

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2011-0007-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) and other persons and entities, 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) 2010-2011. 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 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' petition for reconsideration.

¹ State Water Board Resolution No. 2002-0104 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. 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.

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

2.0 STATUS OF LITIGATION

On January 31, 2011, the California Supreme Court issued a decision in long-standing litigation over the statute authorizing the water right fees and the implementing regulations adopted for FY 2003-2004. (*California Farm Bureau Federation v. State Water Resources Control Bd.* (S150518).) Each year since 2003, NCWA, CVPWA, and the California Farm Bureau Federation (Farm Bureau) have filed suit against the State Water Board and BOE, alleging, in part, that the fee legislation and the State Water Board's fee regulations are unconstitutional and invalid. The NCWA, CVPWA, and Farm Bureau actions over the FY 2003-2004 fees have been consolidated, and the other actions have been stayed pending resolution of the consolidated cases. 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 for FY 2003-2004. The California Supreme Court granted review in April 2007.

In its decision, the Supreme Court upheld the water right fee statutes. (E.g., Wat. Code, §§ 1525, 1540, 1560.) The Supreme Court 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. (Cal. Code Regs., tit. 23, § 1066, 1073.)³ The 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. The Supreme Court's decision otherwise left intact the appellate court's holdings that were favorable to the State Water Board.

3.0 GROUND FOR RECONSIDERATION

According to the State Water Board's regulations governing reconsideration of fees, only a fee payer may petition for reconsideration of the board's determination that the fee payer is required to pay a fee, or the 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

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.

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 December 6, 2010 assessment was January 5, 2011. The State Water Board will not consider late petitions or late-filed letters referencing the NCWC-CVPWA 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 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 includes funding from several different sources.

(See Stats. 2009, ch. 712, § 2.00, Item 3940-001-0439, schedules (2), (6), (11), (18) & (19).)

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) required the State Water Board to adopt emergency 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 set forth in the annual Budget Act. (*Id.*, § 1525, subd. (d)(3).) If the revenue collected in the preceding year was greater, or less than, the revenue levels set forth in the annual Budget Act, 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.)

As explained in the Memorandum to File from Barbara Evoy, Deputy Director for the Division of Water Rights, dated February 25, 2011, entitled "Recommended Water Right and Water Quality Certification Fee Schedule for [FY] 2010-2011" (hereinafter "Evoy Memorandum"), in FY 2010-2011, the Legislature appropriated \$18.012 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 includes a \$9.104 million appropriation from the Water Rights Fund in the Budget Act of 2010⁵ and a continuing appropriation from the Water Rights Fund of

⁴ The State Water Board is directed to order or deny reconsideration on a petition within 90 days from the date on which the 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 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 WQ 98-05-UST at pp. 3-4.)

⁵ Stats. 2010, ch. 712.

\$3.75 million for enforcement positions,⁶ for a total of \$12.854 million appropriated to the State Water Board from the Water Rights Fund. The State Water Board's budget for the water right program also includes \$4.698 million in general funds and \$460,000 from other sources. In addition to the amounts appropriated to the State Water Board, the Budget Act appropriates \$429,000 from the Water Rights Fund to BOE for its water right fee collection efforts and appropriates \$39,000 from the Water Rights Fund to the California Environmental Protection Agency for support functions that the agency provides for the board's water right program.

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 appropriation made from the fund in the annual Budget Act, taking into account money in the fund from other sources.⁷ As explained in the Evoy Memorandum, the Water Rights Fund had a beginning balance of \$5.701 million for the fiscal year, and the Division determined that the fund condition projections for FY 2010-2011 should include a reserve for economic uncertainty of about \$2.7 million. For the purposes of calculating this year's fees, the amount by which reserves would be spent down to reduce the fund balance to a \$2.7 million reserve was subtracted from the total amount that would otherwise be collected in fee revenues, resulting in a fee revenue target of \$8.959 million.

Also as described in the Evoy Memorandum, the Division recommended continuing to charge water right permit and license holders an annual fee of \$100 plus \$0.03 for each acre-foot in excess of 10 acre-feet.⁸ (§ 1066.) The Division also recommended revising other portions of the fee schedule for FY 2010-2011, which are not the subject of this petition for reconsideration.⁹

⁶ In addition to the Budget Act appropriation of \$9.104 million, Senate Bill No. 8 of the 2009-2010 Seventh Extraordinary Session (Stats. 2009 (7th Ex. Sess.) ch 2) (SB 7X 8) authorizes a continuous appropriation to the Water Rights Fund of \$3.75 million for water right enforcement positions.

