

## INTERIOR

**Tribe urges court to toss Westlands' federal water contract**

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A Northern California tribe is calling on the courts to block the Interior Department from executing a permanent water contract with the Westlands Water District. Westlands Water District

A Native American tribe pressed a federal judge yesterday to throw out a permanent federal water delivery contract for the Westlands Water District, a former client of Interior Secretary David Bernhardt.

The Hoopa Valley Tribe is challenging the Interior Department's March decision to convert contracts for Westlands and others from temporary to permanent.

Their reservation sits on the Trinity River in Northern California, and the tribe argues that the conversion means that Interior and Westlands will sidestep environmental reviews that would occur when contracts come up for renewal.

"The tribe is constantly forced to fight over water deliveries that they are entitled to under federal law," attorney Thane Somerville told the U.S. District Court for the Northern District of California yesterday.

Somerville argued the contracts will deprive the tribe of water and harm salmon runs as more water is shipped from the Trinity River south via the federal Central Valley Project to contractors, including Westlands.

Interior has argued that it had no choice in converting the contracts.

Under a provision of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act, signed by President Obama, the Bureau of Reclamation is required to make the conversion at the request of the contract holder.

It has also said the conversions are a good deal for the government. In return, the contractors pay back their debts for the construction of Central Valley Project's dams, reservoirs, aqueducts and canals much earlier.

Yesterday, the Justice Department asked Judge Richard Seeborg to either transfer the case to the Eastern District of California — where other litigation challenging the conversions is playing out and where Westlands is based — or to dismiss it altogether.

The "WIIN Act required conversions," DOJ Attorney Jeffrey Thomas said, before arguing that the lawsuit should be dismissed on standing grounds.

"Plaintiffs," he said, "have not shown a particularized injury that can be differentiated from the harm suffered by any member of the public."

Somerville strongly pushed back on that argument.

"This is not a case where Hoopa is just a concerned member of the public," he said. "The Trinity River goes right through their lands."

Further, Thomas argued that the contracts do contain protections for the tribe because they "do incorporate federal Reclamation law."

Seeborg started the hearing by signaling that he was not inclined to grant DOJ's request to transfer the case because the Hoopa reservation lies within the Northern District's jurisdiction and the Eastern District is suffering from a "terrible situation" of being overloaded with cases.

Westlands is the nation's largest irrigation water provider. The Rhode Island-size district formerly hired Bernhardt when he worked as a lobbyist in private practice, and conservationists have called the contract conversions "shockingly corrupt."

Interior maintains, however, that Bernhardt signed an ethics pledge in August 2017 that precluded any work on issues related to his lobbying work.

The agency's inspector general has opened an investigation into ethics complaints concerning Bernhardt's activities ([Greenwire](#), April 16, 2019).

Westlands is far from the only district that has requested and received a contract conversion. At least 75 others that rely on the Central Valley Project have also done so ([Greenwire](#), March 2).

The conversions have been challenged in several lawsuits by fishing and environmental groups, as well as some Northern California counties.

Most of those cases are in the Eastern District, which has not issued any substantive rulings yet.

Seeborg, the Northern District judge, said yesterday he will rule on the government's motion to dismiss but provided few hints signaling how he would come down.

Thomas, the DOJ attorney, repeatedly hammered the standing argument.

"We still haven't heard a concrete harm," he said near the end of the arguments. "There is just no harm or imminent risk of harm that has been alleged in this case."

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