

**BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION**

**BATON ROUGE WATER WORKS COMPANY
AND PARISH WATER COMPANY, INC.,**

PETITIONERS

VERSUS

DOCKET NO. L01630

**CAPITAL AREA GROUNDWATER CONSERVATION COMMISSION
AND CAPITAL AREA GROUNDWATER CONSERVATION DISTRICT,**

DEFENDANTS

INTERIM ORDER AND REASONS

This matter was heard on June 14, 2024, with Local Tax Judge Cade R. Cole presiding. Brett Furr, John Milazzo, Jr., Justin Mannino, Will Patrick, and Brandon DeCuir appeared on behalf of Baton Rouge Water Works Company and Parish Water Company, Inc. (collectively, “BRWC”). Murphy Foster and Jacob Rousell appeared as attorneys for the Capital Area Groundwater Conservation Commission and the Capital Area Groundwater Conservation District (collectively, the “CAGWC”). At the conclusion of the hearing, the Board took the matter under advisement and now rules as follows:

Background

BRWC operates approximately 100 water wells that produce groundwater from the Southern Hills Aquifer (“SHA”).¹ The SHA is a renewable groundwater resource that supplies water for domestic, agricultural, light business, and industrial purposes. The SHA covers approximately 14,000 square miles, underlying the vast majority of the Parishes of: Pointe Coupee; West Feliciana; East Feliciana; West

¹ As stated in the Water Institute of the Gulf (“WIG”) State of the Science Report, aquifers are subterranean porous media where water is present in empty voids between materials such as sand, silt, and clay or in fractures within rocks.

Baton Rouge; East Baton Rouge; St. Helena; Livingston; Tangipahoa; Washington; and Saint Tammany. The SHA also extends into Mississippi as far north as Vicksburg. In the Baton Rouge area, the SHA ranges between 200 to 2,800 feet deep. The shape of the SHA tends downward and southward towards the Gulf of Mexico. The SHA and saltwater from the Gulf interact such that the SHA is susceptible to saltwater encroachment.

In 1974, concerns about saltwater intrusion and subsidence led the legislature to create the CAGWC. CAGWC exists to provide for the “efficient administration, conservation, orderly development and supplementation of groundwater resources” in “the parishes of Ascension, East Baton Rouge, East Feliciana, Pointe Coupee, West Baton Rouge, and West Feliciana” (the “District”)². CAGWC, in conjunction with the Commissioner of Conservation, is charged with regulating groundwater production from wells that serve the public and industry. However, CAGWC does not have the authority to regulate: production for agricultural or horticultural purposes; wells of a total depth of less than four hundred feet; wells drawing on the Mississippi River alluvial aquifer; or domestic wells at a person’s home for use by the resident or residents of the property.³

The legislature authorized the CAGWC to fund its operations by assessing “pumpage charges” within the District “based upon the annual rate of use of each user.” La. R.S. 38:3076(A)(14)(a).⁴ The CAGWC assessed pumping charges at a rate of \$5 per million gallons pumped from its inception until 2016, when it raised the rate to \$10 per million gallons pumped. BRWC testified that it was not concerned about

² La. R.S. 38:3071(B). Ascension Parish was added to the District by 2019 Act 200 (SB 231).

³ La. R.S. 38:3076(D). However, a well for “domestic use of persons resident upon the same premises” must not be “capable of producing not more than fifty thousand gallons per day in the aggregate,” or it will be subject to the CAGWC’s regulatory power, including the power to assess a pumping charge. *Id.*

⁴ The term “User” is defined as “any person who produces groundwater in the district for any beneficial use, in excess of fifty thousand gallons for any day during any calendar year from a well or wells owned or operated by such person or from a well or wells owned or operated solely for the production of water used by such person.”

the fee until it was raised beyond \$10. The fee was subsequently raised to \$20 and then to \$65 per million gallons of water pumped.

