

LITIGATION ROSTER

SPECIAL TAXES

OCTOBER 2017

Special Taxes
LITIGATION ROSTER
OCTOBER 2017

NEW CASES

Case Name

Case Number

CLOSED CASES

Case Name

Case Number

Please refer to the case roster for more detail regarding new and closed cases

Special Taxes
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OCTOBER 2017

BNSF RAILWAY CO. & UNION PACIFIC RAILROAD CO. v. California Department of Tax and Fee Administration, et al.

USDC, Northern District of California: 3:16-CV-04311

Ninth Circuit Court of Appeal: 16-17130

Filed – 07/29/16

Plaintiffs' Counsel

Munger, Tolles & Olson – Benjamin Horwich

BOE's Counsel

Molly Mosley

BOE Attorney

John Waid

Issue(s): Plaintiff contends that Senate Bill 84 [SB 84](#), establishing the Regional Railroad Accident Preparedness and Immediate Response Fund ([Government Code section 8574.30, et seq.](#)) unconstitutionally imposes a schedule of fees on the transport of hazardous materials by rail in California.

Audit/Tax Period: N/A

Amount: Unspecified

Status: On September 13, 2016, the BOE and the Office of Emergency Services (OES) filed an opposition to the Motion for Preliminary Injunction. By Order of the Court, the hearing was continued to October 13, 2016. At the hearing, the Court took the matter under submission. On October 28, 2016, the district Court Judge granted the Motion for preliminary injunction, enjoining the BOE from enforcement of notice and collection requirements of [SB 84](#) pending entry of final judgment resolving this case on the merits. On November 18, 2016, the Department of Justice filed on behalf of the BOE, Governor's Office of Emergency Services, and others, an appeal in the United States Court of Appeals for the Ninth Circuit from (1) the Order Granting Motion for Preliminary Injunction entered in this action on October 28, 2016, and (2) the Form of Preliminary Injunction entered in this action on November 15, 2016. Defendant/Appellants filed an Opening Brief with the Court of Appeal on January 30, 2017. The BOE is not participating in the appeal. Plaintiff filed their Answering Brief on March 9, 2017. On March 9, 2017, Plaintiffs filed an Answering Brief. On April 10, 2017, Defendants filed a Reply Brief. On April

24, 2017 the Court tentatively set oral argument for August. On July 13, 2017, the BOE filed a Motion with the United States Court of Appeal, Ninth Circuit, to substitute the California Department of Tax and Fee Administration (CDTFA) for the BOE as the Defendant in this action. On July 18, 2017, the Court granted the unopposed Motion substituting the CDTFA for the BOE. On July 21, 2017, the Ninth Circuit Court of Appeal Case No. 16-17130 set Oral Argument for August 29, 2017. On August 29, 2017, Oral Argument was held and the Court took the case under submission.

CALIFORNIA FARM BUREAU FEDERATION I, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 04CS00473 & 03CS01776

Filed – 04/13/04

Third District Court of Appeal: C050289

California Supreme Court: S150518

Filed – 02/23/07

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as applied. The case was remanded to the Court of Appeal to remand to the trial Court for proceedings consistent with the opinion. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. At the Status Conference on July 29, 2011, the Judge ordered discovery in the Water Rights cases. At the Status Conference on October 21, 2011, the Judge granted BOE's Motion to transfer the Palo Verde case to Sacramento, set a further case management conference for January 13, 2012, and set the case for a two-week trial on July 16, 2012. A Notice of Entry of Dismissal was entered for Petitioner Stone Corral Irrigation District on November 17, 2011. Trial was held from December 4, 2012 through December 19, 2012. The Court scheduled post-trial briefing. On July 1, 2013, Petitioners filed their Reply Brief. Respondents State Water Resources Control Board, et al., filed their post-trial Response Brief on July 1, 2013. On September 6, 2013, Sacramento Superior Court issued its tentative decision in favor of Plaintiffs ruling that the fees imposed by the Water Resources Control Board are invalid, because the statutory fee scheme and