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.

⁸ Last fiscal year, annual permit and license fee payers received a one-time credit to reduce the fund surplus. As explained in the Evoy Memorandum, the one-time credit is no longer in effect in FY 2010-2011.

⁹ The State Water Board reduced the upper limit on certain filing fees commensurate with decreases in the consumer price index (§ 1064) and increased annual water quality certification fees for projects licensed, or subject to licensing, by the Federal Energy Regulatory Commission (§ 3833.1).

On October 19, 2010, the State Water Board accepted the Division's recommendations and adopted Resolution No. 2010-0052, revising the emergency regulations governing water right fees for FY 2010-2011. The Office of Administrative Law approved the emergency regulations on November 17, 2010.

5.0 FEE ASSESSMENTS ADDRESSED IN THIS ORDER

According to their petition, Petitioners are NCWA, CVPWA, persons listed in the caption of the petition, identified in Exhibit A of the petition, or fee payers referencing the petition.¹⁰ NCWA and CVPWA are not fee payers and cannot be considered petitioners in this order. (§ 1077.) The State Water Board will consider the persons identified in the caption or Exhibit A of the NCWA-CVPWA petition and the persons filing separate letters of reference to be petitioners under the NCWA-CVPWA petition if they otherwise meet the requirements for a petition for reconsideration. Attachment 1 of this order identifies the persons 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 December 6, 2010. 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 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 for FY 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, and 2009-2010.¹¹ NCWA and CVPWA have raised these issues in their

¹⁰ The State Water Board has received separately filed letters referencing either the NCWA-CVPWA petition or Petitioners' counsel (Somach, Simmons & Dunn). Such letters must have been timely filed to be considered in this order.

¹¹ Petitioners also refer the State Water Board to the Court of Appeal's January 17, 2007 opinion, which held that the fee regulations are invalid. As explained herein, the California Supreme Court reversed the appellate court's determination that the implementing regulations are invalid as applied and remanded the matter to the trial court.

petitions challenging annual fees every fiscal year since the emergency fee regulations were first adopted in 2003. The State Water Board has rejected Petitioners' legal arguments, most recently by Order WR 2010-0006-EXEC.

Petitioners contend that a petition for reconsideration reasserting their same arguments made in prior years, "is unnecessary as a matter of law," because the State Water Board has previously rejected those arguments and has not revised its regulations "in any relevant respect." The requirement to exhaust administrative remedies, however, is mandated by statute. A fee payer must exhaust administrative remedies before seeking judicial review of the State Water Board's decision where, as here, that decision has been delegated to an officer or employee of the board. (Wat. Code, §§ 1537, subd. (b)(2)-(3), 1126, subd. (b); see also Cal. Code Regs., tit. 23, § 1077 [establishing requirements for reconsideration of fee determinations].) The requirement for exhaustion not only affords the State Water Board an opportunity to correct any factual errors in assessing the fees at an administrative level, but the requirement also is necessary for the board to be able to determine who is entitled to a refund and the proper amount of the refund if a judicial challenge to the fees is successful. The State Water Board evaluates each petition for reconsideration on its merits, regardless of whether petitioners have filed similar petitions in previous years.

On the merits, the recent Supreme Court opinion in *California Farm Bureau Federation v. State Water Resources Control Bd.* disposes of Petitioners' claims regarding the constitutionality of the fee statutes. Once final, the Supreme Court's decision conclusively determines Petitioners' issues. (See *Bernhard v. Bank of America Nat. Trust & Savings Ass'n* (1942) 19 Cal.2d 807, 810 [explaining that the doctrine of res judicata precludes parties or their privies from relitigating a cause of action that has been finally determined].)

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 Order WR 2007-0007-EXEC and the orders incorporated by reference in that order.