The Louisiana Legislative Auditor (“state Auditor”) conducted a performance audit of the CAGWC because, according to the United States Geological Survey (“USGS”), groundwater withdrawals from the SHA had resulted in saltwater intrusion. The state Auditor issued an audit report on May 9, 2019 (the “2019 LLA Report”). The state Auditor found that CAGWC “does not effectively regulate the withdrawal of water from the Southern Hills Aquifer so that saltwater encroachment can be reduced and the supply of fresh groundwater can be sustained.” In addition, the state Auditor found that CAGWC relied on self-reported production amounts when assessing fees on well owners but did not conduct inspections to verify the reported amounts.

The CAGWC began efforts to address the state Auditor’s findings and implement some of the recommendations. These efforts involved hiring a new Executive Director, Mr. Gary Beard, at a salary approximately 600% higher⁵ than its previous Agency Head.⁶ In addition, for Fiscal Year 2024, CAGWC hired a Deputy Director at a salary of \$140,000.⁷ By contrast, for Fiscal Years 2018, 2019, and 2020, actual total salary expenditures (all salaries) were only: \$103,952; \$105,508; and \$109,778, respectively. In 2019, the CAGWC doubled the pumping charge rate to \$20 per million gallons pumped.

Under Mr. Beard’s leadership the CAGWC dramatically intensified its regulatory efforts to preserve the SHA. Early in his tenure as Executive Director, Mr.

⁵ CAGC’s 2023 audit report indicates that Mr. Beard’s salary has increased to \$174,585. In addition, the CAGC’s proposed budget for Fiscal Year 2025 shows that Mr. Beard’s salary will increase to \$191,580.

⁶ For Fiscal Years 2018 through 2020, CAGC’s Agency Head was Anthony Duplechin earning \$32,001.

⁷ CAGC’s Proposed Budget for Fiscal Year 2025 proposes a salary of \$144,200 for the Deputy Director. CAGC also proposed to hire an Office Manager at a salary of \$56,238.

Beard canvassed Users as to the nature and reliability of their metering equipment. He testified that meters were broken, decrepit, and deactivated. In addition, his analysis of historically self-reported data led him to believe that many Users simply averaged their wells' maximum output over a three-month period without really measuring what they actually extracted.

The CAGWC contracted with the Water Institute of the Gulf ("WIG") to develop a comprehensive strategy for combatting saltwater intrusion. On November 30, 2021, WIG and CAGWC held a forum on environmental modeling and data. During the forum, Dr. Frank Tsai, with LSU's Department of Civil & Environmental Engineering, presented on a Groundwater Availability Model ("GAM") being developed by LSU. The GAM would provide a 3D model of the SHA. The proposed GAM would be used to inform both short and long-term decision making concerning the preserving of the SHA.

The CAGWC entered into a much-disputed Cooperative Endeavor Agreement (the "CEA" or the "SP Contract") with Sustainability Partners, L.L.P. ("SP") to purchase 377 Flexim Ultrasonic Flow Meters (the "Flexim Meters").⁸ CAGWC agreed to the CEA after a bidding process pursuant to a Request for Quotations ("RFQ") where SP was the only bidder.

BRWC produced evidence at trial showing that there were serious questions about that RFQ. The RFQ and the requirements on any proposing bidder were created almost verbatim from a template provided by SP. The CAGWC's published evaluation criteria for proposals included examining the bidder's experience as a provider of "Infrastructure as a Service," a term that also appears as a criterion in the RFQ's Statement of Qualifications. This key qualification term, "Infrastructure As A Service," is a trademark registered to and exclusively used by SP, as shown by

⁸ The CEA also provided for the purchase of equipment and materials for their power supply and installation onto Users' wells, design and equipment for a Supervisory Control and Data Acquisition ("SCADA") system, and an annual agreement for Operation & Maintenance ("O&M").

Plaintiffs' Exhibit 36, Trademark Registration No. 6,768,747. The RFQ appears to have been written in a manner that sent a signal to all potential bidders that CAGWC predestined the ultimate contract with Sustainability Partners.