implementing regulations do not provide a fair, reasonable and substantially proportionate assessment of all costs related to the regulation of affected payors. On October 23, 2013, the Department of Justice filed a response on behalf of the Defendants, opposing Petitioners' submission regarding remedies. On October 30, 2013, the Court heard argument concerning its tentative decision. The Court issued its Final Statement of Decision on November 12, 2013, confirming that the fees imposed by the State Water Resources Control Board are invalid. The Court further ruled that the fees charged to contractors are unconstitutional under the supremacy clause. On December 13, 2013, the Trial Court issued its final judgment in favor of the Plaintiffs. The Court determined that the fees imposed by the State Water Resources Control Board are invalid, and further ruled that fees charged to contractors are unconstitutional under the supremacy clause. On February 10, 2014, Respondents filed a Notice of Appeal to the trial Court's water rights decision. On February 21, 2014, Plaintiff, California Farm Bureau Federation filed Opposition to Respondent's Motion to tax costs. Northern California Water Association filed an Opposition to Motion to tax costs on the same date. On February 27, 2014, Respondents filed their reply to Plaintiff's Opposition to Motion to tax costs. On April 4, 2014, the Appellant's Notice Designating Record on Appeal was filed. On August 15, 2014, the parties filed a Stipulation for Extension of Time to File Briefs. The Joint Appendix was due December 16, 2014. Appellants' Reply Brief was due February 16, 2015. On or about September 19, 2014, Appellant's filed an application for an extension of time from October 17, 2014, to December 1, 2014 to file its Opening Brief. The Third District Court of Appeal accepted State Water Resources Control Board's (SWRCB) application for an extension to file its Reply Brief. The Brief was due April 16, 2015. On April 10, 2015, the Court granted Appellants' request for an extension to file Reply Brief by June 1, 2015. On June 5, 2015, the Court granted Appellants' Motion to File Corrected Opening Brief and Motion to File Reply Brief exceeding 14,000 words. On June 9, 2015, the Court ordered the Clerk of the Court to strike Appellants' January 5, 2015, Opening Brief and to return it. On June 9, 2015, Appellants filed their corrected Appellants' Opening Brief and the Reply Brief. This case is now fully briefed.

Note: See *Northern California Water Association I* Consolidated Case Court of Appeal, Third Appellate District, Case No. C075866

CALIFORNIA FARM BUREAU FEDERATION II, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 05CS00538

Filed – 01/13/05

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: The parties entered into a stipulation staying this matter pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

CALIFORNIA FARM BUREAU FEDERATION III, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 06CS00651

Filed – 04/26/06

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: The parties entered into a stipulation staying this matter pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

CALIFORNIA FARM BUREAU FEDERATION IV, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 07CS00485

Filed – 02/11/08

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2006-2007; 2007-2008

Amount: Unspecified

Status: The parties entered into a stipulation staying this matter pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

CALIFORNIA FARM BUREAU FEDERATION V, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2009-80000231

Filed – 05/07/09

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2009-2009

Amount: Unspecified

Status: The parties entered into a stipulation staying this matter pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

CALIFORNIA FARM BUREAU FEDERATION VI, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2011-80000880

Filed – 06/10/11

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2009-2010, 2010-2011

Amount: Unspecified

Status: On July 1, 2011, Plaintiff dismissed Jerome E. Horton as Chairperson of the Board of Equalization. This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

**CALIFORNIA TAXPAYERS ASSOCIATION, et al. v. California Governor's Office of
Emergency Services, et al.**

Sacramento County Superior Court: 34-2016-80002357

Filed – 10/04/2012

Plaintiff's Counsel

Nielsen

BOE's Counsel

Robert Asperger

BOE Attorney

Kiren Chohan

Issue(s): The issue in this case is whether the Hazardous Substances Fee enacted by Senate Bill 84 [SB 84](#), adopted by the California Legislature in June 2015, and codified in [Government Code section 8574.30-8574.48](#), is invalid on the ground that it is a tax, not a fee, and did not acquire the requisite 2/3 approval of all members of each house of the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: The Court's tentative ruling was to deny the petition for preliminary injunction. At the hearing, the Court indicated it would likely adopt the tentative but asked for further information regarding the timing of Office of Emergency Services' implementation of the hazardous materials fee. On June 27, 2016, the BOE submitted a letter to the Court identifying the information the Court sought.

On July 8, 2016, the Court denied Plaintiff's Motion for a preliminary injunction, and set the hearing on the merits for December 16, 2016. On October 21, 2016, Plaintiffs filed a First Amended Petition for Writ of Mandate and the Court vacated the current briefing schedule and hearing date. Respondents were not required to file a response to the Amended Petition. The Case is currently stayed by order of the court.

