



OFFICE OF THE ATTORNEY GENERAL
State of California

EVELLE J. YOUNGER
Attorney General

OPINION
of
EVELLE J. YOUNGER
Attorney General
EDWARD P. HOLLINGSHEAD
Deputy Attorney General

No. CV 73/299
July 30, 1974

HONORABLE DANIEL V. BLACKSTOCK, COUNTY COUNSEL
OF BUTTE COUNTY, has requested an opinion on the follow-
ing questions:

1. Are maintenance areas established by the
State Reclamation Board or the Department of Water
Resources pursuant to Water Code section 12878, et seq.,
"special districts" subject to the tax rate limitations
set out in Revenue and Taxation Code section 2201, et
seq., enacted by Statutes 1973, chapter 358 (AB 2008)?

2. Assuming the answer to No. 1 is yes, in
that there are federally imposed standards on levee and
channel maintenance, does the regular maintenance work
thereby fall within the purview of Revenue and Taxation
Code section 2271 as "costs mandated by the federal
government"?

The conclusions are:

1. Maintenance areas established by the State
Reclamation Board or the Department of Water Resources
pursuant to section 12878, et seq., of the Water Code
are "special districts" within the meaning of section
2215 of the Revenue and Taxation Code and, accordingly,
are subject to the provisions of Revenue and Taxation
Code section 2201, et seq., enacted by Statutes 1973,
chapter 358.

2. Maintenance areas formed under said section of the Water Code are subject to the maximum tax rate limitations imposed by sections 2263 and 2266 of the Revenue and Taxation Code. To the extent there are increased costs of maintenance after January 1, 1973, which are required to be met by such maintenance areas in order to comply with the requirements of a federal statute or regulation, those increased costs are "costs mandated by the federal government" as defined by section 2206, Revenue and Taxation Code, which fall within the purview of section 2271, Revenue and Taxation Code, under which an additional tax rate is required to be levied in order to meet such increased costs.

ANALYSIS

I

Maintenance areas for levee and channel maintenance are established under section 12878, et seq., Water Code. They will hereafter be referred to as "maintenance areas." "Maintenance" is defined in section 12878, subdivision (f), as "work described as maintenance by the federal regulations issued by the Secretary of the Army or the Secretary of Agriculture for any project." "Maintenance area," under subdivision (g), "means described or delineated lands which are found by the board or department to be benefited by the maintenance and operation of a particular unit of a project." "Board" means the State Reclamation Board and "Department" means the Department of Water Resources of the State of California. § 12878, subds. (a) and (c), Water Code. "Project" is defined in subdivision (e) as a project commenced under chapters 2 and 4, part 6, division 6 of the Water Code "and concerning which assurances have been given to the Secretary of the Army or the Secretary of Agriculture that the state or a political subdivision thereof will operate and maintain the project works in accordance with regulations prescribed by the federal government or any project upon which assurances have been given to the Secretary of the Army and upon work which the Corps of Engineers, United States Army, has performed work pursuant to section 208 of Public Law 780, 83rd Congress, 2nd Session, approved September 3, 1954." 68 Stat. 1266; 33 U.S.C. § 701g.

