

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2023–0038–EXEC

In the Matter of the Petition for Reconsideration of the

**NORTHERN CALIFORNIA WATER ASSOCIATION,
CENTRAL VALLEY PROJECT WATER ASSOCIATION,
AND INDIVIDUAL PETITIONERS**

Regarding Annual Water Right Fee Determinations

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

The Northern California Water Association (NCWA), the Central Valley Project Water Association (CVPWA), Glenn-Colusa Irrigation District, Westlands Water District, Imperial Irrigation District, Placer County Water Agency, Byron-Bethany Irrigation District, and Stevinson Water District, collectively referred to herein as “Petitioners,”² petition the State Water Resources Control Board (State Water Board) for reconsideration of annual water right fees imposed for Fiscal Year (FY) 2014-15.

¹ State Water Board [Resolution No. 2012-0061](#) delegates to the Executive Director the authority to conduct and supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the board, the Executive Director’s consideration of petitions for reconsideration of disputed fees falls within the scope of the authority delegated under Resolution No. 2012-0061. Accordingly, the Executive Director has the authority to refuse to reconsider No. petition for reconsideration, deny the petition, or set aside or modify the fee assessment.

² The term “Petitioners” is used for ease of reference and does not confer the legal status of petitioner.

Petitioners allege that the annual fees constitute an unconstitutional tax in violation of Article XIII A of the California Constitution (commonly referred to as “Proposition 13”) and violate the Supremacy Clause of the United States Constitution. They request the State Water Board to vacate and rescind the water right fees and refund with interest all fees paid to the State Water Board or the State Board of Equalization (BOE). The State Water Board finds that its decision to impose the fees was appropriate and proper and denies Petitioners’ request for reconsideration.

2.0 STATUS OF LITIGATION

Beginning in 2003, NCWA, CVPWA, and the California Farm Bureau Federation (Farm Bureau) have filed suit against the State Water Board and BOE alleging that the water right fees are unconstitutional and invalid. The NCWA, CVPWA, and the Farm Bureau actions over the FY 2003-04 fees have been consolidated, and the other actions have been stayed pending resolution of the consolidated cases. Thus, the active litigation has involved issues regarding the constitutionality of the statute authorizing the water right fees and the implementing annual fee regulations adopted for FY 2003-04. In 2005, the Sacramento County Superior Court issued a judgment upholding the water right fees in their entirety, and NCWA, CVPWA, and the Farm Bureau appealed. In January 2007, the Third District Court of Appeal issued a decision upholding the fee statute and invalidating the fee regulations. The California Supreme Court subsequently granted review.

In 2011, the California Supreme Court issued a decision on the statute authorizing the water right fees and the State Water Board’s annual fee regulations for FY 2003-04. (*CFBF v. State Water Resources Control Bd.* (2011) 51 Cal.4th 421 (*Farm Bureau*).) The Supreme Court upheld the water right fee statutes (e.g., Wat. Code, §§ 1525, 1540, 1560). (*Farm Bureau, supra*, at p. 446.) It also reversed the two adverse holdings of the Court of Appeal concerning the State Water Board’s regulations governing annual permit and license fees and the annual fees passed through to the federal water contractors. (*Id.*, at pp. 446-447; see Cal. Code Regs., tit. 23, § 1066, 1073.)³ The

³ All further regulatory references are to the State Water Board’s regulations located in title 23 of the California Code of Regulations unless otherwise indicated.

Supreme Court remanded issues concerning the application of these fees through the State Water Board's regulations back to the trial court for further fact-finding.

Specifically, the Supreme Court directed the trial court to make factual findings as to whether the annual permit and license fees were reasonably related to the costs of the regulatory activity and findings related to the annual water right fees passed through to the federal water contractors. (*Farm Bureau, supra*, at pp. 442, 446.) The Supreme Court's decision otherwise left intact the appellate court's holdings that were favorable to the State Water Board.

In December 2012, a trial was held in the Sacramento Superior Court on the application of the water right fees for FY 2003-04. On November 12, 2013, the Superior Court issued its Final Statement of Decision, invalidating the FY 2003-04 fee regulations.

On March 2, 2018, the Court of Appeal issued a 40-page decision completely reversing the trial court decision on the three key issues. (*Northern California Water Association v. State Water Resources Control Board* (Mar. 2, 2018, C075866) 20 Cal.App.5th 1204 [2018 WL 1127892].) The appellate court found that the State Water Board reasonably apportioned fees amongst the fee payers and that the fee payers in FY 2003-04 did not subsidize the State Water Board's work on behalf of non-fee payers. The court similarly found that the fees assessed on permit and license holders were proportionate to the benefits derived by them or the burdens they placed on the Division of Water Rights, satisfying the constitutional test for a regulatory fee.

