

In the Matter Of:

Westlands Water District vs All Persons Interested in the Matter

REPORTER'S TRANSCRIPT

February 27, 2020

Job Number: 610275

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF FRESNO

Before the Honorable ALAN M. SIMPSON, Judge

Department 502

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WESTLANDS WATER DISTRICT, a)
California Water District,)

Plaintiff) Case No. 19CECG03887

vs.)

ALL PERSONS INTERESTED IN THE)
MATTER OF THE CONTRACT BETWEEN)
THE UNITED STATES AND)
WESTLANDS WATER DISTRICT)
PROVIDING FOR PROJECT WATER)
SERVICE, SAN LUIS UNIT AND)
DELTA DIVISION AND FACILITIES)
REPAYMENT,)

Defendants)

_____)

Fresno, California

February 27, 2020

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1 FEBRUARY 27, 2020 - AFTERNOON SESSION

2 (The following proceedings were held in the presence of
3 the Court, counsel, and parties:)

4 THE COURT: Westlands Water District vs. All Persons
5 Interested in the Matter of the Contract Between the United
6 States and Westlands Water District Providing for Project
7 Water Service, San Luis Unit and Delta Division and
8 Facilities Repayment, case number 19CECG03887.

9 MR. O'HANLON: Good afternoon, Your Honor. I'm Daniel
10 O'Hanlon representing the plaintiff, Westlands Water
11 District. With me this afternoon is Mr. Bill Chisum, and
12 also here in the courtroom is the general counsel for
13 Westlands Water District, Mr. John Ruben.

14 THE COURT: Good afternoon to all of you.

15 MR. O'HANLON: Thank you.

16 THE COURT: Certainly.

17 MR. KEATS: Good afternoon, Your Honor. Adam Keats on
18 behalf of California Water Information Network.

19 THE COURT: Good afternoon.

20 MR. RUIZ: Good afternoon, Your Honor. Dean Ruiz on
21 behalf of Central Delta Water Agency and South Delta Water
22 Agency.

23 THE COURT: Good afternoon.

24 MR. KEELING: Good afternoon, Your Honor. Tom Keeling on
25 behalf of the Counties of San Joaquin and Trinity.

26 THE COURT: Good afternoon.

1 MR. MOORE: Good afternoon, Your Honor. Roger Moore also
2 on behalf of defendant San Joaquin County and Trinity County.

3 THE COURT: Good afternoon to you as well.

4 MR. VOLKER: Your Honor, appearing by phone, if I might?

5 THE COURT: Sure.

6 MR. VOLKER: Stephan Volker appearing for defendants,
7 North Coast Rivers Alliance. Thank you.

8 THE COURT: Good afternoon. Well, according to the
9 tentative ruling, Mr. Volker, I believe your office called,
10 but I'm not sure of that. I think that, Mr. Moore, you or
11 your office did call for sure and someone else called. I
12 think, Mr. Palmer's office called and requested oral argument
13 as well; so --

14 MR. VOLKER: That would be correct, Your Honor.

15 THE COURT: Great. Does the resolution itself permit
16 changes without board approval? Anybody can respond to that.

17 MR. O'HANLON: Your Honor, this is Daniel O'Hanlon. I'll
18 address that.

19 THE COURT: Okay.

20 MR. O'HANLON: The resolution requires -- approves the --
21 signing the contract and substantially the form of the
22 contract that was presented to the board, and so if the final
23 version of the contract is not material to the change from
24 that what was before the board, then no further authorization
25 by the Westlands board is required.

26 THE COURT: Okay. But if there are changes, then they

1 could be made and then it could be completed, then?

2 MR. O'HANLON: Yes, Your Honor. And I should advise the
3 Court, we submitted a supplemental case management conference
4 statement. I'm not sure it's been actually filed. It was
5 served on the other parties and the purpose of that was to
6 advise the Court that Westlands is signing the final version
7 of the conversion contract tomorrow as is the United States;
8 so as of tomorrow we will have a fully executed contract
9 between Westlands and the United States, and the form of that
10 contract does not materially vary from the form that was
11 before the Westlands board.

