S20047 5 LIU, J.

In the Supreme Court of the State of California

WESTERN STATES PETROLEUM ASSOCIATION, **Plaintiff and Respondent,** **v.** **CALIFORNIA STATE BOARD OF EQUALIZATION,** **Defendant and Appellant.**	**Case No. B225932**

Second Appellate District, Case No. B225932
Los Angeles County Superior Court, Case No. BC403167
The Honorable Robert L. Hess, Judge

REPLY TO ANSWER

APR - 2 2012

KAMALA D. HARRIS
Attorney General of California
DAVID S. CHANEY
Chief Assistant Attorney General
FELIX E. LEATHERWOOD
Supervising Deputy Attorney General
BRIAN D. WESLEY
Deputy Attorney General
State Bar No. 219018
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-5754
Fax: (213) 897-5775
Email: Brian.Wesley@doj.ca.gov
Attorneys for Appellant
State Board of Equalization

TABLE OF CONTENTS

Page

INTRODUCTION 1

ARGUMENT 3

I. REVIEW SHOULD BE GRANTED TO RESOLVE AN IMPORTANT ISSUE OF CALIFORNIA LAW REGARDING WHETHER THE BOARD CAN PROMULGATE REGULATIONS THAT REQUIRE A SINGLE APPRAISAL UNIT THAT INCLUDES FIXTURES IN ORDER TO ENSURE FAIR MARKET VALUATION IN ACCORDANCE WITH MARKETPLACE PRACTICES. 3

A. Section 51(d) mandates that the marketplace, not depreciation, defines the proper appraisal unit. 3

B. Legislative history and case law support the Board's ability to determine the appropriate appraisal unit for special types of real property in accordance with the constitutional fair market value principle. 8

C. This is a case of first impression because neither *Board of Supervisors* nor *County of Orange* interprets section 51(d) to mean that fixtures must constitute a separate appraisal unit despite contrary marketplace treatment. 11

D. The exceptions to Rule 461(e) support the conclusion that the Board has authority to adopt appraisal rules for special types of property. 12

II. THE OPINION CREATES INCONSISTENCY IN CALIFORNIA LAW BY IGNORING PUBLISHED CALIFORNIA PRECEDENT. 15

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES

California Assn. of Medical Products Suppliers v. Maxwell-Jolly (2011) 199 Cal.App.4th 286 .... 1, 15, 16

City of San Diego v. Neumann (1993) 6 Cal.4th 738 7

County of Orange v. Orange County Assessment Appeals Bd. (1993) 13 Cal. App. 4th 524 .... 11, 12, 15

Exxon v. County of Santa Barbara (2001) 92 Cal.App.4th 1347 .... 7, 13, 14, 15

Lynch v. State Bd. of Equalization (1985) 164 Cal.App.3d 94 13

McDonnell Douglas Corp. v. County of Los Angeles (1990) 219 Cal.App.3d 715 7

State Bd. of Equalization v. Board of Supervisors (1980) 105 Cal.App.3d 813 .... 5, 11

Western States Petroleum Assn. v. Board of Equalization (2012) 202 Cal.App.4th 1092 .... passim

STATUTES

Gov. Code
- § 11346.3 1
- § 11346.5, subd. (a)(8) 1
- § 15606, subds. (c) & (e) 1, 3

Rev. & Tax. Code
- § 51 .... 4, 6, 7
- § 51, subd. (a) 4
- § 51, subd. (a)(2) 6, 12
- § 51, subd. (d) .... passim
- § 110 6
- § 110, subd. (a) 7

CONSTITUTIONAL PROVISIONS

Cal. Const. Article XIII, § 1 .... passim

Cal. Const. Article XIII A, § 2 .... passim

Cal. Const. Article XIII A, § 2, subd. (b) 4

REGULATIONS

Cal. Code Regs., Title 18, § 324 .... 1, 7, 13

Cal. Code Regs., Title 18, §§ 468, 469 & 473 13

Cal. Code Regs., Title 18, § 474 1

INTRODUCTION

The State Board of Equalization's (the "Board") Petition for Review should be granted to decide an important question of property tax law regarding the Board's authority and responsibility to instruct county assessors on appropriate appraisal methodologies to ensure that taxable real property is assessed based upon the fair market value standard, as required by both the California Constitution and statutory law. (Cal. Const. arts. XIII, § 1 & XIII A, § 2; Rev. & Tax. Code, § 51, subd. (d); Gov. Code, § 15606, subds. (c) & (e); Cal. Codes Regs., tit. 18, § 324.)