The appellate court also concluded that the State Water Board's decision to allocate all of the United States Bureau of Reclamation's (Reclamation) annual permit and license fee for the federal Central Valley Project (CVP) to the water supply contractors was reasonable. The record and the case law establish that the CVP is a water supply project and that Reclamation provides the contractors with all available water after satisfying its obligations under state and federal law. As a result, the fees paid by CVP contractors were reasonably related to their beneficial interest in CVP water rights.

Finally, the appellate court concluded that the trial court erred in determining that the fee regulations were invalid based on their application to a single payer (Imperial Irrigation District). Prevailing law requires that the fees have to be evaluated collectively, and a

regulatory fee is not invalid simply because it may be disproportionate as applied to a particular fee payer.

On May 16, 2018, the California Supreme Court denied NCWA's petition for review. On October 15, 2018, the United States Supreme Court denied NCWA's petition for writ of certiorari.

3.0 GROUNDS FOR RECONSIDERATION

According to the State Water Board's regulations governing reconsideration of fees, only a fee payer may petition for reconsideration of the State Water Board's determination that the fee payer is required to pay a fee, or the State Water Board's determination regarding the amount of the fee. (§ 1077.) A fee payer may petition for reconsideration on any of the following grounds: (1) irregularity in the proceeding, or any ruling, or abuse of discretion, by which the fee payer was prevented from having a fair hearing; (2) the fee determination is not supported by substantial evidence; (3) there is relevant evidence that, in the exercise of reasonable diligence, could not have been produced; or (4) error in law. (§§ 768, 1077.) Pursuant to Water Code section 1537, subdivision (b)(4), the State Water Board's adoption of the regulations may not be the subject of a petition for reconsideration. When a State Water Board 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.

A petition for reconsideration of a fee assessment must include certain information, including the name and address of the Petitioner, the specific State Water Board action of which the 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 that the Petitioner requests. (§§ 769, subd. (a)(1)-(6), 1077, subd. (a).) A petition for reconsideration of a fee assessed by BOE must include either a copy of the notice of assessment or certain information. (§ 1077, subd. (a)(2).) Section 769, subdivision (c) of the regulations further provides that a petition for reconsideration shall be accompanied by a statement of points and authorities in support of the legal issues raised in the petition.

If the subject of the petition relates to an assessment of a fee by BOE, the State Water Board's decision regarding the assessment is deemed adopted on the date of assessment by BOE. (§ 1077, subd. (b).) A petition is timely filed only if the State Water Board receives it within 30 days of the date the assessment is issued. (*Ibid.*) The deadline for filing a petition for reconsideration of the November 4, 2014 assessment was December 4, 2014. The State Water Board will not consider late petitions or late-filed letters referencing the jointly filed petition for reconsideration.

The State Water Board 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 of the State Water Board's regulations. (§ 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board also may deny the petition if the board 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.*, subd. (a)(2)(A)-(C).)⁴

4.0 LEGAL AND FACTUAL BACKGROUND

The State Water Board is the state agency entity primarily responsible for administering the State's water right program. The State Water Board administers the program through its Division of Water Rights (Division). The funding for the water right program is scheduled separately in the Budget Act (and through a continuous appropriation discussed below) and includes funding from several different sources. The primary source of funding for the water right program is regulatory fees deposited in the Water Rights Fund in the State treasury. Legislation enacted in 2003 (Sen. Bill No. 1049, Stats. 2003, ch. 741 (S.B. 1049)) required the State Water Board to adopt emergency

⁴ The State Water Board is directed to order or deny reconsideration on a petition within 90 days from the date on which the State Water Board adopts the decision or order. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because it failed to complete its review of the petition on time. (State Water Board [Order WR 2009-0061](#) at p. 2, fn. 1; see *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151; State Water Board Order WR 2009-0061 at p. 2, fn. 1; State Water Board [Order WQ 98-05-UST](#) at pp. 3-4.)