HOWARD JARVIS TAXPAYERS ASSOCIATION, et al. v. California Department of Forestry and Fire Protection, et al.

Sacramento County Superior Court: 34-2012-00133197-CU-MC-GDS

Filed – 10/04/2012

Plaintiff's Counsel

Trevor A. Grimm - Howard Jarvis Taxpayers Foundation

BOE's Counsel

Robert Asperger

BOE Attorney

John Waid

Issue(s): The issue in this case is whether the Fire Prevention Fee enacted by AB X1 29 (Stats 2011, First Ex. Sess. Ch.8) is a tax and, as such, not enacted without receiving the two-thirds vote required by article XIII A, section 3, of the California Constitution.

Audit/Tax Period: None

Amount: Unspecified

Status: BOE's response was filed on April 26, 2013. At the July 19, 2013 hearing, the Court issued a ruling on the submitted matters: 1) the Court overruled CalFire's demurrer to the first amended complaint for failure to state sufficient facts to allege class action causes for relief; 2) the Court ruled in CalFire's favor that Plaintiffs should have filed a petition for redetermination before filing a claim for refund; and 3) CalFire's Motion to strike certain paragraphs of Plaintiffs' first amended complaint were granted. Plaintiffs filed a second amended complaint on July 29, 2013. BOE's response to Plaintiff's second amended complaint was filed on August 7, 2013. On November 21, 2013, a hearing was held on the Demurrer, and the matter was taken under submission. On December 13, 2013, the Court issued a ruling agreeing with CalFire on CalFire's demurrer to Plaintiffs' second amended complaint. On January 21, 2014, attorneys for Plaintiffs filed opposition to CalFire's Proposed Order on the demurrer and Motion to strike Plaintiffs' second amended complaint. On January 24, 2014, attorneys for Defendant filed notice of order on CalFire's demurrer and Motion to strike regarding Plaintiff's second amended complaint. On January 24, 2014, attorneys for Plaintiffs filed "Class Action" third amended complaint for declaratory relief and refunds. On February 25, 2014, CalFire filed an answer to Plaintiffs' third amended complaint. On February 28, 2014, BOE filed an answer to Plaintiffs' third amended complaint. The Motion for class certification was heard on August 7, 2015. On August 8, 2015, the Court denied class certification on the declaratory relief cause

of action, but granted class certification on the refund claims, limited to those who have paid the fee and exhausted administrative remedies. Plaintiffs are in the process of giving notice to the class members. On January 22, 2016, the Superior Court approved the form of notice of the action to class members. On January 29, 2016, the Court entered an Order approving a proposed form of notice to the members of the certified class in this case. Case is currently dormant. On July 19, 2017, Assembly Bill 398 [AB 398](#) was adopted to add [Public Resources section 4213.05](#), which effective July 1, 2017, suspends the fire prevention fee until January 1, 2031. On September 20, 2017, plaintiff filed a motion for summary judgment. Hearing is set for December 8, 2017. On October 5, 2017, California Department of Tax and Fee Administration (CDTFA) filed a Motion to Dismiss for lack of prosecution. Hearing date is December 8, 2017. On October 31, 2017, the Court entered an order substituting the CDTFA as the successor to the BOE.

MYERS, MICHAEL D. v. California Board of Equalization

(Blue Cross / Blue Shield)

Los Angeles County Superior Court: BS143436

Filed – 7/3/2013

Plaintiff's Counsel

Richard J. Ayoob - Ajalat, Polley, Ayoob & Matarese

BOE's Counsel

BOE Attorney

John Waid

Issue(s): The primary dispute in this matter is between the Plaintiffs and Blue Cross/Blue Shield. BOE is a nominal Defendant.

Audit/Tax Period: None

Amount: Unspecified

Status: On September 5, 2013, BOE filed its Notice of Appearance. The Court permitted BOE to file a no-position response on November 22, 2013. On January 17, 2014, attorneys for real party in interest, Blue Cross of California dba Anthem Blue Cross filed its reply in support of demurrer. On the same date, attorneys for real party in interest filed its response to Plaintiff's objection to Blue Cross' request for judicial notice.

