

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004-0031-EXEC

In the Matter of the Petitions for Reconsideration of the
**NORTHERN CALIFORNIA WATER ASSOCIATION,
THE CENTRAL VALLEY PROJECT WATER ASSOCIATION, AND INDIVIDUAL
PETITIONERS¹**

Regarding Water Right Fee Determinations

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR²

1.0 INTRODUCTION

The Northern California Water Association (NCWA), the Central Valley Project Water Association (CVPWA) and other persons and entities, petitioned the State Water Resources Control Board (SWRCB) for reconsideration and a refund of fees assessed by the State Board of Equalization (BOE) on or about January 8, 2004. On April 7, 2004, the SWRCB issued SWRCB Order WRO 204-0011-EXEC, which considered the petitioners' allegations and denied reconsideration. After issuing its order, in May 2004 the SWRCB received from BOE additional letters of protest that were timely filed by the persons identified in Attachment 1. (Cal. Code Regs., tit. 23, § 1077, subd. (c).) This order incorporates Order WRO 204-0011-EXEC by reference. It denies the petitions for reconsideration filed by the persons identified in

¹ The individual petitioners are identified in Attachment 1.

² SWRCB Resolution No. 2002 - 0104 delegates to the Executive Director the authority to supervise the activities of the SWRCB. Unless a petition for reconsideration raises matters that the SWRCB wishes to address or requires an evidentiary hearing before the SWRCB, the Executive Director's consideration of petitions for reconsideration of disputed fees falls within the scope of the authority delegated under Resolution No. 2002 - 0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, or set aside or modify the fee assessment.

Attachment 1, collectively referred to herein as "Petitioners," for the reasons set forth in Order WRO 204-0011-EXEC.³

2.0

On petition by any interested person or entity, the SWRCB may order reconsideration of all or part of a decision or order adopted by the SWRCB, including a determination that a person or entity is required to pay a fee or a determination regarding the amount of the fee. (Wat. Code, §§ 1122, 1537, subd. (b)(2).) Pursuant to Water Code section 1537, subdivision (b)(4), the SWRCB's adoption of the regulations may not be the subject of a petition for reconsideration. When an SWRCB decision or order applies those regulations, a petition for reconsideration may include a challenge to the regulations as they have been applied in the decision or order.

California Code of Regulations, title 23, section 768 provides that an interested person may petition for reconsideration upon any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence that, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

A petition for reconsideration of a fee assessment must include certain information, including the name and address of the petitioner, the specific board action of which petitioner requests reconsideration, the reason the action was inappropriate or improper, the reason why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated, and the specific action which petitioner requests. (Cal. Code Regs., tit. 23,

³ The SWRCB is directed to order or deny reconsideration on a petition within 90 days from the date on which the SWRCB adopts the decision or order. (Wat. Code, § 1122.) If the SWRCB fails to act within that 90-day period, a petitioner may seek judicial review, but the SWRCB is not divested of jurisdiction to act upon the petition simply because the SWRCB failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; SWRCB Order WQ 98 - 05 -UST at pp. 3-4.)

§ 769, subd. (a)(1)-(6); § 1077, subd. (a).) In addition, the petition may include a claim for refund. (*Id.* § 1074, subd. (g).)

The SWRCB may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768.

(*Id.* § 770, subd. (a)(1).) Alternatively, after review of the record, the SWRCB also may deny the petition if the SWRCB finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action.

(*Id.* § 770, subd. (a)(2)(A)-(C).)

To the extent that this order does not address all of the issues raised in each of the petitions for reconsideration, the SWRCB finds that either these issues are insubstantial or that Petitioners have failed to meet the requirements for a petition for reconsideration under the SWRCB's regulations. (*Id.* §§ 768-769, 1077.)

3.0 LEGAL AND FACTUAL BACKGROUND

SWRCB Order WRO 204-0011-EXEC, which is incorporated by reference herein, contains the legal and factual background applicable to these petitions. In sum, Senate Bill 1049 (Stats. 2003, ch. 741) requires the SWRCB to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury and revising fees for water quality certification. The SWRCB must set a fee schedule that will generate revenues in the amount the Budget Act sets for water right fee revenues. On December 15, 2003, the SWRCB adopted Resolution No. 2003 - 0077 approving emergency fee regulations to meet the requirements of the Budget Act and Senate Bill 1049. The Office of Administrative Law approved the emergency regulations on December 23, 2004, and both Senate Bill 1049 and the emergency regulations became effective on January 1, 2004. BOE issued the first bills by Notice of Determination on January 8, 2004.