regulations revising and establishing water right fees and revising fees for water quality certification. (Wat. Code, §§ 1525, 1530.) Pursuant to this legislation, the State Water Board reviews the fee schedule each fiscal year and, as necessary, revises the schedule so that the fees will generate revenues consistent with the amount appropriated by the Legislature from the Water Rights Fund, taking into account the reserves in the fund. (*Id.*, § 1525, subd. (d)(3).) If the revenue collected in the preceding year was greater, or less than, the amounts appropriated, the State Water Board may adjust the annual fees to compensate for the over- or under-collection of revenue. (*Ibid.*) BOE is responsible for collecting the annual fees. (*Id.*, § 1536.)⁵

As explained in the Memorandum to File from Barbara Evoy, Deputy Director for the Division of Water Rights, dated March 10, 2015, entitled “Recommended Water Right Fee Schedule for Fiscal Year 2014-15” (hereinafter “Evoy Memorandum”), in FY 2014-15, the Legislature appropriated \$25.278 million from all funding sources for water right program expenditures by the State Water Board. The Evoy Memorandum provides more detail, but in sum, this amount included \$13.84 million for the support of the State Water Board from the Water Rights Fund and a continuous appropriation from the Water Rights Fund of \$3.75 million for enforcement positions,⁶ with a total of \$17.59 million appropriated to the State Water Board from the Water Rights Fund. The State Water Board also received additional expenditure authority through mid-year budget revision for two personnel expenditures of \$130,000 and \$712,000. Thus, in calculating fees, the State Water Board had to ensure sufficient revenues to support a total of \$18.441 million appropriated from the Water Rights Fund for FY 2014-15. The State

⁵ As of June 27, 2017, the Department of Tax and Fee Administration was vested with many of the BOE’s former authorities, including but not limited to collection of water right fees pursuant to the Water Code and the State Water Board’s fee regulations. (Gov. Code, §§ 15570.22 & 15570.24.)

⁶ In addition to the annual Budget Act, Senate Bill No. 8 of the 2009-2010 Seventh Extraordinary Session (Stats. 2009, 7th Ex. Sess., ch. 2) (SB 7X 8), § 11, makes a continuous appropriation from the Water Rights Fund of \$3.75 million for water right enforcement. In 2011, the Legislature amended Water Code section 1525, subdivision (d)(3) to clarify that the amounts collected through fees should be sufficient to cover the appropriations set forth in the Budget Act and the continuous appropriation in SB 7X 8. (Stats. 2011, ch. 579, § 9.)

Water Board's budget for the water right program also included \$7.18 million in General Fund, \$276,000 from Cigarette and Tobacco products, and \$223,000 from the Federal Trust Fund. In addition to the amounts appropriated to the State Water Board, the Legislature appropriated \$484,000 from the Water Rights Fund to BOE for its water right fee collection efforts, \$37,000 from the Water Rights Fund to the California Environmental Protection Agency for support functions that the agency provides for the State Water Board's water right program, and \$14,000 to the Financial Information System of California.

In accordance with the Water Code, the State Water Board sets a fee schedule each fiscal year so that the amount collected and deposited into the Water Rights Fund during that fiscal year will support the appropriations made from the fund, taking into account money in the fund from other sources.⁷ In calculating the amount needed to be collected through fee revenues, the Division also considered the Water Rights Fund balance at the beginning of the fiscal year, which serves as a prudent reserve for economic uncertainty. In reviewing the fee schedule, the Division considered a 10 percent fund reserve to be prudent. In some years, the fund reserve has been drawn down by collecting less revenue annually than is expended. As explained in the Evoy Memorandum, the Water Rights Fund had a reserve of \$3.851 million at the beginning of FY 2014-15. Without any annual fee increase, the projected reserve for FY 2015-16 was expected to be 9.1 percent, which would have been below the amount the Division considered to be prudent. To prevent the projected fund reserve from being drawn down below 10 percent, the Division proposed increasing annual permit, license, and pending application fees by increasing the per acre-foot charge from \$0.053 to \$0.058 and increasing the annual Federal Energy Regulatory Commission (FERC) license-associated water quality certification per kilowatt charge from \$0.342 to \$0.43. The Division also proposed adjusting the caps on application and petition filing fees based on changes in the consumer price index. With these increases, the

⁷ Other sources of money in the Water Rights Fund, in addition to fee collections made during the fiscal year, include unexpended reserves from fee collections in previous years (see Wat. Code, § 1525, subd. (d)(3)) and penalties collected for water right violations (*id.*, § 1551, subd. (b)). The calculations used to determine water right fees do not include appropriations from funds other than the Water Rights Fund.

