LITIGATION ROSTER

SPECIAL TAXES

SEPTEMBER 2016

Special Taxes
SEPTEMBER 2016

NEW CASES

Case Name	Court/Case Number
NONE	

CLOSED CASES

Case Name	Court/Case Number
NONE	

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

Special Taxes

LITIGATION ROSTER
SEPTEMBER 2016

BNSF RAILWAY CO. & UNION PACIFIC RAILROAD CO. v. California State Board of Equalization, et al.

United States District Court, Northern Dist. CA 3:16-CV-04311

Filed – 7/29/16
Plaintiffs' Counsel
Munger, Tolles & Olson – Benjamin Horwich

BOE's Counsel
Molly Mosley

BOE Attorney
John Waid

Issue(s): Plaintiff contends that Senate Bill (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: Pending

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 court, the hearing was continued to October 13, 2016. At the hearing, the court took the matter under submission.

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

California Supreme Court Case No. S150518Filed – 04/13/04

Sacramento Superior Court Case No. 04CS00473
Court of Appeal, Third Appellate District Case No. C050289
Filed – 04/13/04

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE's Counsel
Carol Boyd

BOE Attorney
Renee Carter

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 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.

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

Sacramento Superior Court Case No. 05CS00538

Filed – 01/13/05

BOE's Counsel
Carol Boyd
Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 06CS00651
Filed – 04/26/06

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 07CS00485
Filed – 02/11/08

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2009-80000231
Filed – 05/07/09

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. CA State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2011-80000880
Filed – 06/10/11

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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 ASSN., et al. v. CA GOVERNOR'S OFFICE OF EMERGENCY SERVICES, et al.
Sacramento Superior Court: 34-2016-80002357
Filed – 10/04/2012

BOE's Counsel
Robert Asperger

Plaintiff's Counsel
Nielsen

BOE Attorney
Kiren Chohan

Issue(s): The issue in this case is whether the Hazardous Substances Fee enacted by SB 84, adopted by the California Legislature in June 2015, and codified in Government Code sections 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.

CF & WF GROUP, INC. v. STATE OF CALIFORNIA et al.; and DOES 1 through 100, INCLUSIVE

San Bernardino County Superior Court: CIV08160595
Filed – 04/15/2016

BOE's Counsel

Plaintiff's Counsel
Dawn Kirk

BOE Attorney
Kiren Chohan

Issue(s): The issue in this case is whether the Hazardous Substances Fee enacted by SB 84, adopted by the California Legislature in June 2015, and codified in Government Code sections 8574.30-8574.48, is valid.

Audit/Tax Period: None

Amount: Unspecified

Status: On June 30, 2016, the BOE and the Department of Toxic Substances Control filed a Motion for Change of Venue to Sacramento County Superior Court. On September 1, 2016, plaintiff filed a Request for Dismissal with the Superior Court. On September 2, 2016, the court entered dismissal of this case with prejudice.

HOWARD JARVIS TAXPAYERS ASSN., et al. v. CA Dept. of Forestry, et al.
Sacramento Superior Court: 34-2012-00133197-CU-MC-GDS
Filed – 10/04/2012

BOE's Counsel
Robert Asperger

Plaintiff's Counsel
Trevor A. Grimm - Howard Jarvis Taxpayers Foundation

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 XIIIA, 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.

VASKIN KOSHKERIAN v. CALIFORNIA STATE BOARD OF EQUALIZATION
Los Angeles County Superior Court Case No: BC 28370
Filed – 02/01/2016

BOE's Counsel
Charles Tsai

Plaintiff's Counsel
Pro Se

BOE Attorney
Renee Carter

Issue(s): This litigation concerns underground storage tank fees for the period October 1, 2000 through March 7, 2001. Plaintiff Vaskin Koshkerian filed a complaint regarding a State Tax Lien in the amount of $63,225.59. Plaintiff claims he was improperly charged the fees as an individual by the Board for partnership obligations; that he did not operate the business for all or part of the tax periods in question; and that the Board improperly collected the fees from his personal bankruptcy estate.