Notice of Entry of Judgment of Dismissal was entered on March 10, 2014. On April 1, 2014, Notice of Appeal and Notice Designating Record on Appeal were filed. On June 26, 2014, one volume of reporter's transcripts was filed. Appellant's Opening Brief and Appendix were due on August 5, 2014. Pursuant to stipulation of the parties, Appellants' Opening Brief was due September 5, 2014. Respondents' Brief was due January 5, 2015. On March 11, 2015, the Court of Appeal granted the application by California Department of Managed Health Care to file an *amicus* Brief in support of Respondents and filed the brief. On April 6, 2015, the Department of Managed Care filed its *amicus* Brief. On May 6, 2015, Respondents Blue Shield and Blue Cross filed their responses. On October 9, 2015, Blue Cross of California filed a petition for rehearing. On November 4, 2015, California Physicians Service dba Blue Shield filed its petition for review in the California Supreme Court, case number S230351. On November 17, 2015, Blue Cross dba Anthem filed its petition for review in the California Supreme Court, case number S230351. On November 25, 2015, Plaintiff/Appellant filed its Answers to Blue Shield's and Blue Cross' petition for review; and Defendant/Respondent Dave Jones filed his Answer to Blue Shield's

and Blue Cross' petition for review. On December 4, 2015, Blue Cross dba Anthem and Blue Shield filed separate Reply Briefs to Answer to petition for review. On December 9, 2015, the Court denied the petition for review. The remittitur has issued in this appeal. The parties will present to the trial Court a Proposed Order reversing the judgment in favor of Blue Cross/Blue Shield in accordance with the directions of the Appellate Court. On May 26, 2016, Respondent Blue Cross of California filed a peremptory challenge against the trial Court Judge under [Code of Civil Procedure section 170.6](#). On July 14, 2016, the case was transferred to the Presiding Judge's department. On August 17, 2016, this case was transferred to Department 307. On March 17, 2017, Plaintiff filed a Request for Status Conference. On April 12, 2017, the Court set a status conference for June 22, 2017. The Court continued the Status Conference to November 3, 2017. The real parties in interest indicated that they would be filing demurrers to be heard the same day. BOE retains authority over this case, therefore, the California Department of Tax and Fee Administration (CDTFA) is closing its case files for this matter.

**MYERS, MICHAEL D. v. California Board of Equalization
(Kaiser Permanente)**

Los Angeles County Superior Court: BS157999

Filed – 9/28/2015

Plaintiff's Counsel

Timothy Morris

BOE's Counsel

BOE Attorney

John Waid

Wendy Vierra

Issue(s): The primary dispute in this matter is between the Plaintiffs and Kaiser Foundation Health Plan, Inc. BOE is a nominal Defendant.

Audit/Tax Period: None

Amount: Unspecified

Status: On October 28, 2015 the trial Court signed the Order approving the stipulation of the parties granting a due date of December 3, 2015 for BOE's response. A trial setting conference is scheduled for January 7, 2016. On November 13, 2015, the Court ordered this case related with the Blue Shield case and set an initial Status Conference for January 22, 2015. No answer is due until the Court sets a schedule. On November 6, 2015, the Court ruled that this case is related to *Myers v. BOE*, Case No. BS143436. Court vacated the trial setting conference of January 21, 2016 and set an initial status conference of January 22, 2016. At the Initial Status Conference, the trial Court concluded that since the appeals Court did not appear to have issued the remittitur in the Blue Cross/Blue Shield case, the trial Court did not have jurisdiction over these cases. The trial Court therefore continued the Initial Status Conference to April 5, 2016. On March 25, 2016, the Court, at the request of the parties, continued the April 5, 2016, Initial Status Conference to May 12, 2016. On June 16, 2016, Real Party in Interest Kaiser Foundation filed a Peremptory Challenge under Code of Civil Procedure 170.6 to the assigned Judge. On July 14, 2016, the case was transferred to the Presiding Judge's department. On August 17, 2016, this case was transferred to Department 307. On March 17, 2017, Plaintiff filed a Request for Status Conference. On April 12, 2017, the Court set a status conference for June 22, 2017. The Court continued the Status Conference to November 3, 2017. The real parties in interest indicated that they would be filing demurrers to be heard the same day. BOE retains authority over this case, therefore, the California Department of Tax and Fee Administration (CDTFA) is closing its case files for this matter.