projected fee revenue was \$16.431 million and total Water Right Fund projected revenue was \$17.517 million. With estimated total expenditures of \$18.441 million for the fiscal year, expenditures were projected to exceed revenues by \$924,000, thereby ending the fiscal year with a reserve of \$2.927 million, which amounted to a 15.9 percent fund reserve. Although this fee schedule would not draw down the fund reserve to 10 percent of annual expenditures, the Evoy Memorandum later stated, based on the Budget Act for FY 2014-15, the Governor's proposed budget for FY 2015-16, and implementation of the projected fees for FY 2015-16, that the fund reserve was expected to get closer to a minimum prudent reserve level in FY 2016-17.⁸ The proposed and adopted FY 2014-15 fee schedule was intended to maintain a prudent reserve while minimizing the need for a larger increase in future fiscal years.

On September 23, 2014, the State Water Board accepted the Division's recommendations and adopted Resolution No. 2014-0052, revising the emergency regulations governing water right fees for FY 2014-15. The Office of Administrative Law approved the emergency regulations on October 30, 2014. The BOE issued the annual fee assessments on behalf of the State Water Board on November 4, 2014.

5.0 FEE ASSESSMENTS ADDRESSED IN THIS ORDER

According to their petition, Petitioners are NCWA, CVPWA, and individual Petitioners listed in the caption of the petition (Imperial Irrigation District, Westlands Water District, Glenn-Colusa Irrigation District, Placer County Water Agency, Byron-Bethany Irrigation District, and Stevinson Water District), as well as fee payers who referenced the petition in separately filed letters. NCWA and CVPWA are not fee payers and cannot be considered Petitioners in this order. (§ 1077.) The State Water Board will consider the Petitioners identified in the caption and the fee payers who timely filed letters referencing a petition by NCWA and CVPWA et al. or Petitioners' counsel (Somach, Simmons & Dunn) to be petitioners under the fee regulations if those persons otherwise meet the requirements for a petition for reconsideration. Attachment 1 of this order

⁸ On September 16, 2015, the State Water Board adopted [Resolution No. 2015-0061](#), increasing the annual per acre-foot fee for permits and licenses consistent with the projections made prior to adoption of the FY 2014-15 fee increases discussed in this order.

identifies the persons and entities who were assessed an annual water right fee, have met the regulatory requirements for filing a petition for reconsideration, and are properly considered petitioners for purposes of this order.

The State Water Board's review in this order is limited to annual fee assessments issued on November 4, 2014. The petition is dismissed to the extent it seeks review of any fee determinations other than the fee determinations identified for Petitioners listed in Attachment 1 of this order. Moreover, to the extent that Petitioners' contentions are not relevant to any of the annual fee assessments for which their petition for reconsideration has been filed, those contentions are not within the scope of the petitions for reconsideration.

6.0 PETITIONERS' ARGUMENTS REGARDING THE CONSTITUTIONALITY OF THE FEES AND THE ADMINISTRATION OF THE FEES ARE WITHOUT MERIT

Petitioners contend that the water right fees are unlawful taxes, adopted in violation of Proposition 13, and that the fees violate the Supremacy Clause of the United States Constitution. Petitioners incorporate the arguments set forth in their previous petitions challenging the imposition of annual water right fees in prior years. The State Water Board has rejected Petitioners' legal arguments, most recently by [Order WR 2014-0012-EXEC](#).⁹

⁹ Petitioners incorporate the arguments set forth in the petitions filed by "NCWA, CVPWA, and others" challenging the annual water right fees in previous years. The State Water Board has agreed Petitioners may incorporate by reference the arguments made in their previous petitions. For several prior years' petitions, the Petitioners' counsel also represented the Farm Bureau, which had been represented by other counsel and filed petitions separately from NCWA and CVPWA in prior years. (The State Water Board has rejected the Farm Bureau's legal arguments made in its previous separate petitions, most recently by Order WR 2011-0008-EXEC.) For this year's petition, the Petitioners and the Farm Bureau have again filed separate petitions with separate counsel. This year's petition outlines prior arguments made by NCWA and CVPWA, largely repeating the arguments made in previous petitions filed by counsel for NCWA and CVPWA. Accordingly, this order addresses the arguments in this year's petition and those arguments incorporated by reference in petitions filed in previous years by NCWA and CVPWA.