12 THE COURT: This is a \$362 million contract?

13 MR. O'HANLON: The final payment amount, Your Honor,
14 is -- the repayment obligation for construction is
15 significantly less than that because the years between that
16 estimate and today, Westlands has been making
17 payments and --

18 THE COURT: About how much less? I'm sorry to interrupt
19 you.

20 MR. O'HANLON: I'm sorry, Your Honor. It's -- I don't
21 have the precise -- it's in the \$200 million range.

22 THE COURT: Less or --

23 MR. O'HANLON: Less. The repayment amount. Yes, Your
24 Honor.

25 THE COURT: So -- okay. I understand the idea is that
26 the contract is in substantial conformity or will be in

1 substantial conformity with what's been proposed, but it's
2 not final, and I think there's some requirements that -- in
3 order for a proper action of this type that has to be
4 available for viewing by anyone interested, the public in
5 general and anyone interested is with the final contract. I
6 understand you're saying that it's in substantial compliance
7 or conformity with, but that's not the final contract and
8 there's a declaration and something else from someone that
9 says that while there won't be that many changes, if any, and
10 so on, but I don't know if that's going to do it. Exhibits
11 A, B, C and D to the contract are not part of the record; is
12 that correct?

13 MR. O'HANLON: Yes, Your Honor. That -- the actual
14 exhibits themselves were not available.

15 THE COURT: Okay.

16 MR. O'HANLON: But we did provide the Court with
17 information describing the information that was to be in
18 Exhibits A, B and C.

19 THE COURT: Sure. Those have to be viewed also, don't
20 they?

21 MR. O'HANLON: I'm sorry?

22 THE COURT: There has to be an opportunity for them to be
23 viewed as well, doesn't there? By the public and persons
24 interested.

25 MR. O'HANLON: In terms of the -- if the Court is
26 discussing the Brown Act requirements for public meeting,

1 those require that the general subject essentially of
2 the -- what's to be discussed at the meeting be disclosed in
3 the agenda, and as we argued in our papers, that requirement
4 was met.

5 And if I can add with respect to the exhibit, Exhibit A
6 is a boundary -- a map of the boundaries of Westlands, which
7 hasn't changed from the series of interim contracts. Exhibit
8 C is a description of how the Bureau of Reclamation does
9 water needs assessments. That hasn't changed. Exhibit B is
10 the current rates that reclamation charges Westlands for
11 water. That's something that's updated annually pursuant to
12 reclamation laws and that's understood how that is done. And
13 Exhibit D, which is the repayment obligation, which I
14 understand from the tentative is perhaps the Court's primary
15 area of concern, that total represents Westlands's share of
16 the construction costs of the Central Valley Project, which
17 is a -- it's a number, as I indicated earlier, is going down
18 as how much Westlands owes goes down as it pays annually for
19 it's water supply. It's not a negotiated item. It's
20 something calculated by reclamation pursuant to reclamation
21 law. We had -- we and reclamation both had a ballpark
22 estimate certainly of that. Everyone was aware of what that
23 estimate was, but the basic agreement is whatever
24 construction payment costs Westlands owed it must pay. As
25 far as the schedule for that, that's set out in the statute.
26 It's either a lump sum payment up front or the contractor can

1 elect to pay installments over three years; so the precise
2 dates depend upon the date of the contract, but in terms of,
3 like, the basic schedule, that's, again, something set out by
4 the statute; so neither the amount or schedule really are
5 things that are negotiated. They're pretty much set and
6 established by reclamation law and policy.

7 THE COURT: Okay. Were there some other things that you
8 wanted to tell me as well?

9 MR. O'HANLON: Yes, Your Honor.

10 THE COURT: You responded to the questions I asked you
11 thus far; so go ahead.

12 MR. O'HANLON: In the Court's tentative, the Court
13 indicated that it did not think that Water Code section 35855
14 allowed for validation of a proposed contract. As I
15 understand the Court's reasoning, it's based on the 1961
16 amendment to that section, which prior to '61 that statute
17 said that -- that section 35855 of the Water Code said that a
18 contract or proposed contract could be validated by filing an
19 action in the superior court and then the statute as adopted
20 in 1961 simply refers to contract, and as I understand the
21 Court's reason from the tentative, that removing proposed
22 contract from the statute leads to an inference that the
23 legislature no longer intended that that provision would
24 authorize validation of a proposed contract. If the wording
25 of this statute were the same with only the deletion of the
26 proposed contract -- determined proposed contract, I would

