

Litigation Status

The water right fee litigation, which addresses the water right fees for FY 2003-2004, is currently pending before the California Supreme Court. When the Supreme Court renders a decision, the State Water Board will proceed consistent with the Supreme Court's direction. Until then, the State Water Board need not take any further action with respect to the FY 2003-04 fees. It is not known when the Supreme Court will make a decision.

Litigation Background

Each year since the State Water Board first adopted emergency water right fee regulations in 2003, the Northern California Water Association and the Central Valley Project Water Association (co-plaintiffs hereafter referred to as "NCWA-CVPWA"), and the California Farm Bureau Federation (Farm Bureau) have sued the State Water Board and the State Board of Equalization over the water right fees. The plaintiffs allege, in part, that the fee legislation and the State Water Board's FY 2003-04 fee regulations are unconstitutional and invalid. In 2005, the trial court upheld the State Water Board's fees in their entirety. In January 2007, the Third District Court of Appeal (Appellate Court) issued a decision that partially overturned the trial court's 2005 decision. The Appellate Court upheld the fee statute in its entirety, rejecting NCWA-CVPWA and Farm Bureau claims that the statute was unconstitutional and invalid. The Appellate Court, however, invalidated the State Water Board's regulations that establish the amount of annual fees that water right permit and license holders pay each year. The Appellate Court also invalidated the regulations that establish water right fees for the federal Central Valley Project's contractors and further concluded that the State Water Board was limited as to how much of the fees the Board could pass through to contractors. The State Water Board requested the Supreme Court to review the Appellate Court's opinion, and the Supreme Court granted review in April 2007. The Supreme Court's grant of review means that the Appellate Court's opinion has been superseded and that it is no longer in effect.

Frequently Asked Questions

1. Will this be the final decision on the FY 2003-2004 water right fees?

Yes. Once a decision is rendered, the State Water Board will proceed consistent with the California Supreme Court's direction on the FY 2003-2004 water right fees.

2. Will the State Water Board continue to assess water right fees while the litigation is pending before the Supreme Court?

Yes. The State Water Board is required by statute to assess water right fees.

3. What is the deadline for petitioning for reconsideration of the annual fees assessed on October 15, 2007?

The deadline is November 14, 2007.

