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. S200475**

SUPREME COURT
FILED

JAN 23 2013

Frank A. McGuire Clerk

Deputy

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

REPLY BRIEF ON THE MERITS

KAMALA D. HARRIS
Attorney General of California
PAUL D. GIFFORD
Senior Assistant Attorney General
W. DEAN FREEMAN
FELIX E. LEATHERWOOD
Supervising Deputy Attorneys 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

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

REGULATIONS

STATUTES

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

INTRODUCTION

Under Government Code section 15606, subdivisions (c) and (e), appellant State Board of Equalization ("Board") is required to provide instructions to county assessors on the proper assessment of different types of real property. Revenue and Taxation Code section 51, subdivision (d) ("section 51(d)"), defines real property as either the appraisal unit the marketplace commonly values as a single appraisal unit or, in the alternative, that is "normally valued separately." Pursuant to Government Code section 15606, subdivisions (c) and (e), and section 51(d), the Board adopted California Code of Regulations, title 18, section 474, *Petroleum Refining Properties* ("Rule 474"), to instruct county assessors that petroleum refineries are rebuttably presumed to constitute a single appraisal unit comprised of land, improvements and fixtures for Proposition 8 decline-in-value purposes. Rule 474 is an exception to California Code of Regulations, title 18, section 461, subdivision (e) ("Rule 461(e)"), which generally treats fixtures as a separate appraisal unit.

In an effort to promote the ability of petroleum refineries to maximize depreciation, respondent Western States Petroleum Association ("WSPA") argued below that Rule 474 is inconsistent with section 51(d) and Rule 461(e) on the alleged basis that fixtures *must* be treated as a separate appraisal unit. The Court of Appeal agreed. (*Western States Petroleum Assn. v. Board of Equalization* (2012) 202 Cal.App.4th 1092, review granted May 16, 2012, S200475 ("decision".) The decision invalidated Rule 474 on the ground that combining land, improvements and *fixtures* would reduce the amount of depreciation claimed by the petroleum refinery companies.

The decision was erroneous because the California Constitution requires county assessors to follow the *marketplace principle* in determining the valuation of real property for Proposition 8 purposes when

the fair market value declines below Proposition 13's adjusted base-year value. (Cal. Const., art. XIII A, § 1 ("Proposition 13"); Cal. Const., art. XIII A, § 2, subd. (b), implemented in Rev. & Tax. Code, §§ 51 and 110.1 ("Proposition 8"); *State Bd. of Equalization v. Board of Supervisors* (1980) 105 Cal.App.3d 813.) Rule 474 implements these fundamental principles by recognizing that petroleum refinery land, improvements and fixtures are commonly bought and sold together as a single unit in the marketplace, a fact which WSPA has now admitted. In other words, because the marketplace treats petroleum refineries as a single appraisal unit, Rule 474 recognizes that marketplace reality by creating a rebuttable presumption that, for Proposition 8 decline-in-value purposes only, petroleum refinery land, improvements and fixtures constitute the proper appraisal unit. The Board does not ignore Proposition 13's "acquisition value system," as WSPA incorrectly asserts. To the contrary, Rule 474 only addresses declines in value under Proposition 8 when Proposition 13 limits do not apply. Under such circumstances, the property must be valued at its "fair market value," which necessarily considers that unit of real property typically sold in the marketplace. (Rev. & Tax. Code, §§ 51(a) & (d), 110; see *State Bd. of Equalization v. Board of Supervisors, supra,* 105 Cal.App.3d at pp. 819-822.)

The decision below effectively undermines the ability of the Board to instruct county assessors when the marketplace creates special circumstances requiring special rules in order to ensure that real property is properly valued at fair market value for Proposition 8 declines in value. It mandates an appraisal unit that maximizes depreciation for petroleum refineries, irrespective of marketplace realities, and invalidates longstanding rules and appraisal practices that require that an appraisal unit be consistent with how real property is commonly bought and sold in the open market. (See generally Cal. Code Regs., tit. 18, §§ 468 (Oil and Gas

Properties), 469 (Mining Properties), and 473 (Geothermal Properties); see also Board's Letters' To Assessors (LTA) No. 2012/053, pp. 12-15 [fixtures are normally sold together with land and improvements in "single-family homes" and therefore constitute a single appraisal unit for decline - in-value purposes] at http://www.boe.ca.gov/proptaxes/2012.htm .)

The decision also creates a new, restrictive rule for the preparation of economic impact statements under Government Code section 11346.5, subdivision (a)(8). State agencies commonly use reasonable projections and factual inferences to determine whether a new regulation would have a significant economic impact on California businesses. (*Pulaski v. Occupational Safety & Health Stds. Bd.* (1999) 75 Cal.App.4th 1315, 1329 ("*Pulaski*"); *California Assn. of Medical Products Suppliers v. Maxwell-Jolly* (2011) 199 Cal.App.4th 286, 304 ("*California Association.*").) But the decision below adopts a new rule that requires agencies to use actual numbers to prepare an economic impact statement, and prohibits reliance on factual inferences or projections. This new, unworkable rule creates undue additional costs and burdens for agencies.

Throughout its brief, WSPA misrepresents the Board's arguments, the evidence in the rulemaking file, and the applicable law, and further improperly references new evidence that is not in the record. Below, we address the most significant misstatements made by WSPA.

ARGUMENT

A. RULE 474 IS A QUASI-LEGISLATIVE REGULATION IMPLEMENTING THE BOARD'S OBLIGATION TO INSTRUCT COUNTY ASSESSORS ON THE PROPER APPRAISAL UNIT UNDER GOVERNMENT CODE SECTION 15606, SUBDIVISIONS (C) AND (E).

The Board correctly argued below that Rule 474 is entitled to deference because it is a quasi-legislative regulation. (*Yamaha Corp. of*

America v. State Bd. of Equalization (1998) 19 Cal.4th 1, 10; *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567 ("*Western States*").) WSPA argues that Rule 474 is not entitled to deference because: (1) the rule is contrary to what WSPA alleges is a longstanding Board interpretation; and (2) the rule is an "interpretive" regulation, and not quasi-legislative. (Respondent's Answer To Brief On The Merits ("RA") 10-11.)