1 agree with the Court, but that was not the only change to
2 that section. What was changed in that section not only was
3 there no longer reference to proposed contract, but it said
4 that validation should happen in accordance with the
5 procedures set forth in the Code of Civil Procedure. The 1961
6 legislature also adopted the validation statutes, Code of
7 Civil Procedure section 860, which sets out a procedure for
8 conducting validation actions. Section 35855 was amended at
9 that time to refer to and essentially adopt that procedure
10 for validation -- for a water district to validate a
11 contract. As the Court observes in its tentative ruling,
12 the validating statutes do allow for validation of a proposed
13 contract and that's in Code of Civil Procedures section 864,
14 which says that a contract is deemed to be a matter in
15 existence for purposes of validation and when the -- when the
16 board of the agency adopts a resolution authorizing execution
17 of the contract; so I would urge the Court to reconsider that
18 portion in its tentative and ask it to instead rule that
19 section 35855 through the validating statutes and the Code of
20 Civil Procedure does allow for validation of a proposed
21 contract.

22 The other thing, Your Honor, I would like to make a
23 proposal or suggestion to the Court, if the Court is willing
24 to entertain it. With respect to the Brown Act compliance,
25 the Court indicated in the tentative that there were -- some
26 information that it needed clarification of or had incomplete

1 information in the motion, and what I would propose is that
2 we can provide that information to the Court. I would
3 propose that the Court set a date perhaps ten court days for
4 us to submit that information and obviously give the
5 defendants an opportunity to respond to it so that the Court
6 can consider that additional information.

7 I would also propose to submit for the Court's
8 information a copy of the executed converted contract. As
9 indicated, it's going to be signed by the United States and
10 by Westlands tomorrow.

11 Unless the Court has any other questions for me, Your
12 Honor, I'll submit. I'll conclude my argument there, subject
13 to if I have an opportunity for rebuttal.

14 THE COURT: Yes.

15 MR. MOORE: Your Honor, Roger Moore for San Joaquin and
16 Trinity Counties. Your Honor is absolutely right in the
17 tentative that this contract is fundamental and certainly
18 lacks material terms and is subject to change and, therefore,
19 can't be validated, even under the provision that counsel
20 mentioned, Code of Civil Procedure 864.

21 I want to address a number of points just raised. First,
22 Westlands's counsel mentioned a very recently filed
23 supplemental report that, in some wishful thinking, asserts
24 without providing an actual contract or details that there
25 will be a contract signing allegedly tomorrow. That
26 supplemental document makes two important updates both of

1 which cut against the belief that Westlands requests here.
2 The first is that they concede in that document that
3 Westlands now has signed another two year interim contract
4 covering 2020 to 2022. There is now absolutely no urgency to
5 rush forward to the finish line on a validation of a
6 conversion contract. It is undisputed here that under
7 section 4011 of the WIIN Act the sun set date for that
8 statute is December 16th, 2021.

9 The second important update in that supplemental
10 statement is the assertion, again, without proof just because
11 they said so that Westlands and the bureau may be about to
12 sign a contract conversion. That also cuts against belief
13 that Westlands has asked for here. The subject of a
14 validation action can only be the contract that is tendered
15 before the Court, which as your Your Honor has pointed out
16 here is missing the four exhibits and is subject to change at
17 the bureau and a number of uncertain developments at the
18 federal level. Whether a conversion contract is going to be
19 executed in another day, or another month, or another year,
20 it means there is going to be a different contract document
21 that is not before the Court in any form that was not the
22 basis for the summons that was published and was the source
23 of jurisdiction here, which we had criticized as not covering
24 a broader geographic scope, but such as it is, it refers only
25 to the very preliminary contract with all the missing
26 exhibits and uncertainties; so it helps them not at all to

