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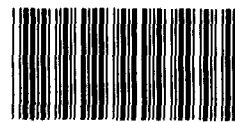
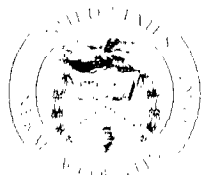
United States General Accounting Office

Report to the Chairman, Subcommittee  
on Water, Power and Offshore Energy  
Resources, Committee on Interior and  
Insular Affairs, House of  
Representatives

June 1990

# WATER SUBSIDIES

## The Westhaven Trust Reinforces the Need to Change Reclamation Law



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United States  
General Accounting Office  
Washington, D.C. 20548

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Resources, Community, and  
Economic Development Division

B-239883

June 5, 1990

The Honorable George Miller  
Chairman, Subcommittee on Water, Power  
and Offshore Energy Resources  
Committee on Interior and Insular Affairs  
House of Representatives

Dear Mr. Chairman:

Subsequent to our October 1989 report<sup>1</sup> to you on the implementation of the Reclamation Reform Act of 1982's 960-acre limit for subsidized water,<sup>2</sup> you requested that we determine whether the sale of the J. G. Boswell Company's Boston Ranch to the Westhaven Trust was an example of a large farming operation continuing to receive federally subsidized water on its entire acreage. The Boston Ranch Company—a wholly owned subsidiary of the J. G. Boswell Company and a large farm operator located in the Central Valley Project of the Department of the Interior's Bureau of Reclamation—sold 23,238 acres to the Westhaven Trust in May 1989. The trust was formed for the benefit of 326 salaried employees of the J. G. Boswell Company.

As stated in our 1989 report, we believe, on the basis of the act's legislative history, that the Congress expected to stop the flow of federally subsidized water to owned and/or leased land above the 960-acre limit that was operated as one farm. Six of the cases we examined showed that the owners or lessees had reorganized large farms into multiple, smaller landholdings to be eligible to receive additional federally subsidized irrigation water from the Bureau. However, the farms continued to be operated as large farming operations. Therefore, we concluded that (1) the act's acreage limit was not being implemented in a manner consistent with congressional expectations and (2) large farms had been reorganized since the act's passage to receive subsidized water on acreage that would have otherwise exceeded the legislatively mandated limit. We recommended that if federally subsidized water is to be limited to no more than 960 acres of land being operated as one farm or farming operation, the act must be amended to apply the act's acreage limit to farms and farming operations.

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<sup>1</sup>Water Subsidies: Basic Changes Needed to Avoid Abuse of the 960-Acre Limit (GAO/RCED-90-6, Oct. 12, 1989).

<sup>2</sup>Water at rates that exclude any interest on the federal government's investment in the irrigation component of its water resource projects is referred to as "subsidized water" because the lost interest is viewed as a subsidy to farmers.

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## Results in Brief

The J. G. Boswell Company's Boston Ranch is another example of a large farm, reorganized by its sale to the Westhaven Trust, to whose beneficiaries are attributed multiple, individual landholdings. Each landholding is within the act's 960-acre limit, and each individually qualifies for federally subsidized water under current reclamation law. However, for all practical purposes, the landholdings continue to be operated collectively as one large farming operation, much as they were before their sale to the Westhaven Trust.

A consequence of this trust arrangement is that the federal government is not collecting the revenues to which it would be entitled if the multiple landholdings were considered collectively as one large farm or farming operation subject to the act's 960-acre limit. Had the Westhaven Trust been subject to the acreage limitation, the trust would have been required to pay about \$2 million more per year for its federal water. Reduced revenues are likely to continue to occur annually under the existing act unless the Congress amends the act, as we recommended in our October 1989 report.

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## Background

The 1982 act represents a fundamental change in federal reclamation law, by limiting to 960 the maximum owned or leased acreage that an individual or legal entity, such as a partnership or corporation, can irrigate with subsidized water. Generally, owned land above the limit cannot be irrigated with federal water, and farmers must pay the full cost for water delivered to leased land over this limit. However, the act does not prohibit multiple landholdings from being operated collectively as one farm while individually qualifying for federally subsidized water.<sup>3</sup> Some farmers, therefore, have reorganized their farms into multiple, smaller landholdings to be eligible to receive federally subsidized water from the Bureau using various partnerships, corporations, and/or trust arrangements. As a result, the Bureau has continued to provide federally subsidized water to large farms, some consisting of thousands of acres of land.

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<sup>3</sup>The act defines and uses the term "landholding"—which is the total irrigable acreage held directly or indirectly by the recipient of federal water—rather than the term "farm" or "farming operation" in establishing the acreage limit.

## Law Allows Subsidized Water for Westhaven Trust's Entire Acreage

The J. G. Boswell Company has taken advantage of section 214 of the act, which exempts from its 960-acre limit land held for beneficiaries by a trustee in a fiduciary capacity, as long as no single beneficiary's interest exceeds the law's ownership limits. The act does not preclude multiple landholdings from being operated collectively under a trust as one farm while qualifying individually for federally subsidized water. Accordingly, the J. G. Boswell Company was able to reorganize the Boston Ranch land by selling the 23,238 acres to the Westhaven Trust, with the landholdings attributed to each beneficiary being eligible to receive federally subsidized water.