Additionally, the Board's petition should be granted because the Court of Appeal's decision imposes obligations not set forth in Government Code sections 11346.3 and 11346.5, subdivision (a)(8), and creates inconsistency in California law. (Cf. *California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286.) The Board's Petition for Review establishes that the Opinion's interpretation of "Rule 474" (Cal. Code Regs., tit. 18, § 474.) is inconsistent with both the fair market valuation principle mandated by the California Constitution and the legislative intent for enacting Revenue and Taxation Code section 51, subdivision (d)[1] (hereafter section 51(d)).

---

[1] Hereafter, all statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Western States argues and the Court of Appeal held that the intent of section 51(d) is to always treat fixtures as a separate appraisal unit from land and improvements to maximize depreciation of fixtures. (*Western States Petroleum Assn. v. Board of Equalization* (2012) 202 Cal.App.4th 1092, 1110.) But that view misinterprets section 51(d), because the plain meaning of the statutory language is to define real property as being the appraisal unit used by "persons in the marketplace." The Court of Appeal's interpretation creates an inflexible rule that contradicts the constitutional requirement that a decline in value under California Constitution article XIII A, section 2 (hereafter "Proposition 8") be based upon fair market value, as well as the clear legislative intent that the Board has the authority to determine the proper appraisal unit based upon marketplace transactions when there is a decline in value under Proposition 8. (Cal. Const., arts. XIII, § 1 & XIII A, § 2; Rev. & Tax. Code, § 51, subd. (d).) Section 51, which is the governing statute applicable here, implemented Proposition 8. (Stats. 1979 ch. 242 § 4, effective July 10, 1979.)

Based on this statutory authority, the Board adopted Rule 474 after it heard testimony that petroleum refinery fixtures are not separately sold from refinery land and improvements in the marketplace; but, instead, the entire petroleum refinery plant, including the fixtures, land, and improvements, is sold as a single appraisal unit. For this reason, the application of Rule 461, subdivision (e) (hereafter Rule 461(e)), which

defines fixtures as a separate appraisal unit for decline-in-value purposes, to petroleum refineries violates the Constitution's and section 51(d)'s requirement that the Board follow the marketplace when defining appraisal units. To maintain consistency with section 51(d), the Board exercised its authority under Government Code section 15606, subdivisions (c) and (e) by adopting Rule 474 to instruct county assessors that petroleum refineries' fixtures, land, and improvements are rebuttably presumed to constitute a single appraisal unit for Proposition 8 decline-in-value purposes. Review should be granted to preserve the Board's ability to control real property appraisal practices to ensure that county appraisal practices properly adapt to changes in the marketplace.

ARGUMENT

I. REVIEW SHOULD BE GRANTED TO RESOLVE AN IMPORANT ISSUE OF CALIFORNIA LAW REGARDING WHETHER THE BOARD CAN PROMULAGATE REGULATIONS THAT REQUIRE A SINGLE APPRAISAL UNIT THAT INCLUDES FIXTURES IN ORDER TO ENSURE FAIR MARKET VALUATION IN ACCORDANCE WITH MARKETPLACE PRACTICES.

A. Section 51(d) mandates that the marketplace, not depreciation, defines the proper appraisal unit.

The Court of Appeal mistakenly holds that fixtures must be included in a separate appraisal unit to ensure that depreciation is maximized. (*Western States Petroleum Assn. v. Board of Equalization, supra,* 202

Cal.App.4th at p. 1110.) In its answer, Western States argues that section 51 and the California Constitution require the separate depreciation of fixtures. (Answer, p. 13.) This is based on the false premise that fixture depreciation must be separately recognized in order to maximize the reduction in value, despite the fact that the marketplace would include the fixtures in a larger aggregate appraisal unit. Contrary to this assertion, there is no constitutional or statutory requirement that the depreciation of fixtures be recognized separately and independently when it is undisputed that the marketplace commonly includes the fixtures together with land and improvements in a single appraisal unit.

