” any “[w]ater service contracts that were entered into under section (e) of the Act of August 4, 1939 (53 Stat. 1196), to be converted under this section shall be converted to repayment contracts under section 9(d) of that Act (53 Stat. 1195).” 130 Stat. 1878. The WIIN Act also provides that the converted contract shall “continue so long as the contractor pays applicable charges, consistent with section 9(d) of the Act of August 4, 1939 (53 Stat. 1195), and applicable law.” 130 Stat. 1879.

LEGAL AUTHORITY FOR CONTRACT CONVERSION

Section 4011 of the WIIN Act, co-authored by Senator Feinstein and signed into law by President Obama, provides the Secretary of the Interior shall convert water service contracts to repayment contracts at the request of any existing water service contractor.

According to the Congressional Research Service, “Section 4011 of the WIIN Act allows for the conversion of agricultural and municipal water service contracts to repayment contracts to allow for prepayment of allocable construction costs that otherwise would have been repaid to Reclamation over extended terms. The section authorizes prepayment of outstanding construction cost obligations through a lump sum or in installments ... The legislation reiterates that once contractors have satisfied their repayment obligations, they are no longer subject to the acreage limitations and full-cost pricing (as well as other associated requirements) of the RRA. In addition, the section authorizes M&I contractors to convert to repayment contractors and/or repay their outstanding balances through prepayment.”

<https://crsreports.congress.gov/product/pdf/R/R44986>

WELL-ESTABLISHED PROCESS

Congress has affirmed multiple times since the passage of the Reclamation Act of 1902 water users who have repaid their share of the construction costs of a project have a permanent right to the use of water developed by a project.

“Since the passage of the Reclamation Act of 1902, reclamation law has been based on the concept of project repayment—reimbursement of federal construction costs—by project water and power users. Agreements between the federal government (through Reclamation) and water users for delivering water generally are governed by one of two contract types: water service contracts or repayment contracts.”

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The suggestion that the permanent nature of the proposed Westlands repayment contract makes it an “unusually good deal” is simply false. Indeed, Westlands’ contract would not be the first section 9(e) water service contract converted to a section 9(d) repayment contract in the CVP. To the contrary, section 9(e) water service contracts in the Friant Division of the CVP were converted to section 9(d) repayment contracts pursuant to legislation authorizing implementation of the San Joaquin River settlement and, concurrent with Westlands’ conversion, there are more than 75 other CVP contractors, including the State of California Department of Fish and Wildlife, which have requested conversion of their 9(e) water service contracts to section 9(d) repayment contracts pursuant to the WIIN Act. The substantive terms of those converted repayment contracts will all be identical to those in the proposed Westlands contract.

Questions have also been raised about why the Westlands conversion contract is the first to be completed and the suggestion has been made that Westlands was given special attention because of its influence. That is simply wrong. Within the CVP, Reclamation completed a CVP-wide process and has held numerous divisional negotiations. The draft of Westlands’ converted contract was the first released for public review because of pending litigation, *North Coast Rivers Alliance, et al., v. United States Department of the Interior*. In that case, North Coast Rivers Alliance challenges Reclamation’s National Environmental Policy Act compliance in connection with a prior renewal of their Westlands water service contract (a contract that was in effect from 2016-2018). The District Court has struggled with whether it should move the case forward or dismiss the case because it is moot. The Court decided to hold proceedings in that case in abeyance in light of the contract conversion process but ordered Reclamation to provide updates on the progress of WIIN Act conversions every 30 days.

ENVIRONMENTAL ORGANIZATIONS HAVE SUPPORTED CONTRACT CONVERSIONS

Under the San Joaquin River Restoration Settlement Act, the Secretary of the Interior converted water service contracts in the Friant Division to repayment contracts to generate revenue for the San Joaquin River restoration program.

That legislation provided for conversion of the Friant Division contracts under terms that are substantively the same as terms provided under the WIIN Act and reflected in the proposed Westlands repayment contract. People and organizations that vigorously oppose conversion of Westlands’ water service contract to a repayment contract were enthusiastic supporters of the conversion of Friant Division water service contracts to repayment contracts. This begs the question: what’s the difference? The answer should be obvious. **The only difference between the two contract conversions is how Reclamation will expend funds provided by the early repayment of construction costs. The conversion itself, however, is substantially identical.**

The conversion of the Friant Division contracts under the San Joaquin River Restoration Settlement Act generated money for a project. The restoration of the San Joaquin River was supported by people and organizations who now oppose the conversion of Westlands’ contract. The conversion of Westlands’ and other contracts under the WIIN Act will generate money for projects they oppose, such as building water storage projects. Beyond that, there are no differences.

The Natural Resources Defense Council, the lead non-governmental organization in the San Joaquin River Restoration Settlement, praised the Friant contract conversion and, at the time, touted:

“The agreement provides for approximately \$440 million from Friant water users for settlement implementation (through extending water user payments known as the “Friant Surcharge” for the life of the settlement, *redirection of capital repayments*, and authorizing the Secretary of Interior to allocate up to \$2 million per year of additional Friant payments from the CVPIA Restoration Fund).”

https://www.nrdc.org/sites/default/files/leg_07010101A.pdf (emphasis added)

MANY CALIFORNIA WATER AGENCIES SEEK CONVERSION

As of October 2019, more than 75 agencies that have CVP water service contracts, including the State of California Department of Fish and Wildlife, have elected under the WIIN Act to convert their water service contracts to repayment contracts.

According to the Congressional Research Service, “The provisions of this section would apply to all Reclamation contractors; that is, all contractors would be eligible (either through optional conversion to repayment contracts and subsequent prepayment for water service contractors or through optional prepayment for existing repayment contractors) for prepayment of their obligations to the federal government. However, it is unclear how many contractors would take advantage of these provisions. In its estimate of similar provisions, the Congressional Budget Office previously estimated that approximately 35% of current users would convert to repayment contracts, and that a total of \$639 million in receipts would be expected to accrue to the Treasury from accelerated repayment over the FY2015-FY2024 period. It is unclear what broader effects these payments (and the absence of RRA requirements on some contractors) might have.”

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THE EARLY REPAYMENT WILL BE USED FOR CRITICALLY NEEDED WATER STORAGE

President Obama noted that the provisions of Subtitle J of the WIIN Act were intended to help meet California’s long-term water needs, helping to “assure that California is more resilient in the face of growing water demands and drought-based uncertainty.”

In the case of Westlands’ contract conversion, like all contract conversions done before or after, it offers a win-win for all parties. The Westlands contract conversion will accelerate payment of between approximately \$200 to \$210 million to the federal government years before payment otherwise would be due. This money, pursuant to the WIIN Act, will be placed in the Reclamation Water Storage Account to be used for the construction of water storage and supply projects that will benefit all CVP purposes.

