

SUPREME COURT COPY

CASE NO. S150518

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA FARM BUREAU FEDERATION, et al.,
Plaintiffs and Appellants,

v.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD,
et al.,
Defendants and Respondents.

SUPREME COURT
FILED

JUL 10 2007

Frederick K. Ostrich *Clerk*

**OPPOSITION OF PETITIONERS NORTHERN CALIFORNIA
WATER ASSOCIATION, ET AL. TO RESPONDENTS STATE
WATER RESOURCES CONTROL BOARD, ET AL.'S
REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
BRIEF ON THE MERITS**

DEPUTY

After Decision by the
Court of Appeal, Third Appellate Dist., No. C050289

From Judgment
of the Sacramento County Superior Court, Case No. 03CS01776
The Honorable Raymond M. Cadei, Judge

Stuart L. Somach (SBN 90959)
ssomach@lawssd.com
Robert B. Hoffman (SBN 48020)
rhoffman@lawssd.com
Daniel Kelly (SBN 215051)
dkelly@lawssd.com
SOMACH, SIMMONS & DUNN
813 Sixth Street, Third Floor
Sacramento, CA 95814
Telephone: (916) 446-7979
Facsimile: (916) 446-8199

Attorneys for Petitioners
Northern California Water Association, et al.

Defendants and Respondents State Water Resources Control Board, et al. (“State”) improperly request that this Court take judicial notice of various budget-related documents. As set forth below, that request should be denied.

The State requests that this Court take judicial notice pursuant to, *inter alia*, Evidence Code section 452, subdivision (c), selected pages from the State of California’s 2003-2004 and 2005-2006 budgets. (See State’s Request for Judicial Notice in Support of Respondents’ Brief on the Merits.) The relevant provisions of the Evidence Code provide for both mandatory and permissive judicial notice. (Evid. Code, §§ 451, 452.) Evidence Code section 452, under which the State makes its request, provides that, for certain enumerated writings and facts, “[j]udicial notice *may* be taken.” Since taking judicial notice under this section is discretionary, this Court may deny the State’s request.

On July 26, 2006, the Third District Court of Appeal requested a supplemental letter brief addressing, among other things, “whether the parties adduced all evidence at their disposal in the trial court.” (Letter from Court of Appeal, Third Appellate District, dated July 27, 2006.) In response, the State argued that it “ha[d] not adduced all relevant evidence at its disposal,” but that “any further evidence at trial would have been either irrelevant or cumulative.” (State’s Supplemental Letter Brief, dated Aug. 11, 2006, at p. 1.) The State’s Request for Judicial

Notice in Support of Brief on the Merits now seeks to introduce evidence that it previously characterized as “irrelevant or cumulative,” and to do so after the case has been fully briefed, argued, submitted, and a decision issued. Indeed, based, at least in part, upon the State’s characterization of the budget-related evidence not adduced in the trial court as “irrelevant or cumulative,” the Court of Appeal held that no party was prejudiced by the trial court’s misallocation of the burden of proof. (Opinion at p. 29.) The time for the State to submit evidence to support its arguments has long since passed. Accordingly, this Court should deny the State’s Request for Judicial Notice in Support of Brief on the Merits.

SOMACH, SIMMONS & DUNN
A Professional Corporation

DATED: July 10, 2007

By 
Daniel Kelly

Attorneys for Petitioners
Northern California Water
Association, et al.

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 813 Sixth Street, Third Floor, Sacramento, California; I am over the age of 18 years and not a party to the foregoing action.

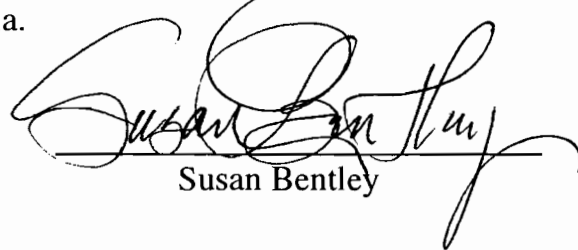
On July 10, 2007, I served the following document(s):

**OPPOSITION OF PETITIONERS NORTHERN CALIFORNIA
WATER ASSOCIATION, ET AL. TO RESPONDENTS STATE
WATER RESOURCES CONTROL BOARD, ET AL.'S REQUEST
FOR JUDICIAL NOTICE IN SUPPORT OF BRIEF ON THE
MERITS**

X (by mail) on all parties in said action, in accordance with Code of Civil Procedure §1013a(3), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Somach, Simmons & Dunn, mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on July 10, 2007, at Sacramento, California.


Susan Bentley

SERVICE LIST

<p>Superior Court of California County of Sacramento 720 Ninth Street, Appeals Unit Sacramento, CA 95814</p>	<p>Clerk</p>
<p>Court of Appeal Third Appellate District 900 "N" Street, Room 400 Sacramento, CA 95814</p>	<p>Clerk</p>
<p>Office of State Attorney General Matthew J. Goldman Molly K. Mosley P.O. Box 944255 Sacramento, CA 94244-2550</p>	<p>Counsel for Defendants/ Respondents California State Water Resources Control Board, et al.</p>
<p>David A. Battaglia, Esq. Gibson, Dunn & Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071-3197</p>	<p>Counsel for Plaintiffs/Appellants California Farm Bureau Federation, et al.</p>
<p>Nancy N. McDonough California Farm Bureau Federation 2300 River Plaza Drive Sacramento, CA 95833</p>	<p>Counsel for Plaintiffs/Appellants California Farm Bureau Federation, et al.</p>
<p>Tim O'Laughlin O'Laughlin & Paris 2580 Sierra Sunrise Terrace, Suite 210 Chico, CA 95928</p>	<p>Counsel for Amicus San Joaquin River Group Authority</p>
<p>Kevin M. O'Brien Downey Brand, LLP 555 Capitol Mall, 10th Floor Sacramento, CA 95814</p>	<p>Counsel for Amicus Association of California Water Agencies</p>
<p>Jason Everett Resnick Western Growers Law Group 17620 Fitch Street Irvine, CA 92614-6022</p>	<p>Counsel for Amicus Western Growers Association, et al.</p>
<p>Ed Gee U.S. Department of the Interior Office of the Solicitor 2800 Cottage Way, Room E-1712 Sacramento, CA 95825</p>	<p>Courtesy Copy</p>
<p>Kirk C. Rodgers, Regional Director U.S. Bureau of Reclamation 2800 Cottage Way, Rm. W-1105 Sacramento, CA 95825</p>	<p>Courtesy Copy</p>