First, the argument that Rule 474 is contrary to a longstanding Board interpretation is erroneous. The Board has consistently exercised its authority under Government Code section 15606, subdivisions (c) and (e), and section 51(d) to instruct county assessors on the proper appraisal methodology for special types of property. (2 AA 354-375 [Final Statement of Reasons (FSR)], 1 AA 73-79 [FSR First Addendum], 1 AA 53-56 [FSR Second Addendum].)[1] Because the Board determined that a special appraisal methodology is required to comport with how marketplace participants actually buy and sell petroleum refineries, it adopted Rule 474 to instruct county assessors to apply a rebuttable presumption of a single appraisal unit to determine the fair market value of petroleum refinery real property under Proposition 8. The Board's promulgation of Rule 474 does not mark an abrupt change in its statutory interpretation, but rather is the continued exercise of the Board's longstanding responsibility to instruct county assessors and is, in fact, just one more exception to Rule 461. (See Board's Opening Brief (OB) 13-15, 20-21; Cal. Code Regs., tit. 18, §§ 468, 469, & 473; Board's LTA No. 2012/053, pp. 12-15 at http://www.boe.ca.gov/proptaxes/2012.htm.)

---

[1] The designation "AA" refers to the Appellant's Appendix filed in the Court of Appeal.

Second, the argument that Rule 474 is not quasi-legislative because it interprets section 51(d) is also incorrect. (RA 11-12.) Rule 474 is not merely an interpretation of section 51(d) under specific circumstances, but a new rule with general application to petroleum refineries for Proposition 8 valuation purposes that was promulgated for the purpose of providing guidance to county appraisers, as provided by Government Code section 15606, subdivisions (c) and (e).[2] Under Government Code section 15606, subdivision (e), the Board has been "granted [] substantive rulemaking power." (*Yamaha Corp. of America v. State Bd. of Equalization, supra*, 19 Cal.4th 1, 10.) The Legislature authorizes the Board to exercise its judgment to determine when it is necessary to adopt a regulation to instruct county assessors on how to implement and apply property tax law in specific factual circumstances. In this case, it was necessary for the Board to adopt Rule 474 in order to comply with the constitutional mandate that real property must be valued at fair market value for Proposition 8 decline-in-value purposes. Section 51(d)'s use of the word "marketplace" shows that the Legislature intended a flexible statutory standard to define appraisal units in the face of changing marketplace circumstances to ensure that real property is being valued at fair market value; it is thus reasonable to infer that the Legislature delegated to the Board quasi-legislative authority to adopt rules to define appraisal units for application to particular types of property as needed so that the fair market valuation of such property reflects the current marketplace reality. (OB 26-29.)

---

[2] The Board is responsible for ensuring uniform property tax assessment throughout the state. In furtherance of this obligation, the Legislature delegated the Board authority to advise county assessors on proper appraisal and *valuation* methodologies, and authority to issue regulations and other guidance materials to assist county assessors in meeting their assessment responsibilities. (Gov. Code, §§ 15606, subds. (c) & (e).)

When the Board instructs county assessors on the "differences in the character and conditions of property subject to taxation," as it did here with Rule 474, its regulatory instruction is clothed with a presumption of correctness and regularity so long as there is substantial evidence in the rulemaking record to support the Board's findings. (Gov. Code, § 15606, subds. (c) & (e); *Jones v. County of Los Angeles* (1981)114 Cal.App.3d 999, 1003.)

B. RULE 474 COMPLIES WITH THE CONSISTENCY REQUIREMENT UNDER ADMINISTRATIVE PROCEDURES ACT SECTION 11342.2.

WSPA incorrectly argues that Rule 474 is invalid because it violates the consistency requirements of the Administrative Procedures Act ("APA"). (RA 15.) The APA requires that a regulation must be "consistent with the statutes being implemented or interpreted." (*Western States*, *supra*, 202 Cal.App.4th at 1109; Slip Op. at 17; Gov. Code § 11342.2.) The Court of Appeal erred in concluding that Rule 474 is not consistent with the statutes. To the contrary, Rule 474 is consistent with section 51(d) because it follows the *marketplace's* definition of "real property" for petroleum refineries, as required by the California Constitution.

1. Rule 474 is Consistent with Section 51(d) Because California Law Requires that the Marketplace Define "Real Property."

As discussed in the Board's Opening Brief in detail, and as established during the rulemaking process, Rule 474 is consistent with the governing statute, section 51(d), and was adopted in order to ensure that refinery property is valued at fair market value for Proposition 8 purposes when the property value declines below its Proposition 13 adjusted base-year value, as required by the California Constitution, article XIII, section 1

and article XIII A, section 2. (OB 13-24; see also Rev. & Tax. Code, § 110, subds. (a) & (b).) To properly instruct county assessors on the assessment of petroleum refineries, the Board adopted Rule 474 because it determined that petroleum refineries are a unique type of real property that requires a special appraisal rule. (Cal. Code Regs., tit. 18, § 474, subd. (b)(1).)

According to WSPA, there is no evidence to support the Board's determination that a new rule is necessary. (RA 14.) But this is incorrect. The evidence in the record substantiates that the Board found that petroleum refineries are unique because: (1) they commonly sell in the marketplace as a single unit because they are physically, functionally and economically integrated; and (2) they have a high ratio of fixture value (80 percent) compared to total value. (2 AA 358-372; 6 AA 1783-1784.)

WSPA also argues that petroleum refineries are similar to other types of highly fixturized facilities, such as amusement parks or breweries, and therefore that there is no evidence to support the Board's claim that refineries are unique. (RA 14.) However, the record contains direct testimony explaining why petroleum refineries are different from general commercial properties:

> We believe refineries are unique from so-called other manufacturers, in the sense that the fixtures in a refinery are the unit. The fixtures in a typical cannery operation are a minor part of the operation, itself. The value is typically in the land and in the structures. Whereas in a refinery you have, according to the staff report, itself, 80 percent of the fixtures are -- rather, 80 percent of the value are in the fixtures. So, when one buys the land they're actually buying a refinery operation and they're buying the fixtures.

(6 AA 1781-1782.)