Mr. Beard further admitted that his private company does business with Jay Simon, SP's principal engineering subcontractor on the CAGWC contract. There was email communication about developing business with Mr. Beard at the same time the SP contract was pending. Although there is no evidence to question Mr. Beard's good intentions, there is a serious appearance of undue conflicts of interest permeating the SP Contract. The record established that Mr. Beard personally profits from his private work with that subcontractor while at the same time the subcontractor is profiting from CAGWC's lucrative contract (\$50+ million) with SP.

The breakdown of upfront costs to the CAGWC under the CEA is as follows:

Item Description	Qty.	Hardware & Materials	Installation & Services	Total
Concrete Pad	377	\$1,179	\$1,179	\$888,966
Aluminum Shelter	377	\$3,296	\$850	\$1,563,042
Solar Panel	377	\$2,234	\$430	\$1,004,328
Flexim Meter	377	\$4,200	\$1,250	\$2,054,650
Control Panels	377	\$6,000	\$500	\$2,450,500
Salinity Probe	12	\$8,183	\$2,367	\$126,600
Conduit	377	\$43	\$157	\$75,400
SCADA System	1	\$0	\$1,545,700	\$1,545,700
IT Equipment	1	\$12,880	\$0	\$12,880
Engineering, Design & CM & PM	377	\$0	\$1,883	\$709,711
Total upfront costs				\$10,431,777

Subsequent annual costs were itemized as follows:

Description	Qty.	Services/yr	Total
Cellular Data Collection	377	\$92	\$34,684

Annual Factory Site Inspections / Calibrations (as required)	161	\$961	\$154,721
Monthly monitoring / troubleshooting / maintenance	377	\$600	\$226,200
Total annual O&M costs			\$415,605
Yearly Debt Service & Equipment Replacement Costs			\$1,179,693
Total combined annual costs			\$1,595,298

In sum, the CAGWC was obligated to pay \$10,431,777 up front, plus an annual fee of \$1,595,298 thereafter. The CEA does not specify a number of years for which the annual payments will continue. However, Mr. Beard testified that he expected the contract to be in effect for at least thirty years—which would assume payments of public money of over \$50 million to SP.

It is widely understood and black letter law in Louisiana that if you obligate a public body to payments beyond the current fiscal year then oversight by the State Bond Commission is triggered. During the merits hearing, State Treasurer John Fleming testified that the CEA obligates the CAGWC to pay interest or finance charges on its obligations to SP in a way that should have required Bond Commission approval. He testified that as Chairman of the State Bond Commission this contract was not submitted for approval and that his office found that the failure to seek that approval was in violation of Bond Commission rules.

The state Auditor also⁹ testified that the CEA is a debt obligation that did not receive the required approval of the State Bond Commission. The state Auditor further testified that the CEA has a formula for imposing a draconian termination penalty. In addition, the state Auditor testified that this is concerning because the

⁹ It should be noted that the current state Auditor is Mr. Michael Waguespack. He was not the state Auditor when the 2019 LLA Report was issued.

CEA does not contain a provision absolving the CAGWC of financial liability under a traditional ‘non-appropriation’ clause that is used to protect the public fisc in these types of contracts. The state Auditor had serious concerns about these problems with the SP Contract.

CAGWC argues that the metering program and corresponding rate increase were necessary and appropriate expenses of fulfilling its regulatory responsibilities. Mr. Beard testified that the Flexim Meters were intended to feed real time data into a SCADA System. The collated data from the SCADA system was supposed to enable Dr. Tsai to generate a reliable GAM.

The CAGWC planned to compel Users to permit the installation of the Flexim Meters on their wells. By Emergency Rule effective January 20, 2022, CAGWC more than tripled their pumping charges (which had been \$5 approximately five years earlier) from \$20 to \$65 per million gallons pumped. It also promulgated the requirement that Users permit installation of the Flexim Meters at all wells.