In support of an argument that the fees are collected for general revenue purposes, Petitioners cite to the Budget Act of 2010, which provides for a \$926,000 loan from the Water Rights Fund

to the General Fund. Petitioners allege that the fees are being unlawfully charged to support the General Fund. The Budget Act of 2010 provides for the loan to the General Fund to be repaid by "earliest feasible date but no later than June 30, 2012." The statutory presumption is that an official duty will be performed and the law will be obeyed. (Civ. Code, § 3548.) In the State Water Board's experience, loans are indeed repaid.¹² The loan from the Water Rights Fund did not result in a fee increase this fiscal year, but instead reduced the amount of surplus in the fund. The loan must be repaid in the next fiscal year (FY 2011-2012) and the repayment will be counted as funding available for expenditure from the Water Rights Fund from sources other than fee revenue as part of the State Water Board's calculation of the fee revenue target when the State Water Board sets future fee schedules. (Wat. Code, § 1525, subd. (d)(3).) As explained in the Evoy Memorandum, the loan did not affect the calculation of the fee revenue target. Because fee calculations did not include any amount intended to cover the loan, Petitioners' argument that fees are being charged to support the General Fund clearly has no merit.

Even assuming the \$926,000 loan was not a loan, but was instead a transfer that would not be reimbursed, that would not mean that fees are being used to support the General Fund. For FY 2010-2011, the amount appropriated from the General Fund for support of the water rights program is \$4.698 million. If the \$926,000 loan was instead a transfer that would not be repaid, the net effect would be a General Fund appropriation of \$3.372 million for support of the water rights program. In practical effect, the fees would be used to reimburse the General Fund for about one-fifth of the program costs being paid for by the General Fund. Using fee revenues to reimburse the General Fund for a portion of the General Fund support of a program, as opposed to simply reducing the General Fund appropriation and increasing the appropriation from a fee supported special fund by equal amounts, would be unnecessarily complicated. But the result is the same, and cannot convert an otherwise valid fee into a tax.

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 (public trust actions, etc.). Although this is an argument that Petitioners have raised in past years, and which the State Water Board has addressed in prior orders, this issue may merit additional discussion. Petitioners claim that the

¹² The budget for FY 2006-2007 included a loan from the Underground Storage Tank Cleanup Fund to the Water Rights Fund, which was later repaid.

entire cost of the program is paid for by permittees and licensees, but they 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. And even if the General Fund appropriation was assumed to be only \$3.372 million, the portion of the program funded by sources other than the Water Rights Fund would vastly exceed the portion of the water rights program cost attributable to regulation of riparian, pre-1914 appropriative, or other water rights not subject to annual fees.

As explained above, the Budget Act of 2010 appropriates \$18.012 million to the State Water Board for regulatory activities included in the board's water right program for FY 2010-2011. The water right program budget also includes \$4.698 million in General Fund and \$460,000 from other sources. Even if General Fund support were reduced to \$3.372 million and federal reimbursements are ignored, sources other than fees would account for nearly a quarter of the cost of the water right program.

To address concerns that certain water users benefit from, or place burdens on, the water right regulatory program, but do not pay fees, the Division has analyzed the program resources dedicated to those non-paying water users. As explained in the Memorandum to File from Victoria A. Whitney, Deputy Director for Water Rights, dated February 1, 2010, regarding "Analysis of Water Right Program Activities and Expenditure of Resources" (hereinafter "Whitney Memorandum"), the Division has found that the State Water Board directs a de minimis amount of resources toward those water users who do not pay annual permit or license fees. Moreover, as explained in the Evoy Memorandum, the costs relating to implementation of the State Water Board's program for processing statements of water diversion and use (Wat. Code, § 5100 et seq.) and other actions relating to non-fee payers are paid for with general funds this fiscal year.

Petitioners contend that additional funds available from the Cigarette and Tobacco Products Surtax Fund are not available for the State Water Board generally, but are earmarked for specific purposes. Petitioners miss the point. The tobacco tax funds are indeed appropriated for specific purposes, protection of fish and wildlife. (Rev. & Tax Code, § 30122, subd. (a)(4).) It does not matter whether tax-based sources of funding for the water right program are available for general purposes or only for specific purposes. Either way, by paying for a portion of the program from sources other than the Water Rights Fund, when the amount of fees is based on the amount expended from the Water Rights Fund, they reduce the portion of the

program funding that is supported by fee revenues. This helps assure that the costs recovered through fees do not exceed the proportion of the program costs attributable to regulation of the fee payers, and thus assures that the fee system would be valid even if the costs attributable to regulation of persons not subject to the fee system were more than de minimis.¹³