Based on testimony and other substantial evidence provided during the rulemaking process, the Board concluded that it was required to adopt Rule 474, under article XIII, section 1, and article XIII A, section 2, of the California Constitution, and Government Code section 15606, subdivisions (c) and (e). (See 2 AA 358-375 (FSR), 408-411, 412-422, 520-526, 539, 541; 6 AA 1613-1615; 6 AA 1773-1775, 1781-1789.)

Moreover, any arguable burden to establish that "other heavily fixturized facilities" also sell as a single unit was on WSPA. (*California Forestry Assn. v. California Fish & Game Commission* (2007) 156 Cal.App.4th 1535, 1555 fn. 8.) WSPA, however, failed to submit any substantiating evidence during rulemaking regarding the percentage of fixtures at amusement parks or breweries, or whether the fixtures of such facilities typically sell separately or together with their associated land and improvements as a single unit. WSPA only submitted documentary evidence supporting the converse proposition; that is, that refinery fixtures may *sometimes* be sold separately in some situations. (2 AA 376-406, 452-464) WPSA's evidence thus further substantiated the Board's findings during the rulemaking process that petroleum refineries are unique and *normally* sell as a single appraisal unit in the marketplace. In fact, during the course of this litigation, WSPA itself eventually admitted that refinery properties typically sell together as a unit in the marketplace. (WSPA MSJ, p. 46, at 8 AA 2343:14-18; 6 AA 1797-1798; 7 AA 1818-1819; see Appellant's Opening Brief (Court of Appeal), pp. 13-14; see Opinion (concurring), p. 1.) Under these circumstances, the Board was clearly correct in determining that Rule 474 was necessary and consistent with section 51(d). And further, that Rule 474's rebuttable presumption properly allows for the separate valuation of refinery fixtures for decline-in-value purposes under factual circumstances indicating that the fixtures likely

would be sold separately in the marketplace. (Cal. Code. Regs., tit. 18, § 474, (d)(3).)

2. Rule 474 Provides an Exception to the General Rule of Rule 461(e).

WSPA now argues for the first time in its Answer filed with this Court that: "There is no evidence that fixtures and land for 'most types of properties' are sold separately." (RB 14.) However, WSPA's own testimony given during the Rule 474 rulemaking process directly refutes its latest baseless argument. (WSPA MSJ, p. 46, at 8 AA 2343:14-18; 6 AA 1797-1798; 7 AA 1818-1819; see Appellant's Opening Brief (Court of Appeal), pp. 13-14; see Opinion (concurring), p. 1.) To explain, in this litigation WSPA has explicitly conceded that *refinery properties, consisting of land, improvements and fixtures*, typically sell as a unit in the marketplace. But during the rulemaking process, WPSA specifically asserted and submitted evidence that *refinery fixtures* were sold separately from refinery land and improvements, in a manner similar to the fixtures of most types of commercial properties, and therefore, should likewise be treated as a separate appraisal unit for decline-in-value purposes under Rule 461(e). (2 AA 376-407, 452-462.)

Specifically, WSPA stated during rulemaking in its letter that:

> ***This information and attachments provide <u>evidence</u> that petroleum refinery process units, which consist of machinery and equipment (and are classified as "fixtures" for property tax purposes), are sold in the marketplace separately from the land on which they are situated and then relocated and installed at other sites.***
>
> . . .
>
> Fn 1 "the evidence set forth below demonstrates that refinery process units do not always or commonly sell with the land on which they are situated (i.e., often they are not part of the same economic unit").

(2 AA 376, WSPA letter dated July 23, 2007, bold and italics in original.)

Then, WSPA stated in a following letter that:

> As you know Proposed Rule 474, paragraph (c)(2), defines "appraisal unit" as the "property that persons in the marketplace commonly buy and sell as a unit." This definition, as applied to petroleum refining properties, is premised on the presumption that refineries are always sold or transferred as a unit.
> "In fact, this is not the case. There are numerous instances in which large items of refinery equipment, known as "process units", are sold and transferred separately from the land on which they are situated and the other improvements, machinery and equipment at a refinery.
> . . .
> WSPA believes there is significant information demonstrating that petroleum refining properties ***do not always sell or transfer as a single appraisal unit.***

(2 AA 452-453, WSPA letter dated November 9, 2007, emphasis in original.)

The Board's Final Statement of Reasons (2 AA 354) for Rule 474 states that:

> *[Rule 461(e)] is premised upon the normal market situation, applicable to most types of property, where the land and improvements are most commonly sold separately from the fixtures and machinery.* . . . It has long been recognized, however, that Rule 461, subdivision (e) will not provide accurate fair market valuations in all situations. In some exceptional cases involving special types of properties, the normal market situation involves the sale of land, improvements, fixtures and machinery as a single unit. In these types of cases, in order to be consistent with the marketplace, the land, improvements, fixtures and machinery should be valued as a single appraisal unit to determine whether or not there has been a decline in value.

(2 AA 354, emphasis added.)

Thus, even though WSPA did not raise this argument during rulemaking, the rulemaking file for Rule 474 clearly establishes the undisputed fact that, for most types of commercial real property; fixtures typically sell separately from land and improvements in the marketplace[3]. Refinery properties, however, are an exception to this general rule, along with certain other types of special-use commercial property. (2 AA 354-375 (FSR), 1 AA 73-79, 1 AA 53-56.) Therefore, the fact that Rule 461(e) was adopted to implement the marketplace reality that fixtures for most types of properties are typically sold separately in the marketplace has been an "undisputed fact" during the entire course of this action; and has, in fact, been undisputed since the rulemaking for Rule 474 first began. (2 AA 354-375 (FSR), 1 AA 73-79, 1 AA 53-56; see WSPA MSJ, 6 AA 1720; Code of Civ. Proc. § 437, subd. (c).) Given this undisputed fact, Rule 461(e) is consistent with California's marketplace rule in determining the proper appraisal unit for the fair market valuation of real property for "most" types of properties, both pre- and post- Proposition 13 (see OB 33-34; see also Assessors' Handbooks AH-501, pp. 10-12 at http://www.boe.ca.gov/proptaxes/pdf/ah501.pdf, & AH-502, p. 2 at http://www.boe.ca.gov/proptaxes/pdf/ah502.pdf, and guidance related to declines in value for single family homes in Board's LTA No. 2012/052, pps. 12-15 at http://www.boe.ca.gov/proptaxes/pdf/lta12053.pdf; Board's Letters' To Assessors (LTA) No. 2012/053, pp. 12-15 [fixtures are normally sold together with land and improvements in "single-family homes" and therefore constitute a single appraisal unit for decline in value purposes] at http://www.boe.ca.gov/proptaxes/2012.htm.)

