



United States Department of the Interior



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Information Bulletin No. CA-2010-013

To: All CA District and Field Managers
From: Acting State Director
Subject: California Water Rights Fees and County Tax Assessments

Program Area: Soil, Water and Air and Lands and Realty

Purpose: This Information Bulletin (IB) serves as notification to BLM District and Field Managers to not pay water right fees or penalties pursuant to notices from the California State Water Resources Control Board (SWRCB) for annual reporting requirement for permitted and licensed water rights and/or County for tax assessment bills related to BLM administered lands.

Background: Virtually all field offices receive annual notices from the SWRCB and County Tax Assessors requiring payment of fees or assessments. District and Field Offices are not to pay any of these fees or assessments unless directed to do so by the State Director. These include notices of assessments from the County Tax Assessor that may be identified as fire protection, flood protection, mosquito abatement, school bonds, hospitals, etc.

It is the position of the Department of the Interior (DOI) agencies that the California's water rights fees and other tax assessments are a tax on the United States of America, in violation of the Supremacy and Plenary Power Clauses of the US Constitution. Furthermore, the California Statehood Act (9 Stat. 452), section 3 states that the state legislature "shall never impose any taxes or assessments" upon the public domain. This position of the DOI was transmitted to the SWRCB in a Solicitor letter dated April 28, 2005, and to the Meridian Fire Protection District and Sutter County Tax Collector on October 26, 2005 (both attached), and remains valid today. It is based on three legal arguments:

- 1) The Federal Government is immune from state taxation;
- 2) The SWRCB water rights fee is an impermissible tax on Interior agencies; and,
- 3) Even if the water rights fee is deemed a "reasonable" fee, rather than a tax, there is no clear and unambiguous waiver of federal sovereign immunity to subject and authorize the Interior agencies to pay the fee.

These three arguments also apply to tax assessments. In certain circumstances, payment of fees by the Federal government may be appropriate. The Supreme Court in *Massachusetts v United States*, 435 U.S. 444, 464-67 (1978), established a three-prong test for distinguishing a legitimate fee from an impermissible tax. The charge must:

- 1) Be imposed in a nondiscriminatory manner;
- 2) Represent a fair approximation of the benefit received by the payer; and,
- 3) Be structured to produce revenues that will not exceed the regulator's total cost of providing the benefits supplied.

According to the April 2005 Solicitor letter, the water rights fee does not meet these tests. The second Solicitor letter, dated October 26, 2005, addressing tax assessments for federally-held parcels by the US Fish and Wildlife Service, provides additional analysis and an example of when a fee might be appropriate for specific services. Also attached is a second Solicitor memorandum discussing when it may be appropriate to pay a fee. Water rights fees and tax assessments received by the BLM do not meet these three tests. If field offices receive a notice of fees that it believes is appropriate to pay under the above guidelines, no payment should be made without first obtaining additional guidance from the State Office.

Policy/Action: BLM policy in 7250 requires cooperation with State Governments, conformance to applicable State water rights laws, protection of existing water rights, and acquiring and/or perfecting water rights.

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Signed by:
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Acting State Director

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Records Management

3 Attachments

- 1 – Water Rights Fees, Senate Bill 1049 (8 pp)
- 2 – Tax Assessment and Notice of Lien (5 pp)
- 3 – Water System Fees (11 pp)