



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

JAN 31 2012

Mr. Rexford Wait
Nevada Hydro Company, Inc.
2416 Cades Way
Vista, CA 92083

Dear Mr. Wait:

LAKE ELSINORE VALLEY MUNICIPAL WATER DISTRICT AND THE NEVADA HYDRO COMPANY, INC. PETITION FOR RECONSIDERATION OF FEES FOR THE LAKE ELSINORE ADVANCED PUMPED STORAGE PROJECT FERC LICENSE NO. 11858 (WR EF 94013248)

On November 2, 2011, the State Board of Equalization (BOE) mailed you a Notice of Determination that assessed an annual 401 Certification fee on behalf of the State Water Resources Control Board (State Water Board) in the amount of \$113,860.00. In your letter dated November 28, 2011, you requested reconsideration of your annual fee because the Federal Energy Regulatory Commission (FERC) issued an Order on July 12, 2011 dismissing the FERC license application for the Lake Elsinore Advanced Pumped Storage Project.

The California Code of Regulations, title 23, section 3833.1, states the following in reference to the FERC annual fees:

- (b) (1) An annual fee calculated pursuant to paragraphs (4)... shall apply in each fiscal year (July 1 through June 30) during or after the year in which review in anticipation of consideration of certification is initiated as specified in paragraph (2) and until and including the fiscal year in which certification and related federal proceedings are complete as specified in paragraphs (3)...
- (3) Certification and Related proceedings shall be deemed to have been completed when any of the following occurs:
 - (A) FERC issues or denies the license or license amendment for which review in Anticipation of consideration of certification was initiated.
 - (B) FERC determines that no license, other than a license already in effect, or license amendment is required.
 - (C) The applicant abandons the proposed activity, including withdrawal or voluntary surrender of any applicable notification of intent, FERC preliminary Permit, FERC license application or FERC license.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

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In the case of the Lake Elsinore Advanced Storage Project, the federal proceedings for FERC License No. 11858 were not complete until November 17, 2011, when FERC issued an Order denying Nevada Hydro Company's request for rehearing on the dismissal of its license application. Thus, federal proceedings were ongoing during the 2011-2012 fiscal year as outlined in section 3833.1.

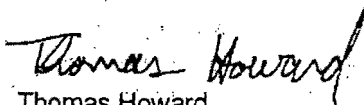
Further, the applicant Nevada Hydro Company had not abandoned the activity as it initiated litigation against the State Water Board in San Diego County Superior Court on April 1, 2011, challenging the State Water Board's dismissal of Nevada Hydro's 401 certification request. The complaint was not dismissed until November 28, 2011.

The Water Code, title 23, division 3, section 1074 further explains that "...if the circumstances establishing a requirement for a payment of an annual fee occur during a year, the entire annual fee shall be imposed for that year, even if those circumstances occur for only a portion of the year." Because the proceedings were still in effect during the fiscal year in which fees are imposed, the annual water right fees remain valid and due to the BOE immediately.

The State Water Board finds that its decision to impose water right fees was appropriate and proper. The State Water Board finds that the issues raised in the petition for reconsideration are insubstantial and that Nevada Hydro Company has failed to meet the requirements for a petition for reconsideration under the State Water Board's regulations. (California Code of Regulations title 23, sections 768-769, 1077.) The petition for reconsideration is denied.

If you have any questions, please contact Eloise Berryman at 916-341-5347 or by email at eberryman@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Eloise Berryman, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Thomas Howard
Executive Director

cc: Carol Reisinger, Board of Equalization
Keith Christensen, Board of Equalization
Lisa Gonzalez, Board of Equalization
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