

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2009-0004-EXEC**

---

In the Matter of the Petitions for Reconsideration of the  
**CORDUA IRRIGATION DISTRICT, EXETER IRRIGATION DISTRICT,  
IVANHOE IRRIGATION DISTRICT, KAWEAH RIVER POWER AUTHORITY,  
LINDSAY-STRATHMORE IRRIGATION DISTRICT, LOMO COLD STORAGE  
M & T INCORPORATED, MCPHERRIN LAND COMPANY, NEVADA IRRIGATION DISTRICT,  
ORANGE COVE IRRIGATION DISTRICT, PARADISE IRRIGATION DISTRICT,  
SOLANO IRRIGATION DISTRICT,  
SOUTH FEATHER WATER & POWER AGENCY AND  
TERRA BELLA IRRIGATION DISTRICT**  
Regarding Annual Water Right Fee Determinations

---

**ORDER DENYING RECONSIDERATION**

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

**1.0 INTRODUCTION**

The Cordua Irrigation District, Exeter Irrigation District, Ivanhoe Irrigation District, Kaweah River Power Authority, Lindsay-Strathmore Irrigation District, Lomo Cold Storage, M & T Incorporated, McPherrin Land Company, Nevada Irrigation District, Orange Cove Irrigation District, Paradise Irrigation District, Solano Irrigation District, South Feather Water & Power Agency and Terra Bella Irrigation District, collectively referred to herein as "Petitioners",<sup>2</sup> individually petition the State Water Resources Control Board (State Water Board or Board) for reconsideration and a refund of annual water right fees assessed by the State Board of Equalization (BOE) for Fiscal

---

<sup>1</sup> State Water Board Resolution No. 2002-0104 delegates to the Executive Director the authority to supervise the activities of the Board. Unless a petition for reconsideration raises matters that the 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 authority 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.

<sup>2</sup> Attachment 1 contains a list of petitioners who meet the legal requirements for filing a petition for reconsideration and whose requests for reconsideration are addressed by this order.



If the subject of the petition relates to an assessment of a fee by BOE, the State Water Board's decision regarding an assessment is deemed adopted on the date of assessment by BOE (§ 1077, subd. (b).) A petition is timely filed only if received by the Board within 30 days of the date an assessment is issued. (*Ibid.*) The deadline for filing a petition for reconsideration of the November 10, 2008 assessment was December 10, 2008.<sup>4</sup> The Board will not consider late petitions.

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. (§ 770, subd. (a)(1).) Alternatively, after review of the record, the petition may be denied if the State Water 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).)

This order addresses the principal issues raised by Petitioners. To the extent that this order does not address all of the issues raised by the Petitioners, the State Water Board finds that either these issues are insubstantial or that the Petitioners have failed to meet the requirements for a petition for reconsideration. (§§ 768-769, 1077.)

### **3.0 LEGAL AND FACTUAL BACKGROUND**

The State Water Board's Division of Water Rights (Division) is the entity primarily responsible for administering the state's water right program. The primary source of funding for the water rights 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 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 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).) BOE is responsible for collecting the annual fees. (*Id.*, § 1536.)

---

<sup>4</sup> 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 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. (See *California Correctional Peace Officers Ass'n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; State Water Board Order WQ 98-05-UST at pp. 3-4.)

In FY 2008-2009, the Budget Act appropriates \$11.377 million to the State Water Board for regulatory activities included in the Board's water right program. Most of this funding – a total of \$7.382 million – is appropriated from the Water Rights Fund.<sup>5</sup> In addition to the amounts appropriated to the Board, the Budget Act appropriates \$420,000 from the Water Rights Fund to BOE for its water right fee collection efforts and appropriates \$35,000 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. (Stats. 2008, ch. 268, as amended by Stats. 2008, ch. 269.)<sup>6</sup>

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 Water Rights Fund in the annual Budget Act, taking into account money in the fund from other sources.<sup>7</sup> The Board has determined the current annual permit and license fee schedule for FY 2007-2008 will continue to generate sufficient revenues to support the water right program activities for FY 2008-2009.<sup>8</sup> Accordingly, it did not revise the regulations applicable to annual permits and licenses this year and the annual permit and license fee schedule for this fiscal year is identical to the fee schedule for FY 2007-2008.<sup>9</sup>

---

<sup>5</sup> In addition to appropriations from the Water Rights Fund, the State Water Board's budget for the water right program includes \$3.558 million in general funds, \$289,000 in tobacco tax funds, and \$148,000 in federal trust funds. The calculations used to determine water right fees do not include appropriations from funds other than the Water Rights Fund, and do not include appropriations from the Water Rights Fund that are attributable to transfers from other funds.