The California Constitution requires assessment at fair market value unless a Proposition 13 limit applies. (Cal. Const. arts. XIII, § 1 & XIII A, § 2.*)* Proposition 8 declines in value address the situation where the *actual fair market value* of the subject real property is *less than* its adjusted base year value under Proposition 13. (Cal. Const. art. XIII A, § 2, subd. (b); Rev. & Tax. Code, § 51, subd. (a); Petition, p. 10.) The Task Force Report for Propositions 13 and 8 dated January 22, 1979, clarifies the relationship between the two laws:

> The Task Force felt that the purpose of Prop. 13 was to place a cap on the value of property in any one year, while Prop. 8 sought to allow values to rise and fall without restriction at any point below this cap, should actual market values so dictate. [¶] The purpose of the 'appraisal unit' concept is to ensure that these increases or

declines in value be measured in the same manner as such property was appraised prior to Prop. 13.

(7 AA 2076, underline in original.]

Proposition 8 is thus based on "actual market value," that is, the fair market value as dictated by the marketplace. Property tax assessments prior to Proposition 13 were based on the marketplace fair market value principle. (See Assessors' Handbooks[2] (AH) prior to the enactment of Proposition 13, specifically, 1958 AH "Appraisal of Urban Real Estate" p. 4 RJN 18 at 10 AA 2802; 1966 AH 501, pp. 501-15, 501-16, RJN 19, at 10 AA 2988-2989; 1975 AH 501, p. 501-12, 501-13, RJN 20, at 11 AA 3088-3089.) Thus, Proposition 13 did not repeal, either expressly or by implication, the provisions of article XIII of the Constitution pertaining to assessment at fair market value when there is no applicable Proposition 13 limitation. (*State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813, 820 f.n. 3 (hereafter *Board of Supervisors*).) In sum, the marketplace principle applies for property tax valuation purposes when Proposition 13 limits do not apply, including when there is a decline in value under Proposition 8.

---

[2] The Assessors' Handbook is a guide developed by Board staff to give county assessors and other interested parties an understanding of the principles of property assessment.

Section 51implements Proposition 8. Section 51(d) was plainly intended to define "real property." Section 51(d) states that the "marketplace" determines the appraisal unit. When the Board adopted Rule 474, it determined that, in the marketplace, buyers and sellers buy and sell petroleum refineries' land, improvements and *fixtures* as a single appraisal unit, and do not break them into component parts or pieces. This fact is undisputed, and the concurring opinion recognized this in stating: "it appears that petroleum refineries are now being bought and sold in one unit comprising real property, improvements and fixtures." (*Western States Petroleum Assn. v. Board of Equalization, supra*, 202 Cal.App.4th at p. 1119 fn. 1.) Moreover, the majority also acknowledges this fact. (*Id* at p. 1105.) But the Opinion ignores the Board's finding that refinery properties commonly sell as a single unit in the marketplace by holding that the depreciation of fixtures must be recognized under section 51; and, in order to do so, fixtures must be treated as a separate appraisal unit for Proposition 8 decline in value purposes. (*Ibid.*) The Board is not disputing that "full cash value" under section 110 and section 51, subdivision (a)(2) must account for depreciation. However, such depreciation should be recognized only if, and to the extent that, the depreciation is recognized by the marketplace as reflected in the property's fair market value.

The appropriate focus of any appraisal is to determine what is the proper appraisal unit or "real property" that should be depreciated. And,

contrary to the Opinion, the overriding principle is that the *marketplace* governs the determination of the proper appraisal unit. (Cal. Const., arts. XIII, § 1 & XIII A, § 2; Rev. & Tax. Code, §§ 51, 110, subd. (a); Cal. Code Regs., tit. 18, § 324; AH-501, pp. 1-12, at http://www.boe.ca.gov/proptaxes/pdf/ah501.pdf ; AH 502, p. 2, at 7 AA 2260; AH 504, pp. 95-96, 7 AA 1878-1879; *Exxon v. County of Santa Barbara* (2001) 92 Cal.App.4th 1347; *City of San Diego v. Neumann* (1993) 6 Cal.4th 738.)

Thus, based upon undisputed marketplace circumstances, Rule 474 merely creates a rebuttable presumption of the proper appraisal unit for refinery property consistent with the California Constitution and section 51, which requires recognition of depreciation for a "decline in value" when the marketplace recognizes such depreciation. Contrary to the Opinion, there is no statutory or constitutional requirement that depreciation for fixtures be separately recognized for Proposition 8 purposes when the marketplace would not separately recognize such depreciation.

It is undisputed that the marketplace defines the depreciable appraisal unit for petroleum refineries as land, improvements, and fixtures. Therefore, in order to assess taxable property at fair market value, the appraisal unit is dictated by the marketplace. The Court of Appeal has violated the fair market value requirements of the California Constitution by mandating the use of non-marketplace appraisal units for petroleum

refineries that artifically separate fixtures from the proper marketplace appraisal unit.