The Emergency Rule was formally approved by a closely divided vote during a highly contentious CAGWC board meeting on April 22, 2022. The minutes of this meeting reflect comments in opposition by BRWC’s President and CEO, Mr. Patrick Kerr. The final rule¹⁰ was promulgated and went into effect on June 20, 2022. LAC 56:V.707, 1107. The CAGWC began negotiating with Users and executing Lease Agreements to permit contractors to install and maintain the Flexim Meters on their private property.

BRWC, however, refused to install the Flexim Meters, execute a Lease Agreement, or voluntarily continue to pay the pumping charges. Instead BRWC purchased 100 of its own meters and installed them on its wells.

¹⁰ 48 LR No. 1502 (June 20, 2022).

Act 494 of the 2024 Regular Session of the Legislature was recently enacted into law. Subsection F was added to R.S. 38:3076 to expressly prohibit CAGWC from requiring Users to install CAGWC's meters on their property assuming certain criteria were met. It is undisputed that the BRWC meters meet those specifications and that is it now expressly illegal for CAGWC to install SP's meters on BRWC's property.

Procedural History

On December 21, 2022, BRWC filed the instant Petition with the Board. CAGWC responded with Exceptions of Lack of Subject Matter Jurisdiction, *Lis Pendens*, No Cause of Action, and No Right of Action, which were heard on July 13, 2023. On November 30, 2023, the Board rendered Judgment overruling the Exceptions of Lack of Subject Matter Jurisdiction, No Right of Action, and *Lis Pendens*. The Exception of No Cause of Action was sustained in part, allowing BRWC to amend their Petition to make clear any use of the Board's declaratory judgment jurisdiction pursuant to the Louisiana Constitution and La. R.S. 47:1407. We further converted the Exception in part to an Exception of Prematurity and dismissed BRWC's claims for refunds of past payments, made without protest and for which BRWC did not request an administrative refund, without prejudice.

BRWC timely filed their First Supplemental, Amending and Restated Petition on December 13, 2023 (the "Amended Petition"). In their Amended Petition, BRWC acknowledged that there is no statute providing for the payment of the pumping charges under protest. Therefore, BRWC requested that they be allowed to deposit their payments in the Board's escrow account.

BRWC continued to pay under protest until their last payment to CAGWC on November 17, 2023. That payment brought the sum of their payments under protest to CAGWC to \$2,160,449.45. After that, and beginning with their following payment on February 29, 2024, BRWC began depositing their payments in their attorneys'

Trust Account at Taylor Porter Brooks & Phillips, LLP. As of the date of the merits hearing, BRWC had deposited \$849,132.69 in the Taylor Porter Trust Account.

Roughly one month before it began tendering payments to their attorneys, BRWC filed a Motion for Partial Summary Judgment with the Board. Therein, BRWC asserted that: (1) the pumpage charges are imposed on the same incidents of taxation that trigger the State's severance tax; (2) groundwater is a natural resource for purposes of the severance tax; (3) CAGWC is a political subdivision of the state; (4) as a political subdivision, CAGWC is prohibited from levying a severance tax by La. Const. Art. VII § 4(C); and (5) the pumpage charges are therefore unconstitutional severance taxes.

Before the Summary Judgment hearing, CAGWC filed an Expedited Motion for Contempt. Therein, CAGWC asserted that BRWC was in violation of the Board's Judgment on the Exceptions. We set the Motion for Contempt for hearing. However, CAGWC requested that that hearing be continued so that BRWC would have an opportunity to make a formal request for an extension of time to pay the pumping charges at a CAGWC meeting. Accordingly, we canceled the hearing. CAGWC never asked the Board to reset its motion for another date.

BRWC's Motion for Partial Summary Judgment was heard on April 12, 2024. At the conclusion of the hearing, we stated that we intended to grant summary judgment in part. Specifically, we found that if the pumping charges are taxes, then they are severance taxes unconstitutionally levied by a political subdivision. However, we denied summary judgment in part because BRWC had not established that the pumpage charges were, in fact, taxes. Accordingly, we held that the question of whether the pumpage charges were taxes was a material dispute to be resolved at trial. On April 19, 2024, we set forth these holdings in a Judgment with Reasons.