---

[3] WSPA did not submit any contrary evidence during rulemaking. In fact, this new argument is raised for the first time in this Court.

Notwithstanding this general rule, *refinery fixtures* typically sell together as a unit in the marketplace, together with the refinery land and improvements and, therefore, constitute an exception to Rule 461(e)'s general rule. WSPA has explicitly conceded the fact that *refinery properties, consisting of land, improvements and fixtures*, typically sell as a unit in the marketplace. (WSPA MSJ, p. 46, at 8 AA 2343:14-18; 6 AA 1797-1798; 7 AA 1818-1819; see Appellant's Opening Brief (Court of Appeal), pp. 13-14; see Opinion (concurring), p. 1.)

Thus, based on substantial evidence, the Board determined that it was necessary to enact a regulatory exception to Rule 461(e) for *refinery properties* in order to comply with the marketplace valuation principles for real property set forth in Revenue and Tax Code sections 51 and 110, as well as California Constitution articles XIII, section 1 and XIII A, section 2. (2 AA 354-375; see Opinion (concurring), p. 1.)

3. Rule 474 Does Not Prevent the Recognition Of Depreciation or Assess Unrealized Increases in Land Value in Violation of Proposition 13.

WSPA argues that Rule 474 is fatally flawed because it prevents the recognition of depreciation, and taxes unrealized increases in land value in violation of Proposition 13. (RA 15-17.) This is incorrect.

First, Rule 474 only applies to Proposition 8 declines in value and does not affect a refinery property's Proposition 13 adjusted base-year value. And, county assessors and refinery owners still account for depreciation under a unit valuation approach. For refineries, Rule 474 only changes the unit taken into consideration in determining fair market value if there has been a decline in value below Proposition 13's adjusted base-year value. In this context, depreciation of real property in the appraisal unit, both improvements and fixtures, will be recognized to the extent that it is recognized in the unit commonly bought and sold in the marketplace.

Thus, Rule 474 simply ensures that in measuring declines in fair market value under Proposition 8, the fair market value of the entire appraisal unit must be taken into consideration, as opposed to just looking at the estimated useful lives of discrete pieces of the unit in order to maximize the refinery property's realized depreciation reductions.

The Board recognizes that declines in the fair market value of refinery properties appraised as single units under Rule 474 may not drop as low in value as when fixtures are treated as a separate appraisal unit, but whether the amount of depreciation increases or decreases is irrelevant in determining the proper appraisal unit. This is because, in order to determine fair market value for Proposition 8 declines in value, the appraisal unit used must reflect the marketplace. WSPA acknowledges that, in applying Rule 461(e) to refinery properties, refinery "fixtures tend to be assessed at current market value reflecting depreciation and land tends to be assessed at its adjusted base-year value." (RB 2.) This artificial bifurcation of the marketplace single appraisal unit, permitted for refineries under Rule 461(e) prior to the adoption of Rule 474, effectively granted petroleum refineries the benefit of Proposition 8 decline-in-value assessment amounts lower than fair market value, contrary to the requirements of California Constitution articles XIII, section 1 or XIIIA, section 2, and Revenue and taxation Code sections 51 or 110.

WSPA's main concern is not whether "unrealized increases in land and improvement" will violate Proposition 13, because, as WSPA acknowledges, more than 80 percent of a refinery's value is in its fixtures, "And in a refinery where 80 percent of your value is in the fixtures, the depreciation is very large." (6 AA 1783-1784.) Thus, in most cases, it is unlikely that Proposition 13 will ever apply to limit the assessed value of refinery property to adjusted base-year value

since the refinery fixtures' depreciation will, under normal circumstances, reduce fair market value below the refinery's adjusted base-year value limitation amount (i.e., Proposition 8 declines in value likely will be recognized for refinery properties in most if not all years). Rather, WSPA's real concern is whether, under Proposition 8, petroleum refineries can maximize their depreciation deductions without taking into account any offsetting increases in value that may occur by defining the land, improvements and fixtures as a single appraisal unit.

For decades, WSPA's members have reduced their property tax liability each year by artificially treating fixtures as a separate appraisal unit in violation of section 51(d). As a result, there was always a significant "decline in value" under Proposition 8. The decision below would perpetuate this artificial treatment by effectively holding that the purpose of section 51(d) is to maximize depreciation. But this holding violates the clear terms of section 51(d), which does not mention fixtures or depreciation.

Second, Rule 474 does not violate Proposition 13, and does not tax unrealized increases in property values.[4] (RA 15-16.) Plainly stated, Proposition 13 does not apply to Rule 474 because under Proposition 8 and section 51(d) county assessors are required to use *fair market value* only when the real property's value declines below Proposition 13 adjusted base-year value. (Rev. & Tax Code, § 51, subd. (a); Cal. Const. art. XIII A, § 2,

[4] This issue is not before the Court because it was not decided by the Court of Appeal and was not raised by either party as a ground for review under California Rules of Court, rules 8.500 and 8.516.

subd. (b); Rev. & Tax. Code, § 51, subd. (a).) Rule 474 properly recognizes this distinction.[5]

4. Section 51(d) Provides a Marketplace Definition of "Real Property" in Order to Authorize the Board to Exercise Its Quasi-Legislative Authority to Determine Whether or Not the "Full Cash Value" of Special Types of Property Require a Single Appraisal Unit Assessment Methodology.

In order to carry out its responsibility under Government Code section 15606, subdivisions (c) and (e), to instruct county assessors regarding the proper assessment of real property, the Board must look to the marketplace. The appellate court's characterization of fixtures as a permanent and unchangeable separate appraisal unit is contrary to the realities of the marketplace, and in that respect it is contrary to longstanding authority holding that the Board has the discretion to exercise its quasi-legislative power to define proper appraisal units based on the marketplace's methodology for determining the fair market value.