1 say that there may be a subsequent converted contract. This
2 goes directly to the purposes of a validation statute. The
3 case law reflects that the point of validation is to provide
4 a way to get a single dispositive final judgment to promptly
5 settle all questions about the validity of a public agency's
6 actions. If there's going to be a subsequent converted
7 contract, that is not before the Court and could not have
8 been in the summons. That single judgment is not possible in
9 the current action and you would have the possibility of dual
10 conflicting, potentially, provisions; so they can't -- this
11 is not something that they can fix later on because it's the
12 basis of the current action. They jump the gun and try to
13 get the Court to validate an incomplete proposed contract
14 that may well be at odds with the converted contract, and
15 even that is the subject of pending federal comments and
16 significant controversy over federal issues like NEBA
17 compliance, the Endangered Species Act, Central Valley
18 Project Act requirements that offer a host of federal law
19 issues about reclamation's compliance with federal law that
20 Westlands in it's motion papers says "This court is not
21 capable of validating anyway"; so it would be much more
22 sensible not to validate the incomplete indeterminant
23 contract that they have proposed so we don't have this
24 inconsistent judgment problem. Westlands, then, attempts to
25 underplay, but with their own spin, the significance of
26 missing Exhibits A through D.

1 A key part, as the tentative recognizes, of the contract
2 is the repayment provision. Now, this is taking the -- it's
3 a proposal -- and it's only a proposal -- is to take the
4 contracts that are now on a two year interim basis that are
5 water supply contracts and convert them to permanent
6 repayment contracts that would apply in perpetuity. This is
7 a fundamental change that is fraught with complications that
8 have not been studied and raise significant federal issues
9 that may affect the second round, this contract that we have
10 not seen.

11 The tentative referred to the congressional research
12 service report on the WIIN Act. It also notes on page 23
13 that a part of what section 401 contract conversions would do
14 is eliminate the acreage requirements and cost provisions
15 that apply under current reclamation law. Page 25 recognizes
16 that the WIIN Act is subject to a savings clause in section
17 2012 that preserves numerous requirements of law, including
18 the central -- including the CVPIA, the Endangered Species
19 Act and so forth. Westlands filed this attempt to validate
20 the incomplete proposed contract without even waiting for the
21 pending federal comments that had a deadline of January 8.
22 That raised numerous issues. The sum of the contract letters
23 that were concealed from the Court are referenced in
24 Exhibit 2 of the Moore declaration we filed in opposition.
25 It's not up to this court to resolve that federal stuff, but
26 it is noteworthy that in those comments there are public

1 controversies in those comment letters relating to all four
2 of the exhibits. They are not as routine as Westlands
3 portrays and involve things that are far beyond this court;
4 so we should not jump the gun and conclude otherwise.

5 Next, Westlands relies on two -- I'd have to say quite
6 self-serving declarations of Mr. Gutierrez, a non-attorney and
7 staff member, who essentially speculates -- and that's all it
8 is -- about the unknown and indeterminant outcome of
9 subsequent federal proceedings whether it's the step that
10 Westlands' counsel refers to in the near term or whether those
11 still unaddressed requirements of federal law will end up
12 leading to additional contract changes once those public
13 concerns are fully vetted and addressed; so this court has
14 fully disregarded the speculation of Mr. Gutierrez that they
15 do not anticipate significant changes because we are in the
16 dark about what that phase two contract, that potentially more
17 complete contract, is going to look like.

18 Next, Westlands argues that -- essentially, that the
19 limitation in the 1961 amendment to Water Code 35855 doesn't
20 mean what it actually says. As the tentative quite correctly
21 recognizes, before 1961 the language of the contract was "A
22 district may submit any contract or proposed contract to the
23 superior court for validation." They expressly took that word
24 out and only -- so that you can no longer attempt to validate
25 a proposed contract. The statute means what it says and
26 Westlands cannot rewrite it. It does not help them at all to

1 refer to the parallel development of the -- of the validation
2 code that's found in Code of Civil Procedure 860 et sec. They
3 refer to the provision in section 864 that identifies the
4 point of authorization as the date that the public agency
5 passes a resolution approving the contract and authorizing
6 it's execution. That's the language of 864. Note that
7 language. It doesn't say "Approving a proposed contract." It
8 says "Approving the contract."

9 Now, it is true -- and we do not dispute -- that for
10 matters that are truly subject to validation such as the
11 subset that the Court recognized in circumstances that are
12 directly connected to indebtedness that there may be a place
13 where authorization could play out in a different way. Here,
14 however, whether it's under Government Code -- whether it's
15 under Water Code 35855 or the Government Code provision that
16 the tentative discusses after, 53511 -- in fact, for any
17 contractual purposes that Westlands now seeks to validate it,
18 it runs into the same dead end, which is even 864, with it's
19 reference to authorization and a resolution does not provide a
20 mechanism to validate an uncertain potentially shifting
21 contract lacking in material terms like this one.

