

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004 - 0023 - EXEC

In the Matter of the Petition for Reconsideration of
SANTA MARIA WATER CONSERVATION DISTRICT
Regarding Water Right Fee Determination

ORDER GRANTING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR¹

1.0 INTRODUCTION

By this order, the Executive Director grants the Santa Maria Water Conservation District's (Santa Maria) petition for reconsideration of the Notice of Determination of an annual water right fee in the amount of \$4,974.00 for the U.S. Bureau of Reclamation's (USBR) license for the Twitchell Project (License 10416, Application 11343, Board of Equalization (BOE) Account No. WR MT 94-000009, USBR 1009). The State Water Resources Control Board (SWRCB) attempted to allocate the fee to Santa Barbara County Water Agency (Santa Barbara) pursuant to Water Code section 1540 because the agency has a contract for the delivery of Twitchell Project water from the USBR and the USBR declined to pay the fee. The Notice of Determination identifies Santa Barbara as the fee payer. The SWRCB sent the Notice of Determination, however, to Santa Maria's address. Santa Barbara delivers Twitchell Project water to Santa Maria pursuant to a sub-contract.

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¹ 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 a petition for reconsideration of a disputed fee 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.

BOE issued the Notice of Determination on or about January 8, 2004. The SWRCB received Santa Maria's petition for reconsideration on February 6, 2004.² 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).)

Santa Maria argues that the annual fee for License 10416 may not be allocated to Santa Maria because Santa Maria is not a contractor within the meaning of Water Code section 1540. That section provides that, if the SWRCB determines that an entity, such as the USBR, will not pay a water right fee based on a claim of sovereign immunity, the SWRCB may "allocate the fee or expense, or an appropriate portion of the fee or expense, to persons or entities who have contracts for the delivery of water from the person or entity on whom the fee or expense was initially imposed." Santa Maria contends that it is not a contractor within the meaning of this section because it does not have a water supply contract with the USBR.

It is unnecessary to reach the legal issue presented by Santa Maria because the SWRCB did not intend to allocate the fee to Santa Maria. Rather, the SWRCB intended to allocate the fee to Santa Barbara, which does have a contract with the USBR. Santa Maria's petition should be granted, however, because the Notice of Determination was not sent to the correct address.

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² The SWRCB is directed to order or deny a petition for reconsideration 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.)

ORDER

IT IS HEREBY ORDERED THAT Santa Maria's petition for reconsideration is granted. The SWRCB will direct BOE to issue a revised Notice of Determination to Santa Barbara, using the correct address, and refund or cancel the fees previously assessed, as appropriate.

Dated: April 21, 2004

ORIGINAL SIGNED BY HARRY M. SCHUELLER for
Celeste Cantú
Executive Director