Before the land was sold to the trust, the J. G. Boswell Company operated the acreage as one large farm and paid full cost for the federal irrigation water delivered to the acres for the 18-month period ending in May 1989. When the trust bought the land, the entire acreage became eligible to receive federally subsidized water.

According to the Department of the Interior's Office of the Solicitor, because the landholdings attributed to the 326 trust beneficiaries range from 21 acres to 547 acres per beneficiary, the trust meets the act's requirement that no individual beneficiary's interest exceeds 960 acres. Although the act does not preclude large farming operations organized as multiple landholdings under a trust from receiving federally subsidized water on the entire acreage, this situation is not consistent with what we believe the Congress was trying to accomplish in establishing the 960-acre limit.

## GAO Indicators Suggest That Westhaven Trust's Acreage Is One Farming Operation

In our October 1989 report, we developed 11 indicators, any one or more of which would suggest that individual small landholdings are, in fact, parts of larger farms. Most indicators focus on arrangements between and among owners, lessees, and/or farm operators rather than on the individual landholdings. These indicators are not absolute determinants in themselves. Rather, when applied to the entire farming operation, they suggest that for all practical purposes these landholdings continue to be operated collectively as single large farms. Examples of these indicators include cases in which the same individuals make management decisions for multiple landholdings; a single farm management company operates multiple landholdings; or the farm manager or operator acknowledges that the small landholdings are being operated collectively as one farm. (See app. I.)

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We identified the following five indicators that demonstrate to us that, after the Boston Ranch was sold to the Westhaven Trust, the acreage has continued to be operated as one large farming operation.

- One of the stated purposes of the trust is to operate the entire acreage as one farm under a farm management agreement. Officials from the J. G. Boswell Company and the Westhaven Trust acknowledge that the Westhaven Trust land is generally operated as one farm.
- The 23,238 acres were purchased with one loan.
- The trustee makes management decisions for the entire acreage.
- The annual farming operation is financed with one operating loan.
- The beneficiaries have an undivided interest in the land.<sup>4</sup>

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## Conclusion

The Westhaven Trust is another example that clearly demonstrates the need to change the Reclamation Reform Act of 1982 if subsidized water is to be limited to no more than 960 acres of leased and/or owned land being operated as one farm or farming operation. The specific language to amend the act, which is included in our October 1989 report, would define a "farm" or "farming operation" to include a landholding or multiple landholdings farmed or operated as a unit by a trust or other arrangement. If amended, the act would prevent arrangements such as the Westhaven Trust from receiving subsidized water on land in excess of the 960-acre limit.

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## Scope and Methodology

We reviewed the associated Westhaven Trust documents and records of the Bureau's Mid-Pacific Region in Sacramento, California. We met with officials from the Bureau's Mid-Pacific Region, the Department of the Interior's Office of the Solicitor, the J. G. Boswell Company, and the Westhaven Trust. We also visited the Westhaven Trust land, accompanied by representatives of the J. G. Boswell Company and the Westhaven Trust.

Our work was conducted from February through May 1990 in accordance with generally accepted government auditing standards.

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<sup>4</sup>No individual beneficiary owns a specific parcel of land. Rather, each beneficiary is allocated a percentage of the total acreage of the trust. This percentage is based on each beneficiary's salary from the J. G. Boswell Company relative to the total salaries of all 326 beneficiaries.

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## Agency Comments

We discussed the information in this report with Bureau officials at the Mid-Pacific Region and representatives of the Westhaven Trust, who generally concurred with our information. They emphasized, however, that the trust's large farming operation is allowed under existing reclamation law. As requested, however, we did not obtain official agency comments on a draft of this report.

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As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Secretary of the Interior, the Commissioner of the Bureau of Reclamation, and other interested parties.

If you have any additional questions or if we can be of further assistance, please contact me at (202) 275-7756. Major contributors to this report are listed in appendix II.

Sincerely yours,



James Duffus III  
Director, Natural Resources  
Management Issues

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# List of Indicators That Could Be Used to Identify Multiple Landholdings That Are Parts of a Larger Farm

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- The individual landholdings or other farm assets are combined as collateral for loans.
- The principal owners or lessees of the individual landholdings agree to cover loan defaults of other principals.
- The farm manager or operator bears an economic risk associated with the production and sale of the crops.
- The same individuals make management decisions for multiple landholdings.
- The owners of the farm management company that operates the small landholdings are the same individuals who owned or leased the land before the reorganization occurred.
- The small landholdings are leased from the large farm that existed before the reorganization.
- The same individuals own or lease the small landholdings.
- A single farm management company operates multiple landholdings.
- Crop subsidy records indicate that the landholdings are interrelated.
- The small landholdings share equipment or labor, sometimes without charge.
- The farm manager or operator acknowledges that the small landholdings are being operated collectively as one farm.

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