Maintenance areas were formed in Butte County to maintain projects authorized as part of the Sacramento River Major and Minor Tributaries Project, California, also referred to as the Sacramento River Flood Control Project, by an Act of Congress known as the Flood Control Act of December 22, 1944 (Public Law No. 534, Seventy-Eighth Congress, Second Session, H. R. 4485, 58 Stat. 887, 33 U.S.C. § 701, et seq.; see particularly § 703). This act authorized the projects constructed in the Sacramento-San Joaquin River Basin on Butte Creek, Chico Creek, Little Chico Creek, Sandy Gulch Creek, Mud Creek, Feather River, and Cherokee Canal consisting of levee construction and enlargements, with other related improvements, which were paid for by federal appropriations. 58 Stat. at pp. 900-901. These projects were in furtherance of and modified prior federal flood control acts cited in the 1944 Act, particularly the act of June 22, 1936, 49 Stat. 1570, which is known as the 1936 Act. See 33 U.S.C. §§ 701a, 701b, and 701c. Section 3 of the 1944 Act incorporates the state and local cooperation requirements of section 3 of the 1936 Act, whereunder the federal government specified that construction would be paid for by the federal government, with the requirement that the state and local agencies (a) provide without cost to the United States all lands, easements and rights of way, (b) hold and save the United States free from damages due to the construction works, and (c) maintain and operate the works after completion in accordance with regulations prescribed by the Secretary of the Army. 33 U.S.C. 701c. The state, pursuant to The State Water Resources Law of 1945 (Stats. 1945, ch. 1514; codified in 1953 as Water Code, § 12571, et seq.), committed itself to a policy limiting the amount of financial assistance to be given by the state to the cost of land, easements and rights of way necessary for the construction of any such projects. § 12583, Water Code. The 1945 Act was specifically designed to pay for the cost of cooperation on all flood control projects as required by the Act of Congress approved December 22, 1944, *supra*. § 12584, Water Code. In section 12642 of the Water Code it is further provided:

"In all cases where the Federal Government does not maintain and operate projects, it is the responsibility and duty of the county, city, state agency, or public district affected to maintain and operate flood control and other works,

constructed pursuant to Chapters 1 and 2 of this part, after their completion and hold and save the State and the United States free from damages." 1/

The State Reclamation Board and the Department of Water Resources are authorized to give and have given assurances to the federal government that project levees will be maintained and operated in accordance with federal regulations. §§ 8617, 12641, Water Code; see also 9 Ops.Cal.Atty.Gen. 87 (1947). By an agreement dated January 1, 1949, the County of Butte, in order to obtain the projects, assumed this obligation with respect to the flood control projects for levee work and channel improvement on Chico, Mud, Sandy Gulch, Butte, and Little Chico Creeks, and Cherokee Canal, in Butte County.

Maintenance areas formed under section 12878, Water Code, are areas used to designate lands benefited by the continued operation of designated facilities. § 12878, subds. (e), (f), and (g). The land within the maintenance area is "conclusively presumed to be benefited by the continued operation and maintenance" of the project facilities. § 12878.25, Water Code. The Department of Water Resources annually prepares cost estimates for the operation of each unit. § 12878.27, Water Code. A series of public hearings are held either by the Reclamation Board, where the Sacramento and San Joaquin River systems are involved, or by the Department in all other instances to determine whether the cost estimates are legitimate. §§ 12878.25-21878.39, Water Code. Once the Board or Department determines that the cost estimates are legitimate, those costs are certified by the Department to the auditor and board of supervisors of each county "in which each maintenance area, or part thereof lies." § 12878.34, Water Code. The board of supervisors in turn levies on the land within each area or each zone of a divided area; "an ad valorem assessment sufficient to raise" the certified amount. § 12878.35, Water Code. The board of supervisors also determines a rate of assessment "sufficient to cover the amount of the estimate." § 12878.37, Water Code.

1. This section was formerly section 22 of the Statutes 1945, chapter 1514. It was codified by Statutes 1953, chapter 196, page 1222.

The Water Code requires that prior to the formation of a maintenance area that there be either a finding that the preexisting "governing body" has failed adequately to perform the responsibilities assumed under federal regulations or, alternatively, that the "governing body" wishes to relieve itself of responsibility for the operation and maintenance of the project facilities. § 12878.1, Water Code.

In the instant matter, the Butte County Board of Supervisors originally accepted the obligation to maintain the federally constructed project levees along both banks of Butte Creek in Butte County, including channel maintenance of a 4.8-mile segment of the project. On August 24, 1953, the Butte County Board of Supervisors passed a resolution requesting that Butte County be relieved of all obligations to maintain the project works and that a maintenance area be established for the operation of the units which were included in what was to become Maintenance Area No. 5. The Reclamation Board on October 7, 1953, approved the formation of a maintenance area covering the maintenance of the completed works along Butte Creek. The board of supervisors on January 4, 1954, opened negotiations to rescind the August 24, 1953, resolution. On March 8, 1954, the board of supervisors reaffirmed the original resolution requesting the formation of a maintenance area. Maintenance Area No. 5 was thereafter created by the Reclamation Board, by resolution adopted July 21, 1954, recorded July 30, 1954, in Book 729, page 134, Official Records of Butte County.