As Petitioners' acknowledge, the Supreme Court's 2011 opinion in *Farm Bureau* disposes of Petitioners' claims regarding the constitutionality of the fee statutes.¹⁰ With respect to those issues not resolved by the Supreme Court's opinion, and except as discussed below, Petitioners have not provided any new arguments, new information, or supporting authorities that materially change any of the issues raised in their previous petitions challenging the annual water right fees. With respect to the issues that are incorporated in the petition now before the State Water Board, this order adopts and incorporates the reasoning of its prior orders regarding NCWA's and CVPWA's petitions for reconsideration, including Order WR 2014-0012-EXEC, [Order WR 2007-0007-EXEC](#), and the orders incorporated by reference in those orders.

As in past years, Petitioners argue that the water right fees impose the entire cost of the Division's program on permittees and licensees, alleging that the fees ignore the Division's activities that are related to other water rights not subject to the fees, such as pre-1914 and riparian rights, and the time spent on issues related to the public generally

This year's petition omits Petitioners' arguments made previously about Proposition 26, which imposes a two-thirds vote requirement on certain types of charges that previously could be established by statutes enacted by majority vote. (Cal. Const., Article XIII A, § 3, amended by initiative, Gen. Elec. (Nov. 2, 2010).) The petition, however, contains the unsupported statement that Proposition 26 effectively overturned legal precedent regarding regulatory fees and that charges "are now measured against Proposition 26's more stringent standards." (Petition, p. 6, fn. 4.) To the extent that Petitioners intended this statement to suffice as an argument that the State Water Board has made an error in law subject to reconsideration, they have not offered legal support for this position and their petition fails to meet the requirements for reconsideration on this point. (§ 769, subd. (c).) Moreover, the State Water Board need not address this issue further because it has previously addressed the applicability of Proposition 26 to the annual water right fees in Order WR 2012-0003-EXEC, which is incorporated by reference, and addresses a similar contention in the Anderson-Cottonwood Irrigation District, et al. order, Order WR 2023-0039-EXEC, which is incorporated by reference.

¹⁰ Nonetheless, Petitioners argue that the water right fees constitute a tax based solely on real property ownership. To the extent that Petitioners continue to argue that the water right fees are ad valorem taxes, the Supreme Court has disposed of this argument. The Supreme Court determined that the water right fee statute does not assess a new ad valorem tax on real property. The court further opined that because a regulatory fee is not a tax, if the regulations impose a valid regulatory fee then they are not subject to challenge based on Proposition 13's limitation on taxation of real property. (*Farm Bureau*, *supra*, 51 Cal.4th at p. 443.)

(public trust actions, etc.). As in past years, Petitioners have their facts wrong. Water right fees do not bear the entire cost of the water right program. Nor do the annual fees support the Water Rights Fund in its entirety. Moreover, as explained in the Evoy Memorandum and previous similar memoranda, the State Water Board's limited program costs that are related to regulation of non-fee payers and unrelated to the regulation of post-1914 appropriative rights or unauthorized diversions are supported by sources of funding other than the Water Rights Fund. The water right program budget for FY 2014-15 includes general funds amounting to approximately \$7.18 million and additional funds from sources other than the Water Rights Fund, and these funds are sufficient to support these other program activities. In short, while annual permit and license fees are the primary source of revenues deposited in the Water Rights Fund, and the Water Rights Fund is the primary source of funding for the water rights program, arguments based on the assumption that annual permit and license fees are the sole source of program funding are misleading at best. Funding of water right program costs for activities unrelated to the administration of the permit and license program from these other sources belies Petitioners' argument that water right permit and license holders are being burdened with program costs that do not bear a fair and reasonable relationship to their activities. Petitioners' legal claims have been addressed in more detail in the orders incorporated by reference by this order.¹¹

¹¹ Petitioners also continue to argue that the water right fees unlawfully seek to assess the federal government and its contractors. (Wat. Code, §§ 1540, 1560; see Cal. Code Regs., tit. 23, § 1073 [providing for pass through of fees to CVP water supply contractors].) This order incorporates by reference the prior State Water Board orders addressing this issue. But it merits noting that the Supreme Court determined that neither Water Code section 1540 nor section 1560 "authorizes imposition of a fee that facially violates the supremacy clause or state and federal rights to equal protection and due process." (*Farm Bureau, supra*, 51 Cal.4th at 444.) The Supreme Court agreed with the State Water Board that "the federal contractors have a taxable interest in the 'face value'" of Reclamation's water right permits. (*Id.*, at p. 446.) As discussed in the Evoy Memorandum, the State Water Board has determined in FY 2014-15 that it is reasonable to pass through 100 percent of the Reclamation CVP-related fees to the CVP contractors.

