



In Brief

A MONTHLY NEWSLETTER FROM
THE LEGAL SERVICES DIVISION OF
CALIFORNIA FARM BUREAU

SEPTEMBER 2024

UPCOMING WEBINAR: MONARCH BUTTERFLIES AND FARMING



The monarch butterfly is scheduled to be listed as an endangered or threatened species under the Endangered Species Act in December 2024. Farm Bureau, in conjunction with Western Growers, and CAPCA will be hosting a webinar for growers to learn about the forthcoming listing as well as EPA's Workplan to Protect Endangered Species and Threatened Species from Pesticides. The free webinar will be on October 8, 2024, from 9:00 am to 10:00 am. Please register here: <https://go.wga.com/esa-listing-monarch-butterflies-new-epa-regulation>

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CAFB FILES REPLY BRIEF IN SDG&E PHASE 2 PROCEEDING

On August 30, 2024, CAFB filed a reply brief regarding the remaining unsettled issues in the proceeding.

CAFB had previously negotiated and joined two separate settlement agreements which addressed most of the issues in the proceeding favorably for CAFB, but the issue of combining the distribution and generation tariffs within San Diego Gas and Electric's (SDG&E) tariff book remained. CAFB supported the opening brief of the City of San Diego and pointed out, among other things, that it would take an agricultural customer sixteen steps to gather all the necessary information for assessing the breakdown of their rates. CAFB addressed the fact that SDG&E had failed to comply with the settlement agreement from the prior Phase 2 proceeding and should be required to do so now at no additional cost to ratepayers. A decision from the ALJ is expected in a few months.

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FAARM REQUEST FOR PROPOSALS

The FAARM Project is a joint initiative of the American Farm Bureau Federation, the California Farm Bureau Federation, the Indiana Farm Bureau Federation, the Oregon Farm Bureau Federation, the North Carolina Farm Bureau Federation, and the Texas Farm Bureau that is designed and intended to foster and help facilitate legal research, writing and scholarship. The RFP is directed at lawyers, law students, professors, or law schools that would like the chance to be awarded up to \$20,000 to research and write a legal article/law review piece on the following topics:

Topic 1: Identify and discuss the federal regulations most burdensome to farmers and ranchers in terms of lost time, money, and opportunity. Explain the statutory and policy rationale for the regulations and make suggestions for regulatory reforms that would decrease the burden on farmers while still accomplishing the goals of the statute.

Topic 2: Following recent developments in agency deference and the major questions doctrine, identify federal regulations that are burdensome to farmers and ranchers that are ripe for a refreshed challenge of agency overreach. Include any factual situations that would particularly highlight the discrepancy between the authorizing statute and the agency's implementing regulations.

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CAFB FILES REPLY BRIEF IN PACIFICORP GENERAL RATE CASE



On August 23, 2024, CAFB filed a reply brief on the remaining Track 2 issues concerning a number of wildfire memorandum accounts. The Wildfire Mitigation Memorandum Accounts (WMMAs) carry a balance of \$36.4 million and would be subject to amortization over a period of years. This represents a significant amount of costs in PacifiCorp's small territory and CAFB argued that the third party audit the Public Utilities Commission ordered did not fulfill its obligations by proving the costs were incremental or reasonable. CAFB also rebutted the position of the Public Advocates Office on how the costs should be allocated, which would result in an additional \$33,000 being allocated to agricultural customers per year. A decision from the ALJ is expected in a few months.

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CAFB FILES PROTEST TO PACIFICORP ECAC APPLICATION

On August 30, 2024, CAFB filed a protest regarding PacifiCorp's 2025 Energy Cost Adjustment Clause (ECAC) and Greenhouse Gas-Related (GHG) costs application. The application requests an overall rate increase of \$8.7 million or 6% based on the combined ECAC and GHG Surcharge, for rates effective January 1, 2025. While less than the prior two ECAC proceeding requests, CAFB plans to fully review all testimony and in particular, push back against the inclusion of Washington's Cap and Invest Program which now has been challenged in Oregon and Wyoming and may be repealed in Washington's November election. The next step will be a prehearing conference to establish the schedule for the proceeding.

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CAFB JOINS IN AMICI CURIAE BRIEF IN ALRA CARD CHECK CASE



CAFB joined 10 other agricultural employer organizations in an amici curiae brief supporting Wonderful Nurseries' challenge to the majority support petition procedure under the California Agricultural Labor Relations Act, whereby a labor union can become the collective bargaining agent of agricultural

employees without winning a secret ballot election. The brief was submitted for filing with the Kern County Superior Court.

Noting “[a]micus briefs are common in appellate proceedings but are rare in trial court proceedings, for good reasons,” the court in its July 18 order on Wonderful’s motion for a preliminary injunction declined to accept the brief (along with three other employer-backed amicus briefs supporting Wonderful). The court stated it did so because the briefs “do not appear to offer a different prospective on the issues from Wonderful” and their acceptance “would only further delay the court’s decision on the motion” because the opposing parties would have to be given a chance to respond to them.

Nonetheless, the court adopted the positions of Wonderful and the would-be amici by granting Wonderful’s motion for preliminary injunctive relief “given the constitutional rights at stake in this matter.” Specifically, the court enjoined the Agricultural Labor Relations Board from (1) enforcing its certification of the United Farm Workers union as the collective bargaining representative of Wonderful’s agricultural employees and (2) continuing to conduct proceedings in the underlying administrative matter.

On August 21, real party in interest UFW lodged with the California 5th District Court of Appeal a notice of appeal of the trial court’s order granting the preliminary injunction.

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CAFB SUBMITS COMMENTS ON TULE SUBBASIN PROBATIONARY HEARING AND WATER RIGHTS FEES INCREASES

CAFB submitted written comments on two important upcoming State Water Resources Control Board items. One is the Board staff’s Tule Subbasin Final Staff Report and a proposed probationary designation resolution ahead of the Board’s September 17th Tule Subbasin Probationary Hearing. Board staff’s Tule Subbasin Final Staff Report takes steps in the right direction, expanding options for evapotranspiration-based alternatives to well metering, and granting two local Groundwater Sustainability Agencies (“GSAs”) first-of-their-kind “Good Actor” exclusions from Sustainable Groundwater Management Act (“SGMA”) probationary fees and reporting. However, unless obstacles to implementing such solutions in more GSAs throughout the San Joaquin Valley are removed, most areas will continue to have to shoulder crushing costs.

In addition to these comments on SGMA and Tule Subbasin, specifically, the remainder of CAFB’s comments addressed the Board’s September 18th annual water rights fee adoption item. To the surprise of many, the Board staff’s proposed water rights fee adjustments include enormous increases in water rights application fees, generally, and fees for temporary groundwater recharge permits, in particular. In addition to the lack any budgetary support for the Board’s proposed fee increases, CAFB’s comments point out how the Board’s temporary recharge permits run completely against the grain of recent state policy that identifies groundwater recharge as a key part of California’s long-term water-resilience portfolio. The Board’s proposed fees would likely make most such fees unattractive and prohibitively expensive for most would-be applicants. Without much more groundwater recharge, local GSAs in overdraft will be largely reduced to “demand management” options like pumping restrictions and land retirement alone. CAFB will offer oral comments on both items at the Board’s September 17-18, meeting. Also, CAFB joined a coalition letter in opposition to these increases.

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GO GOLFING WITH FARM BUREAU



Sunday, December 8

During Annual Meeting

SAVE \$25 - Register by November 1!

Register Now!



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