The maintenance on the westerly levee of the Feather River from Cox Ranch, mile 47.3 to a point opposite Rio Bonito Station, mile 57.3, was originally under jurisdiction of the Corps of Engineers. The Corps transferred jurisdiction to the Reclamation Board which accepted it on June 15, 1955. The Board at the same meeting transferred those portions of the levee system located in Butte County to the county for operation and maintenance. The Butte County Board of Supervisors, in a resolution dated August 15, 1955, requested that the Reclamation Board create a maintenance area. The Reclamation Board responded by creating Maintenance Area No. 7, in a resolution dated September 5, 1956.

Maintenance Area No. 13 was similarly created at the request of the Butte County Board of Supervisors. It covers the project work on the Cherokee Canal in Butte County. The request was contained in a resolution

dated December 15, 1958. The Reclamation Board created the maintenance area by a resolution adopted February 16, 1961.

Each maintenance district is a "district within which assessments are collected according to the value of the land." § 12878.26, Water Code. "Land" in this case includes improvements. § 12878, subd. (i), Water Code. Beginning with section 12878.25, Water Code, the Legislature has set out a scheme whereby land within each maintenance area is conclusively presumed to be benefited in accordance with its assessed valuation and annual ad valorem assessments thereon are made and the taxes levied by the board of supervisors of the county at the same time of levying county taxes in an amount sufficient to raise the amount or amounts certified by the Department of Water Resources. See in particular § 12878.35, Water Code. Amounts so levied are to be collected at the same time and in the same manner as county taxes. § 12878.38, Water Code. Under section 2202, Revenue and Taxation Code, enacted by Statutes 1973, chapter 358, "ad valorem taxation" means any source of revenue derived from applying a property tax rate to the assessed value of property. Section 2213, Revenue and Taxation Code, defines "property tax rate" as any rate of assessment which is levied per unit of assessed value of property, as well as any rate or assessment which is levied on the value of land and improvements.

Section 2215 of the Revenue and Taxation Code provides as follows:

"Special district" means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. 'Special district' includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area, formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area. 'Special district' does not include a city, a county, a school district or a community college district.
(Emphasis added.)

This section has been construed in a prior opinion of this office (57 Ops.Cal.Atty.Gen. 1 (1974)) as including a maintenance district formed by a city under section 5820, et seq., Streets and Highways Code. The broad definition in section 2215 was held to cover such maintenance districts even though, like county service areas, they have no separate governing body or officers but are in fact administrative units of the political subdivisions which form them. Because the maximum tax rates for special districts are separately provided for under the statute, each district or area is to be treated separately. 57 Ops.Cal.Atty.Gen. at pp. 3-4.

It thus appears that maintenance areas are "special districts" as that term is defined by section 2215, Revenue and Taxation Code. Not only are they an agency of the state for the local performance of governmental functions within limited boundaries, but they also are a maintenance area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area.

As already indicated, the board of supervisors of the county within which a maintenance area or part of a maintenance area is located has the two-fold function of determining the tax rate to be applied and the levying of taxes sufficient to meet the estimate of the Department. The Department of Water Resources, in contrast, operates and maintains the various maintenance areas on a daily basis. § 12878.21, Water Code. As indicated in 57 Ops.Cal.Atty.Gen. 1, supra, the fact that a maintenance area does not have a separate governing body or officers would not prevent it from falling within the definition of "special district." We conclude that a maintenance area formed under sections 12878, et seq., Water Code, is a "special district" within the meaning of section 2215, Revenue and Taxation Code, subject to the provisions of section 2201, et seq., Revenue and Taxation Code, as enacted by Statutes 1973, chapter 358 (AB 2008).