Audit/Tax Period: October 1, 2000 – March 7, 2001
Amount: None

Status: On March 7, 2016, the Case Management Conference was scheduled for April 20, 2016. On March 7, 2016, hearing on the Demurrer / Motion to Transfer was scheduled for May 26, 2016. On April 1, 2016, Pro Se Plaintiff filed a document identified as "Complaint Motion" for the March 26, 2016, hearing. On April 5, 2016, the BOE filed a Case Management Statement for the April 20, 2016, scheduled conference. On April 13, 2016, Pro Se Plaintiff filed a Case Management Statement for the April 20, 2016, scheduled conference. On April 20, 2016, the Court issued a minute order continuing the Case Management Conference to May 26, 2016.

On July 27, 2016, the Los Angeles County Superior Court issued its notice of incoming transfer and issued a new case number, BC 628370 (formerly Orange County Superior Court: 30-2016-00832795). On August 9, 2016, the court issued to Koshkerian an Order to Show Cause scheduling a hearing for October 4, 2016, for failure to file proof of service of the Summons and Complaint. On August 22, 2016, BOE filed its Notice of Hearing on the Demurrer and Demurrer, and its Request for Judicial Notice in Support of BOE's Demurrer.

MYERS, MICHAEL D. v. Board of Equalization (Blue Cross / Blue Shield)
Los Angeles County Superior Court: BS143436
Filed – 7/3/2013

BOE's Counsel

Plaintiff's Counsel
Richard J. Ayoob - Ajalat, Polley, Ayoob & Matarese

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 brief of Amici Curiae 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.

MYERS, MICHAEL D. v. Board of Equalization (Kaiser)
Los Angeles County Superior Court: BS157999
Filed – 9/28/2015

BOE's Counsel

Plaintiff's Counsel
Timothy Morris

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. State Board of Equalization* (Blue Shield/Blue Cross; 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/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 May 26, 2016, in related case Myers v. Board of Equalization (BS143436), Respondent Blue Cross of California filed a peremptory challenge to the trial court judge under Code of Civil Procedure section 170.6. 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.

MYERS, MICHAEL D. v. Board of Equalization (Health Net of California Inc. Real Party in Interest)
Los Angeles County Superior Court: BS158655
Filed – 10/22/2015

BOE's Counsel

Plaintiff's Counsel
Timothy Morris

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 Board 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. State Board of Equalization* (Blue Shield/Blue Cross case 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 n Interest HealthNet filed a peremptory challenge against the trial court judge under Code of Civil Procedure 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.

NORTHERN CA WATER ASSOCIATION I, et al. v. State Water Resources Control Board, et al.
California Superior Court Case No. S150518
Sacramento Superior Court Case No. 03CS01776
Court of Appeal, Third Appellate District: 03CS01776
Filed – 12/17/03

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. This case is now fully briefed.

NORTHERN CA WATER ASSOCIATION II, et al. v. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 04CS01467
Filed – 10/29/04

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 05CS01488
Filed – 10/19/05

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 06CS01517
Filed – 10/18/06

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2008-00003004-CU-WM-GDS
Filed – 02/07/08

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2009-80000183
Filed – 03/05/09

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2010-80000461
Filed – 03/04/2010

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Sacramento Superior Court Case No. 34-2011- 80000828
Filed – 04/05/2011

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
Daniel Kelly, Esq. Somach Simmons & Dunn

BOE Attorney
Renee Carter

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 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. State Water Resources Control Board, et al.
Riverside Superior Court Case No. INC 043178
Filed – 05/28/04

BOE's Counsel
Carol Boyd

Plaintiffs' Counsel
David R. Saunders - Clayson, Mann, Yaeger & Hansen

BOE Attorney
Renee Carter

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 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.