**MYERS, MICHAEL D. v. California Board of Equalization
(Health Net of California Inc.)**

Los Angeles County Superior Court: BS158655

Filed – 10/22/2015

Plaintiff's Counsel

Timothy Morris

BOE's Counsel

Brian Wesley

BOE Attorney

John Waid

Issue(s): The primary dispute in this matter is between the Plaintiffs and Health Net of California, Inc. BOE is a nominal Defendant.

Audit/Tax Period: None

Amount: Unspecified

Status: On November 5, 2015, the parties stipulated that the BOE and Department of Insurance deadline to respond to petitioner's complaint is extended from November 22, 2015, to December 22, 2015. On December 16, 2014, the BOE filed a Stipulation to extend time to file its response to Plaintiff's verified petition, from December 22, 2015 to January 22, 2016. On December 16, 2015, the Court ruled that this case is related to *Myers v. BOE*, Case No. BS153436. The Court vacated the trial setting conference of January 21, 2016 and set an initial Status Conference for January 22, 2016. In light of the latter, no response to Plaintiff's verified petition is due. The Initial Status Conference was continued to April 5, 2016. On March 25, 2016, the Court, at the request of the parties, continued the April 5, 2016, Initial Status Conference to May 12, 2016. On May 5, 2016, Real Party in Interest HealthNet filed a peremptory challenge against the trial Court Judge under [Code of Civil Procedure section 170.6](#). On May 10, 2016, the Court granted HealthNet's peremptory challenge to the trial Court Judge. The case has been reassigned to a new Judge. All pending hearing dates have been vacated, and are to be rescheduled in the newly assigned department. On July 14, 2016, the case was transferred to the Presiding Judge's department. On August 17, 2016, this case was transferred to Department 307. On March 17, 2017, Plaintiff filed a Request for Status Conference. On April 12, 2017, the Court set a status conference for June 22, 2017. The Court continued the Status Conference to November 3, 2017. The real parties in interest indicated that they would be filing demurrers to be heard the same day. BOE retains authority over this case, therefore, the California Department of Tax and Fee Administration (CDTFA) is

closing its case files for this matter.

NORTHERN CA WATER ASSOCIATION I, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 03CS01776 & 04CS00473

Filed – 12/17/03

Third District Court of Appeal: C075866

California Supreme Court: S150518

Filed – 2/23/07

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: The California Supreme Court issued its decision on January 31, 2011, affirming the Court of Appeal's judgment holding that the fee statutes at issue are facially constitutional and reversing the Court of Appeal's determination that the statutes and their implementing regulations are unconstitutional as applied. The case is remanded to the Court of Appeal to remand to the trial Court for proceedings consistent with the opinion. On April 20, 2011, the Court denied the petitions for rehearing, and modified its opinion. Remittitur issued May 12, 2011. At the Status Conference on July 29, 2011, the Judge ordered discovery in the Water Rights cases. A Notice of Entry of Dismissal was entered for Petitioner Stone Corral Irrigation District on November 17, 2011. Trial was held from December 4, 2012 through December 19, 2012. On July 1, 2013, Petitioners filed their Reply Brief. Respondents State Water Resources Control Board, et al., filed their post-trial Response Brief on July 1, 2013. On September 6, 2013, Sacramento Superior Court issued its tentative decision in favor of Plaintiffs ruling that the fees imposed by the Water Resources Control Board are invalid, because the statutory fee scheme and implementing regulations do not provide a fair, reasonable and substantially proportionate assessment of all costs related to the regulation of affected payors. On October 23, 2013, the Department of Justice filed a response on behalf of the Defendants, opposing Petitioners' submission

regarding remedies. On October 30, 2013, the Court heard argument concerning its tentative decision. The Court issued its Final Statement of Decision on November 12, 2013, confirming that the fees imposed by the State Water Resources Control Board are invalid. The Court further ruled that the fees charged to contractors are unconstitutional under the supremacy clause. On December 13, 2013, the Trial Court issued its final judgment in favor of the Plaintiffs.