WSPA erroneously states that the Task Force Report for Propositions 13 and 8, "expressly recommended that fixtures continue to be segregated for assessment after Prop. 13." This is a misstatement. (See OB 26-29, 32.) Once again, WSPA is trying to confuse "assessment" and "valuation." As stated by the Board in its Advanced Appraisal Handbook:

---

[5] 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.

(7 AA 2076, emphasis in original.)

> Often, the appraisal unit does not correspond with the way that assessed values are allocated for purposes of enrollment. For example, section 607 provides that land and improvements shall be separately assessed. However, as discussed above, when valuing land and improvements these two real property components are typically parts of a single appraisal unit, and the appraiser estimates market value on this basis. To comply with the law, this market value is allocated into two components on the assessment roll.

(Assessors' Handbooks AH 502, "Advanced Appraisal" p. 5 at http://www.boe.ca.gov/proptaxes/pdf/ah502.pdf.)

Provisions requiring land and improvements to be separately *assessed* do not refer to the *value* to be placed on taxable real property[6]. (*Ibid.*; *Mahoney v. San Diego* (1926) 198 Cal. 388, 398-399.) The segregation between land and improvements found on property tax bills is done for purposes unrelated to either fixture depreciation or fair market value appraisal, which are the matters at issue in this action. This segregation is just an allocation, and may be quite arbitrary.[7] (See also Property Tax FAQs, No. 6, at http://www.boe.ca.gov/proptaxes/faqs/generalinfo.htm.)

WSPA also again incorrectly argues that section 51 was drafted to "reflect" Rule 461(e) and that section 51(d)'s "normally valued separately" language was intended to ensure that fixtures depreciation was recognized under Revenue and Taxation Code section 51(a)(2). (RB 16, 18.) But the statute's language and legislative history does not support WSPA's

---

[6] In this context, fixtures are considered to be a part of the improvements, along with structures. (Rev. & Tax. Code, § 105.)

[7] See Assessors' Handbooks AH 501,"Basic Appraisal" p. 11, ft. 14 at http://www.boe.ca.gov/proptaxes/pdf/ah501.pdf ["California property tax law requires separate *assessments* of land and improvements but does not require separate *appraisals* of these different components of a property. The separate assessment of land and improvements is usually an allocation of the total value of the appraisal unit. (Emphasis in original.)"]

contention. For one thing, the phrase "normally valued separately" in section 51(d) was proposed *prior* to the adoption of the relevant provision in Rule 461(e). (7 AA 2044, 2077 (January Task Force Report); see Board's Reply to WSPA's Opposition, at 10 AA 2761-2764.)

Even though the "normally valued separately" language was proposed earlier, Section 51(d) was not enacted until after the adoption of Rule 461(e). Nevertheless, despite Rule 461(e), the Legislature chose *not* to define fixtures as a separate appraisal unit for decline-in-value purposes. Contrary to WSPA's unsupported assertion, there is no evidence that the Legislature codified Rule 461(e) in section 51(d) or that fixtures must always constitute a separate appraisal unit for decline-in-value purposes in order to maximize fixture depreciation. (See OB 22-24; RB 18.)

With respect to declines in value under section 51, the Legislature explained that 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.) As discussed in the Board's Opening Brief (at pp. 33-34), review of the Board's pre-Proposition 13 Assessors' Handbooks from 1958, 1966, and 1975, clearly reveals that the "appraisal unit" prior to Proposition 13 was always based on "the unit that people in the market buy and sell" and was not based on the need to recognize fixture depreciation which the marketplace does not recognize. (10 AA 2789-2791, 2802 (1958 Handbook); 10 AA 2965, 2988-2989 (1966 Handbook); 11 AA 3073, 3088-3089 (1975 Handbook).)

The decision in *State Board of Equalization v. Board of Supervisors, supra,* 105 Cal.App.3d 813, 821-822, supports the Board, not WSPA, because it supports the fair market valuation principle. (RB 6.) There, the court held that it is *actual* market depreciation in value that must be recognized in real property based upon the California Constitution's fair market valuation principle. (*State Board of Equalization v. Board of*

Supervisors (1980)105 Cal.App.3d 813, 821-822.) The strength of Rule 474 is that it recognizes depreciation on taxable refinery property in the same manner as the market. This is because Rule 474's rebuttable presumption is based upon what most commonly happens in the marketplace for the type of real property being valued. Contrary to WSPA's contention, there is no constitutional or statutory right to recognize fixture depreciation for property tax valuation purposes when the marketplace does not so recognize the depreciation.

In *Lynch v. State Bd. of Equalization* (1985) 164 Cal.App.3d 94, the court held that the Board correctly applied Rule 468 to oil and gas interests because they are a special type of property requiring a special appraisal rule. Instead of applying an acquisition value to oil and gas interests under Proposition 13, the court held that Rule 468 properly considered the "additions" to the oil and gas interests to determine its fair market value. (*Id.* at p. 116.) In so holding, the court rejected the argument that an oil and gas company could deplete (depreciate) a proven oil reserve based on the fair market value of the reserve when Proposition 13 was passed in 1975. The court explained that Proposition 13 "was intended to provide broad property tax relief, but it was not intended to exempt particular taxpayers from property tax" (*ibid.*), which is what WSPA is attempting here.

WSPA would limit *Lynch* only to cases where real property is subject to depletion in value. (RA 23.) But the holding of the case was not that narrow; it held that the Board is authorized to adopt new appraisal rules for special types of property in order to maintain the California Constitution's overriding requirement that "all property is taxable." (*Id.* at p. 116.) This Court should reject WSPA's attempt to shelter its fixtures in virtually the same manner.

WSPA also relies upon *County of Orange v. Orange County Assessment Appeals Bd.* (1993)13 Cal.App.4th 524 ("*Orange County*"),

where the court examined the county assessor's challenge to the use of two separate valuation methods (the income and replacement cost approaches) to value cable lines. According to WSPA, *Orange County* stands for the proposition that section 51(d)'s use of "full cash value" does not require appraisal as a single unit (RA 21), but their argument is only partially correct and does not aid their cause. Although *Orange County* held that separate valuation methods for cable lines complied with Rule 461(e), it did so because, unlike here, there was no special appraisal rule for cable lines. (*Id.* at p. 532.) As a result, a separate appraisal unit valuation was appropriate to determine "full cash value." The same is not true here, because here there is a special rule (i.e., Rule 474's exception to Rule 461(e)).

