

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WRO 2004-0020-EXEC**

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In the Matter of  
**PETITION FOR RECONSIDERATION  
OF JERRY DUNCAN**  
Regarding Water Right Fee Regulations

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**ORDER DENYING RECONSIDERATION**

**BY THE EXECUTIVE DIRECTOR<sup>1</sup>**

This matter comes before the State Water Resources Control Board (SWRCB) on a petition for reconsideration filed by Jerry Duncan (Petitioner). Petitioner requests reconsideration and refund of the water right fees assessed by the State Board of Equalization (BOE). Petitioner requests a factual and legal basis for the \$100 minimum fee assessed under water right A024109 (WR MT 94-009537).

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).)<sup>2</sup> 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

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<sup>1</sup> State Water Resources Control Board (SWRCB) Resolution No. 2002 - 0104 delegates to the Executive Director the authority to deny a petition for reconsideration or set aside or modify the water right fee assessment.

<sup>2</sup> 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.)

miscalculated, and the specific action which petitioner requests. (Cal. Code Regs., tit. 23, § 769, subd. (a)(1)-(6); § 1077, subd. (a).) In addition, the petition may include a claim for refund. (*Id.* § 1074, subd. (g).)

Without any analysis or explanation, Petitioner charges that the \$100 fee lacks any factual or legal basis. Petitioner provides no specific reason why he believes the fee is improper and therefore, the petition is defective. Moreover, Petitioner's assertion is without merit. As explained below, the fee is legally supported by the enactment of SB 1049 and the corresponding fee regulations. (See Wat. Code § 1525; Cal. Code Regs., tit. 23, § 1066.) The fee is correctly assessed under Petitioner's water right License 10713 (A024109), which authorizes the diversion of 9 acre-feet per annum of water to storage from October 1 through April 30. Accordingly, the SWRCB denies Petitioner's petition for reconsideration.

The SWRCB Division of Water Rights (Division) is the entity primarily responsible for administering the state's water right program. In Fiscal Year 2003-2004, the Budget Act of 2003 requires the Division's program to be supported by fee revenues amounting to \$4.4 million, replacing a General Fund reduction of \$3.6 million. The Budget Act of 2003 allocates a total of \$9.0 million for support of the water rights program. SB 1049 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. Accordingly, the SWRCB will collect fees for the 2003-2004 fiscal year, but the fees will support half of the program costs this fiscal year. The SWRCB will review and revise the fees each fiscal year as necessary to conform to the revenue levels set forth in the annual Budget Act. BOE is responsible for collecting the annual fees.

The Legislature enacted the water right fee provisions of the Budget Act of 2003 and SB 1049 based on the recommendations of the Legislative Analyst. The Legislative Analyst concluded that the water right program provides benefits to the water right applicants and water right holders regulated by the program. With respect to existing water right holders, the Legislative Analyst observed:

[T]he water rights program provides *ongoing* benefits directly to water rights holders. This is mainly because SWRCB is charged with assuring that applications for new water rights do not cause harm to any other existing legal water rights holder. In addition, the program conducts routine compliance and inspections of existing water rights. These activities also provide direct benefits to water rights holders by ensuring the terms and conditions of the water rights permits and licenses held by others are upheld.

(Legislative Analyst's Office, Analysis of the 2003-04 Budget Bill at p. B-125) [*italics in original*].) Accordingly, the Legislative Analyst recommended an increase in application fees, plus new annual fees assessed on all permit and license holders, and establishment of a new special fund for deposit of the revenues generated by the fees. (*Ibid.*)

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. In general, the fee regulations increase filing fees for applications, petitions, registrations, and other filings and adopt annual fees for permits, licenses, water leases, and projects subject to water quality certification. Fees will be deposited in the Water Rights Fund, which will be used to support all activities in the water right program. The Office of Administrative Law approved the emergency regulations on December 23, 2004, and both SB 1049 and the emergency regulations became effective on January 1, 2004. BOE issued the first bills by Notice of Determination on January 8, 2004.

A Notice of Determination dated January 8, 2004 was sent to Petitioner for a \$100 fee based on Application No. A024109 (License 10713). The SWRCB determined that an appropriate annual fee rate is \$0.03 per acre-foot. However, approximately half of water right permits and licenses authorize the diversion of 10 acre-feet of water or less. For permits and licenses authorizing very small diversions, the costs of administering the permit or license substantially exceeds \$0.03 per acre-foot. Indeed, even the costs of administering the fee system exceed that amount. If these water right holders were billed based on the per acre-foot charge of \$0.03, the cost of billing would exceed the amount of the bill.

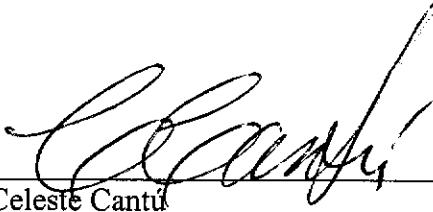
Staff determined that a minimum charge of \$100 is appropriate to recover the cost of providing services to these water right holders. While for larger water rights costs generally increase as the authorized diversion increases, certain basic costs apply for every permit or license, no matter how small. These include the costs of maintaining records, costs of processing address and ownership changes, costs of reviewing and filing reports of permittee and licensee, costs of processing revocations where the right has not been used, and costs of providing notification to water right holders of proceedings that may affect their rights. The minimum fee on all permits and licenses is consistent with the need for and costs of the SWRCB's regulatory activity.

If you have financial difficulty paying the water right fee, you may wish to contact the State Board of Equalization to arrange a payment plan. If the last two digits of your account number are between 00 and 32, call (916) 324-2290. If the last two digits of your account number are between 33 and 66, call (916) 324-2117. If the last two digits of your account number are between 67 and 99, call (916) 327-3356.

**ORDER**

**IT IS HEREBY ORDERED THAT** the petition for reconsideration is **DENIED**.

Dated: 4-08-04

  
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Celeste Cantu  
Executive Director