The Court determined that the fees imposed by the State Water Resources Control Board are invalid, and further ruled that fees charged to contractors are unconstitutional under the supremacy clause. On February 10, 2014, Respondents filed a Notice of Appeal to the trial Court's water rights decision. On February 21, 2014, Plaintiff, California Farm Bureau Federation filed Opposition to Respondent's Motion to tax costs. Northern California Water Association filed an Opposition to Motion to tax costs on the same date. On February 27, 2014, Respondents filed their reply to Plaintiff's Opposition to Motion to tax costs. On April 4, 2014, the Appellant's Notice Designating Record on Appeal was filed. On August 15, 2014, the parties filed a Stipulation for Extension of Time to File Briefs. Appellants' Opening Brief is due October 17, 2014. The Joint Appendix was due December 16, 2014. Appellants' Reply Brief was due February 16, 2015. On or about September 19, 2014, Appellants filed an application for an extension of time from October 17, 2014, to December 1, 2014 to file their Opening Brief. The Third District Court of Appeal accepted State Water Resources Control Board's (SWRCB) application for an extension to file its Reply Brief. The Brief was due April 16, 2015. On April 10, 2015, the Court granted Appellants' request for an extension to file Reply Brief by June 1, 2015. On June 5, 2015, the Court granted Appellants' Motion to File Corrected Opening Brief and Motion to File Reply Brief exceeding 14,000 words. On June 9, 2015, the Court ordered the Clerk of the Court to strike Appellants' January 5, 2015, Opening Brief and to return it. On June 9, 2015, Appellants filed their corrected Appellants' Opening Brief and the Reply Brief. Defendant and Appellant State Water Resources Control Board filed a Supplemental Brief on January 20, 2017. Plaintiff and Respondent Northern California Water Association *et al.* filed a Supplemental Brief and Motion to strike on February 3, 2017. Defendant and Appellant State Water Resources Control Board *et al.* filed a Supplemental Brief on February 17, 2017, and an opposition to Plaintiff/Respondent's Motion to strike on February 21, 2017.

NORTHERN CA WATER ASSOCIATION II, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 04CS01467

Filed – 10/29/04

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2004-2005

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION III, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 05CS01488

Filed – 10/19/05

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2005-2006

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION IV, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 06CS01517

Filed – 10/18/06

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2006-2007

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION V, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2008-00003004-CU-WM-GDS

Filed – 02/07/08

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2007-2008

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION VI, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2009-80000183

Filed – 03/05/09

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2008-2009

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION VII, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2010-80000461

Filed – 03/04/2010

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2009-2010

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal.

NORTHERN CA WATER ASSOCIATION VIII, et al. v. California State Water Resources Control Board, et al.

Sacramento County Superior Court: 34-2011-80000828

Filed – 04/05/2011

Plaintiffs' Counsel

Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2010-2011

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending Appeal.

PALO VERDE IRRIGATION DISTRICT v. California State Water Resources Control Board, et al.

Riverside County Superior Court: INC 043178

Filed – 05/28/04

Plaintiffs' Counsel

David R. Saunders - Clayson, Mann, Yaeger & Hansen

BOE's Counsel

Carol Boyd

BOE Attorney

John Waid

Issue(s): Whether the water rights fee imposed by the State Water Resources Control Board (SWRCB) enacted by the Legislature in 2003 in Senate Bill 1049 [SB 1049](#) is valid ([Water Code sections 1525-1530](#); [1535-1541](#); [1550-1552](#); and [1560](#)).

Audit/Tax Period: 2003-2004

Amount: Unspecified

Status: This case is stayed pending the outcome of the consolidated cases. See *Northern California Water Association, et al. v. State Water Resources Control Board, et al.* (Sacramento County Superior Court Case No. 03CS01776; Court of Appeal, Third Appellate District, Case No. C050289.) The consolidated cases were appealed to the California Supreme Court and remanded back to the trial Court. The trial Court rendered its judgment on remand, which is on appeal to the Court of Appeal, Third Appellate District, Case No. C075866. This matter is stayed pending the outcome of the pending appeal. At the Case Management Conference on October 21, 2011, the Judge in Sacramento granted BOE's Motion to transfer this case to Sacramento to be heard, but not consolidated, with the other water rights cases. Trial was held from December 4, 2012 through December 19, 2012. The Court scheduled post-trial briefing. On July 1, 2013, Petitioners filed their Reply Brief. Respondents State Water Resources Control Board, et al., filed their post-trial response brief on July 1, 2013. On September 6, 2013, Sacramento Superior Court issued its tentative decision in favor of Plaintiffs ruling that the fees imposed by the Water Resources Control Board are invalid, because the statutory fee scheme and implementing regulations do not provide a fair, reasonable and substantially proportionate assessment of all costs related to the regulation of affected payors. On October 23, 2013, the Department of Justice filed a response on behalf of the Defendants, opposing Petitioners' submission regarding remedies. On October 30, 2013, the Court heard argument concerning its tentative decision. The Court issued its Final