In *Exxon Mobil Corp. v. County of Santa Barbara* (2001) 92 Cal.App.4th 134 ("*Exxon Mobil*"), the court held, that under Government Code section 15606 and Rule 324(b), the Board was authorized to treat two separate units of an oil refinery as a single unit. (*Id.* at p. 1353.) *Exxon Mobil* explained that the Board was required to adopt a single appraisal unit to arrive at a full cash value based on the marketplace: "The appraiser's determination of the proper appraisal unit should reflect the unit most likely to be sold in view of these five factors, if the property were exposed to the open market." (*Ibid.*)

All of these cases, and the existence of other exceptions to Rule 461(e), point to the conclusion that the Legislature did not intend to create fixed rules for the appraisal of real property under Rule 461(e) for Proposition 8 declines in value. Instead, the legislative history for Propositions 13 and 8 indicates that the Legislature empowered the Board with quasi-legislative authority to adopt discrete rules based on the characteristics and marketplace realities of different types of real property. (OB 26-29.) The guiding principle for determining the appropriate

appraisal unit is not the maximization of depreciation. The guiding principle under the California Constitution is that fair market value is determined by examining how real property is actually bought and sold in the marketplace.

Review of pre-Proposition 13 Board Assessors' Handbooks demonstrates that the proper unit to be valued when determining fair market value has always been "the unit that people in the market buy and sell." (OB 33-34.) As such, the decision incorrectly asserts that, because fixtures are "assessed" separately this means that they must be appraised separately for "valuation" purposes, and also incorrect in asserting without support that "fixtures have always been 'normally valued separately' to account for depreciation". (RB 3; Slip Opinion 3, 18.)

Without citing any authority, WSPA goes on to inaccurately assert that "fixtures and land have always been separately assessed in order to account for fixture depreciation." (RB 3.) As discussed above, however, real property tax "assessment" and the "valuation" (or appraisal) of real property under the fair market value standard, are two separate matters. (See OB 32.)

C. WSPA IMPROPERLY RAISES ARTICLE XIIIA, SECTION 3 AS A GROUND TO AFFIRM THE LOWER COURT DECISION.

WSPA improperly raises the argument that Rule 474 violates the requirement that a two-thirds vote of the Legislature is required to increase an existing tax. (RA 25-27.) Under California Rules of Court, rule 8.516(b)(1), the Court may decide any issues that are raised in the petition for review or answer thereto. Neither the Board nor WSPA raised the two-thirds vote requirement under article XIII A, section 3 of the California Constitution (Proposition 13). And, the Court of Appeal never decided the

issue. (*Western States*, *supra*, 202 Cal.App.4th at p. 1092.) Thus, it is not properly raised by WSPA.

Moreover, the Board is not the Legislature, and the two-thirds vote requirement is irrelevant to a policy decision of a taxing agency. (*River Garden Retirement Home v. Franchise Tax Bd.* (2010) 186 Cal.App.4th 922, 950.) The Board exercised its quasi-legislative authority to instruct county assessors on the proper valuation of petroleum refineries consistent with existing tax laws; it cannot and did not pass a statute to raise taxes.

D. THE BOARD'S ECONOMIC IMPACT STATEMENT COMPLIES WITH THE APA.

The Board's economic impact statement satisfied the requirements of Government Code section 11346.5, subdivision (a)(8) because it determined based on substantial evidence submitted by industry and county assessors, and its own economic impact report, that the total economic impact due to the adoption of Rule 474 would not have a significant adverse economic impact on business in California. (3 AA 626-633.) WSPA's contrary argument that the Board's economic impact statement must determine and disclose the "actual" impact in taxes for a representative business, and cannot rely on reasonable projections, contradicts the plain language of Government Code section 11346.5, subdivision (a)(8), and existing law. (*Pulaski, supra,* 75 Cal.App.4th at p. 1329; *California Assn.*, *supra*, 199 Cal.App.4th at p. 304.)

Furthermore, the Board did in fact comply with section 11346.5, subdivision (a)(9), because neither the statute nor any case law requires that the Board estimate an economic or tax impact for each "representative business." WSPA's analysis of *Pulaski* and *California Association* discloses that neither case required quantification of the economic impact for a "representative business." (RB 49.)

1. The Decision Below Conflicts with *Pulaski* and *California Association* Because its Standard for Reviewing an Agency's Economic Impact Statement Undermines the Agency's Discretion when Exercising its Quasi-Legislative Authority.

In *Pulaski,* the court rejected the challenge various labor associations made to new regulations adopted by the California Occupational Safety and Health Standards Board ("OSHA"). (*Pulaski*, *supra*, 75 Cal.App.4th at p. 1323.) Like WSPA's argument here, the labor associations in *Pulaski* argued that OSHA relied too heavily on inferences or projections and thus failed to provide substantial evidence to support its conclusions on the costs of implementing the regulations. (*Id.* at p. 1329.) The court disagreed, and held that, despite the inferences and projections, OSHA correctly determined that the regulations would not have a significant economic impact. Moreover, even though OSHA failed to prepare its own study and relied on studies prepared by other government agencies, it nevertheless sufficiently satisfied the APA. (*Id.* at p. 1329, fn. 9.) The court explained that it was not going to "second-guess [OSHA's] conclusions or resolve conflicting scientific views in an area committed to the discretion of the rulemaking agency." (*Ibid.,* citing *Western States Petroleum Assn . v. Superior Court*, *supra*, 9 Cal.4th at p. 578.)

In *California Association*, the court held that, in preparing an economic impact study, an agency must rely on facts, but that an agency "need not assess or declare *all* adverse economic impact anticipated." (*California Assn.*, *supra*, 199 Cal.App.4th at p. 308; emphasis in original.) The court explained that substantial evidence examines the quality and not the quantity of the evidence (*id.* at p. 309), and that inferences based on logic qualify as substantial evidence. (*Ibid.*) Ultimately, the court

determined that the agency's factual inferences based on its expertise and the evidence that it heard during the rulemaking proceedings satisfied Government Code section 11346.5, subdivision (a)(8). (*Id.* at pp. 310-311.)