In order to be a valid regulatory fee, an assessment must bear a fair or reasonable relationship to the fee payers' burdens on or benefits from the regulatory activity. (*California Assn. of Professional Scientists v. Dept. of Fish and Game* (2000) 79 Cal.App.4th 935.) The annual water right fees are imposed on the group of water users—permittees and licensees—that account for the majority of the State Water Board's regulatory efforts. (Wat. Code, § 1525, subds. (a), (c).) To the extent that the fee payers create a burden on or benefit from the State Water Board's regulatory activity, including actions to mitigate the environmental effects of the fee payers' diversion and use of water, it is reasonable to assess a fee to cover the costs of such regulation. Depositing fees in a special fund that is used solely for program costs helps assure that fee revenues do not exceed program costs, but for purposes of determining the validity of a regulatory fee, the ultimate issue is whether the amount to be recovered through fee revenues exceeds the estimated costs of the regulatory activities for which the fees are charged, not how the fee revenues are expended. In that regard, it does not matter whether the fee revenues are earmarked for expenditure on the same regulatory activities for which they are collected, so long as the amount of the fees collected is consistent with the costs of the regulatory activities for which they are collected.

Petitioners also point out that funds available from the Federal Trust Fund are earmarked for specific purposes. But the availability of these funds also underscores the conclusion that the fees bear a reasonable relationship to the activities of the fee payer. Support of a portion of the water right program from the Federal Trust Fund helps assure that amounts charged in fees to permit and license holders other than the United States Bureau of Reclamation (Bureau) does not include amounts attributable to water right program activities fairly allocated to regulation of federal reclamation projects. For the most part, the program costs attributable to Bureau projects are recovered through fees charged to the Bureau's water supply contractors. But some program costs, including costs attributable to Bureau projects that do not have water

¹³ It is unclear whether Petitioners suggest that only certain activities of the water program are regulatory as they have claimed in the past. The State's water right program, however, is a single, coherent regulatory program, which is not divided into discrete individual regulatory programs as Petitioners appear to suggest. Petitioners' claims regarding the regulatory nature of the water right program have been previously addressed in the orders incorporated by reference herein.

supply contractors in California, are not recovered through the fees that are passed through to Bureau contractors. The Federal Trust Fund consists of moneys paid into it by the United States (Gov. Code, § 16360) and can be used to reimburse certain costs of water right actions of the United States. The State Water Board has entered a contract with the Bureau for reimbursement of those water right program costs that involve water rights held by the Bureau but are not passed through to Bureau contractors. In combination, the fees passed through to Bureau contractors and the reimbursements budgeted as expenditures from the Federal Trust Fund mean that, notwithstanding the Bureau's sovereign immunity, program costs fairly attributed to regulation of Bureau projects are not shifted to other water right holders.

(See Wat. Code, § 1560, subds. (2) & (3).)

Further, as was also explained above, the budget for the water right program includes \$4.698 million in general funds. Even if the water right program received no tobacco tax funding and no reimbursements through the Federal Trust Fund, the program costs paid for from a source other than the Water Rights Fund would vastly exceed any program costs in excess of those fairly allocated to non-federal permit and license holders or Bureau contractors.

Finally, annual permit and license fees do not support the Water Rights Fund in its entirety. Filing fees, penalties, water quality certification fees, expenses of adjudications and court references are deposited in the Water Rights Fund with the annual permit and license fees. (*Id.*, § 1551; see the Evoy Memorandum [explaining how annual permit and license fees were calculated by subtracting one-time filing fees and other fees from the revenue target].) Certain water users who are regulated by the State Water Board to a far lesser degree, such as surface water users not under the permitting authority of the State Water Board, do not pay water right permit and license fees. These users and other water users do, however, pay other fees in connection with water right activities. (See, e.g., Wat. Code, § 1528 [fees for proofs of claim], § 1529 [fees for groundwater recordations].)¹⁴

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. Payment of a substantial portion of the

¹⁴ Petitioners also claim that the annual fees improperly subsidize applications and petitions. While this argument has been addressed in the orders incorporated by reference herein, it merits noting that the Division has determined that in recent years, water right application processing has been fully supported by application filing fees, application annual fees, and general fund revenue. (Whitney Memorandum, p. 3, fn. 3.)

cost of the water right 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.

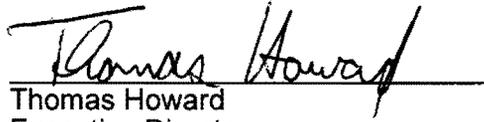
7.0 CONCLUSION

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 and CVPA 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 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: **MAR 7 2011**


Thomas Howard
Executive Director

Attachment

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In the matter of the Petition for Reconsideration of the
Northern California Water Association, et al.