PEOPLE v. NATIVE WHOLESALE SUPPLY COMPANY, et al.
Sacramento County Superior Court Case No. 34-2008-00014593-CU-CL-GDS
Filed – 04/20/16

BOE's Counsel
Michelle Hickerson

Plaintiffs' Counsel
Patrick Mackey
Lipsitz, Green, Scime & Cambria, LLP

BOE Attorney
Gregory Day

Issue(s): The People contend that the defendant is distributing cigarettes in California that do not appear in Statutory Tobacco Directory. BOE is not a party of the complaint but to identify PMK (Persons Most Knowledgeable) who have knowledge of the BOE's enforcement of tax laws and regulations in Indian Country or Tribal lands.

Audit/Tax Period: none
Amount: None

Status: Deposition set for May 5, 2016. Deposition taken off calendar pending filing and resolution of motions by the People and BOE for protective orders and to quash the deposition subpoenas. BOE filed its motion for protective order on June 9, 2016. Defendant filed its response on June 16, 2016. BOE filed its reply and statement of objections on June 29, 2016. The motions were heard by the special master on July 1, 2016. On July 8, 2016, the special master served his report, recommending that BOE's motions to quash and for a protective order be granted, and that sanctions be awarded against defendant. On August 3, 2016, defendant filed its partial objections to the report and recommendation. On August 16, 2016, the People filed the opposition to the partial objection, on behalf of BOE. On September 2, 2016, the Court issued its tentative ruling on the Objections by Defendant to the report and recommendation of the discovery referee, rejecting the objections and adopting the report and recommendation and awarding sanctions against the Defendant. On September 9, 2016, after hearing, the Court affirmed its tentative ruling, ordered the recommendations contained in the discovery referee's report to become effective upon the Court's execution of the report and service on the parties by the Clerk of notice of entry of the executed report.

RANDOLPH E. SIPLE v. California Department of Forestry and Fire Protection, et al.
Ventura County Superior Court Case No. 56-2016-00478552
Filed – 02/22/16

BOE's Counsel
Brian Wesley

Plaintiffs' Counsel
Siple, Randolph, In Pro Per

BOE Attorney
John Waid
Kiren Chohan

Issue(s): Plaintiff contends that the fire prevention fee AB 29 is invalid and unconstitutional.

Audit/Tax Period: none
Amount: None

Status: On March 22, 2015, the BOE filed its Notice of Motion and Motion to Transfer Venue to Sacramento. On July 13, 2016, the BOE filed its Reply to Plaintiff's Opposition. On August 25, 2016, the court entered its order transferring the case to Sacramento County Superior Court. On September 9, 2016, the Sacramento County Superior Court issued notice that it had received the court records from Ventura County Superior Court.

STESHENKO, GREGORY v. CALIFORNIA BOARD OF EQUALIZATION; FIRE PREVENTION; ANDRES LOPEZ
Santa Cruz County Superior Court Case No. 16CV007757
Filed – 03/25/16
BOE's Counsel
Crystal Yu

Plaintiffs' Counsel
Pro Se

BOE Attorney
Wendy Vierra

Issue(s): Plaintiff contends that the fire prevention fee 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.

TAKI, WAHID AHMAD dba News & Cigarettes City v. California Board of Equalization
Sacramento Superior Court Case No. 34-2012-80001335
Filed – 12/14/12

BOE's Counsel
Jane O'Donnell

Plaintiffs' Counsel
Caitlin Colman – Attorney at Law

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 section 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. USA et al.
USDC Northern Dist. CA Case No. CA 14 3008 NJV
Filed – 7/15/14

BOE's Counsel
Jeffrey Vincent

Plaintiffs' Counsel
Plaintiff in Pro Per

BOE Attorney
Renee Carter

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: Unspecified

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 to rule on the papers filed by the parties. The Court rescheduled the Case Management Conference from February 27, 2015 to August 14, 2015. 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 had 30 days to file an appeal. Plaintiff filed her Notice of Appeal on June 26, 2015. The court set the following schedule: Appellant's Opening Brief due October 5, 2015. Appellees' Answering Brief 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 Reply Brief on November 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, in forma pauperis status, filed a request for extension of time to file writ of certiorari. The Supreme Court did not act on the request during the 2015 term which ended on September 30, 2016.

Special Taxes
CLOSED CASES
LITIGATION ROSTER
SEPTEMBER 2016

None

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