The Court of Appeal decision in this case conflicts with *Pulaski* and *California Association* because those cases approve of an agency's use of reasonable projections and inferences when preparing an economic impact statement under section 11346.5, subdivision (a)(8). (*Pulaski v. Occupational Safety & Health Stds. Bd.*, *supra*, 75 Cal.App.4th at p. 1329; *California Assn. of Medical Products Suppliers v. Maxwell-Jolly*, *supra*, 199 Cal.App.4th at p. 309.) The decision below needlessly adopts a different test, which erroneously imposes additional undue burdens on state agencies and removes the flexibility that the Legislature provided for agencies.

The Board's economic impact statement ("EIS") satisfies *Pulaski* and *California Association.* The EIS used a hypothetical to project the impact of Rule 474, but candidly noted the difficulty of predicting the economic impact of the rule: "The revenue effect of not always treating fixtures as a separate appraisal unit for declines in value is extremely difficult to estimate due to the many factors involved and their lack of predictability." (3 AA 626.) It also used facts submitted by WSPA's counsel and county assessors. For example, it noted that California has 20 major refineries, 9 of which are in Los Angeles and Contra Costa counties, with a total assessment of over $14 billion, with about 79 percent ($11 billion) as fixtures. (3 AA 626; 6 AA 1781-1784.) The approximate 80 percent ratio of fixtures-to-total refinery property also was verified during the rulemaking process and was corroborated by WPSA's counsel. (6 AA 1761, 1781, 1783-1784.) From this data, the Board inferred that Rule 474 could affect $32 billion of refinery property, of which $25 billion was in fixtures (80 percent of $32 billion).

The difference of $7 billion represents the value of the non-fixture real property (land and structural improvements). With respect to this property, the Board noted that the tax impact was "relatively small when compared to the fixtures" and "any increases ... in their market value are easily absorbed by the depreciation of the fixtures." (3 AA 627.) Due to the fact that most non-fixture appreciation could be expected to be offset by fixture depreciation, the Board conservatively estimated an annual increase of two percent[8] in value appreciation related to the $7 billion in non-fixture real property, which nets to the Board's estimated yearly $140 million increase in assessed value. Given a one percent tax rate, this translates into the Board's projected annual increase of $1.4 million in property taxes due to Rule 474's use of a "single appraisal unit." (3 AA 626-627, 633.) Based upon this revenue estimate, the Board concluded that adoption of Rule 474 "would have an incremental revenue impact." (3 AA 606.)

Thus, a review of the Board's Revenue Estimate clearly reveals that WSPA erroneously asserts that there is "no evidence" supporting the Board's determination and no economic impact analysis included in the rulemaking file. (RB 32-35, 37-38, 49.)

WSPA argues that the Board was required to use and disclose actual numbers from the refineries and counties, but the Board's reliance on facts and reasonable projections met the requirements set forth in *California Association*. *California Association* specifically approved the agency's reliance on permissible inferences: "[T]he Department's statements demonstrate a reliance on the facts and circumstances before it, and the logical inferences that can be drawn from them." (*California Assn.*, *supra,*

---

[8] Despite confusion, the two percent appreciation factor used in the Board's Revenue Estimate was not based upon the maximum annual Proposition 13 annual inflation factor. (2 RT 154-158, 165, 169-170.)

199 Cal.App.4th at p. 310.) The Board did the same in this case. It made factual inferences based on testimony and data obtained from WSPA and the county assessors during the rulemaking process, and used its expertise in property tax law to project the ultimate economic or tax impact. Thus, the Board's EIS clearly satisfies the statutory language in the APA and passes the *California Association* test, which held that the court's discretion to invalidate an agency's finding under Government Code section 11346.5, subdivision (a)(8) is limited by whether the decision was "arbitrary, capricious, or without evidentiary support, and/or whether it failed to conform to the law." (*Id.* at p. 307.)

WSPA claims that *California Association* should be overruled because: (1) it interpreted the word "may" in section 11350, subdivision (b)(2) as permissive (RA p. 44-47); (2) it determined that an economic impact statement prepared under section 11346.5, subdivision (a)(8) only required an initial analysis (RA p. 47-48); and (3) it held that the APA requires only "substantial compliance" (RA p. 48-50).

First, WSPA's argument for interpreting the word "may" as mandatory in Government Code section 11350 is contrary to common usage and would significantly undermine the agency's role in assessing whether a declaration is necessary under Government Code section 11346.5, subdivision (a)(8).

Second, *California Association*'s interpretation of the term "initial" is consistent with its plain and ordinary meaning. Moreover, WSPA confuses the preparation of an initial statement of reasons prepared during the rulemaking with the use of the word "initial" in section 11346.5, subdivision (a)(8). (RA 47-48.) During the Rule 474 rulemaking process, the Board prepared an initial statement of reasons. (1 AA 112.) Subsequently, after receiving commentary from the public, the Board prepared its Final Statement of Reasons. (2 AA 354-375.) An initial

statement of reasons for the adoption of a regulation examines the legal and policy questions that the public has regarding the adoption of a regulation. (*Western States Petroleum Assn. v. Superior Court*, *supra*, 9 Cal.4th at p. 565.) In contrast, the preparation of a satisfactory "initial" economic impact statement means that an agency does not have to conduct an expensive and time-consuming economic impact statement before adopting a regulation. The standard imposed by the decision below would, however, require California rulemaking agencies to assume the onerous undue burden of preparing more expensive and time-consuming statements.

Third, a "substantial compliance" test is necessary to provide agencies with flexibility in preparing economic impact statements, which in turn enables agencies to rely on reasonable projections and factual inferences.

California Association is well reasoned and supported by sound policy considerations. It adopts a flexible standard that is adaptable to the varying circumstances that agencies confront, and allows agencies to utilize reasonable factual inferences and projections as long as they are based in logic to project the regulation's ultimate economic impact.

On the other hand, the decision breaks with this existing law by adopting a new and unworkable standard for reviewing an agency's economic impact statement, which will restrict an agency's ability to enact new regulations and promote a lack of deference to an agency's expertise when it acts in its quasi-legislative capacity. The decision, not *California Association*, should be reversed.

