

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WRO 2005-0003-EXEC**

---

---

In the Matter of the Petition for Reconsideration of  
**DELTA WETLANDS PROPERTIES**  
Regarding Annual Water Right Fee Determinations

---

---

**ORDER DENYING RECONSIDERATION**

BY THE EXECUTIVE DIRECTOR<sup>1</sup>:

Delta Wetlands Properties (Petitioner) petitioned for reconsideration of four Notices of Determination assessing annual water right fees against Petitioner. Petitioner holds Water Right Permits (Permit) 21103, 21104, 21105, and 21106, for which the Board of Equalization account numbers for fee payments are WR MT 94-012571 5, WR MT 94-012572 5, WR MT 94-013095 5, and WR MT 94-013096 5, respectively. The fees assessed to Petitioner total \$26,385.75. Petitioner argues that the fees have been miscalculated, and that a refund is due to Petitioner in the amount of \$5,436.25. Petitioner's argument is substantively identical to Petitioner's argument in which it requested a refund of its annual water right fees for 2003-2004. For the same reasons discussed in Order WR 2004-0012--EXEC, therefore, the petition for reconsideration is denied. Except for the dollar amounts of the fees discussed in that order and the final paragraph of findings the findings in Order WR 2004-0012--EXEC are incorporated herein by reference.

///

///

---

<sup>1</sup> 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 petitions for reconsideration of water right 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 a petition for reconsideration, or set aside or modify the water right fee assessment.

Petitioner was assessed a fee of \$2,772.25 for the 106,900 acre-feet under Permit 21103 and \$10,524.75 for the maximum 417,000 acre-feet per year under Permit 21105. Petitioner argues that it should be refunded \$2,672.25 in fees for these two permits because of the combined limit of 417,000 acre-feet of diversion for the two permits.

Petitioner was assessed a fee of \$2,864 for the 110,570 acre-feet under Permit 21104 and \$10,224.75 for the maximum 405,000 acre-feet under Permit 21106. Petitioner argues that it should be refunded \$2,764 in fees for these two permits because of the combined limit of 405,000 acre-feet of diversion for the two permits.

Petitioner argues that in each case the fee should be based on the combined maximum diversion under both permits. Petitioner's argument is based entirely upon an interpretation of the SWRCB's regulation at California Code of Regulations, title 23, section 1066. Petitioner suggests that section 1066 should be interpreted to place a limit on the sum of the fees in cases where there is a combined maximum annual diversion imposed on two or more permits that are coordinated. This is an incorrect interpretation of section 1066 in the context of Petitioner's water rights, because, for each pair of permits, Petitioner has the option to appropriate all of the water under one permit or part of the water under each permit. In cases where the water right holder has the flexibility to choose between the permits under which it diverts water and divert the full amount under either permit, the fees are assessed based on the individual permits.

Petitioner has issued a check for the full amount of the fees assessed, in the amount of \$26,385.75, to the State Board of Equalization, under protest.

///

///

///

For the reasons discussed above, I find that the decision of the Division of Water Rights to impose annual water right fees was appropriate and proper. To the extent that this order does not address all of the issues raised in the petition for reconsideration, the SWRCB finds that either these issues are insubstantial or that Petitioner has failed to meet the requirements for a petition for reconsideration under the SWRCB's regulations. The petition for reconsideration is denied.

**ORDER**

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

Dated: January 12, 2005

*ORIGINAL SIGNED BY*  
Celeste Cantú  
Executive Director