B. Legislative history and case law support the Board's ability to determine the appropriate appraisal unit for special types of real property in accordance with the constitutional fair market value principle.

Western States agrues and the Court of Appeal held that section 51's "normally valued separate" provision refers to Rule 461(e), and that the Legislature intended that fixtures must permanently remain a separate appraisal unit for all types of properties for determining Proposition 8 declines in value. (*Western States Petroleum Assn. v. Board of Equalization, supra,* 202 Cal.App.4th at p. 1105.) If this is true, why did the Legislature not incorporate Rule 461's language regarding *fixtures* into section 51 prior to enacting it? Rule 461 was adopted prior to the enactment of Section 51. (See 10 AA 2761-2764.) Still, the Legislature chose not to incorporate Rule 461 into section 51 because it intended to provide the Board authority to determine the appropriate appraisal unit on a *case-by -case basis, consistent with the fair market value principle.* (3 AA 773-776.)

Specifically, after Proposition 8 was passed, but before section 51(d) was enacted, the Legislature created a "Task Force on the Administration of the Property Tax" ("Task Force") to help it enact statutes to implement the new law. (3 AA 770.) On November 27, 1978, the Task Force issued its

minutes on implementation of Propositions 13 and 8. (3 AA 773.) In the section discussing declines in values the Task Force stated:

> There was general consensus to recommend the following:
>
> (1) that the Prop 8 changes to Section 2 (a) of Article XIIIA shall be offered by the Board of Supervisors upon taxpayer request and (2) that the second Prop. 8 "recommendation" previously adopted be clarified to indicate that the market value determination be the net of increases and/or decreases in the various components of value (land, improvements) which comprise each "assessment unit", as described in the Assessor's Handbook. Determination of the "unit" would be subject to Board rule, and assessor determination on a case-by-case basis.
>
> ....
>
> Extensive discussion centered on the "unit" of assessment. The question was raised as to whether the value of land versus that of improvement should be separate for purposes of determining declines in value, or whether the net change in value for the entire unit be the determining value.
>
> Concerns were raised that commercial/industrial owners would divide their properties so that only those depreciating assets would be under one ownership, while appreciating assets would be under other ownership. This way, even if the net were used, the net would always be a decline, and thus overall assessment levels could be manipulated.

(3 AA 775.)

Further, contemporaneous with the enactment of section 51(d), the Task Force decided not to draft a statute on oil and gas properties and instead relied on Rule 468:

> Although without a special constitutional provision for valuation; oil and gas properties do qualify as a special problem. The Task Force debated at some length whether to recommend separate statutory treatment of these properties; it opted not to. No statute has yet been enacted, although Board Rule 468 does address the valuation of these properties.

(7 AA 1924.)

Thus, the Task Force considered whether to recommend special statutory treatment for special property types. The Task Force, however, chose not to. Consequently, no statutes were enacted, and the Legislature explicitly left to the Board's rulemaking authority to determine the treatment of these special properties. Thus, even if a statute could somehow codify a regulation, section 51 does not codify Rule 461 because the language of section 51 is materially different from Rule 461.

Western States asserts and the Court of Appeal found that fixtures have always been treated separately from land and improvement for reassessment purposes. (Answer, p. 6; *Western States Petroleum Assn. v. Board of Equalization, supra*, 202 Cal.App.4th 1092, 1112.) This is false. Rule 461's general rule that fixtures constitute a separate appraisal unit for decline in value purposes was adopted concurrently with Propositions 8 and 13 to reflect the fact that for *most* types of properties, fixtures are normally sold separately in the marketplace. However, as discussed above, this is not true for petroleum refineries.

C. This is a case of first impression because neither *Board of Supervisors* nor *County of Orange* interprets section 51(d) to mean that fixtures must constitute a separate appraisal unit despite contrary marketplace treatment.

Western States cites *Board of Supervisors, supra,* 105 Cal.App.3d 813 to support its argument that fixtures must be a separate appraisal unit. (Answer, p. 11.) However, *Board of Supervisors* does not support Western States's position. There, the court concluded that an amendment to Rule 461 was invalid because it failed to recognize actual market value depreciation. The court emphasized that the fair market value principle continues to apply when Proposition 13 limits do not, and Proposition 8 requires recognition of a decline in value when the *actual market value* of the subject real property is *less than* its adjusted base year value under Proposition 13. (*Id.* at pp. 820-822; Cal. Const., arts. XIII, § 1 and XIII A, § 2; Rev. & Tax Code, § 51, subd. (a)(2).) Here, Rule 474 provides an appropriate framework for recognizing actual market value depreciation, consistent with constitutional marketplace principles and section 51(d).