Statement of Decision on November 12, 2013, confirming that the fees imposed by the State Water Resources Control Board are invalid. The Court further ruled that the fees charged to contractors are unconstitutional under the supremacy clause. On December 13, 2013, the Trial Court issued its final judgment in favor of the Plaintiffs. The Court determined that the fees imposed by the State Water Resources Control Board are invalid, and further ruled that fees charged to contractors are unconstitutional under the supremacy clause. On February 10, 2014, Respondents filed a Notice of Appeal to the trial Court's water rights decision. On February 21, 2014, Plaintiff, California Farm Bureau Federation filed Opposition to Respondent's Motion to tax costs. Northern California Water Association filed an Opposition to Motion to tax costs on the same date. On February 27, 2014, Respondents filed their reply to Plaintiff's Opposition to Motion to tax costs. On April 4, 2014, the Appellant's Notice Designating Record on Appeal was filed. On August 15, 2014, the parties filed a Stipulation for Extension of Time to File Briefs. The Joint Appendix was due October 17, 2014. Respondents' Brief is due December 16, 2014. Appellants' Reply is due February 16, 2015. On or about September 19, 2014, Appellants filed an application for an extension of time from October 17, 2014, to December 1, 2014 to file their opening brief. The Third District Court of Appeal accepted State Water Resources Control Board's (SWRCB) application for an extension to file its Reply Brief. The Brief was due April 16, 2015. On April 10, 2015, the Court granted Appellants' request for an extension to file Reply Brief by June 1, 2015. On June 5, 2015, the Court granted Appellants' Motion to File Corrected Opening Brief and Motion to File Reply Brief exceeding 14,000 words. On June 9, 2015, the Court ordered the Clerk of the Court to strike Appellants' January 5, 2015, Opening Brief and to return it. On June 9, 2015, Appellants filed their corrected Appellants' Opening Brief and the Reply Brief. This case is now fully briefed.

STESHENKO, GREGORY v. California Board of Equalization, et al.

Santa Cruz County Superior Court: 16CV007757

Filed – 03/25/16

Plaintiffs' Counsel

Pro Se

BOE's Counsel

Robert Asperger

BOE Attorney

John Waid

Issue(s): Plaintiff contends that the fire prevention fee Assembly Bill 29 [AB 29](#) is invalid and unconstitutional, and that exempt funds were illegally seized.

Audit/Tax Period: None

Amount: None

Status: On June 28, 2016, the BOE filed its Reply to Plaintiff's Opposition to Motion to Transfer Action to Sacramento County Superior Court. At the July 6, 2016 hearing, the Court granted the Motion for Change of Venue to Sacramento County Superior Court. On August 29, 2016, the BOE's Proposed Order for change of venue to Sacramento was submitted to Plaintiff for approval as to form. On September 8, 2016, the DAG sent a signed letter to the Court submitting the Proposed Order granting Motion for change of venue, with attachments. On September 28, 2016, the Court entered an Order, transferring the case to Sacramento County Superior Court. On October 11, 2016, Plaintiff filed a petition for writ of mandate with the Sixth Appellate District. The Santa Cruz Superior Court has transferred the case to Sacramento County Superior Court. Sacramento County Superior Court has scheduled a case management conference for May 4, 2017. The case management statement is due April 19, 2017. On February 28, 2017, the Court of Appeal denied the petition for writ of mandate and request for stay. On March 21, 2017, Defendants BOE and CalFIRE filed a demurrer and Motion to strike. The hearing on these moving papers is scheduled for April 27, 2017. On April 26, 2017, the Court continued the hearing to June 2, 2017. On April 27, 2017, the Court issued its tentative ruling on the CMC set for May 4, 2017. It requires the parties to choose trial and settlement conference dates before the end of the year. The hearing on BOE's Demurrer has been continued to July 7, 2017. At the July 7, 2017 hearing, the trial court sustained the demurrers of Defendants California Board of Equalization, the California Department of Forestry and Fire Protection, and Andres Lopez as to the second through fourth causes of action of the complaint; and stayed the entire action on

the grounds that there is another action pending between the same parties on the same cause of action. On July 19, 2017, Assembly Bill 398 [AB 398](#) was adopted to add Public Resources section 4213.05, which effective July 1, 2017, suspends the fire prevention fee until January 1, 2031. On August 3, 2017, the Court entered an order sustaining the Board's demurrer to the second through fourth causes of action and staying the first cause of action on the grounds that there is another action pending between the same parties (the Howard Jarvis case). There has been no action since then.