7.0 PETITIONERS' CONTENTION THAT THE FEES ARE ARBITRARY IS WITHOUT MERIT

Petitioners contend that the water right fees are arbitrary because “[t]he [State Water Board] and its predecessors [sic], over time, have issued water rights differently.” (Petition, p. 9.) Specifically, Petitioners posit that because some water rights issued and managed by the State Water Board contain multiple uses and/or multiple points of diversion and rediversion, while other diverters hold separate permits or licenses for their multiple uses and/or points of diversion and rediversion, this “results in fee payers being treated disparately for similar activities.” (*Ibid.*)

The water right fee structure covers applications, permits, requests for water quality certification for FERC-licensed hydropower projects, petitions for change, and many other activities and requests for Division action. Each type of activity is subject to a different type of fee. Petitioners suggest, as an example of similar activities that are billed disparately, that the water right permits held by the Imperial Irrigation District to appropriate water initially diverted from the Colorado River are akin to rights held by the Department of Water Resources (DWR) for water released from Lake Oroville. Petitioners contend, based solely on this one example of two somewhat similarly situated fee payers, that the fees are arbitrary.

As discussed by the California Supreme Court in *Farm Bureau*, permissible fees “need not be finely calibrated to the precise benefit each individual fee payer might derive.” (*Farm Bureau, supra*, 51 Cal.4th at 438.) “The question of proportionality is not measured on an individual basis. Rather, it is measured collectively, considering all rate payers.” (*Ibid*, citing *California Assn. of Professional Scientists v. Dept. of Fish & Game* (2000) 79 Cal.App.4th 935, 948.) Imperial Irrigation District generates hydropower under six different permits for six different diversions from the All American Canal. DWR, at least under the particular operations Petitioners are seemingly concerned with, generates power at a number of locations that are part of the State Water Project under one permit. DWR also holds many separate permits for consumptive and non-consumptive uses relating to the State Water Project and Lake Oroville and is billed for each of those permits in the same manner as Imperial Irrigation District. That Imperial Irrigation District holds multiple permits for activities that seemingly could, based on

DWR's operations under the complained-about permit, be conducted pursuant to a single permit simply does not answer the question of whether the fees incurred by Imperial Irrigation District are appropriately related to the overall cost of the program, which is the touchstone of valid fees. (See *Farm Bureau, supra*, 51 Cal.4th at 438.)

A fee is not invalid "simply because the fee may be disproportionate to the service rendered to individual payers." (*Farm Bureau, supra*, 51 Cal.4th at 438, citing *Brydon v. East Bay Mun. Utility Dist.* (1994) 24 Cal.App.4th 178, 194, 29 Cal.Rptr.2d 128.) As such, it is not instructive that these two particular situations might be billed the same under a different structure, or even under the same structure, as Imperial Irrigation District could request changes in its permits that would allow similar permitting to DWR's. The question is whether the structure is appropriate considering most situations. There is in fact a broad spectrum of hydropower diversion practices covered by water right permits and licenses, and Imperial Irrigation District's situation seems to fall more towards one end of the spectrum based on Imperial Irrigation District's particular location, water source, operations, and, in part, the Division's historic permitting practices. Petitioners do not offer any feasible means of recalculating the fees for hydropower diversions in a manner that reasonably addresses the spectrum of hydropower diversion practices, as opposed to the fees charged to a single fee-payer and would allow calculation of the fees on a timely basis. This one particular situation could be easily remedied by Imperial Irrigation District—which could petition for consolidation of its rights into fewer permits, if it so desired—and does not by itself support a conclusion that the fee structure, or the fee incurred by Imperial Irrigation District under that structure, is arbitrary.

Petitioners, do not reasonably appear to be arguing that any particular fee for FY 2014-15, including Imperial Irrigation District's, has been miscalculated under the fee regulations, and do not appear to request any specific action besides that the fees be vacated and rescinded in total and that all fees paid be refunded. Petitioners' memorandum of points and authorities does not provide any justification for recalculation of any fees billed to any of the named Petitioners.

8.0 CONCLUSION

The State Water Board finds that its decision to impose water right fees was appropriate and proper. This order addresses the principal issues raised by the NCWA, CVPWA, and the individual Petitioners. To the extent that this order does not address all of the issues raised by Petitioners, the State Water Board finds that either these issues are insubstantial or that Petitioners have failed to meet the requirements for a petition for reconsideration under the State Water Board's regulations. (§§ 768-769, 1077.) The petition for reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT the petition for reconsideration is denied.

