

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004 -0012 - EXEC

In the Matter of
Petition for Reconsideration of
**DELTA WETLANDS PROPERTIES REGARDING WATER RIGHT
FEE DETERMINATIONS**

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:¹

Delta Wetlands Properties (Petitioner) petitioned for reconsideration of four Notices of Determination assessing annual water right fees against Petitioner. Petitioner holds water right permits 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 \$31,184.10. Petitioner argues that the fees have been miscalculated, and that a refund is due to Petitioner in the amount of \$6,524.10. For the reasons discussed below, the petition for reconsideration is denied.

Permits 21103 and 21105, authorizing diversion of water onto Webb Tract in the Sacramento-San Joaquin Delta, have a combined limit of 417,000 acre-feet per year. The maximum diversion under Permit 21103 is 106,900 acre-feet per year, and under Permit 21105 the maximum diversion is 417,000 acre-feet per year. Petitioner was assessed a fee of \$3,207 for

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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 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 deny a petition for reconsideration or set aside or modify the water right fee assessment.

Permit 21103 and \$12,510 for Permit 21105. Petitioner argues that the total fee for both permits should be \$12,510 because their combined maximum is 417,000 acre-feet.

Permits 21104 and 21106, authorizing diversion of water onto Bacon Island in the Sacramento-San Joaquin Delta, have a combined limit of 405,000 acre-feet per year. The maximum diversion under Permit 21104 is 110,570 acre-feet per year, and under Permit 21106 the maximum diversion is 405,000 acre-feet per year. Petitioner was assessed a fee of \$3,317.10 for Permit 21103 and \$12,150 for Permit 21106. Petitioner argues that the total fee for both permits should be \$12,150 because their combined maximum is 405,000 acre-feet.

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 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.

Section 1066(b) limits the fee on a single permit or license if the permit or license contains an annual use limitation that restricts the amount of water that can be diverted under that right to an amount that is less than what the permittee or licensee could divert in the absence of the limitation. By way of contrast, in cases where a permit or license contains no term setting a maximum amount of water, the fee will be based on the maximum amount of water that can be diverted if the water right holder diverts continuously at the maximum rate of direct diversion. (See section 1066(b)(1).) To ensure clarity, section 1066(b)(3) provides that in cases such as the Petitioner's, where the water right holder holds more than one water right, and there is an annual limit on water diversion or use under the combined rights, but the water right holder may divert the full amount authorized under any one right by diverting less under the other rights, then the

fees are based on the total annual amount for each of the individual rights. Therefore, the fee assessments imposed on Petitioner are correct.

Three letters of protest were included with Petitioner's petition for reconsideration. They are from Reclamation District No. 756 on Bouldin Island, Reclamation District No. 2025 on Holland Tract, and Reclamation District No. 2026 on Webb Tract. They respectively protest and pay the annual fees assessed on them under Account Numbers WR MT 94-000713 1, WR MT 94-000716 1, and WR MT 94-000717 1. None of the three reclamation districts petitioned for reconsideration, however, and consequently this order does not further address them.

ORDER

IT IS HEREBY ORDERED THAT the petition for reconsideration filed by Delta Wetlands Properties seeking reconsideration of the fee assessments imposed under Board of Equalization Account Numbers WR MT 94-012571 5, WR MT 94-012572 5, WR MT 94-013095 5, and WR MT 94-013096 5 is denied.

Dated: April 7, 2004

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

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