



FRIDAY REVIEW

Legislative and Governmental Update

JANUARY 20, 2006

SB 1099 (Hollingsworth, R-Murrieta), the measure that would have prohibited the taking of agricultural land unless the condemning entity retained direct ownership of the property for the stated public use died in the Senate Judiciary Committee on a vote of 1 to 1. SB 1099 was one of several legislative responses to the highly controversial U.S. Supreme Court's decision in *Kelo v. New London* where eminent domain was used to take private property for later transfer to another private party for the stated "public purpose" of economic development and increased tax revenue. The Judiciary Committee's analysis concluded that there appeared to be a variety of statutory protections in place to ensure that agricultural land is preserved and cited two Farm Bureau sponsored bills from 1994 and 1996 as examples that "resulted in extensive changes to state law."

The bill's opponents, American Planning Association, California Chapter and Sierra Club California argued that they have not heard of eminent domain being used to acquire agricultural lands on a regular basis and were not aware that it is a public policy problem.

The Judiciary Committee roll call on SB 1099 was "AYES": Ackerman; "NOES": Kuehl; "Absent or not voting": Dunn, Morrow, Cedillo, Escutia, and Figueroa.

The California Independent Oil Marketer's (CIOMA) bill to shift the state excise tax on diesel fuel from the oil marketer to the farmer was approved by the Assembly Appropriations Committee. AB 674 (Klehs, D-San Leandro) would require farmers and ranchers to pay the state's \$0.18 excise tax on clear diesel fuel when they purchase the fuel and then apply for a refund from the Board of Equalization (BOE) for the amount of clear diesel fuel in a nontaxable off-highway use. Under existing law, the oil marketer pays the tax and seeks the refund based on a declaration of use by the farmer. As of September 1, 2005 federal law requires farmers and ranchers to pay the federal excise tax (\$0.244) up front and seek a refund from the Internal Revenue Service. The amount claimed for refund must be at least \$750.

Assemblymember Klehs continued to state that as many as two-thirds of California farmers and ranchers use their tax exempt clear diesel for a taxable on-highway use. In our testimony, we took the author to task over his outrageous allegations and reminded him and the committee that all taxpayers are not cheats.

Farm Bureau and other members of an agricultural coalition have proposed what we believe would be an equitable solution to the issue. Instead of having to pay the entire tax up front on the total sale of bulk diesel, we've suggested that farmers and jobbers only pay the \$0.18 per gallon in state excise tax on the estimated gallons used on-road. An exemption certificate, similar to the partial sales tax exemption certificate, would have to be on file with the jobber and the "estimate" would have to be reconciled either quarterly or at year's end based on the refund claim from the IRS. (Note: the Internal Revenue Service just recently released the forms needed to claim the federal excise tax refund on clear diesel used off-road. It is Schedule 1 of Form 8849. This form will be available on the CFBF website at www.cfbf.com. It is important to note that **the IRS will only process refunds "filed during the first quarter following the last quarter included in the claim."** For example, a claim for the quarters consisting of July through September and October through December must be filed between January 1 and March 31.)

The Assembly Appropriations Committee roll call on AB 674 was “AYES”: Chu, Bass, Berg, De La Torre Karnette, Klehs, Leno, Nation, Oropeza, Ridley-Thomas, and Saldana; “NOES”: Sharon, Runner, Emmerson, Haynes, and Nakanishi; “Absent or not voting”: Calderon, Walters, and Yee.

Senate Bill 283 (Abel Maldonado, R-Santa Maria), the urgency bill that would allow agricultural product haulers to continue using motor truck two-pull trailer combinations up to 75 feet in length, passed out of the Senate on a 29-0 vote and was sent to the Governor for his signature. The measure takes effect immediately upon the Governor’s signature and extends the sunset date until January 1, 2007. CFBF thanks Senator Maldonado and his staff who worked diligently to move this bill through the legislative process as quickly as possible.

Build What?

Following up on his State of the State address, in which he said that California needs new water supplies to meet the needs of 8.5 million new residents and support agriculture, and to repair aging levees, and his bold commitment to ‘build it,’ Governor Schwarzenegger has introduced bills in the legislature that would put \$9 billion worth of water-related bond initiatives on the ballot, one in 2006 (\$3 billion) and 2010 (\$6 billion).

Despite being cast as the successor to the great water infrastructure projects of the 1960’s, these new proposals do not actually authorize any particular water supply projects to be built, and do not make any of the needed regulatory reforms to actually authorize any major water supply projects.

The proposal does include a new statewide monthly water charge, ranging from \$3 to \$10, to be paid by all California residences, businesses, and farms who receive water from water districts. The charge will generate an estimated \$380 million per year in new state revenue. Now, the Department of Water Resources (DWR) is promoting this as a fee (not a tax) but whatever it is called, it is new revenue to be paid by California’s water districts, residents, businesses, farmers and ranchers.

Other than a set of projects earmarked for improving flood protection for the greater Sacramento area, the bond proposal does not provide authorization or funding for any particular flood control or water supply projects. A third of the money raised will be turned over to local districts for development of regional projects, which may include increasing water supplies, but could also be spent on purely environmental projects. Less than 14% of the funds to be raised are dedicated to development of new water supplies with statewide benefits, and even these funds are contingent on eventual authorization of projects, and appear to be limited to being spent mainly on environmental mitigation for storage projects, rather than on building the actual project or projects. A significant amount of money raised by the bonds for ‘water supply and flood’ is actually expressly dedicated to purely environmental projects. While some funds are dedicated to repairing levees, the current needs exceed the amount dedicated, and the proposal provides the DWR with the authority to decline to repair certain levees and acquire flood easements over the protected property instead.

Farm Bureau anticipates that the governor’s proposal will undergo many changes before it is approved by the legislature and sent to the voters. The legislature will be holding hearings in the next couple of weeks to vet this proposal, with a view towards legislative approval of a bond package by March that would go before the voters on the June 2006 primary ballot. As the proposal evolves, Farm Bureau will be keeping a close eye on the ball to ensure that state borrowing results in development of real water supply with statewide benefits, and real restoration of our aging levee system.