

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2007-0004-EXEC**

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In the Matter of the Petition for Reconsideration of

**James and Nena Talcott**

(Application 30857)

Regarding Order Canceling Application

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SOURCE: Two Unnamed Streams tributary to Napa River Tidal Channel

COUNTY: Napa

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**ORDER DENYING RECONSIDERATION**

**BY THE EXECUTIVE DIRECTOR:**

**1.0 INTRODUCTION**

James Talcott (Talcott) petitions the State Water Resources Control Board (State Water Board) for reconsideration of the Division of Water Rights' (Division) order canceling Application 30857. Talcott asks the State Water Board to reinstate the application. The State Water Board finds that the Division Chief's order canceling the application was appropriate and proper and denies Talcott's petition for reconsideration.

**2.0 RECONSIDERATION OF A DECISION OR ORDER**

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law. (Cal. Code Regs., tit. 23, § 768.)

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 State Water Board's regulations. (*Id.*, § 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to 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 State Water Board, the Executive Director's consideration of a petition for reconsideration 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, set aside or modify the decision or order, or take other appropriate action.

The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (Board Order WR 96-1, at p. 17, fn. 11.)

### **3.0 FACTUAL BACKGROUND**

James and Nena Talcott (Applicants) filed a water right application with the Division on April 7, 1999, requesting the right to divert a total of 79 acre-feet (af) per annum as follows:

(a) Reservoir 1 is an existing 10 af reservoir that the applicant proposes to enlarge to 30 af, and (b) Reservoir 2 will be constructed with a 49 af capacity. Water was to be diverted for irrigation from two Unnamed Streams tributary to Napa River Tidal Channel from December 15 through March 31 of the succeeding year.

The application was noticed on February 4, 2000. The National Marine Fisheries Service, Avatar Wine Partners, Clos Pegase Winery, Friends of the Napa River and the Department of Fish and Game (DFG) filed protests. All protests were accepted except for the DFG protest. The accepted protests were not resolved.

The Division's September 13, 2002 letter requested that the Applicants prepare a water availability analysis and execute a Memorandum of Understanding (MOU) for preparation of the California Environmental Quality Act document. On September 23, 2002, the Applicants requested an extension of time until January 15, 2003 to submit the analysis and MOU. The Division granted the requested extension of time on October 11, 2002. Four months later, the Applicants requested an additional extension of time until February 28, 2003 to complete the water availability analysis. The Division, by

letter dated March 4, 2003, requested the MOU be submitted by April 3, 2003 or the Division would cancel Application 30857 without further notice. To date, the requested water availability analysis and MOU have not been received. The Applicants submitted a Cancellation Request form dated April 23, 2003 to the Division.

In July of 2003, Applicants chose to pursue a Small Domestic Use Registration for a portion of the project, and the Division agreed to hold Application 30857 in abeyance pending DFG clearance of the Small Domestic Use Registration. To date, DFG has not provided conditions for the Small Domestic Use Registration due to concerns about the availability of unappropriated water and compliance with the NOAA National Marine Fisheries Service/DFG Guidelines.

The Division's May 31, 2006 letter advised the Applicants that the Division would not continue to defer processing Application 30857 and requested information by June 30, 2006 showing that the Applicants were diligently pursuing Application 30857. The Applicants were advised that failure to provide the requested information would result in cancellation of Application 30857 without further notice in accordance with the California Water Code, sections 1275 and 1276. The Applicants, after due notice, failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.)

The Applicants' agent advised the Division by letter dated June 6, 2006, that the Applicants wanted to cancel Application 30857. The Division cancelled the Applicants' application on August 8, 2006. By letter dated August 15, 2006, Talcott petitioned the State Water Board for reconsideration of the cancellation of Application 30857. His petition is based upon the argument that the earlier requests for cancellation were submitted in error. (Letter from Talcott to Pat Meroney (15 Aug. 2006).)

#### **4.0 DISCUSSION**

Even if the State Water Board were to accept as a finding Talcott's lack of intent to cancel, there would not be grounds for reconsideration. The Division's letter of May 31, 2006 advised the Applicants that the Division would not continue to defer processing Application 30857 and requested information by June 30, 2006 showing that the Applicants were diligently pursuing Application 30857. The Applicants were advised that failure to provide the requested information would result in cancellation of Application 30857 without further notice in accordance with the Water Code, sections 1275 and 1276.

The Applicants, after due notice, failed to submit information requested pursuant to section 1275 of the Water Code or to show good cause why additional time should be allowed. (Wat. Code, § 1276.) This failure resulted in cancellation of the application. Under California Code of Regulations, title 23, section 768, Applicants' lack of intent is not cause for reconsideration of a cancellation prompted by Applicants'

failure to comply with sections 1275 and 1276 of the Water Code. Applicants have presented no grounds that warrant reconsideration.

**5.0 CONCLUSION**

The petition submitted by Talcott fails to raise substantial issues related to the causes for reconsideration. For this reason, the State Water Board finds that the Division's order canceling the application was appropriate and proper. The petition for reconsideration is denied.

**ORDER**

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

Dated: February 9, 2007

*ORIGINAL SIGNED BY*  
Thomas Howard  
Acting Executive Director