Attachment 1: Petitioners for Reconsideration FY 10/11

Name	State Water Board ID
A & G MONTNA PROPERTIES LP.	A031175
A & G MONTNA PROPERTIES LP.	A031176
A & G MONTNA PROPERTIES LP.	A006348
A & G MONTNA PROPERTIES LP.	A019083
A & G MONTNA PROPERTIES LP.	A009515
A & G MONTNA PROPERTIES LP.	A006582
A & G MONTNA PROPERTIES LP.	A007989
ANDERSON-COTTONWOOD IRRIGATION DISTRICT	USBR1085
ARVIN-EDISON WATER STORAGE DISTRICT	USBR1061
ARVIN-EDISON WATER STORAGE DISTRICT	USBR1326
BANTA-CARBONA IRRIGATION DISTRICT	A001933
BANTA-CARBONA IRRIGATION DISTRICT	A005248
BANTA-CARBONA IRRIGATION DISTRICT	USBR1115
BELLA VISTA WATER DISTRICT	USBR1214
BROWNS VALLEY IRRIGATION DISTRICT	A008986
BROWNS VALLEY IRRIGATION DISTRICT	A013130
BROWNS VALLEY IRRIGATION DISTRICT	A013873
BROWNS VALLEY IRRIGATION DISTRICT	A023757
BROWNS VALLEY IRRIGATION DISTRICT	A027302
BYRON BETHANY IRRIGATION DISTRICT	USBR1180
CALAVERAS COUNTY WATER DISTRICT	USBR1307
CALAVERAS COUNTY WATER DISTRICT	A005648D
CALAVERAS COUNTY WATER DISTRICT	A011792B
CALAVERAS COUNTY WATER DISTRICT	A012910
CALAVERAS COUNTY WATER DISTRICT	A012911
CALAVERAS COUNTY WATER DISTRICT	A012912
CALAVERAS COUNTY WATER DISTRICT	A012912A
CALAVERAS COUNTY WATER DISTRICT	A013091
CALAVERAS COUNTY WATER DISTRICT	A013092
CALAVERAS COUNTY WATER DISTRICT	A013093
CALAVERAS COUNTY WATER DISTRICT	A013093A
CALAVERAS COUNTY WATER DISTRICT	A018727
CALAVERAS COUNTY WATER DISTRICT	A019148
CALAVERAS COUNTY WATER DISTRICT	A019149
CALAVERAS COUNTY WATER DISTRICT	A022405
CALAVERAS COUNTY WATER DISTRICT	A025901
CENTERVILLE COMMUNITY SERVICES DISTRICT	USBR1091
CENTRAL SAN JOAQUIN WATER CONSERVATION	USBR1248
CHOWCHILLA WATER DISTRICT	USBR1102
CHOWCHILLA WATER DISTRICT	USBR1286
CHOWCHILLA WATER DISTRICT	USBR1287
CHOWCHILLA WATER DISTRICT	A011047

