

COUNTY OF EL DORADO

330 Fair Lane
Placerville, CA 95667
(530) 621-5390
(530) 622-3645 Fax

SUZANNE ALLEN DE SANCHEZ
Clerk of the Board



BOARD OF SUPERVISORS

JOHN R. KNIGHT
District I
RAY NUTTING
District II
JAMES R. SWEENEY
District III
RON BRIGGS
District IV
NORMA SANTIAGO
District V

September 12, 2011

George Gentry, Executive Officer
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Ken Pimlott, Director
Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Kristine Cazadd, Executive Director
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279

PETITION FOR REDETERMINATION

The County of El Dorado ("County"), on behalf of all affected land owners in the County, hereby files this Petition for Redetermination in accordance with Public Resources Code section 4220 et seq. As more specifically set forth herein, the County's Petition should be granted and the State Responsibility Area Fire Prevention Fee (the "Fee"), authorized by Public Resources Code section 4210 et seq. and implemented by 14 C.C.R. §1665.1 et seq., found inapplicable because, among other reasons, it is an unlawful tax in violation of Proposition 26 and it imposes an undue burden on local property owners who already pay for fire protection service.

1. The Fee violates Proposition 26.

Proposition 26 amended the California Constitution to place additional limits on the State's ability to impose a tax. In particular, it requires that any state statute that results in a higher tax must be passed by a vote of at least two-thirds of all members elected to each of the two houses of the Legislature. (Cal. Const., Art. XIII A, § 3(a).) Only those levies, charges, or exactions that fall into one of five narrow exceptions are not subject to the two-thirds voting requirement. (*Id.*, § 3(b)(1)-(5).) Significantly, the State bears the burden of proving that a particular levy, charge, or other exaction is not a tax:

The State bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover

the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity. (*Id.*, § 3(d).)

Here, the Fee is actually a tax because neither of the two potentially-applicable exceptions—charges imposed for a specific benefit conferred or privilege granted (Cal. Const., Art. XIII A, § 3(b)(1)) and charges imposed for a specific government service or product provided (*Id.*, § 3(b)(2))—apply.

First, the amount of the Fee as authorized, up to \$150 per dwelling, and as implemented, up to \$90 per dwelling, appears somewhat arbitrary and not supported by proof that it does not exceed the reasonable cost of conferring the benefit or providing the service. Indeed, with almost 80,000 parcels affected in El Dorado County and approximately 62,000 dwelling units potentially subject to the Fee, the Fee could yield approximately \$5.5 million, which seems excessive given the nature of the benefit or service provided in El Dorado County.

Second, the natural resources that the State seeks to protect through this Fee benefit all people in the State; however, the Fee charges only a subset of the population to protect and maintain resources enjoyed by all. Protection of such resources is the proper function of the State's general fund, as was the case prior to implementation of the subject Fee.

Third, the State cannot prove that the manner in which the cost is allocated bears a fair or reasonable relationship to the burdens on or benefits received from the subject activity. In particular, land owners who already receive fire protection from local fire districts (paid through property taxes or assessments) are forced to pay the Fee, albeit a slightly discounted one. That certain property owners will be forced to pay twice for fire protection is particularly troublesome in El Dorado County where Cal Fire, the agency whose activities are to be funded by the Fee, is oftentimes not the first agency on the scene of fires in El Dorado County.

Because the State cannot meet its burden of proving that the Fee is exempt from Proposition 26, the statute authorizing the Fee must have been adopted by a two-thirds vote of each house of the Legislature. However, the bill enacting Public Resources Code section 4210 et seq. and authorizing the Fee (ABX1 29) received only a simple majority vote of each house, falling two votes short of the required two-thirds in the Assembly and four votes short in the Senate. Accordingly, the Fee violates Proposition 26 and is inapplicable to land owners in El Dorado County.

2. The Fee would be an extraordinary burden on local land owners.

As mentioned above, many land owners in El Dorado County already pay for fire protection from local fire districts. Requiring those land owners to pay any additional amounts for no appreciable increase in the level of service provided or benefit received is extraordinarily burdensome.

3. The Fee will make it very difficult for local fire districts to obtain voter approval for any necessary fee increases.

Many local fire districts have seen their funding decrease over the past few years, forcing them to consider seeking voter approval for fee increases or special taxes. However, it will be very difficult to obtain such approval from voters who will already be paying additional amounts for fire prevention pursuant to the Fee.

For all of the foregoing reasons, the County's Petition for Redetermination should be granted and the Fee found inapplicable to land owners within El Dorado County. Additionally, the County requests that the Department of Forestry and Fire Protection begin conducting the inspections referenced in 14 C.C.R. § 1665.7(c) in order to determine which parcels in El Dorado County are eligible to receive the referenced \$10 fee reduction.

Respectfully.



Raymond J. Nutting, Chairman
County of El Dorado Supervisors
530.621-5651
bostwo@edcgov.us

c: Governor Jerry Brown
Senator Ted Gaines