Dated: July 13, 2023



Eileen Sobeck
Executive Director

**Attachment 1:
 Petitioners of Fiscal Year 2014-15 Water Right Fees in the matter of the Petition
 for Reconsideration of Northern California Water Association, Central Valley
 Project Water Association, and Individual Petitioners**

State Water Board ID	Primary Owner
A001933	BANTA-CARBONA IRRIGATION DISTRICT
A005248	BANTA-CARBONA IRRIGATION DISTRICT
USBR1115	BANTA-CARBONA IRRIGATION DISTRICT
USBR1214	BELLA VISTA WATER DISTRICT
A008986	BROWNS VALLEY IRRIGATION DISTRICT
A013130	BROWNS VALLEY IRRIGATION DISTRICT
A013873	BROWNS VALLEY IRRIGATION DISTRICT
A023757	BROWNS VALLEY IRRIGATION DISTRICT
A027302	BROWNS VALLEY IRRIGATION DISTRICT
A006743	BUTTE SLOUGH IRRIGATION COMPANY
USBR1180	BYRON BETHANY IRRIGATION DIST.
USBR1094	CITY OF ROSEVILLE
A005941	CONTRA COSTA WATER DISTRICT
A020245	CONTRA COSTA WATER DISTRICT
A025516A	CONTRA COSTA WATER DISTRICT
A025829	CONTRA COSTA WATER DISTRICT
A027893	CONTRA COSTA WATER DISTRICT
USBR1302	CONTRA COSTA WATER DISTRICT
USBR1233	DEL PUERTO WATER DISTRICT
A000654	EL DORADO IRRIGATION DISTRICT
A001440	EL DORADO IRRIGATION DISTRICT
A001441	EL DORADO IRRIGATION DISTRICT
A001692	EL DORADO IRRIGATION DISTRICT
A002270	EL DORADO IRRIGATION DISTRICT
A005645A	EL DORADO IRRIGATION DISTRICT
A005645B	EL DORADO IRRIGATION DISTRICT
A006383	EL DORADO IRRIGATION DISTRICT
A007478	EL DORADO IRRIGATION DISTRICT
FERC184A	EL DORADO IRRIGATION DISTRICT
USBR1027	EL DORADO IRRIGATION DISTRICT
FERC184	ELDORADO IRRIGATION DISTRICT
A026709	FRANCIS R BURKE III
A000018	GLENN-COLUSA IRRIGATION DIST
A001554	GLENN-COLUSA IRRIGATION DIST
A001624	GLENN-COLUSA IRRIGATION DIST
A008688	GLENN-COLUSA IRRIGATION DIST

State Water Board ID	Primary Owner
A012125	GLENN-COLUSA IRRIGATION DIST
A023005	GLENN-COLUSA IRRIGATION DIST
A030838	GLENN-COLUSA IRRIGATION DIST
USBR1215	GLENN-COLUSA IRRIGATION DISTRICT
USBR1262	GLIDE WATER DISTRICT
A023031	GRAVELLY FORD WATER DISTRICT
USBR1012	GRAVELLY FORD WATER DISTRICT
A009899	HALLWOOD IRRIGATION COMPANY
A007482	IMPERIAL IRRIGATION DIST
A007739	IMPERIAL IRRIGATION DIST
A007740	IMPERIAL IRRIGATION DIST
A007741	IMPERIAL IRRIGATION DIST
A007742	IMPERIAL IRRIGATION DIST
A007743	IMPERIAL IRRIGATION DIST
A008534	IMPERIAL IRRIGATION DIST
USBR1155	JAMES IRRIGATION DISTRICT
USBR1126	KANAWHA WATER DISTRICT
A008830	LEAL FAMILY TRUST
A031572	LEAL FAMILY TRUST
A026169	LOWER TULE RIVER IRRIGATION DIST
USBR1193	LOWER TULE RIVER IRRIGATION DISTR
USBR1296	LOWER TULE RIVER IRRIGATION DISTR
USBR1297	LOWER TULE RIVER IRRIGATION DISTR
A008631	MAXWELL IRRIGATION DISTRICT
A011955	MAXWELL IRRIGATION DISTRICT
A011956	MAXWELL IRRIGATION DISTRICT
A011957	MAXWELL IRRIGATION DISTRICT
A011958	MAXWELL IRRIGATION DISTRICT
A013735	MAXWELL IRRIGATION DISTRICT
A013919	MAXWELL IRRIGATION DISTRICT
A014378	MAXWELL IRRIGATION DISTRICT
A030445	MAXWELL IRRIGATION DISTRICT
USBR1150	MAXWELL IRRIGATION DISTRICT
USBR1086	MERCY SPRINGS WATER DISTRICT
A001074B	MERIDIAN FARMS WATER CO
A009737	MERIDIAN FARMS WATER CO
USBR1211	MERIDIAN FARMS WATER COMPANY
USBR1218	ODYSSEUS FARMS PARTNERSHIP
USBR1251	PACHECO WATER DISTRICT
USBR1252	PACHECO WATER DISTRICT
USBR1181	PANOCHÉ WATER DISTRICT