Prior to the merits hearing, on May 23, 2024, CAGWC filed a Motion in Limine to exclude evidence concerning the CEA or CAGWC's monitoring program set forth in La. Admin. Code 56:V.707. The motion was heard and denied on June 4, 2024. At

the conclusion of the hearing, we ruled that evidence concerning the CEA and the monitoring program was relevant to the purpose of increasing the pumpage charges, and relevant to whether the costs associated with the CEA and the monitoring program were necessary costs of regulation.

Discussion

While La. Const. Art. VII, § 4(B) authorizes the State to levy taxes on natural resources severed from the soil or water, it expressly provides that political subdivisions may **not** levy a severance tax. La. Const. Art. VII, § 4(C). The constitution prohibits political subdivisions from levying a severance tax on any natural resource. Groundwater is a natural resource. La. R.S. 31:4. The Commission is a political subdivision of the State. La. R.S. 38:3072. Thus, the Commission is not allowed to levy a severance tax. The legislature cannot authorize what is prohibited by the Constitution. *Baton Rouge Water Works Company and Parish Water Company, Inc., Petitioners v. Capital Area Groundwater Conservation Commission and Capital Area Groundwater Conservation District*, Docket No. L01630 (La. Bd. Tax App. 4/19/2024), 2024 WL 1827917, at p. 3.

If a tax operates in substantially the same way as a severance tax, then it is a severance tax regardless of how it is named in law. In *City of New Orleans v Scramuzza*, 507 So.2d 215 (La. 1987), the Louisiana Supreme Court stated that “[classification of a tax must be determined by its operational effect. . . . The realities of the tax must be examined; its substance, not its form.” *Id.* at 218. The pumpage charges are imposed on the severance of a natural resource. Thus, if the pumpage charges are taxes, they are unconstitutional severance taxes.

Under *Audubon Ins. Co. v. Bernard*, 434 So.2d 1072 (La. 1983), “not every imposition of a charge or fee by the government constitutes a demand for money under its power to tax.” *Id.* at 1074. If the imposition is “not principally intended to raise revenue but is merely incidental to the making of rules and regulations to promote public order, individual liberty and general welfare, it is an exercise of the

police power.” *Id.* Similarly, assessing a special fee to a limited class of persons who receive special benefits that are not shared by other members of society is an exercise of the police power and not a tax. *Id.* However, if the imposition is primarily intended to raise revenue, **or if it “clearly and materially exceeds the cost of regulation or conferring special benefits upon those assessed, the imposition is a tax.”** *Id.* Thus, the issue presented for resolution on the merits is whether BRWC can prove that the pumping charges are taxes because: (1) it receives no special benefit from the charge; and (2) the cost clearly and materially exceeds the necessary cost of regulation by the CAGWC.

We find that pumping charges are not a charge on a specific class of persons levied in exchange for a unique benefit not shared by the general public. In *Audubon Ins.*, the tax at issue was levied on casualty insurers to fund the firefighters’ retirement system. The retirement system’s attorneys argued that insurers benefitted from better fire protection through reduced incidents of fire loss. However, the Court held that better fire protection benefits everyone, not just insurers and policyholders. *Id.* at 1076.

The pumping charges are dedicated to funding the CAGWC’s operations. The CAGWC is responsible for protecting the SHA for the benefit of all people in the capital area. The public, small domestic well owners, and agricultural concerns all benefit from the preservation of a reservoir of comparatively pure drinking water. Industrial concerns also benefit from having access to a source of water that is significantly less expensive to treat for use in industrial processes. BRWC does not gain any unique benefit from the CAGWC’s operations.