22 Finally, Westlands makes an interesting suggestion that
23 they can, as I understand it, finesse the Brown Act issues
24 that the Court has correctly identified, which are quite
25 substantial here, by providing the information to the Court on
26 a post hoc basis. This would provide no help at all under the

1 Brown Act, which exists not as a case management tool, but as
2 a transparency matter to inform the public. As the Court
3 correctly recognized, there was a convoluted series of notices
4 for the meeting in which the October 2019 resolution was
5 passed. There were material documents missing. There were
6 all the problems that the Court recognized. Under those
7 circumstances, the Brown Act can't just be written off as a
8 technicality that can be -- that can be corrected down the
9 road. It went to the very integrity and transparency of the
10 approval. That's why there's no basis for validation here at
11 all.

12 THE COURT: Anyone else?

13 MR. KEELING: Yes, Your Honor. Tom Keeling for the
14 Counties of Trinity and San Joaquin. We would like to
15 address the Court's ruling on timeliness, but it may make
16 more sense -- we're happy to do that now, but it may make
17 more sense for the Court to entertain any further comments on
18 the substance of validation issues before we move to that.
19 Which would the Court prefer?

20 THE COURT: That's fine. We can see if anyone has any
21 other comments.

22 MR. KEELING: Okay.

23 THE COURT: Anything else?

24 MR. KEELING: On the timeliness issue?

25 THE COURT: All right.

26 MR. KEELING: The position of the Counties is very simply

1 that the answer was timely filed. A brief recap of what
2 happened and then moving into some of the governing
3 provisions and decisional law is what I'm going to do. Very
4 simply, on December 16 the County's answer was submitted
5 through the e-filing service approved by the Court. At a
6 little after 3:30 that afternoon, we receive from that
7 e-mailing -- that e-filing service confirmation that the
8 answer had been submitted to the Court. At 9:23 a.m. the
9 next morning, the e-filing service notified us that the
10 filing had been reviewed, but returned by the clerk for
11 further action. Applying apparently a local rule, the clerk
12 required that certain words be placed on the caption page.
13 The clerk explained to us that if we just place the words,
14 "Exempt from filing fee Government Code section 6103" on the
15 caption page the filing would be accepted; so we did
16 immediately. We complied and the Court -- or the clerk
17 accepted the answer for filing that same day, December 17.

18 Now, first, as a preliminary matter under both the
19 pertinent State and local rules, our answer electronically
20 submitted to the Court on December 16 should have been deemed
21 filed on that day. Code of Civil Procedure section
22 1010(b)(3) provides that "Any document received
23 electronically by the Court between 12:00 a.m. and 11:59.59
24 p.m. on a court day shall be deemed filed on that court day."
25 Fresno County Superior Court local rule 4.1.13.D, likewise,
26 provides for -- or provides that "For purposes of electronic

1 filing of documents, pursuant to Code of Civil Procedure
2 section 1010.6(b)(3), any document received electronically by
3 the Court between 12:00 a.m. and 11.59.59 p.m. on a court day
4 shall be deemed filed on that court day.

5 Now, below that same local rule also notes that "This
6 provision concerns only the method and the effective date of
7 filing. Any document that is electronically filed must
8 satisfy all other legal filing deadlines and requirements."
9 That's fine, but this case -- in this case it is the
10 effective date of filing that is at issue.

11 Second, the situation in this case is reminiscent of the
12 statute of limitations dispute in *Carlos v. State of*
13 *California*. A 1998 case at Cal.App.4th -- excuse me -- '68
14 Cal.App.4th, 1268. There, the superior court refused to
15 accept a complaint for filing because it didn't include a
16 certificate included by a local rule. The plaintiff re-filed
17 the complaint after the statute of limitations had elapsed and
18 then of course moved for correction of the filing date. The
19 superior court denied that motion. In holding that the clerk
20 of the Court did not have authority to reject the filing that
21 complied with State requirements, although the filing did not
22 comply with the local rule, the Court of Appeals later said --
23 and I'm quoting -- "For purposes of the statute of
24 limitations, filing means delivering to the clerk during
25 business hours." That's at 68 Cal.App.4th, page 1273. The
26 Carlson Court observed, also, that a superior court could not

1 condition the filing of a complaint on a local rule
2 requirement. Instead, as long as the complaint complies with
3 state requirements the clerk has a ministerial duty to file.
4 That's at 68 Cal.App.4th, 1272 through 1273.

