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 DIRECTOR[1]

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.

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[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 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 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 2010[5] and a continuing appropriation from the Water Rights Fund of

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[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-feet 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]

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[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 that 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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