2. The Board's Finding that Rule 474 Will Not Have a Significant Adverse Economic Impact Complies with Government Code Section 11350, subdivision (b)(2) Because There Is No Substantial Evidence Conflicting with its Finding.

The Board's finding that Rule 474 will not have a significant adverse economic impact on business is supported by substantial evidence. In fact,

there is no evidence in the record conflicting with the Board's evidence. WSPA apparently relies upon its own unsupported opinion that the annual tax increase will be "at least $5 million, and perhaps as much as $10 million". (2 AA 368; 2 AA 313.) WSPA now criticizes the Board's revenue estimate and determination, yet it did not provide any explanation, calculation, or substantiating data for its own statement.[9] But in any event, regardless of whether the estimated adverse tax impact is $1.4 million or $5-$10 million, given the $32 billion value base in California refinery property, the estimated burden would not impose a significant adverse economic effect on the refinery business. (3 AA 626-627.)

---

[9] It appears that WSPA clearly understands that there is no evidence to rebut the Board because it is now attempting -- for the third time -- to introduce its own economic impact statement that was created after the adoption of Rule 474. (8 AA 2354-2356.) The first time, WSPA attempted to introduce the economic impact statement in the trial court, but the Board's objection was sustained. (9 AA 2632-2633 [SBE Objections Nos 1c, 2c & 3c]; 11 AA 3265, fn. 2 [Trial Court Decision].) WSPA has also tried to use the report in the Court of Appeal, and now in this Court. (RA 35-36.)

The Court should ignore the report because: (1) it has not been raised as an issue in the proceeding (Cal. Rules of Court, rule 8.516); and (2) WSPA never appealed the trial court's order sustaining the Board's objection. As a result, WSPA has waived its right to raise the issue at this stage in the litigation. (*Phelan v. Superior Court of San Francisco* (1950) 35 Cal.2d 363, 374.) WSPA argues that its new economic analysis is admissible under Government Code section 11350, subdivision (d)(3), but this provision only allows admission of a required item that is "not included in the rulemaking file" and even then, only "for the sole purpose of proving its omission." Neither of these criteria applies here because there is an economic impact analysis in the rulemaking file, and WSPA is exceeding the scope of the statute. (3 AA 626-627)

E. THE ISSUE OF NECESSITY WAS NOT REACHED BY THE COURT OF APPEAL.

WSPA argues that the issue of whether Rule 474 was necessary was waived by the Board. (RA 54-55.) But the portion of the decision cited by WSPA is the court's recitation of the facts and not a holding of the court. (See *Western States*, *supra,* 202 Cal.App.4th at pp. 1100, 1105.) The decision never reached the issue of necessity because it held that Rule 474 is legally inconsistent with section 51(d). As a result, there was no need for the Board to raise necessity as an issue for review. If WSPA believed that the issue of necessity should be reviewed by this Court, it should have raised the issue in its answer to the Board's petition for review. (Cal. Rules of Court, rule 8.500 (a)(2).) WSPA's failure to raise necessity acts as a waiver.

Notwithstanding the above, the Board has repeatedly explained that Rule 474 is necessary to comply with *existing law* under Revenue and Taxation Code sections 51 and 110, as well as California Constitution, articles XIII, section 1, and XIII A, section 2, in order to ensure that refinery real property is valued at fair market value when a Proposition 8 decline in value occurs. (See OB 13-22; 2 AA 354-375.)

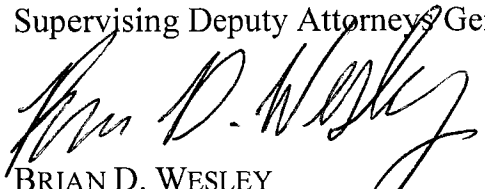
CONCLUSION

For the reasons stated above, the Board requests that the Court reverse the decision of the Court of Appeal.

Dated: January 22, 2013

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
PAUL D. GIFFORD
Senior Assistant Attorney General
W. DEAN FREEMAN
FELIX E. LEATHERWOOD
Supervising Deputy Attorneys General



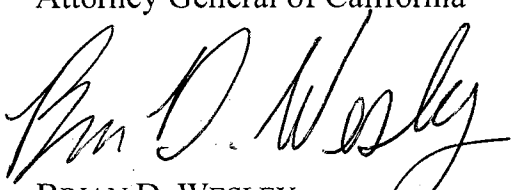
BRIAN D. WESLEY
Deputy Attorney General
Attorneys for Appellant
State Board of Equalization

CERTIFICATE OF COMPLIANCE

I certify that the attached **Reply Brief on the Merits** uses a 13 point Times New Roman font and contains 8,220 words.

Dated: January 22, 2013

KAMALA D. HARRIS
Attorney General of California



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 Association v. California State Board of Equalization**

California Supreme Court Case No.: **S200475**
California Court of Appeal Case No.: **B225932**
Los Angeles County Superior Court 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 January 22, 2013, I served the attached **REPLY BRIEF ON THE MERITS** 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:

CAHILL, DAVIS & O'NEALL, LLP **C. Stephen Davis, Esq.** **Cris K. O'Neal, Esq.** **Andrew W. Bodeau, Esq.** **550 S. Hope Street, Suite 1650** **Los Angeles, California 90071** *(U.S. Mail)*	**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** *(U.S. Mail)*
Office of the County Counsel **County of Los Angeles** **Attn: Albert Ramseyer, Principal Deputy County Counsel** **648 Kenneth Hahn Hall of Administration** **500 West Temple Street** **Los Angeles, California 90012-2713** *(U.S. Mail)*	**Office of the County Counsel** **County of Contra Costa** **Attn: Rebecca Hooley, Dep. County Counsel** **P.O. Box 69** **Martinez, California 94553-0116** *(U.S. Mail)*
Bruce Reed Goodmiller, City Attorney **City of Richmond** **450 Civic Center Plaza** **P.O. Box 4046** **Richmond, California 94804-1630** *(U.S. Mail)*	**Clerk of the California Court of Appeal** **Second Appellate Distict** **300 South Spring Street - North Tower** **Second Floor** **Los Angeles, California 90013-1213** *(Hand-Delivered)*

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 January 22, 2013, at Los Angeles, California.

Kathi Palacios	
Declarant	Signature