2024 Act 494

Analysis of whether the fulfillment of the SP contract justifies the pumping charges was pretermitted in part on June 10, 2024, when the Governor signed 2024 Act 494 into law. Act 494 expressly prohibits the CAGWC from compelling a User to

install the CAGWC's meters if the User's own meters substantially comply with the following:

- (a) Demonstrates compliance with the user's obligation to meter.
- (b) Measures flow data at least hourly for each well, for each stratum from which the well draws, and reports the data to the board monthly.
- (c) Ensures proper operation of the metering device through installation, calibration, validation, and maintenance practices that are consistent with the accepted capability of that type of metering device. Calibration of each metering device shall be performed at least once a year by a qualified source, which is a person or entity that has received formal training or has practical field experience in the calibration of that type of metering device.
- (d) Adheres to accepted scientific practices to safeguard the accuracy and reliability of measurements of the volume of monitored withdrawals.
- (e) Measures flows with a maximum deviation of less than five percent from true withdrawal rates throughout the range of expected withdrawal volumes.¹¹

BRWC's meters undisputedly satisfy all of the above criteria. Consequently, the effect of Act 494 is to affirmatively prohibit the CAGWC from forcing BRWC to install the Flexim Meters. The legislature and governor, through duly enacted law, have therefore restricted CAGWC's exercising its authority. Therefore, Act 494 requires the Board to consider the increased pumping charges in light CAGWC's narrowed regulatory powers. We also consider the fact that the meters were never used on BRWC wells and were not part of the actual regulation of BRWC activities prior to the enactment of Act 494.

An exercise of the police power is a measure taken to provide for the health, welfare and safety of the public. *CITGO Petroleum Corp. v. State ex rel. Dep't of Revenue & Taxation*, 2002-0999, p. 7-8 (La. App. 1 Cir. 4/2/03), 845 So.2d 558, 562, writ denied sub nom. *Citgo Petroleum Corp. v. State Thorough Dep't of Revenue & Taxation*, 2003-1243 (La. 6/27/03); 847 So.2d 1274. An example of this power would

¹¹ La. R.S. 38:3076(F)(1).

be a city's assessments for garbage collection. *Id.* Assessments of that kind are more comparable to the price paid for a commodity or service than they are to taxes. *Id.*

In this case, the installation and maintenance of the Flexim Meters could be seen as analogous to the CAGWC providing a commodity or service in lieu of Users having to bear the expense of self-metering and self-reporting. However, as stated above, CAGWC cannot do this with respect to BRWC. Furthermore, because this matter concerns an imposition on the severance of a natural resource, there should be considerably less leeway if the pumping charges generate excess revenue. The law specifically *authorizes* municipalities to generate some revenue from providing utilities. La. Const., Art. XIV, § 14; La. R.S. 33:4161; *City of Lake Charles v. Wallace*, 170 So.2d 654, 660 (La. 1964) (“Because the city charges a fee, and it may be hence argued that some incidental revenue would come to the municipality does not convert the ordinance into a revenue measure.”). By contrast, political subdivisions are constitutionally *prohibited* from levying a severance tax. La. Const. Ann. art. VII, § 4(C); *cf.* The constitutional prohibition against levying a local severance tax is broad and prohibits any kind of local severance tax. Thus, **any** revenue generated by the pumping charges that clearly and materially exceeds the necessary and reasonable costs of regulation represents an unconstitutional severance tax.

That said, Act 494 does not prevent the CAGWC from installing and maintaining meters as to Users who do not meet the requirements for self-metering. Furthermore, the pumping charges are statutorily required to be used to fund the operations of the CAGWC. The CAGWC is expressly charged to exercise the police power to preserve the SHA. The pumping charges are not taxes to the extent that they fund the CAGWC's necessary operations as a regulator. For this reason, we hold

that only the portion of the pumping charges that purports to fund the now-prohibited metering program under the CEA are unconstitutional taxes.¹²

The record evidence establishes that \$31.91 of the pumping charges at their current rate is attributable to the metering program. This portion of the \$65 pumping charges is found to be in excess of what is necessary for the CAGWC to carry out its regulatory purpose and is therefore an unconstitutional severance tax as to BRWC. A Declaratory Judgment will be rendered reflecting that finding.