Name	State Water Board ID
CHOWCHILLA WATER DISTRICT	A013175
COLUSA COUNTY WATER DISTRICT	USBR1082
COLUSA COUNTY WATER DISTRICT	USBR1335
COLUSA DRAIN MUTUAL WATER COMPANY	USBR1270
COLUSA DRAIN MUTUAL WATER COMPANY	A016305
COLUSA DRAIN MUTUAL WATER COMPANY	A010363
CONTRA COSTA WATER DISTRICT	USBR1302
CONTRA COSTA WATER DISTRICT	A005941
CONTRA COSTA WATER DISTRICT	A020245
CONTRA COSTA WATER DISTRICT	A025516A
CONTRA COSTA WATER DISTRICT	A025829
CONTRA COSTA WATER DISTRICT	A027893
CORNING WATER DISTRICT	USBR1153
DAVIS WATER DISTRICT	USBR1149
DEL PUERTO WATER DISTRICT	USBR1233
DELANO-EARLIMART IRRIGATION DISTRICT	USBR1300
DELANO-EARLIMART IRRIGATION DISTRICT	USBR1301
DUNNIGAN WATER DISTRICT	USBR1103
EAST BAY MUNICIPAL UTILITY DISTRICT	A000465
EAST BAY MUNICIPAL UTILITY DISTRICT	A004228
EAST BAY MUNICIPAL UTILITY DISTRICT	A004768
EAST BAY MUNICIPAL UTILITY DISTRICT	A005128
EAST BAY MUNICIPAL UTILITY DISTRICT	A006707
EAST BAY MUNICIPAL UTILITY DISTRICT	A013156
EAST BAY MUNICIPAL UTILITY DISTRICT	A015201
EAST BAY MUNICIPAL UTILITY DISTRICT	A018672
EAST BAY MUNICIPAL UTILITY DISTRICT	A025056
EAST BAY MUNICIPAL UTILITY DISTRICT	A002593
EAST BAY MUNICIPAL UTILITY DISTRICT	13156P001127
EAST BAY MUNICIPAL WATER DISTRICT	USBR1134
EL DORADO IRRIGATION DISTRICT	USBR1027
EL DORADO IRRIGATION DISTRICT	A000654
EL DORADO IRRIGATION DISTRICT	A001440
EL DORADO IRRIGATION DISTRICT	A001441
EL DORADO IRRIGATION DISTRICT	A001692
EL DORADO IRRIGATION DISTRICT	A005645B
EL DORADO IRRIGATION DISTRICT	A006383
EL DORADO IRRIGATION DISTRICT	A007478
EL DORADO IRRIGATION DISTRICT	A011675
EL DORADO IRRIGATION DISTRICT	A015140
EL DORADO IRRIGATION DISTRICT	A002270
EL DORADO IRRIGATION DISTRICT	A005645A
EL DORADO IRRIGATION DISTRICT	FERC184
GARDEN HIGHWAY MUTUAL WATER COMPANY	A001699
GARDEN HIGHWAY MUTUAL WATER COMPANY	A014415

Name	State Water Board ID
GARDEN HIGHWAY MUTUAL WATER COMPANY	A015893
GARDEN HIGHWAY MUTUAL WATER COMPANY	A023045
GARDEN HIGHWAY MUTUAL WATER COMPANY	A026098
GARDEN HIGHWAY MUTUAL WATER COMPANY	A031191
GARRETH B SCHAAD	A000735
GARRETH B SCHAAD	A017853
GARRETH B SCHAAD	A028985
GLENN-COLUSA IRRIGATION DISTRICT	A000018
GLENN-COLUSA IRRIGATION DISTRICT	A001554
GLENN-COLUSA IRRIGATION DISTRICT	A001624
GLENN-COLUSA IRRIGATION DISTRICT	A008688
GLENN-COLUSA IRRIGATION DISTRICT	A012125
GLENN-COLUSA IRRIGATION DISTRICT	A023005
GLENN-COLUSA IRRIGATION DISTRICT	A030838
GLENN-COLUSA IRRIGATION DISTRICT	USBR1215
GLIDE WATER DISTRICT	USBR1262
IMPERIAL IRRIGATION DISTRICT	A007482
IMPERIAL IRRIGATION DISTRICT	A007739
IMPERIAL IRRIGATION DISTRICT	A007740
IMPERIAL IRRIGATION DISTRICT	A007741
IMPERIAL IRRIGATION DISTRICT	A007742
IMPERIAL IRRIGATION DISTRICT	A007743
IMPERIAL IRRIGATION DISTRICT	A008534
JAMES IRRIGATION DISTRICT	USBR1155
JOHN B CROOK	A002227
KANAWHA WATER DISTRICT	USBR1126
KERN-TULARE WATER DISTRICT	USBR1220
LEAL FAMILY TRUST	A008830
LEAL FAMILY TRUST	A031572
MADERA IRRIGATION DISTRICT	USBR1106
MADERA IRRIGATION DISTRICT	USBR1298
MADERA IRRIGATION DISTRICT	USBR1299
MADERA IRRIGATION DISTRICT	A017311
MADERA-CHOWCHILLA WATER AND POWER	A027456
MAXWELL IRRIGATION DISTRICT	USBR1150
MAXWELL IRRIGATION DISTRICT	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
MERCY SPRINGS WATER DISTRICT	USBR1086
NATOMAS CENTRAL MUTUAL WATER COMPANY	A000534