II

Section 2201, et seq., Revenue and Taxation Code, as enacted by Statutes 1973, chapter 358 (AB 2008), is a reenactment of the tax rate limitations originally enacted by Statutes 1972, chapter 1406 (Senate Bill 90).

In enacting AB 2008, the Legislature rearranged the tax rate limitation provisions and defined several of the terms that are applicable to the questions here presented.

The maximum rate limitation applicable to special districts is found in section 2263 of the Revenue and Taxation Code, which in pertinent part provides:

"The maximum property tax rate which may be levied by, or on behalf of, a special district shall be:

"(1) The maximum property tax rate authorized by the enabling statute under which the district is organized; provided that any rate in excess of such maximum rate which is authorized by Section 35 of Chapter 1 of the Statutes of 1968 (First Extraordinary Session) and which was levied during either the 1971-1972 or the 1972-1973 fiscal year may continue to be levied.

"(2) If no such maximum property tax rate is provided by statute, or if a maximum property tax rate is provided but such rate is applicable only to a portion of the purposes for which such district is levying an ad valorem property tax, the maximum rate shall be the rate levied by, or on behalf of, the district for either the 1971-1972 or the 1972-1973 fiscal year, at the option of the governing body of the district. If a district operates on a calendar year, the maximum rate which may be levied pursuant to this subdivision shall be that levied in either calendar 1972 or calendar 1973, at the option of the governing body of the district.

"(3) In addition, if the voters of a district, pursuant to provisions of the enabling statute under which the district is organized, have authorized an additional rate, such augmented rate shall be the maximum property tax rate."

Special districts are also permitted an alternate procedure to determine the maximum tax rate by section 2266, Revenue and Taxation Code, which allows for changes in the cost of living and population. See

57 Ops.Cal.Atty.Gen. 1 (1974), supra, regarding the operation of that section.

Special districts which are subject to federal regulation may levy an additional tax rate pursuant to section 2271 of the Revenue and Taxation Code, which provides in pertinent part:

"A local agency may levy, or have levied on its behalf, a rate in addition to the maximum property tax rate established pursuant to this chapter (commencing with Section 2201) to pay costs mandated by the federal government or costs mandated by the courts which are not funded by federal or state government."

Section 2211 provides that "'Local agency' means any city, county or special district."

Section 2206 defines "costs mandated by the federal government" as follows:

"'Costs mandated by the federal government' means any increased costs mandated upon a local agency after January 1, 1973, in order to comply with requirements of federal statute or regulation. 'Costs mandated by the federal government' does not include costs which are specifically reimbursed or funded by the federal or state government."

Unlike "state-mandated programs" (§ 2231, Revenue and Taxation Code), section 2206 does not require that the federal statute or regulation in question be enacted or issued after January 1, 1973. A direct comparison between section 2206 and section 2231 reveals that "any increased costs" which are mandated upon a local agency after January 1, 1973, in order to comply with requirements of a federal statute or regulation are "costs mandated by the federal government," whereas only those costs which are mandated by acts enacted after January 1, 1973, or by regulations issued after January 1, 1973, are "state-mandated costs" under section 2231. Thus, the Legislature has made a fundamental distinction between costs mandated by acts and regulations over which it has ultimate control and costs which are required to be expended to comply with federal laws and regulations which are not subject to state control. In

the case of levee and channel maintenance, it is the federal government which has required that the work be done. The Secretary of the Army has promulgated a specific regulation governing such maintenance. 33 C.F.R. § 208.10. This work is done in accordance with extensive operation and maintenance manuals issued by the Corps of Engineers, United States Army Engineer District, Sacramento, California. The work that the Department may perform on project facilities is limited to "work described as maintenance by the federal regulations issued . . . for any project." § 12878(f), Water Code. Thus, the only work that may be done by the Department of Water Resources in the operation of a maintenance area is work described as maintenance in the federal regulation. This is all that is required under sections 2206 and 2271, Revenue and Taxation Code, to constitute any increased costs as "costs mandated by the federal government." These increased costs must be paid for by levying an additional rate pursuant to section 2271, Revenue and Taxation Code, and the applicable provisions of the Water Code.

* * * * *