5 And by the way, that report -- that result comports with
6 California Rule of Court 2.100(a), which states "The judicial
7 counsel has preemptive local rules related to the form and
8 format of papers to be filed in the trial courts." In other
9 words, no contrary rule could be enforced. When you turn to
10 Rule of Court 2.111 and we look at that, that's the statute
11 that -- that's the rule that governs the caption page of
12 papers filed in the trial courts. There is no reference
13 anywhere in that rule to those particular words having to
14 appear on the caption page. As far as we can tell, this is a
15 local rule, but frankly, we haven't found it yet.

16 The Carlson court that I just talked about cited United
17 Farm Workers of America v. Agriculture of Labor Relations
18 Board, a 1985 case, California Supreme Court 37 Cal.3d 912.
19 That case concerned a petition for review of an administrative
20 position. After the petition was presented for filing, the
21 clerk returned it with a note saying it was defective. Before
22 the petition could be presented again for re-filing, the
23 statute of limitations had lapsed. The question was whether
24 the petition had, in legal effect, been, quote, "filed," end
25 quote, when initially presented for filing. The California
26 Supreme Court ruled that it had been filed and it said -- and

1 I'm quoting from page 918 in that decision -- "We conclude
2 that filing for purposes of compliance with the time limits of
3 Labor Code section 1160.8 means what it does in all other
4 contexts: Actual delivery of the petition to the clerk at his
5 place of business during office hours. Thus, it is the
6 filer's actions that are scrutinized in determining whether a
7 petition was timely filed. Rejection of the petition by the
8 clerk for a technical defect cannot undue a filing that has
9 already occurred."

10 To similar effect, we would invite the Court's attention
11 to the Litzmann case -- that's L-I-T-Z-M-A-N-N -- v. Workers'
12 Compensation Appeals Board, a 1968 decision at 266 Cal.App.2d,
13 page 203. There, a claimant presented a petition for filing
14 on the last day of the applicable period. The court clerk
15 rejected it for technical format related reasons. The Court
16 of Appeals said "Since the petition was deposited with the
17 clerk for filing on April 17, 1968, albeit in defective form,
18 this Court may make an order that the petition be deemed to
19 have been filed on that date. There is a strong policy in
20 favor of hearing cases on their merits and against depriving a
21 party of his right" -- in this case appeal -- "because of
22 technical noncompliance in matters of form."

23 Now, these decisions I've described bear on our situation
24 in two ways. First, the clerk's determination that the
25 County's answer needed a notation about filing fees flagged a
26 technical noncompliance with a local rule. It did not render

1 the filing untimely for purposes of the statute of
2 limitations. Second -- and as far as we can tell, the
3 requirement that these words be put on a caption page is a
4 pure local rule requirement. As the Carlson decision reminds
5 us, a superior court may not condition the filing of a
6 complaint in that case or anything on a local rule
7 requirement. As long as the complaint files -- complies with
8 State requirements, the clerk has a ministerial duty to file.

9 Now, the Court, in it's tentative ruling, cites the
10 Lateef v. City of Madera matter, which I think was decided
11 last week or a couple weeks ago. "For the proposition that in
12 construing CCP section 862, 'Our primary goal is to implement
13 the legislative purpose,'" but that's not the full sentence
14 in Lateef, which, by the way, didn't concern section 862 at
15 all. The full sentence reads "We are also mindful, however,
16 that our primary goal is to implement the legislative purpose
17 and to do so we may refuse to enforce a literal interpretation
18 of the enactment if that interpretation produces an absurd
19 result at odds with the legislative goal." The tentative
20 ruling then refers to a purpose of Code of Civil Procedure
21 section 862. We submit that it could not have been consistent
22 with the legislative purpose of this statute. To deprive the
23 Counties of Trinity and San Joaquin or the hundreds of
24 thousands of Californians in their jurisdiction of the
25 opportunity to have a say in a -- pick your number one -- 100
26 million, 300 million, plus validated action affecting their

1 citizens' welfare merely on the ground that although the
2 answer was filed on the due date and had been timely and
3 properly served a clerk invoking a technical local rule would
4 not formally accept the document for filing, quote/unquote,
5 until the next day. And by the way, for that matter, the word
6 filing never appears in CCP section 862. Section 862 says
7 "Jurisdiction shall be complete after the date specified in
8 the summons. Any party interested may not later than the date
9 specified in the summons appear and contest the legality and
10 validity of the matter sought to be determined," and we did
11 that.

