

Editor's note: See – Order clarifying the decision issued Feb. 28, 1980 – See 40 IBLA 261A through F below.

COUNTY OF IMPERIAL

IBLA 78-614

Decided April 16, 1979

Appeal from decision of the Bureau of Land Management excluding lands withdrawn for reclamation purposes from "entitlement lands" in the computation of payments in lieu of taxes under 31 U.S.C. § 1602 (1976).

Reversed.

1. Accounts: Generally--Accounts: Payments--Act of October 20, 1976

Land withdrawn for reclamation purposes in Imperial County, California, within the California Desert Conservation Area and administered by BLM under a memorandum of understanding with the Bureau of Reclamation should be regarded as "entitlement lands" in the computation of payments to be made to the County under the Act of Oct. 20, 1976, 31 U.S.C. § 1602 (1976).

APPEARANCES: James H. Harmon, Esq., County Counsel, County of Imperial, El Centro, California; William G. Kelly, Jr., Esq., Office of the Solicitor, United States Department of the Interior, Washington, D.C.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The County of Imperial, State of California, appeals from a decision of the Acting Associate Director, Bureau of Land Management (BLM), to exclude lands withdrawn for the Bureau of Reclamation (BuRec) in determining "entitlement lands" under the Payment in Lieu of Taxes Act (PILTA), 90 Stat. 2662, 31 U.S.C. § 1601 *et seq.* (1976), unless such lands are actually "dedicated to the use of water resource development projects." Section 6(a) of PILTA, 31 U.S.C. § 1606. As a consequence of the BLM decision, Imperial County did not receive payment for fiscal year 1977 for some 570,845 acres of BuRec withdrawals within the county.

For our purposes here, we find the pertinent definitions in section 6(a), 31 U.S.C. § 1606:

(a) "[E]ntitlement lands" means lands owned by the United States that are --

* * * * *

(2) Administered by the Secretary of the Interior through the Bureau of Land Management;
[or]

(3) Dedicated to the use of water resource development projects of the United States.

No further definition of water resource development projects appears in the Act.

On appeal, the county contends that it is entitled to payments in lieu of taxes for all withdrawn lands located within its boundaries. Two distinct reasons are offered for this position:

1. BuRec withdrawals are lands dedicated to "water resource development projects," because the withdrawals were made by the Secretary of the Interior for irrigation purposes generally.
2. BuRec withdrawals in Imperial County are actually administered by BLM and hence qualify as "entitlement lands" under section 6(a)(2) of the Act.

The Government answers by categorically denying that the BuRec withdrawals in Imperial County are either "dedicated to the use of water resource development projects of the United States," or are "administered by the Secretary of the Interior through BLM."

Oral argument, granted by the Board, was heard February 6, 1979, with James H. Harmon, Esq., County Counsel of Imperial County, appearing on behalf of the County, and William G. Kelly, Jr., Esq., appearing on behalf of BLM.

County Counsel stated that BLM and BuRec withdrawn lands account for 1.2 million acres of Imperial County, and the general character of these lands is substantially similar such that nothing readily distinguishes the BuRec withdrawals from the ordinary BLM lands. According to counsel, the county furnishes substantial services to the entire 1.2 million acres by providing police protection, search and rescue missions, emergency medical care, and litter control. The county contends that all BuRec withdrawn lands are dedicated to water resource development projects of the United States, because the lands, in part, were withdrawn in connection with the Boulder Canyon Project as lands practicable of irrigation. The only reason known to

the county for the failure to irrigate them is lack of water under the Colorado River Compact. The county further points out that in the early stages of the legislative process, the Department of the Interior indicated that Imperial County would receive some \$908,000 as payment in lieu of taxes, a figure representing PILTA payments for the entire 1.2 million acres of BLM and BuRec withdrawn lands within the County.

County Counsel further argued that if the BuRec withdrawn lands were not considered to be dedicated to water resource development projects, the lands would surely come within the purview of "lands administered by the Secretary of the Interior through BLM." To buttress this argument, counsel adverted to a Memorandum of Understanding between BLM and BuRec, under which BLM has full management responsibility of BuRec withdrawn lands for range management, off-road vehicle regulation, and issuance of rights-of-way, oil and gas leases, geothermal resource leases, and other mineral leases and permits. Counsel also cited an instance in which the county notified BuRec of alleged violations of county ordinances relating to litter only to be told by BuRec that the lands in question were administered by BLM. Mention was also made of recent BLM action to close certain of the BuRec withdrawn lands to off-road vehicular use wherein this Board recognized the jurisdiction of BLM over such BuRec withdrawn lands. See California Four-Wheel Drive Clubs, 38 IBLA 361 (1978).