<sup>6</sup> In addition to making appropriations that are specific as to the particular fund and agency involved, the Budget Act includes appropriations that are allocated by the Department of Finance. The Budget Act also includes generally applicable sections that provide for adjustments of appropriations by the Department of Finance.

<sup>7</sup> 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)), penalties collected for water right violations (*id.*, § 1551, subd. (b)), and money transferred from other funds.

<sup>8</sup> As explained in the Memorandum to File dated October 6, 2008 from Victoria A. Whitney, Chief, Division of Water Rights, as of June 30, 2008 the Water Rights Fund had collected \$10.1 million in revenues from water right and water quality certification fees associated with water supply actions. The Division ultimately anticipates total fee revenues of \$5.91 million for FY 2008-2009.

<sup>9</sup> The State Water Board revised other portions of the fee schedule for FY 2008-2009. By Resolution No. 2008-0074, the Board increased water quality certification fees, increased the upper limit on certain filing fees, and decreased fees for most temporary permits filed under Water Code section 1425. Fees for most fee payers, however, remained unchanged from the previous fiscal year.

#### **4.0 PENDING LITIGATION**

The State Water Board must consider the petitions for reconsideration at a time when the statute authorizing water right fees and the basic structure of the implementing regulations are being challenged in pending litigation. Each year since 2003, the Northern California Water Association (NCWA), the Central Valley Project Water Association (CVPWA), and the California Farm Bureau Federation (CFBF) have filed suit against the Board and BOE, alleging, in part, that the fee legislation and the Board's fee regulations are unconstitutional and invalid. The NCWA, CVPWA, and CFBF actions over the FY 2003-2004 fees have been consolidated, and the other actions have been stayed pending resolution of the consolidated case. In 2005 the Sacramento County Superior Court issued a judgment upholding the water right fees in their entirety, and NCWA, CVPWA, and the CFBF appealed. On January 17, 2007, the Third District Court of Appeal issued a decision in *California Farm Bureau Federation v. State Water Resources Control Board* (hereinafter "*Farm Bureau*") upholding the fee statute and invalidating the fee regulations for FY 2003-2004. All parties petitioned the California Supreme Court for review, and the court granted review on April 11, 2007. The case is still pending before the Supreme Court.

#### **5.0 FEE DETERMINATIONS COVERED BY THE PETITIONS**

Although the Petitioners filed their petitions for reconsideration individually, their petitions repeat the same legal arguments. Eleven Petitioners are represented by a single law firm.<sup>10</sup> The remaining Petitioners submitted petitions with language that is identical to the petitions filed by the law firm. With certain exceptions noted below, none of the petitions provide any additional arguments, information or supporting authorities that materially distinguishes it from the others. Accordingly, the State Water Board has decided to consolidate its consideration of these individual petitions in this order.

The State Water Board's review in this order is limited to annual water right fee assessments issued on or about November 10, 2008. Petitioners' requests made in 2008 for refunds of fees paid between July 1, 2003 and July 1, 2008 are not timely. (§ 1077, subd. (b).)

---

<sup>10</sup> Minasian, Spruance, Meith, Soares & Sexton, LLP.

## **6.0 PETITIONERS' ARGUMENTS REGARDING THE VALIDITY OF THE FEES ARE WITHOUT MERIT**

Petitioners contend that the State Water Board emergency fee regulations are unlawful as described in the Third District Court of Appeal's *Farm Bureau* decision. Therefore, Petitioners claim, the Board's decision to impose water right fees is "an error in law and not supported by substantial evidence."

### **6.1 Legal Requirements for Assessing Regulatory Fees**

Under California Constitution, article XIII A, the State cannot impose a tax unless the tax is approved by a two-thirds vote of each house of the Legislature. The Legislature can authorize a state agency to charge a regulatory fee by passing a bill by a majority vote. A regulatory fee is a fee "charged in connection with regulatory activities, which fees do not exceed the reasonable cost of providing services necessary to the activity for which the fee is charged and which are not levied for unrelated revenue purposes." (*Sinclair Paint Co. v. State Board of Equalization* (1997) 15 Cal.4th 866, 876 [64 Cal.Rptr.2d 447].)