Similarly *County of Orange* does not require treatment of land and fixtures separately. Instead the case concluded that section 51 does not require any particular appraisal unit but allows the use of either a single or separate appraisal unit. (*County of Orange v. Orange County Assessment Appeals Bd.* (1993) 13 Cal. App. 4th 524, 530 (hereafter *County of Orange*).) *County of Orange* is consistent with the Board's interpretation of

section 51(d). The statute does not mandate a single appraisal unit but does allow its use if evidence supports a finding that the marketplace uses that methodology.

D. The exceptions to Rule 461(e) support the conclusion that the Board has authority to adopt appraisal rules for special types of property.

Western States argues that fixtures must be separated from land and improvements for all properties except "extractive industries." (Answer, p. 14.) Without citation to authority, Western States attempts to distinguish the exceptions to Rule 461(e) from Rule 474. (Answer, p. 21.) Rule 461(e) is still the general rule for most types of real property. Rules 468, 469 and 473, however, were not adopted because they are extractive industries, they were adopted because the marketplace dictated that the Board adopt a special appraisal rule. (*Lynch v. State Bd. of Equalization* (1985) 164 Cal.App.3d 94; Cal. Code Regs., tit. 18, §§ 468, 469 & 473.)

Simarily, Rule 474 is a special appraisal rule for petroleum refineries because it is undisputed that the marketplace buys and sells petroleum refineries' land, improvements, and fixtures as a single appraisal unit. Rule 468 and similar rules exist because they apply to special types of real property that are exceptions to the general rule under Rule 461(e). (*Exxon Mobil Corp. v. County of Santa Barbara* (2001) 92 Cal.App.4th 1347, 1355 (*Exxon Mobil*) [Board determined that integrated oil and gas production facilities are not like other types of real property].)

Western States disputes the Board's interpretation of "Rule 324" (Cal. Code Regs., tit. 18, § 324) by mischaracterizing the unauthoritative letter from the Board's staff to a single Board member as the Board's interpretation of Rule 324. (Answer, p. 16.) Western States cites the letter to support its argument that the last clause of Rule 324, which states "that is specifically designated as such by law" refers to Rule 461(e). Western States, however, fails to distinguish or even discuss *Exxon Mobil,* a precedential case that actually interprets Rule 324.

In *Exxon Mobil,* the Court of Appeal examined a refinery that had an offshore oil drilling unit and onshore refining unit that were connected by an oil pipeline. (*Exxon Mobil Corp. v. County of Santa Barbara, supra,* 92 Cal.App.4th at p. 1355.) The county assessor attempted to separate the facilities into separate appraisal units. The Court of Appeal in applying Rules 324 and 468, held that the units constututed a single appraisal unit because the units constituted a "single integrated oil/gas production operation." (*Id.* at p. 1354.)

Western States responds to the Board's application of Rule 324 and adoption of Rule 474 by arguing that the Board is not required to enforce a "single consolidated appraisal unit." (Answer, p. 12.) This is a misstatement. The Opinion requires property to be valued based on two separate and distinct appraisal units. One appraisal unit is for land and improvements and the other is for fixtures. The Court of Appeal's

requirement that the Board utilize two distinct and mandatory appraisal units creates inflexibility and violates the clear languge of section 51(d), which requires the Board to examine the marketplace to determine the proper appraisal unit for different types of real property. The standard enunciated by the Court of Appeal will essentially prevent assessors from valuing taxable refinery property at fair market value as mandated by the California Constitution because assessors will now be required to use an appraisal unit that materially differs and departs from marketplace reality. In other words, the Court of Appeal is mandating an appraisal rule, which will inevitably result in valuing taxable property at less than fair market value. If the Board is no longer authorized to follow the marketplace principle, as held by the Court of Appeal, petroleum refineries will not be valued at fair market value for Proposition 8 decline-in-value purposes.

To summarize, adopting the Court of Appeal's and Western States's interpretation prevents the Board from adopting new rules to address the multitude of different situations that will arise based upon evolving marketplace facts and circumstances. (Compare *Exxon Mobil Corp. v. County of Santa Barbara, supra,* 92 Cal.App.4th at p. 1356 with *County of Orange, supra,* 13 Cal.App.4th at p. 531-532.)