12 Finally, Your Honor, I'd like to -- this is not exactly
13 the trial court level, but I think the notice of appeal
14 decisions are instructive here. As every lawyer knows, the
15 deadline for filing a notice of appeal is jurisdictional.
16 Neither the inherent power of the court or extent of the
17 parties can extend that deadline. No relief under CCP 473 is
18 available for blowing that deadline. There is no discretion
19 to treat late appeal as if it were a petition for review by
20 writ and dismissal in these cases is mandatory; so we look at
21 that line of cases. In Pacific Southwest Airlines v.
22 Dowty-Rotol, section -- excuse me. The date is 1983, 144
23 Cal.App.3d page 491, the deadline for filing the appeal was
24 March 2, but the plaintiff had mailed the notice of appeal to
25 the superior court and the notice had been received by the
26 civil processing division of the clerk's office on February

1 26th. In other words, on time. The notice of appeal was not
2 stamped filed until March 31st long after the deadline had
3 passed. In concluding that the notice had been timely filed,
4 the Pacific Southwest Airline court said "A paper is filed
5 when it is delivered at the place where it is to be filed to
6 the proper officer and by hand received to be kept on file."
7 When the clerk's office received the notice of appeal from the
8 judgement that notice of appeal was filed. This result
9 comports with Rule of Court 8.25(b)(1), which provides, quote,
10 "A document is deemed filed on the date the clerk receives
11 it," end of quote, which, by the way, is consistent with the
12 other statutes and rules we've seen at the trial court level.

13 Thank you, Your Honor for indulging me in this.

14 MR. MOORE: You Honor, I wonder if I can have one more
15 rule reference and that is to the California Rule of Court
16 2.253(b)6, and it says "The effective date of filing of any
17 document received electronically is that prescribed by Code
18 of Civil Procedure section 10.6. This concerns only the
19 effective date of the filing.

20 MR. KEATS: And Your Honor, Adam Keats. Very briefly,
21 Your Honor, I would like to add that on behalf of the other
22 filers, Mr. Keeling's arguments regarding the timeliness of
23 the Counties of San Joaquin -- even though the issue is
24 slightly different regarding what was on the cover of their
25 page versus the payment of the filing fees, Mr. Keeling's
26 arguments apply equally to the other filings as well

1 including those by California Water Impact Network.

2 I'd like to emphasize as well that -- I think Mr. Keeling
3 said this, but I stand beside that California Code of Civil
4 Procedure 1010.6 controls here. It overrides or it controls
5 both the local rule and the judicial counsel rules, which
6 must be in conformity with 1010.6, and I'd cite to section
7 1010.6(e) and 1010.6(f), which both state -- this is
8 regarding the judicial counsel rules -- "These rules shall
9 conform to the condition set forth in this section."

10 MR. O'HANLON: Your Honor, if I may briefly respond? I
11 appreciate the amount of time the Court has given us this
12 afternoon. I'll start with the timeliness issues --

13 MR. VOLKER: Excuse me, Your Honor, this is Stephan
14 Volker on behalf of the defendants, North Coast Rivers
15 Alliance.

16 THE COURT: Yes.

17 MR. VOLKER: If I might be heard briefly?

18 THE COURT: Yes.

19 MR. VOLKER: I would emphasize that, at most, Westlands
20 has suggested a conflict between a rule of the court and a
21 statute of the controlling statute here, which governs the
22 effective date of the filing. It does state in CCP section
23 1010.6(b)(3) and it's implemented correctly by Fresno County
24 Superior Court rule 4.1.13.B, and to the extent that there's
25 any different suggestion in a rule of court that Westlands
26 has relied upon, the statutory commands governs this court's

1 determination of the effective date.

2 I believe, Your Honor, what we have here at most is a
3 dispute over whether the documents effectively filed on that
4 date were potentially incomplete due to other factors. For
5 example, in our case a filing fee, which was less than that
6 which is arguably required, but that is not a jurisdictional
7 defect. And this is important, Your Honor, because those
8 parties whose answers were deemed filed the next day
9 incorrectly by the superior court clerk if determined by this
10 court to be effectively filed on the prior day, December 16,
11 then are jurisdictionally bound and the only question is
12 whether additional fees or other changes in the caption page
13 are required and because that's not a jurisdictional defect
14 it can be cured by a motion under CCP section 473; so it's
15 important for the answering defendants whose answers were
16 deemed incorrectly deemed filed on the following day,
17 December 17, to have this court correct that misapprehension
18 so that if there is still a lingering issue with the filing
19 it can be addressed under CCP section 473.

20 THE COURT: All right.

21 MR. O'HANLON: Thank you, Your Honor. I'll start with
22 the timeliness issue. The Court has it correct in it's
23 tentative ruling. These three of the four defendants did not
24 timely file an answer. The Court cites the case -- the San
25 Diego case, which involved section 862. Mr. Keeling has
26 described for the Court this afternoon a bunch of cases that

1 were not cited in his papers and involved other statutes and
2 the facts in those cases. It's not particularly relevant
3 here. We went through in detail the rules regarding
4 electronic submittal and filing and there is a distinction,
5 and the Court here and the clerk here did everything
6 absolutely correctly and matters -- things are not deemed
7 filed when submitted where other requirements necessary for
8 filing are not met as they were not met here. The filing
9 fees were not provided. It wasn't the fault of the clerk.
10 It wasn't the fault of the local rules. It wasn't anyone's
11 fault, but the defendants who waited until the afternoon of
12 the last day to appear in the date and in the summons and
13 when it turned out they hadn't satisfied all the requirements
14 for filing and received notice promptly early the next day,
15 it was then too late to appear by the jurisdictional deadline
16 set by Code of Civil Procedure 862; so the Court's tentative
17 is exactly correct on that issue.

18 I will address very briefly too the one item that was
19 mentioned about no urgency by Mr. Moore. Westlands has
20 signed -- or will sign the converted contract tomorrow. It
21 will be effective as of June 1, 2020, and the reason for that
22 is because of the provision that we've quoted in the
23 converted that makes -- it's not enforceable by Westlands as
24 against the United States unless and until it is validated;
25 so to cover the interim period between now and that time,
26 Westlands has also signed an inter-renewal contract; so there

1 is urgency to this case. We're hoping to get a validation
2 judgment in the case by June 1, the time that the converted
3 contract is set to become effective, and I appreciate the
4 Court's time.

5 THE COURT: Thank you all. I notice that there's a
6 certified shorthand reporter that's been taking down the
7 proceedings, and I signed the document indicated that the
8 reporter could prepare the official transcript for whoever it
9 is that retained the reporter. It was not the Court, as you
10 know, but I'm wondering if anyone would have an objection to
11 the Court receiving -- I would have the shorthand reporter
12 e-mail, if she can do that, my judicial assistant a copy as
13 soon as possible of the proceedings today so that your
14 comments can be given and a couple other things can be given
15 further consideration. I have been making some notes and I
16 have those, but since there is apparently a transcription
17 that will be prepared or at least a recording of the
18 proceedings is being made by the shorthand reporter, I wonder
19 if anyone would have an objection to that?

20 MR. O'HANLON: Your Honor, Daniel O'Hanlon. I have no
21 objection.

22 MR. KEATS: We have no objections, Your Honor.

23 THE COURT: Very well. I'll take the matter under
24 submission and you'll get a ruling from me.

25 Thank you, gentlemen.

26 (The proceedings were concluded.)

1 STATE OF CALIFORNIA)

2)

COUNTY OF FRESNO)

3

4 I, ANAISE BRESHEARS, Certified Shorthand Reporter, do
5 hereby certify that the foregoing pages compromise a true,
6 full and correct transcript of my shorthand notes and the
7 proceedings had upon the hearing of the above-entitled matter.

8 Date: March 12, 2020

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ANAISE BRESHEARS, CSR 14162

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