



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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November 25, 2002

In reply refer to:
1874 (N)
CA-944

EMS TRANSMISSION: 11/25/02
Instruction Memorandum No. CA-2003-010
Expires: 09/30/2004

To: All DSDs, CDD District Manager, All California Field Managers
From: State Director
Subject: Guidelines for Tracking Litigation Costs in BLM for FY 2003

Program Area: Tracking certain costs associated with administrative appeals, litigation, and compliance with court orders/settlements involving BLM and natural resource-related actions.

Purpose: The purpose of this Instruction Memorandum (IM) is to supplement the attached Washington Office (WO) direction provided in WO IM No. 2002-108, Change 2, dated November 6, 2002.

Policy/Actions: Beginning November 18, 2002, all California offices shall track BLM costs associated with natural resource-related actions in the following three categories: (1) administrative appeals external to the BLM, (2) judicial litigation, and (3) compliance with court orders or settlements resulting from either of the first two categories. Excluded from this requirement are costs associated with tort claims, human resources cases, EEO, and personnel claims.

Employees are responsible for tracking litigation costs in MIS consistent with guidelines contained in the attached WO IM to be included in the FY 2003 AWP directives. The appeal, litigation and compliance project codes (e.g., APPE, LITI, COMP) will have priority and be used instead of all other project codes unless other codes have been specifically established and agreed to by the California State Director and the Washington Office for purposes of tracking litigation costs. At this time, the only separate project code established for California is 064B to track costs of complying with the Center for Biological Diversity (CBD) settlement agreements.

Requests to establish a separate project code to track litigation costs shall be in writing and contain sufficient justification as to why a separate code is necessary. Such requests shall be sent to the State Budget Officer and will be carefully reviewed in consultation with the State Litigation Coordinator for a determination whether to forward the request to Headquarters for approval.

Timeframe: Implementation of the guidelines for tracking litigation costs in California shall begin November 18, 2002, and extend for the entire Fiscal Year 2003.

Contacts: Any policy questions concerning guidance pertaining to tracking of litigation costs in California can be directed to either Jim Abbott, Associate State Director (State Litigation Coordinator) at 916-978-4600, or Rob Nauert, State Budget Officer, at 916-978-4508

Signed by:
James Wesley Abbott
Associate State Director

Authenticated by:
Richard A. Erickson
Records Management

1 Attachment – WO IM 2002-108, Change 2 (7pp)

cc: ACOs
Regional/State Office Budget Coordinators

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

November 6, 2002

In Reply Refer to:
1874 (WO-880) N

EMS TRANSMISSION {11/08/2002}
Instruction Memorandum No. 2002-108, Change 2
Expires: 09/30/2003

To: ADs and AFOs
From: Director
Subject: Process for Tracking Litigation Costs in the Bureau of Land
Management (BLM)

Program Area: This Instruction Memorandum (IM) applies to administrative appeals and litigation involving BLM and actions to comply with court decisions. It does not apply to personnel cases, tort claims against the United States, or civil rights/Equal Employment Opportunity cases.

Purpose: This IM gives direction on the method that will be used to track appeal/litigation costs incurred by the BLM. It will be implemented November 18, 2002.

Policy/Actions: On November 18, 2002, the BLM will continue to track litigation costs in the Management Information System (MIS) by modifying the system that was begun in April 2002 as a pilot. This approach will enable the BLM to improve the accuracy of cost information, while waiting for the project coding "re-structuring" (to be implemented in 2004) and the Department wide crosscutting definitions to be developed (also to be implemented in 2004).

Beginning November 18, 2002, the BLM will track costs of processing and complying with natural resources-related administrative appeals and judicial litigations in three categories:

(1) administrative appeals external to the BLM, (2) judicial litigation, and (3) compliance to final court orders. The BLM will also:

- Keep exploring ways to use cost data to better manage appeals/litigations and keep trying to capture the impacts of appeals/litigations not effectively tracked through MIS.
- Design the "re-structured" project codes (which will be upgraded in 2004) to minimize the displacement of project codes by litigation codes.
- Continue improving the definitions of appeal/litigation/compliance activities.
- Reinforce, with employees and management, the importance of accurately recording costs related to litigation in the MIS.

- Re-evaluate the decision to not track human resources-related cases in the MIS.

See the attached "2003 Annual Work Plan Directives" for the specific procedures to track appeal, litigation, and court compliance costs. State Directors, Assistant Directors, and Center Directors are responsible for communicating this decision/process to employees, including conveying the importance of consistent and accurate reporting in the MIS. Note that the appeal/litigation-related project codes have priority and will be used instead of all other project codes unless prior arrangements have been made with WO-880.

Timeframe: Implementation of tracking the costs of appeals, litigation, and compliance using the appropriate project code will begin November 18, 2002.

Budget Impacts: After the process is developed and initiated, no additional Full-Time Equivalent/labor costs will be incurred.

Background: Increasing costs of appeals and litigations against the BLM warrants tracking the costs of appeals and litigations, including the cost of implementing court orders, in the MIS. By quantifying the costs associated with appeals and litigations, the BLM will be able to better analyze, articulate, and manage the impacts of litigation to the BLM's resource programs.

Manual/Handbook Section Affected: The Cost Coding Handbook will include the appeal/litigation codes and hierarchy of project codes.

Coordination: Executive Leadership Team and the Office of the Solicitor. Comments to this direction from the State Offices and others were incorporated as appropriate.

Contact: Laura Ceperley, WO-880, 202-452-5029.

Signed by:
James M. Hughes
Acting Director

Authenticated by:
Barbara J. Brown
Policy & Records Group, WO-560

1 Attachment

1 - Fiscal Year 2003 Annual Work Plan Directives on Tracking Litigation Costs (5pp)

Tracking Administrative Appeals/Judicial Litigation Costs

Fiscal Year 2003 Annual Work Plan Directives

Bureau Direction

1. During Fiscal Year (FY) 2003, the Bureau of Land Management (BLM) will continue to track litigation costs in the Management Information System (MIS) by modifying the system that was begun in April 2002 as a pilot. This approach will enable the BLM to improve the accuracy of cost information, while waiting for the project coding "re-structuring" (to be implemented in 2004) and the Department wide crosscutting definitions to be developed (also projected to be implemented in 2004). Beginning November 18, 2002, the BLM will track costs of natural resource-related administrative appeals and judicial litigation in three categories: (1) administrative appeals external to the BLM, (2) judicial litigation, and (3) compliance to both administrative and judicial court orders.

The BLM will also:

- Explore ways to use cost data to better manage appeals/litigations, and keep trying to capture the impacts of appeals/litigations not tracked through MIS.
- Design the "re-structured" project codes (to be upgraded in 2004) to minimize the displacement of project codes by litigation codes. Until then, employees can continue using critical project codes to also track appeals and litigations, as long as these project codes have been "registered" with the BLM Washington Office Budget Group (WO-880).
- Continue improving the definitions of appeal/litigation activities.
- Re-enforce with employees and management the importance of accurately recording costs related to litigation in the MIS.
- Re-evaluate the decision to not track human resources-related cases in the MIS.

Employees will track costs of processing and complying with natural resource administrative appeals and judicial litigations in MIS. **This does not include tort claims, human resources cases, Equal Employment Opportunity (EEO), and personnel claims. The appeal/litigation-related project codes have priority and will be used instead of all other project codes.** Appeals/litigations are defined as a set of dispute resolution processes that begin with filing of some formal document such as claims in Federal court, appealable orders, and notices of intent to sue, but not informal complaints/comments. It includes both formal and alternative dispute resolution, as long as the dispute began formally. It ends when there is a final unappealable decision or court-approved settlement. Unless prior arrangements have been made with WO-880, all appeal, litigation, and compliance costs should be charged to one of three project codes:

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- costs for *administrative appeals* will be charged to **APPE**. This “project” starts when a formal protest or appeal for administrative review has been filed with the appropriate office (removing BLM from having jurisdiction over the outcome of the dispute) and ends when a final unappealable administrative review opinion has been reached. It includes reviews by the Department of the Interior (DOI) offices, such as the Office of Hearings and Appeals (OHA), but does not include reviews internal to the BLM. It includes compiling all records relevant to the administrative review, as well as the work to reach a settlement. The costs of complying with a final decision/order are tracked in “compliance”;
 - costs for *judicial litigation* will continue to be charged to **LITI**. This “project” starts when a formal complaint has been filed with a Court or Notice of Intent has been filed with the BLM and ends with a final unappealable judicial opinion or the order has been obtained. It includes compiling all records relevant to the judicial review, as well as the work to reach a settlement. Attorney’s fees, if paid by the BLM, are to be charged to LITI. The costs of complying with the final court order, other than attorney’s fees, are tracked in “compliance”; and
 - costs for *complying with court orders/settlements* (from either administrative appeals or litigation) will be charged to **COMP**. This “project” is the activity of complying with a final administrative or judicial opinion/order, including formal settlements. It includes actions taken to follow a judge’s directive, including payments made **by the BLM** for lump-sum payments, contract claims, compensatory damages, and the first three years of new or reworked projects and planning efforts. Efforts beyond three years are considered beyond the effect of the decision and constitute long-term policy or procedural changes, and are not tracked as “compliance.” This “project” does NOT include lost revenues or the cost of long-term policy/procedural changes that result from the order or “nominal” compliance costs, such as granting the rights-of-way or proceeding with a timber sale. Attorney’s fees, if paid by the BLM, are to be charged to LITI.
4. The coding protocols requiring entries for subactivity, program element, and organization remain unchanged.
5. All appropriate costs should be charged to the Bureau wide project codes (either APPE, LITI, or COMP), unless other codes have been specifically agreed to by the State Budget Officer, and WO-880. Exception to using this Bureau wide code is intended to minimize the disruption of project codes that are being used to track other major BLM initiatives, including Resource Management Planning projects, Coalbed Methane activities, and Threatened and Endangered Species Management activities. This coding structure will allow systematic tracking until a more comprehensive tracking process is developed for FY 2004. State Budget Officers should contact **Laura Ceperley or Renee Floyd in WO-880** to discuss using project codes other than APPE, LITI, and COMP. As of August 12, 2002, the following codes are excepted:
- 064B - complying with the California Biodiversity Settlement;
 - IDLA - litigation regarding Coeur d'Alene Basin, Idaho;

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- 026E - litigation regarding coalbed methane lawsuits in Montana; and
- 060D - litigation regarding OUST in Idaho.

The Assistant Directors, State Directors, and Center Directors are responsible for determining the actual work, which will be charged to the appeal/litigation codes within the standard BLM definitions. Litigation Coordinators and Budget Officers are responsible for working together to clarify these definitions and the correct coding of appeals/litigations costs.

The Assistant Directors, Center Directors, and State Directors are responsible for communicating this process to employees, including conveying the importance of consistent and accurate reporting. They are encouraged to use a variety of opportunities to convey this message, including internal meetings, broadcasts, training sessions, and workshops, as appropriate. It is recognized that costs will only be consistent and accurate if employees are consistent and accurate in their coding. Therefore, it is critical that all definitions are clear and precise, and that employees involved in appeals/litigations understand the importance of this process.

As appropriate, this process will be adjusted over-time to improve its usefulness and accuracy, as well as fit within the DOI program of tracking appeal/litigation costs.

The WO-880 and the National Litigation Coordinator will monitor implementation of this Directive and periodically solicit feedback to improve the tracking of appeal/litigation costs. To assist, please keep track of suggestions regarding the following:

- the definition of costs to include and those NOT to include;
- project codes that are displaced by the litigation cost code and which are used to gather critical information for management;
- the design for a long-term tracking process; and
- communications with employees.

State Contacts and State Litigation Coordinators, as well as State Office Budget Officers, are responsible for clarifying direction, answering questions, and monitoring implementation of the process in their individual State. Costs should be consistent with the litigation events tracked on the national list. State Litigation Coordinators are:

AK	Ramona Chinn	907-271-3806
AZ	Ted Bingham	602-417-9301
CA	Jim Abbott	916-978-4600
CO	Barb Perkins	303-239-3668
ES	TBA	
MT	Pam Dandrea	406-896-5186
ID	Patricia Gentle	208-373-3833
NM	Gary Johnson	505-438-7595
NV	Jo Simpson	775-861-6586
OR	Lisa Blackburn	503-808-6276
UT	Ted Stephenson	801-539-4100
WY	Cheryl Flynn	307-775-6038

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11. National Contacts:

Frank Bruno, National Litigation Coordinator, 202-452-0352
Renee Floyd, 202-452- 5178 (to establish/substitute project codes)
Laura Ceperley, Program Analyst, 202-452-5029
Larry Benna, BLM Budget Officer, 202-452-7745

12. Examples of work associated with natural resource related appeals and litigation to be coded to the appeals/litigation project codes are:

- Charge to project code APPE: Preparing documents and records to respond to appeals external to the BLM, such as those to the OHA, which includes the Interior Board of Land Appeals;
- Charge to project code LITI: working with the DOI's solicitors and the Department of Justice attorneys to prepare legal documents and declarations, respond to discovery requests, and develop answers to complaints, and legal briefs, starting when a complaint has been filed with the court or a "notice of intent to sue" has been filed with the BLM;
- Charge to project code LITI: Preparing and giving testimony, including the time spent "on call" to testify, even if not called to testify;
- Charge to project code APPE or LITI: Working within the BLM to gather information, develop management responses to appeals and litigation, and prepare for and participate in settlement negotiations;
- Charge to project code COMP: Complying to final administrative and judicial court orders to take actions and rework processes/procedures and projects (includes preparing Environmental Impact Statements, Environmental Assessments, ESA consultation, permits, "on-the-ground" projects);
- Charge to project code APPE or LITI: Costs of compiling administrative records and other documents for appeals/litigation, including the cost of copying and mailing records;
- Charge to project code APPE or LITI: Costs associated with processing appeals/litigations involving programs related to carrying out the BLM's mission under many laws, including (but not limited to) National Environmental Policy Act, Federal Land Policy and Management Act, Endangered Species Act (ESA), the Freedom of Information Act (FOIA), Mining law of 1872, National Historic Preservation Act, Mineral Leasing Act, Clean Water Act, Administrative Procedures Act, and the Privacy Act;

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- Charge to project code LITI: The BLM costs associated in responding to litigation that involves other agencies, but is also critical to BLM's mission, such as ESA lawsuits involving the U.S. Fish and Wildlife Service or the National Marine Fisheries Service; and
- Charge to project code APPE, COMP or LITI: Appeal/litigation costs borne by the BLM for DOI solicitors, court reporters, BLM staff, including travel.

13. Examples of costs that are **NOT** appropriate to charge to project code APPE, LITI or COMP include:

- reworking projects not directly involved in appeals/litigations;
- costs of DOI's solicitors and DOJ attorneys not paid/reimbursed by the BLM;
- costs for contract claims not paid/reimbursed by the BLM;
- costs associated with tort claims;
- costs or declining receipts/collections due to deferring authorizations or projects because of appeals or litigations;
- project costs not associated with appeals/litigations, including FOIA requests;
- employee claims against the United States;
- civil rights (EEO) cases or other human resources-related administrative appeals or lawsuits;
- responding to informal complaints or formal comments to planning projects; and
- responding to appeals that are internal to the BLM, such as protests to Resource Management Plans.

14. An example of areas that States will need to clarify depending on the details of the case is accelerating a planning project (such as a resource management plan) as a result of a court-ordered decision date. States need to coordinate their approach with the Washington Office National Litigation Coordinator.