II. THE OPINION CREATES INCONSISTENCY IN CALIFORNIA LAW BY IGNORING PUBLISHED CALIFORNIA PRECEDENT.

The Court of Appeal ignored the holding in *California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, by exceeding its jurisdiction by imposing non-statutory duties on the Board when preparing an economic impact statement. (*Western States Petroleum Assn. v. Board of Equalization, supra*, 202 Cal.App.4th at p. 1115-1116.) The Board candidly explained that it is "extremely difficult" to estimate the revenue effect of not always treating fixtures as a separate appraisal unit because of the many factors involved and their lack of predictability. (4 AA 983.) The Court of Appeal disregarded this complexity but then listed the numerous variables involved in calculating the economic impact of Rule 474:

> Assessed values will vary depending on how long a refinery has held its existing base year value and the amount of assessable new construction it has undertaken and other factors. Changes in the values of the elements which are input into the calculations under the formulas (depreciating fixtures/removals and additions of fixtures/appreciating land) will change the end results of the calculations.

(*Western States Petroleum Assn. v. Board of Equalization, supra*, 202 Cal.App.4th at p. 1117.)

The Court of Appeal's decision creates a standard for preparing economic impact statements that arguably does not allow agencies to account for these variables when making factual inferences. This promotes

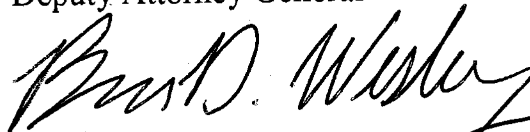
inflexibility when preparing an economic impact statement and creates conflict in California law regarding the standard for preparing an economic impact statement. (Cf. *California Assn. of Medical Products Suppliers v. Maxwell-Jolly, supra,* 199 Cal.App.4th at p. 309.)

CONCLUSION

The Opinion violates the California constitutional requirement to value all real property at its fair market value subject to Proposition 13 limitations. Moreover, the Opinion creates inconsistency in the law and prevents flexibility in preparing economic impact statements. Accordingly, the Petition for Review should be granted.

Dated: March 29, 2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DAVID S. CHANEY
Chief Assistant Attorney General
FELIX E. LEATHERWOOD
Supervising Deputy Attorney General
BRIAN D. WESLEY
Deputy Attorney General



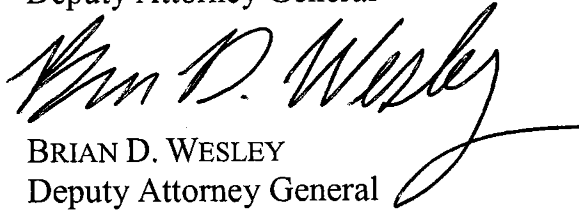
BRIAN D. WESLEY
Deputy Attorney General
Attorneys for Appellant
State Board of Equalization

CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY TO ANSWER uses a 13 point Times New Roman font and contains 4169 words.

Dated: March 29, 2012

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DAVID S. CHANEY
Chief Assistant Attorney General
FELIX E. LEATHERWOOD
Supervising Deputy Attorney General
BRIAN D. WESLEY
Deputy Attorney General



BRIAN D. WESLEY
Deputy Attorney General
Attorneys for Appellant
State Board of Equalization

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Western States Petroleum v. California State Board of Equalization**

California Supreme Court Case No.: **S200475**
Second Appellate District Case No: **B225932**
L.A.S.C. Case No.: **BC403167**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On March 29, 2012, I served the attached **REPLY TO ANSWER** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

C. Stephen Davis, Esq.
Cris K. O'Neall, Esq.
Andrew W. Bodeau, Esq.
CAHILL, DAVIS & O'NEALL, LLP
550 S. Hope Street, Suite 1650
Los Angeles, California 90071
Attorneys for Plaintiff and Respondent
(via U.S. Mail)

The Honorable Robert Leslie Hess
Los Angeles County Superior Court
Central District, Stanley Mosk Courthouse
111 North Hill Street
Department 24, Room 314
Los Angeles, CA 90012
(via U.S. Mail)

Clerk of the Court of Appeal
California Court of Appeal
Second Appellate District, Division 8
300 South Spring Street
North Tower, Second Floor
Los Angeles, California 90013
(via Hand Delivery)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 29, 2012, at Los Angeles, California.

Kathi Palacios	
Declarant	Signature

LA2010503433
51089568.doc