Name	State Water Board ID
NATOMAS CENTRAL MUTUAL WATER COMPANY	A001056
NATOMAS CENTRAL MUTUAL WATER COMPANY	A001203
NATOMAS CENTRAL MUTUAL WATER COMPNAY	A001413
NATOMAS CENTRAL MUTUAL WATER COMPANY	A015572
NATOMAS CENTRAL MUTUAL WATER COMPANY	A022309
NATOMAS CENTRAL MUTUAL WATER COMPANY	A025727
NATOMAS CENTRAL MUTUAL WATER COMPANY	USBR1227
NORTH YUBA WATER DISTRICT	A013957
NORTH YUBA WATER DISTRICT	A014113
ODYSSEUS FARMS PARTNERSHIP	USBR1218
ORLAND-ARTOIS WATER DISTRICT	USBR1210
PACHECO WATER DISTRICT	USBR1251
PACHECO WATER DISTRICT	USBR1252
PANOCHE WATER DISTRICT	USBR1181
PARROTT INVESTMENT COMPANY	A005110
PARROTT INVESTMENT COMPANY	A008187
PARROTT INVESTMENT COMPANY	A008559
PARROTT INVESTMENT COMPANY	A009736
PARROTT INVESTMENT COMPANY	A015867
PATTERSON IRRIGATION DISTRICT	USBR1098
PELGER MUTUAL WATER COMPANY	USBR1053
PELGER MUTUAL WATER COMPANY	A030410
PELGER MUTUAL WATER COMPANY	A001765A
PELGER MUTUAL WATER COMPANY	A012470B
PLACER COUNTY WATER AGENCY	USBR1133
PLEASANT GROVE-VERONA MUTUAL WATER	USBR1146
PRINCETON-CODORA-GLENN IRRIGATION	A000244
PRINCETON-CODORA-GLENN IRRIGATION	A000770
PRINCETON-CODORA-GLENN IRRIGATION	A017066
PRINCETON-CODORA-GLENN IRRIGATION	A030812
PRINCETON-CORDORA-GLENN IRRIGATION	USBR1213
PROBERTA WATER DISTRICT	USBR1163
PROVIDENT IRRIGATION DISTRICT	A000462
PROVIDENT IRRIGATION DISTRICT	A000640
PROVIDENT IRRIGATION DISTRICT	A000892
PROVIDENT IRRIGATION DISTRICT	A001422
PROVIDENT IRRIGATION DISTRICT	A010595
PROVIDENT IRRIGATION DISTRICT	A030813
PROVIDENT IRRIGATION DISTRICT	USBR1217
RAG GULCH WATER DISTRICT	USBR1209
RECLAMATION DISTRCIT NO. 1606	USBR1101
RECLAMATION DISTRICT #10004	A000027
RECLAMATION DISTRICT #10004	A023201
RECLAMATION DISTRICT #108	A000576
RECLAMATION DISTRICT #108	A000763

Name	State Water Board ID
RECLAMATION DISTRICT #108	A001589
RECLAMATION DISTRICT #108	A011899
RECLAMATION DISTRICT NO. 1004	USBR1230
RECLAMATION DISTRICT #108	USBR1224
RIVER GARDEN FARMS COMPANY	USBR1225
RIVER GARDEN FARMS COMPANY	A000575
RIVER GARDEN FARMS COMPANY	A000577
RIVER GARDEN FARMS COMPANY	A011910
ROBERT L WALLACE	A023946
SACRAMENTO COUNTY WATER AGENCY	USBR1066
SACRAMENTO COUNTY WATER AGENCY	USBR1253
SACRAMENTO COUNTY WATER AGENCY	A030454
SACRAMENTO MUNICIPAL UTILITY DISTRICT	USBR1135
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A014963
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A022110
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A023404
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A026768
SACRAMENTO MUNICIPAL UTILITY DISTRICT	FERC2101
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A012323
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A012624
SACRAMENTO MUNICIPAL UTILITY DISTRICT	A020522
SAN BENITO COUNTY WATER DISTRICT	USBR1268
SAN JUAN WATER DISTRICT	A005830
SAN JUAN WATER DISTRICT	USBR1254
SAN LUIS WATER DISTRICT	USBR1174
SANTA CLARA VALLEY WATER DISTRICT	A005653
SANTA CLARA VALLEY WATER DISTRICT	A005654
SANTA CLARA VALLEY WATER DISTRICT	USBR1089
SANTA CLARA VALLEY WATER DISTRICT	USBR1261
SHAFTER-WASCO IRRIGATION DISTRICT	USBR1107
SHAFTER-WASCO IRRIGATION DISTRICT	USBR1108
SILLER BROS., INC.	A011058
SOLANO COUNTY WATER AGENCY	USBR1316
SOUTH SUTTER WATER 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
STEVINSON WATER DISTRICT	A001885
STEVINSON WATER DISTRICT	A005724
STEVINSON WATER DISTRICT	A006111
STEVINSON WATER DISTRICT	A007012
STOCKTON EAST WATER DISTRICT	USBR1247
STOCKTON EAST WATER DISTRICT	USBR1306