The motion to pay the disputed funds into the registry of the board was orally granted at trial. Accordingly, **IT IS ORDERED** that the full amount held in escrow in the Taylor Porter IOLTA account be paid into the registry of the board within ten days of this Order. Any further amounts in dispute may be paid into the registry of the board pending appeal until a final judgment is in effect concerning this matter.

We will order a division of the escrowed funds in accordance with this Interim Order. The amount attributable to \$31.91 of the \$65 shall be adjudged to be returned to BRWC, and the remainder shall be payable to the CAGWC. The amounts held in escrow will be released to the respective parties to whom they are due pursuant to the final judgment once any appeals have concluded.

The law provides no procedural device for refund of those earlier fees paid under protest. As explained in prior rulings, the applicable statutes do not textually apply to this situation. Therefore, the Board will only render a money judgment related to those amounts. This amount would be payable only pursuant to appropriation of the CAGWC. La. Const. art. XII, § 10(C).

Accordingly, **IT IS FURTHER ORDERED** that on or before **July 29, 2024**, the parties shall submit a joint proposed Judgment accordance with this Interim

¹² We make no ruling as to any User not before us, and would observe that for Users who will not self-meter and satisfy the requirements of La. R.S. 38:3076(F), there would be a supportable basis for charging the full fee amount in exchange for providing the metering service at that location.

Order and Reasons and the parties' calculation of the amounts due to BRWC and to CAGWC pursuant to the substance of this Interim Order related to the amounts held in escrow. The proposed Judgment will also reflect a calculation of a money judgment in favor of BRWC concerning the impact of this Interim Order on the amounts previously paid under protest.

IT IS FURTHER ORDERED that if the parties cannot agree on the form of a proposed Judgment on or before **July 29, 2024**, that either party may submit its own proposed Judgment and Memoranda by that date. Either party may file a response to the other party's proposed Judgment and Memoranda on or before **August 9, 2024**.

IT IS FURTHER ORDERED that the final judgment will rule that \$31.92 of the purported \$65 per million gallons pumping charges, as increased per the promulgation of La. Admin. Code 56:V.1107, is an unconstitutional severance tax. This is a declaration that this portion of the rule is unconstitutional, not the underlying statute, therefore the appeal of this Judgment will lie to the First Circuit Court of Appeals.

However, La. C.C.P. Art. 855.1, recently enacted by 2024 2nd Ex. Sess. Act 12, provides:

All civil actions alleging that a law is unconstitutional shall be in writing and be brought in an ordinary proceeding. The pleading shall be served upon the attorney general of the state in accordance with Article 1314. Upon proper service, the attorney general shall have thirty days to respond to the allegations or represent or supervise the interests of the state.

While the judgment will strike a portion of a regulation, not the statute itself, the BRWC's pleadings do allege the unconstitutionality of a law.¹³ Therefore, we find that the Attorney General should be served under this recently enacted provision.

¹³ In addition, to challenging LAC 56:V.707 and 1107, BRWC alleged that the entirety of the pumpage charges authorized by La. R.S. 38:3072(B)(14)(a) and (b) are unconstitutional.

Accordingly, **IT IS FURTHER ORDERED** that a copy of this Order, any prior Judgments, and all Pleadings in this matter shall be served on the Attorney General.

We will allow 30 days to pass from service to allow time for the Attorney General to intervene. If the Attorney General does not intervene in this time, then a Judgment will be rendered in accordance with this Interim Order. If the Attorney General does intervene, we will conduct a status conference to ascertain a reasonable basis for allowing the Attorney General to be heard to comply with any applicable procedural requirements.

This is a non-final Order and does not constitute an appealable Judgment as contemplated by La. R.S. 47:1410 and La. R.S. 47:1434.

SO ORDERED THIS 24th DAY OF JUNE, 2024.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE