

## U.S. Court of Federal Claims Refuses to Dismiss California Farmers' Takings Case

The U.S. Court of Federal Claims recently denied the Government's motion to dismiss California farmers' claim that their farmland had been taken by the Government's failure to build a statutorily required drain to remove salts from their land. Located within the Westlands Water District, these agricultural lands are irrigated by water from the Central Valley Project that picks up and concentrates naturally occurring salts (such as salinium) that eventually make the land unusable. The farmers have obtained several court orders requiring Reclamation to build the drain, but it has not been constructed yet.

The Government moved to dismiss the case, arguing that the claims had accrued sometime between 1968 (when irrigation service without drainage was first provided) and 2000 (when a federal court of appeals held that the Government was required to provide drainage). The CFC rejected all of these potential accrual dates, holding that the Government's inaction in the face of its statutory duty and court orders caused reasonable uncertainty whether drainage would ever be provided, delaying the accrual of the claim:

*The court recognizes that the drainage and salt accumulation problems in the San Luis Unit are complex, continuous, and that there are no easy solutions. That does not mean, however, that the Bureau of Reclamation can use decades of inaction, inconsistent and failures to deliver on its statutory duty and court-ordered responsibilities as an end-run around the statute of limitations regarding plaintiffs' claim. That would set a very perverse precedent, allowing federal agencies by inaction to avoid statutory duties and ignore court orders. Fairness directs giving plaintiffs the opportunity to present evidence to the court on whether or not a taking has occurred based on defendant's failure to provide a drainage solution for the Westlands for over fifty years. Because the court finds that plaintiffs' claims did not accrue before September 2, 2005, plaintiffs' claims are not time-barred by 28 U.S.C. § 2501.*

The full opinion can be read [here](#).

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