Name	State Water Board ID
STOCKTON EAST WATER DISTRICT	A006522
STOCKTON EAST WATER DISTRICT	A030603A
STOCKTON EAST WATER DISTRICT	A030603B
STOCKTON EAST WATER DISTRICT	A030602
STOCKTON EAST WATER DISTRICT	A031534
STOCKTON EAST WATER DISTRICT	A031535
STOCKTON EAST WATER DISTRICT	A031536
STOCKTON EAST WATER DISTRICT	A031537
STOCKTON EAST WATER DISTRICT	A031538
STOCKTON EAST WATER DISTRICT	A031539
STOCKTON EAST WATER DISTRICT	A031540
SUTTER EXTENSION 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 MUTUAL WATER COMPANY	USBR1191
SUTTER MUTUAL WATER COMPANY	A000581
SUTTER MUTUAL WATER COMPANY	A000878
SUTTER MUTUAL WATER COMPANY	A000879
SUTTER MUTUAL WATER COMPANY	A000880A
SUTTER MUTUAL WATER COMPANY	A001160
SUTTER MUTUAL WATER COMPANY	A001758
SUTTER MUTUAL WATER COMPANY	A001763
SUTTER MUTUAL WATER COMPANY	A001769
SUTTER MUTUAL WATER COMPANY	A001772
SUTTER MUTUAL WATER COMPANY	A003195
SUTTER MUTUAL WATER COMPANY	A007886
SUTTER MUTUAL WATER COMPANY	A009760
SUTTER MUTUAL WATER COMPANY	A010658
SUTTER MUTUAL WATER COMPANY	A011953
SUTTER MUTUAL WATER COMPANY	A012470A
SUTTER MUTUAL WATER COMPANY	A016677
THE WEST SIDE IRRIGATION DISTRICT	USBR1263
TURLOCK I D & MODESTO I D	A001232
TURLOCK I D & MODESTO I D	A001233
TURLOCK I D & MODESTO I D	A001532
TURLOCK I D & MODESTO I D	A003648
TURLOCK I D & MODESTO I D	A009996
TURLOCK I D & MODESTO I D	A014126

Name	State Water Board ID
TURLOCK I D & MODESTO I D	A014127
TURLOCK I D & MODESTO I D	A006711
TURLOCK I D & MODESTO I D	A003139
TURLOCK I D & MODESTO I D	A009997
W P & R L WALLACE DBA WALLACE BROS.	A011881
W P & R L WALLACE DBA WALLACE BROS.	A023945
WALLACE BROTHERS	A025792
WALLACE BROTHERS	A025793
WEST SIDE IRRIGATION DISTRICT	A000301
WEST STANISLAUS IRRIGATION DISTRICT	USBR1016
WEST STANISLAUS IRRIGATION DISTRICT	A001987
WESTLANDS WATER DISTRICT	USBR1088
WESTLANDS WATER DISTRICT	USBR1131
WESTLANDS WATER DISTRICT	USBR1273
WESTLANDS WATER DISTRICT	A031153
WESTLANDS WATER DISTRICT	USBR1265
WESTLANDS WATER DISTRICT	USBR1185
WESTLANDS WATER DISTRICT	USBR1187
WESTSIDE WATER DISTRICT	USBR1192
YOLO COUNTY F C & W C DISTRICT	A011389
YOLO COUNTY F C & W C DISTRICT	A015975
YOLO COUNTY F C & W C DISTRICT	A026469
YUBA COUNTY WATER AGENCY	A002197
YUBA COUNTY WATER AGENCY	A003026
YUBA COUNTY WATER AGENCY	A005004
YUBA COUNTY WATER AGENCY	A005631
YUBA COUNTY WATER AGENCY	A005632
YUBA COUNTY WATER AGENCY	A009516
YUBA COUNTY WATER AGENCY	A010282
YUBA COUNTY WATER AGENCY	A015204
YUBA COUNTY WATER AGENCY	A015205
YUBA COUNTY WATER AGENCY	A029837
YUBA COUNTY WATER AGENCY	FERC2246
YUBA COUNTY WATER DISTRICT	A002978