On December 17, 2003, NCWA and CVPWA filed suit against the SWRCB and BOE challenging Senate Bill 1049, SWRCB Resolution No. 2003 - 0077, and the SWRCB's fee regulations. By subsequent Stipulation and Order, dated January 20, 2004, the parties agreed, in

part, that by February 9, 2004, NCWA and CVPWA would file a petition for reconsideration with the SWRCB asking the SWRCB to reconsider the disputed fee bills and to set them aside. The Stipulation also provides that NCWA and CVPWA would file the petition for reconsideration on behalf of any individual who pays its fee in full by February 9, 2004, under cover of a letter of protest that references the Stipulation and adopts the NCWA-CVPWA petition for reconsideration. (Stipulation and Order, 4(a)-(b).)

On April 7, 2004, the SWRCB issued Order WRO 204-0011-EXEC denying reconsideration of the petitions for reconsideration. In May 2004 the Division received from BOE approximately 50 petitions on over 90 water right applications that had been timely filed in accordance with the Stipulation, but had not been received by the SWRCB from BOE in time to be included in Order WRO 204-0011-EXEC.

4.0 DISPOSITION OF PETITIONS FOR RECONSIDERATION

NCWA and CVPWA filed a petition for reconsideration on behalf of all their members and non-members who have paid their billed fees in full, under protest, with reference to the Stipulation. As explained above in Order WRO 204-0011-EXEC, in light of the Stipulation, the SWRCB will treat those Petitioners who paid their fees under letter of protest as specified in the Stipulation as having filed or joined in a properly filed petition for reconsideration. Attachment 1 identifies the individual petitioners who have received a fee bill, complied with the Stipulation, and who are properly considered Petitioners for purposes of this Order.

By paying their bills under letters of protest that reference the Stipulation, Petitioners have effectively adopted the arguments raised in the petition for reconsideration filed by NCWA and the CVPWA. Neither that petition nor any of the letters of protest filed by the individual Petitioners raises any arguments that involve factual issues or alleged miscalculations that apply specifically to the bill issued to an individual Petitioner. Nor did any Petitioner provide any points and authorities or other argument or supporting information, aside from their compliance with the Stipulation, to support or augment the arguments made in the petition for reconsideration filed by NCWA and the CVPWA. The SWRCB has reviewed that order, concludes that it correctly decides the issues raised by the Petitioners through their reliance on

the Stipulation, and incorporates by reference the findings and conclusions of that order. For the reasons set forth in Order WRO 204-0011-EXEC, the petitions for reconsideration are denied.

5.0 CONCLUSION

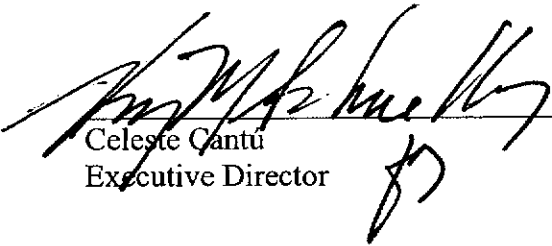
The petitions for reconsideration are denied.

ORDER

IT IS HEREBY ORDERED THAT the petitions for reconsideration are denied.

Dated:

10/25/04



Celeste Cantu
Executive Director

Attachment 1
NCWA-CVPWA Petitioners

Name	SWRCB ID*	BOE Account Number**
Aaron F Bento	A017960	94005934
Arvin-Edison Water Storage District	USBR1061	94000065
Arvin-Edison Water Storage District	USBR1326	94000276
Broadview Water District	USBR1187	94000181
C David Spanfelner	A025742	94010661
C David Spanfelner	A028501	94012230
C David Spanfelner	A028513	94012239
C David Spanfelner	A028514	94012240
C David Spanfelner	A028515	94012241
Charles W. Westcamp	A023995	94009462
Chesney, R&A, Bypass Trust Et	USBR1234	94000220
Chris J. Capaul	A000742	94000380
City of Santa Clara	A026378	94011041
City of Santa Clara	A026379	94011042
City of Santa Clara	A027750	94011741
Darin Claiborne	A025024	94010133
Davis Water District	USBR1149	94000150
Dean A. Wineman	A027224	94011465
Ernest Righetti	A017840	94005852
Ernest Righetti	A021061	94007745
Ernest Righetti	A022704	94008660
Ernest Righetti and Sons Inc.	A028883	94012457
Fresno Slough Water District	USBR1105	94000115
Garcia Family Trust	A028504	94012233
Gary A Spanfelner	A025743	94010662
Gary A Spanfelner	A025744	94010663
Gary A Spanfelner	A028502	94012231
Glennwood J. Hiatt, et al	USBR1226	94000214
Glennwood J. Hiatt, Jr.	A001765B	94000542
Glennwood J. Hiatt, Jr.	A003290B	94000790
Hastings Reclamation Dist 2060	A003769	94000881
Helen K Dixon Trust	A000882A	94000401
Henry D. Richter Jr.	A006418A	94001464
Henry D. Richter Jr.	A013646	94003730
Jack A. Cushman***	A028162	94012002
James S. Irving	A026471	94011104
Kanawha Water District	USBR1126	94000133
Lake Alpine Water Company	A020312	94007276
*ID numbers starting with A = permit and license annual fees, USBR = pass through for USBR contractors		
** The BOE number includes a prefix of WR-MT and a suffix number which is unnecessary for proper identification of the account with the Board of Equalization		
*** Inadvertently omitted from Attachment 1 of SWRCB Order WRO 2004-0011-EXEC		

Attachment 1
NCWA-CVPWA Petitioners

Name	SWRCB ID*	BOE Account Number**
Lake Alpine Water Company	A021485	94008000
Meridian Farms Water Company	A001074B	94000433
Marin Municipal Water District	A009892	94002275
Marin Municipal Water District	A014278	94004038
Marin Municipal Water District	A017317	94005535
Marin Municipal Water District	A022148	94008345
Marin Municipal Water District	A024928	94010057
Marin Municipal Water District	A026242	94010979
Mary Hahn Magers	A012363	94003205
Mary Hahn Magers	A026941	94011332
Masaru Wakida, et ux	A006527	94001491
Masaru Wakida, et ux	USBR1031	94000037
Masaru Wakida, et ux	USBR1137	94000038
Meridian Farms Water Company	A009737	94002222
Meridian Farms Water Company	USBR1211	94000199
Murphy Lake Farms	A015856C	94004768
Murphy Lake Farms	A015858	94004770
Oakdale Irrigation District	A001081	94000434
Oakdale Irrigation District	A003091	94000753
Oakdale Irrigation District	A005648A	94001293
Oakdale Irrigation District	A008892	94001983
Oakdale Irrigation District	A009666	94002204
Oakdale Irrigation District	A010872	94002632
Oakdale Irrigation District	A010978	94002670
Oakdale Irrigation District	A011105	94002704
Oakdale Irrigation District	A012490	94003252
Oakdale Irrigation District	A012614	94003296
Oakdale Irrigation District	A012873	94003380
Oakdale Irrigation District	A013309	94003576
Oakdale Irrigation District	A013310	94003577
Oakdale Irrigation District	A026791	94011264
Orange Cove Irrigation District	A028552	94012257
Orange Cove Irrigation District	A028691	94012338
Orange Cove Irrigation District	A030593	94013180
Orange Cove Irrigation District	A031186	94013241
Orange Cove Irrigation District	USBR1283	94000252
Patricia Harless	A026246	94010983
Plain View Water District	USBR1180	94000175
Porterville Irrigation District	USBR1303	94000266

*ID numbers starting with A = permit and license annual fees, USBR = pass through for USBR contractors

** The BOE number includes a prefix of WR-MT and a suffix number which is unnecessary for proper identification of the account with the Board of Equalization

Attachment 1
NCWA-CVPWA Petitioners

Name	SWRCB ID*	BOE Account Number**
Richard Klein	A023619	94009216
Richard Moore	A015811	94004747
Richter Brothers, et al	USBR1118	94000129
Robert Michael Armstrong	A026372	94011039
Russell L. Young, et al	USBR1073	94000078
Stone Corral Irrigation District	USBR1293	94000260
Stony Creek Water District	A025261	94010315
Stony Creek Water District	USBR1004	94000003
Thomas R Gregory	A026029	94010846
Thomas S Atkinson, II	A007641D3	94001733
Thomes Creek Water District	USBR1143	94000146
Tisdale Irrigation & Drainage Company	A016985	94005346
Tisdale Irrigation & Drainage Company	USBR1074	94000079
Tranquility Irrigation District	USBR1156	94000156
Tranquility Public Utility District	USBR1095	94000103
Trust of Jesse Hawkins Cave III	A014649	94004194

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