In reply, BLM asserted that none of the BuRec withdrawn lands in Imperial County are dedicated to water resource development projects, but are merely withdrawn pending future development. According to BLM, only lands underlying reservoirs are so dedicated, as reflected in PILTA's legislative history. BLM conceded that there is ambiguity in the legislative history, especially in the statistical figures relating to "entitlement lands" as set out in the Senate Report accompanying the Act and agreed that the county probably had to provide similar services to both BLM and BuRec lands. Counsel suggested that if it be determined that the BuRec lands are "entitlement lands," it will be necessary to ascertain if any of the withdrawn lands contain drainage or irrigation ditches, pipelines, or transmission lines, specifically excluded from "entitlement lands" by the legislative history. Counsel admitted that all the figures used by the Department in forecasting probable payments to the counties under PILTA included BuRec withdrawals as "entitlement lands."

On rebuttal, the county reiterated that the Secretary of the Interior was under mandate to restore BuRec withdrawals found to be inadvisable or impractical to irrigate, and hence Imperial County lands withdrawn for BuRec and as yet unrestored must be considered part of a water resource development project. Counsel stressed various figures in the legislative history of PILTA showing in each case that the BuRec withdrawals were included in the totals and types of land for which entitlement was intended.

Counsel for BLM agreed with the county that the cooperative agreement between BLM and BuRec in Imperial County delegated most of the administrative responsibility on the BuRec withdrawn lands to BLM, but maintained that this situation was probably unique in the whole of the United States.

The Public Land Law Review Commission (PLLRC), established pursuant to the Act of September 19, 1964, 78 Stat. 982, conducted a very comprehensive review of the policies applicable to the use, management, and disposition of the Federal lands. In its final report to the President and the Congress on June 20, 1970, entitled "One Third of the Nation's Land," the Commission made more than one hundred major recommendations and several hundred minor recommendations designed to improve the Federal custodianship of the public lands. After a definitive discussion of the impact of tax immunity of the Federal lands on local governmental units, the Commission recommended:

Payments to Compensate for Tax Immunity

Recommendation 101: If the national interest dictates that lands should be retained in Federal ownership, it is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located.

Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands.

The Congress in enacting PILTA sought to translate the basic principle of the PLLRC recommendation into law. The purpose of PILTA is to recognize the burden imposed by tax immunity of the Federal lands and compensate the local governments within whose boundaries the Federal lands are situated by providing minimum Federal payments. The amount of payment for any fiscal year to a unit of local government is determined by a formula set out in PILTA granting a maximum payment of one million dollars to any one political unit in any one year. In addition, a PILTA payment will be reduced by the amount of payments credited to the local governmental unit under other provisions of law, such as the Mineral Leasing Act, the Taylor Grazing Act, the Federal Power Act, and the Bankhead Jones Farm Tenant Act.

The legislative history of PILTA expressed in the Senate Report (Interior and Insular Affairs Committee), No. 94-1262, September 20, 1976, seems to clearly indicate that the Congress included areas utilized as reservoirs as part of water resource projects for determining entitlement payments. (Rpt. p. 13.) No specific mention was made of BuRec withdrawals except on page 21 of the Report where the total

acreage of entitlement lands, consisting of parks and monuments, national forests, BLM, BuRec, and Corps of Engineers lands, is shown to be 374,271,726 acres. Therein, the BuRec total is given as 7,532,714 acres, a figure identical to the total area of all BuRec withdrawals as reported in Public Land Statistics of 1975. Both the Report and the Public Land Statistics used acreage figures as of June 30, 1974. The obvious conclusion, if not the only one, is that the Congress included all BuRec withdrawals as "entitlement lands" under the umbrella of "water resource development projects."

It is interesting to note that section 601 of the Federal Land Policy and Management Act of October 21, 1976, (FLPMA), 43 U.S.C. § 1701 (1976) et seq., establishes the "California Desert Conservation Area" within which lie all the BuRec lands in Imperial County. In the administration of this program, as reported in the Interior Department Conservation Yearbook for 1978-1979, BLM is faced with challenges it has never before had. The report is replete with references to BLM management activities in the California desert, but no mention is made of any BuRec participation in the management of its withdrawn lands in this area. It seems to be tacitly admitted that BLM is the Interior agency exercising jurisdiction over the BuRec withdrawn lands in Imperial County.

[1] We find the BuRec lands in Imperial County are administered by the Secretary of the Interior through BLM, as contemplated in PILTA, either de facto following the memorandum of understanding between BLM and BuRec, or de jure under the provisions of FLPMA, sec. 601, and therefore hold that it was error for BLM to exclude the BuRec withdrawn lands from its computations of entitlement lands in Imperial County.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM decision is set aside, and the case remanded to BLM for further appropriate action consistent with the views set out in this opinion.

Douglas E. Henriques
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Newton Frishberg
Chief Administrative Judge

February 28, 1980

IBLA 78-614 : Payment in Lieu of Taxes Act
: :
COUNTY OF IMPERIAL : Clarification of Decision
: :
: 40 IBLA 257

ORDER

On April 16, 1979, this Board issued a decision entitled County of Imperial, 40 IBLA 257 (1979), reversing a decision of the Bureau of Land Management (BLM), dated July 3, 1978. The BLM decision excluded lands withdrawn for reclamation purposes in Imperial County (County) from those lands designated "entitlement lands" under the Payment in Lieu of Taxes Act (PILTA), 31 U.S.C. §§ 1601-1607 (1976). The effect of BLM's decision was to deny to Imperial County certain payments authorized by the Act to relieve local governments of the fiscal burden created by the presence of nontaxable Federal lands within their jurisdictions.

Under section 1606(a) of the Act, "entitlement lands" are defined to include those lands owned by the United States that are "(2) administered by the Secretary of the Interior through the Bureau of Land Management [or] (3) dedicated to the use of water resource development projects of the United States."

Our decision of April 16, 1979, held that those lands withdrawn for the Bureau of Reclamation (BuRec) ^{1/} in Imperial County are administered by the Secretary of the Interior through the Bureau of Land Management. 40 IBLA at 261. The basis for this conclusion was our finding that the lands are administered by BLM either de facto pursuant to a memorandum of understanding between BLM and BuRec, or de jure according to section 601 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1781 (1976). This conclusion was reached after study of the legislation and the information conveyed to the Board in briefs of counsel for BLM and Imperial County.

Following our decision, BLM submitted a petition for clarification of opinion, pointing out that our decision had also included a

^{1/} The official name of this agency was changed to Water and Power Resources Service by Secretarial order dated November 6, 1979.

statement that "Congress included all BuRec withdrawals as 'entitlement lands' under the umbrella of 'water resource development projects.'" *Id.* at 261. This latter statement caused some confusion to BLM, because BLM now points out that certain lands containing authorized or constructed reclamation projects were not to be administered by BLM under the memorandum of understanding. After further consideration of the legislative history of the Act and of the numerous pleadings filed after our decision, we reaffirm our basic holding that lands within all reclamation withdrawals are intended by the Congress to be "entitlement lands" under PILTA, as hereafter discussed.

[1] The purpose of the memorandum of understanding referred to above, entitled Memorandum of Agreement between the Bureau of Reclamation and the Bureau of Land Management, is to set forth the principles and procedures for coordination of BuRec and BLM programs. Section 5 of the memorandum states that "Reclamation will retain full responsibility for management of Reclamation land authorized or constructed Reclamation projects, and Land Management will retain full responsibility for management of other Reclamation lands * * *."

BLM correctly calls to our attention this gap in BLM's administrative authority on Reclamation lands containing authorized or constructed Reclamation projects. While these lands do not qualify for PILTA payments under 31 U.S.C. § 1606(a)(2), as lands administered by the Secretary of the Interior through the Bureau of Land Management, § 1606(a)(3) as lands dedicated to the use of water resource development projects of the United States.

It is noteworthy that on a map of California published by BLM in 1978, all of the lands at issue in Imperial County are designated as public lands under the administration of BLM. Indeed, no lands in California are shown on the map as being under the administration of the Bureau of Reclamation.

In calculating payments to be made to Imperial County under section 1606(a)(3), lands devoted to drainage or irrigation ditches, pipelines and transmission lines are not to be considered entitlement lands within the meaning of the Act. S. Rep. No. 94-1262, 94th Cong., 2nd Sess. 21, reprinted in [1976] U.S. Code Cong. & Ad. News 5968, 5984.

[2] Counsel for BLM cites Part 613 of the Department Manual wherein BLM is assigned full responsibility for implementing the Lower Colorado River Land Use Plan. The lands subject to this plan are those "bordering on the Lower Colorado River from Davis Dam to the International Boundary, which have been acquired or withdrawn for reclamation purposes under reclamation law * * * or otherwise fall within the area encompassed by the Plan." 613 DM 1.1. BLM's responsibility specifically extends, inter alia, to administration of Reclamation lands used or to be used for recreation and wildlife

activities. 613 DM 1.2. Counsel sets forth two exceptions to BLM's administrative authority on such lands: Reclamation withdrawals used for refuges administered by the Fish and Wildlife Service, and Reclamation withdrawals used for project operation, protection, and security zones around dams and Reclamation construction areas.

Counsel for Imperial County points out that certain lands in the BLM Yuma District adjacent to the Lower Colorado River have been withdrawn for national wildlife refuge purposes. As an example, counsel cites the Imperial National Wildlife Refuge established by Exec. Order No. 8685 in 1941. To the extent that lands subject to the Lower Colorado River Land Use Plan are not administered by the Secretary of the Interior through BLM, are not dedicated to the use of water resource development projects in Reclamation withdrawals, or do not otherwise qualify under section 1606(a) as entitlement lands, no PILTA payments are properly paid to the County, but the County may be entitled to payment in accordance with the Act of August 30, 1964, 16 U.S.C. § 715a (1976), as to lands in the National Wildlife Refuge System.

With respect to project operation, protection, and security zones around dams and Reclamation construction areas administered by BuRec, BLM's administrative authority is confined to recreational and other land uses covered by 613 DM 1.1. Hence, BLM and BuRec share administration of certain areas in the Lower Colorado River Land Use Plan.

The legislative history of PILTA is helpful to us in determining whether BLM's participation in the administration of such lands is sufficient to qualify such lands as entitlement lands within the meaning of the Act. PILTA is a response to a recommendation of the Public Land Law Review Commission (PLLRC) to reverse the historic policy of disposal of Federal lands in favor of a policy retaining such lands. As a corollary to this recommendation, PLLRC also recommended that, if the policy of disposal were reversed,

[I]t is the obligation of the United States to make certain that the burden of that policy is spread among all the people of the United States and is not borne only by those states and governments in whose area the lands are located. Therefore, the Federal Government should make payments to compensate state and local governments for the tax immunity of Federal lands.

S. Rep. No. 94-1262, supra at 6. The term "compensation" is an appropriate one, because local governments are called upon to provide many services to the Federal lands or as a direct or indirect result of activities on these lands. Such services include law enforcement, search, rescue and emergency, public health, sewage disposal, library, recreation, and other general local services. Id. at 9.

The obligation of Imperial County to provide these services is not diminished by the fact that BLM's administrative responsibility for these lands is shared with BuRec. Accordingly, lands used for project operation, protection, and security zones around dams and Reclamation construction areas, whose administration is shared by BLM and BuRec, are entitlement lands under section 1606(a)(2).

[3] The County calls to our attention various leases entered by BuRec with the Department of the Navy and the Department of the Air Force for the nonexclusive use of BuRec lands in Imperial County. One such lease with Navy permits Navy to use some 52,000 acres of land for a recovery parachute test range. BuRec retains rights of ingress and egress under this lease and also the right to operate and maintain equipment for geothermal and ground water studies. The lease further contemplates BLM's need for the subject land for recreational purposes. Counsel for BLM refers us to various statements in the legislative history of PILTA, as for example, in S. Rep. No. 94-1262, supra at 14, n.15, where holdings of the Department of Defense totaling 22,934,584 acres are specifically excluded from the terms of H.R. 9719, a predecessor bill to the one which ultimately became PILTA.

We find that the limited nature of the leases presented by counsel does not significantly diminish the administration by BLM of such lands. Furthermore, there is no evidence before us that the County's services to such lands are diminished by the military presence on those lands. We therefore hold that BuRec lands subject to such leases with the Department of the Navy and with the Department of the Air Force do not lose their status as "entitlement lands" under section 1606(a)(2) by the presence of such outstanding leases on these lands.

BLM should follow the precepts set forth herein in its computation of the PILTA payments due Imperial County.

Douglas E. Henriques
Administrative Judge

I concur.

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON DISSENTING ON PROCEDURAL GROUNDS:

In the present posture of this case my only disagreement with the majority is with its ruling in substance on the motion for clarification of the Board's decision at this time. As discussed, infra, I would not do so.

Our initial consideration of this case was postulated upon an assumption of basic facts concerning the status of lands within Imperial County as presented by the parties at that time. The only factual dispute concerning land status appeared to be what lands might be within the categories of drainage or irrigation ditches, pipelines, and transmission lines.

In requesting clarification of our decision on the proper interpretation of the Payment in Lieu of Taxes Act (PILTA), 90 Stat. 2662, 31 U.S.C. § 1601 (1976), however, counsel for the Bureau of Land Management (BLM) has interjected new allegations of fact concerning the status of lands within Imperial County. In its "Supplement to Petition for Clarification of Opinion," he gives illustrations of types of lands which might not fall within the ambit of lands administered by BLM or lands within water projects. These include, for example, lands within wildlife refuges and lands leased to the military. As to the latter category, the County has contended that lands within Reclamation withdrawals which have been leased to the military are not under military jurisdiction and remain entitlement lands. It has submitted a copy of a lease and maps to support its contention. On page 2 of its "Reply Memorandum," counsel for BLM reacts to this attempt by the County to establish facts by saying:

It also seems necessary to note that the County's attempts to argue the facts concerning status of certain areas by relying on "evidence" such as lease documents and BLM maps are inappropriate at this time. Hearings on issues of facts are heard by administrative law judges under certain conditions. See 43 CFR 4.415. Such a hearing has not been requested or held. The present appeal involves only broad questions of law, and any factual disputes would properly arise only following remand action by BLM.

Therefore, we do not now concede the authenticity, accuracy, or relevance of any documents referred to by the County. * * * We are in agreement with County Counsel that there are only questions of law at this time.

In effect, what counsel for BLM seems to be asking is for this Board to reconsider the legislative history of PILTA in view of the impact caused by varying factors affecting the status of lands in different categories in Imperial County without first knowing what the true facts are concerning the status of the lands. The parties have

agreed there are ambiguities in the legislative history concerning Congressional intent in determining what lands should be entitlement lands. The status of lands was an important part of that history and of our prior determination.

In these circumstances where the request is based upon the impact of our interpretation, I do not believe this Board should be faced with a request for clarification or grant such a clarification without our first knowing what the alleged impacts are.

With regard to counsel for BLM's reference to hearings before Administrative Law Judges, such hearings are ordered only if there are factual disputes which arise because matters are not of public record and cannot be given official notice. With a possible exception of the area of lands covered by ditches, pipelines, and transmission lines, it is difficult to perceive what facts can be disputed since all matters affecting the land status should be of public record. Thus, it would seem that BLM and the County should be able to get together and enter into a stipulated agreement concerning all matters of public record affecting the status of the lands in controversy. This would include copies of all leases, contracts, or other agreements with the military.

The effect of such documents, orders, withdrawals, etc., pertaining to the land would, of course, raise legal issues rather than factual issues.

Accordingly, I would order one of the two following alternatives: (1) deny the request for clarification at this time without prejudice to the parties readdressing the issues after BLM makes a determination on all the facts affecting the land status and then renews its motion for clarification or reconsideration of our decision based on its factual findings and its position on exactly which lands are or are not entitlement lands within the county; or (2) suspend consideration of the request until the parties submit to this Board a stipulated agreement on all matters affecting the status of whether lands within the County are entitlement lands or not, or, if there are matters of fact in dispute, entertain any motion by the parties for a factfinding hearing before an Administrative Law Judge. ^{1/} Either of these approaches would enable this Board to make our legal opinion

^{1/} Hearings under 43 CFR 4.415 before Administrative Law Judges are ordered by this Board at the request of a party or sua sponte if there appears to be a factual dispute. Because I believe the parties should be able to stipulate as to the essential facts I would not order a hearing at this time sua sponte.

based upon a clear and correct factual premise, rather than making an advisory opinion upon matters which have now been somewhat clouded by obscure and differing factual allegations and assumptions.

Joan B. Thompson
Administrative Judge

40 IBLA 261F