State Water Board ID	Primary Owner
USBR1098	PATTERSON IRRIGATION DISTRICT
A001765A	PELGER MUTUAL WATER COMPANY
A012470B	PELGER MUTUAL WATER COMPANY
A030410	PELGER MUTUAL WATER COMPANY
USBR1053	PELGER MUTUAL WATER COMPANY
USBR1194	PIXLEY IRRIGATION DISTRICT
A018084	PLACER COUNTY WATER AGENCY
A018085	PLACER COUNTY WATER AGENCY
A018086	PLACER COUNTY WATER AGENCY
A018087	PLACER COUNTY WATER AGENCY
A026637	PLACER COUNTY WATER AGENCY
FERC2079	PLACER COUNTY WATER AGENCY
USBR1133	PLACER COUNTY WATER AGENCY
USBR1146	PLEASANT GROVE-VERONA MUTUAL WATE
USBR1101	RECLAMATION DISTRICT NO. 1606
A031436	RECLAMATION DISTRICT # 108
A000576	RECLAMATION DISTRICT #108
A000763	RECLAMATION DISTRICT #108
A001589	RECLAMATION DISTRICT #108
A011899	RECLAMATION DISTRICT #108
USBR1224	RECLAMATION DISTRICT NO. 108
USBR1268	SAN BENITO COUNTY WATER DISTRICT
USBR1174	SAN LUIS WATER DISTRICT
USBR1107	SHAFTER-WASCO IRRIGATION DISTRICT
USBR1108	SHAFTER-WASCO IRRIGATION DISTRICT
A010221	SOUTH SUTTER WATER DISTRICT
A014430	SOUTH SUTTER WATER DISTRICT
A014804	SOUTH SUTTER WATER DISTRICT
A022102	SOUTH SUTTER WATER DISTRICT
A023838	SOUTH SUTTER WATER DISTRICT
A026162	SOUTH SUTTER WATER DISTRICT
A001885	STEVINSON WATER DIST
A005724	STEVINSON WATER DIST
A006111	STEVINSON WATER DIST
A007012	STEVINSON WATER DIST
USBR1247	STOCKTON EAST WATER DISTRICT
A006522	STOCKTON EAST WATER DISTRICT
A013333X01	STOCKTON EAST WATER DISTRICT
A013334X01	STOCKTON EAST WATER DISTRICT
A013335X01	STOCKTON EAST WATER DISTRICT
A013336X01	STOCKTON EAST WATER DISTRICT

State Water Board ID	Primary Owner
A013337X01	STOCKTON EAST WATER DISTRICT
A013338X01	STOCKTON EAST WATER DISTRICT
A030602	STOCKTON EAST WATER DISTRICT
A031534	STOCKTON EAST WATER DISTRICT
A031535	STOCKTON EAST WATER DISTRICT
USBR1306	STOCKTON EAST WATER DISTRICT
A010529	SUTTER EXTENSION WATER DISTRICT
A011319	SUTTER EXTENSION WATER DISTRICT
A012230A	SUTTER EXTENSION WATER DISTRICT
A013349	SUTTER EXTENSION WATER DISTRICT
A014588	SUTTER EXTENSION WATER DISTRICT
A014665	SUTTER EXTENSION WATER DISTRICT
A015177	SUTTER EXTENSION WATER DISTRICT
A015178	SUTTER EXTENSION WATER DISTRICT
A015179	SUTTER EXTENSION WATER DISTRICT
A015587	SUTTER EXTENSION WATER DISTRICT
A000742	TISDALE IRRIGATION & DRAINAGE CO
A016985	TISDALE IRRIGATION & DRAINAGE CO
USBR1074	TISDALE IRRIGATION & DRAINAGE COM
A011389	YOLO COUNTY F C & W C DISTRICT
A015975	YOLO COUNTY F C & W C DISTRICT
A026469	YOLO COUNTY F C & W C DISTRICT