

California water agency wins damage suit against feds

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By Michael Doyle

WASHINGTON -- A federal appeals court has delivered a big victory to a small water district in Californias parched San Joaquin Valley.

Judges concluded that the government owes additional damages for the Bureau of Reclamations failure to deliver enough water to the Stockton-based Central San Joaquin Water Conservation District. Potentially, the district could collect millions of dollars.

We are thrilled that the court of appeals has seen the justice of Centrals claim, attorney Roger J. Marzulla said Monday, adding the decision now clears the way for Central to recover at least a portion of the tremendous damage done . . . by Reclamations unexcused breach of contract.

The ruling issued Friday by the U.S. Court of Appeals for the Federal Circuit reversed a trial judge, who had rejected the water districts claims for expectancy damages. In this case, these cover things like damages to farmers and the local groundwater aquifer resulting from the shortfalls in surface water deliveries.

The water district has previously asked for about \$13.1 million in damages.

The appellate courts 18-page opinion does not specify how much the district will be paid. It does, however, endorse the districts overall claim that its owed damages even though it had stopped asking for all the water owed it under the contract.

Central and its farmer clients were on notice that Reclamation was not going to supply the contractual quantities of water, Judge S. Jay Plager said. At some point, most people stop asking for what they are told they are not going to get.

Plager further ordered the government to pay Centrals legal costs for the appeal, which doesnt always happen. A trial judge in the U.S. Court of Federal Claims will now determine how much the government must pay.

The ruling resonates among other California irrigation districts, which between drought and enhanced environmental protections have been facing dry spells of their own. The ruling also punctuates a remarkably long legal odyssey that began in 1993.

Central serves 67,000 acres in San Joaquin County. Along with the larger Stockton East Water District, Central anticipated getting water from New Melones Reservoir, completed in the late 1970s.

Centrals contract called for a minimum of 56,000 acre-feet of New Melones water annually. But with enactment of a 1992 federal environmental law, called the Central Valley Project Improvement Act, Bureau of Reclamation officials warned they could no longer deliver the contracted-for amount.

The two Stockton-based water districts subsequently sued.

Between 1999 and 2004, the federal Bureau of Reclamation delivered an average of 14,000 acre-feet of water annually to Central. The claims court initially dismissed the water districts lawsuit in 2007. But in 2009, the appeals court reversed the trial judge and concluded that the Bureau of Reclamation had, in fact,

breached the water contracts between 1999 and 2004.

Last year, the claims court awarded Stockton East \$2.27 million. The amount is the difference between what Stockton East paid other irrigation districts for substitute water, and what it would have paid for cheaper New Melones water. The Central district was awarded \$149,950. Neither district was awarded expectancy damages.

Central appealed, while Stockton East settled with the government after trial.

Writing on behalf of a unanimous three-judge panel, Plager rejected the governments argument that Central undercut its damage claims by its own actions. Though Central did not ask for its contractual minimum of water between 1999 and 2004, Plager noted the district was acting in response to prior government announcements of shortfalls.

Farmers might have been asking for substantial quantities of water, up to the maximums provided for in Centrals contract with Reclamation, but for Reclamations consistent announcements that less than the contractual amounts of water would be made available, Plager wrote.

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