TAKI, WAHID AHMAD v. California Board of Equalization

Sacramento County Superior Court: 34-2012-80001335

Filed – 12/14/12

Plaintiffs' Counsel

Caitlin Colman – Attorney at Law

BOE's Counsel

Jane O'Donnell

BOE Attorney

Sharon Brady Silva

Issue(s): The issue in this case is whether the evidence supports BOE's findings of petitioner's violation of [Bus. & Prof. Code sections 22974 and 22974.3, subdivision \(b\)](#), which imposes a 10-day cigarette license suspension.

Audit/Tax Period: None

Amount: Unknown

Status: Petitioner's attorney notified the DAG representing BOE that Petitioner is dismissing his writ petition. To date the dismissal has not been filed with the Court.

WRIGHT, LINDA ANN v. United States of America, et al.

USDC, Northern District of California: 3:14-CV-03008

Filed – 06/26/17

Plaintiffs' Counsel

Pro Se

BOE's Counsel

Jeffrey Vincent

BOE Attorney

John Waid

Issue(s): On July 8, 2014, Pro Se Plaintiff Wright filed a Complaint in the District Court of Northern California, against the USA, and various Defendants, including the BOE. The complaint alleges violation of the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, including violation of 42 U.S.C. § 1983 and other statutes. Plaintiff sues the BOE with respect to the Department of Forestry and Fire Prevention fire fee, which she disputes.

Audit/Tax Period: None

Amount: Unknown

Status: BOE's Motion to Dismiss was filed August 19, 2014. Hearing was set for October 3, 2014. The Court on its own Motion continued the hearing to October 10, 2014. The Court granted the US Attorney's Motion to continue all hearings to December 19, 2014. On December 15, 2014, the Court vacated the hearing scheduled for December 19, 2014, and took the case under submission and will rule on the papers filed by the parties. The Court rescheduled the Case Management Conference from February 27, 2015 to August 14, 2015. No ruling on BOE's Motion to Dismiss has been rendered; Motion is under submission. The Court dismissed the complaint without prejudice. Plaintiff had 30 days from March 16, 2015 to file an amended complaint. On May 7, 2015, the Plaintiff filed her response to the Court's Order to Show Cause regarding dismissal of the action. On June 24, 2015, the District Court dismissed Plaintiff's complaint with prejudice. Plaintiff will have 30 days to file an appeal. On June 26, 2015 Plaintiff filed her Notice of Appeal with the Ninth Circuit Court of Appeals. The Court set the following schedule: Appellant's Opening Brief is due October 5, 2015. Appellees' Answering Brief is due November 3, 2015. Appellant's Optional Reply Brief shall be filed within 14 days of service of Appellees' Brief. Plaintiff/Appellant filed her Opening Brief on October 5, 2015. Appellees (including BOE) filed their brief on October 29, 2015. On December 8, 2015, an Order was issued by the Ninth Circuit Court of Appeals affirming the dismissal of

Ms. Wright's lawsuit. Wright has 90 days from December 8, 2015 to file a petition to the Supreme Court. On March 8, 2016, Wright filed a request for extension of time to file Writ of Certiorari *in forma pauperis*. The Supreme Court did not act on the request during the 2015 term which ended on September 30, 2016. Pro se Plaintiff attempts to reopen a previously closed case with the United States Supreme Court by the filing of another Petition for Review (after Plaintiff's last petition was deemed denied by the Court by operation of law). On June 7, 2017, pursuant to Supreme Court Rule 20, part 3(b), the BOE advised the Court that it will not file a response to the Petition.

Special Taxes
LITIGATION ROSTER
OCTOBER 2017

CLOSED CASES

Case Name

Case Number

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