For a charge to constitute a fee, a state agency must demonstrate "(1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity." (*California Association of Professional Scientists v. Department of Fish and Game* (2000) 79 Cal.App.4th 935, 945 [94 Cal.Rptr.2d 535] (hereinafter *CAPS*) (citing *Beaumont Investors v. Beaumont-Cherry Valley Water Dist.* (1985) 165 Cal.App.3d 227, 234-235 [211 Cal.Rptr. 567]).) This demonstration does not require a precise cost-fee ratio. (*CAPS, supra*, 79 Cal.App.4th at p. 950.) Flexibility is an inherent component of reasonability. Regulatory fees, unlike other types of fees, often are not easily correlated to a specific, ascertainable cost due to the complexity of the regulatory scheme, the multifaceted responsibilities of the responsible agency and its employees, intermingled funding sources, and accounting systems that are not designed to track specific tasks. (*Id.* at p. 950.)

### **6.2 Overview of Annual Water Right Fees**

Water Code 1525, subdivision (c) authorizes the State Water Board to set the total amount of fees collected equal to an amount necessary to recover costs incurred in administering the

water right program. The activities described in subdivision (c) encompass virtually all water right program activities, including reviewing applications, petitions and requests, prescribing terms and conditions, planning, monitoring, and enforcement.

The State Water Board assesses an annual water right fee to each holder of a water right permit or license based upon the total authorized diversion amount of that permit or license (commonly referred to as the "face value" of the water right). (§ 1066, subd. (b).) The annual permit and license fee regulations apply equally to each permit or license. All fee payers pay the same rate — \$100 plus \$0.03 per each acre-foot in excess of 10 acre-feet — based on the total annual amount of diversion authorized by the permit or license. (§ 1066, subd. (a).)

The United States Bureau of Reclamation's (Reclamation) extensive water right holdings and sovereign immunity add to the complexity of assessing water right fees. The State Water Board has the authority to regulate the diversion and use of water that Reclamation contracts to deliver. (*California v. U.S.* (1978) 438 U.S. 645; *Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183.) As a federal agency, however, Reclamation does not pay fees to the State of California. Accordingly, pursuant to Water Code section 1540, if the Board determines that a fee payer such as Reclamation is likely to decline to pay a fee or expense based on a claim of sovereign immunity, then the Board may allocate the fees due to that fee payer's water supply contractors. Section 1073 of the fee regulations contains a formula by which the Board passes Reclamation's fees through to Reclamation's contractors by prorating Reclamation's fees for Reclamation projects among the contractors for each project. This is commonly referred to as the "pass-through" fee. The water right fee assessed against Reclamation's permits and licenses is calculated based on the same rate that is applied to all other fee payers. Because the fees attributable to Reclamation permits are passed through to project contractors, non-Reclamation permitted and licensed water right holders are not being required to pay for program costs attributable to regulating the federal projects.

### **6.3 Petitioners' Arguments Based on the Farm Bureau Decision Have No Merit**

As Petitioners acknowledge, the Third District Court of Appeal's *Farm Bureau* decision is currently pending before the California Supreme Court. The appellate court's opinion was superseded when the California Supreme Court granted review. Thus, the opinion is no longer considered published and may not be cited or relied on. (Cal. Rules of Court, Rule 8.1105 and Rule 8.1115.) To the extent Petitioners rely on the unpublished *Farm Bureau* opinion in

support of their claims, their arguments have no merit. Similarly, as discussed below, to the extent Petitioners independently adopt the reasoning in the *Farm Bureau* opinion, their arguments have no merit. If Petitioners intended to rely on other grounds, then their challenge is deficient because they failed to specify those grounds and to include points and authorities in support of the legal issues raised. (§ 769, subd. (c).)

**6.3.1 Because the Water Right Program Primarily Regulates the Diversion and Use of Water Subject to the State Permit and License System, it is Appropriate that Fee Revenue Comes Primarily from Annual Permit and License Fees.**

Petitioners point to the appellate court's invalidation of the State Water Board's annual permit and license fee regulation (§ 1066) in support of their argument that the Board's decision to impose the water right fees is an error in law and not supported by substantial evidence. In *Farm Bureau*, the court concluded that the Board failed to adequately show the basis for apportioning costs so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity. More specifically, the court faulted the Board because some persons benefit from the regulatory program but do not pay fees, including riparian, pueblo, and pre-1914 water right holders. Petitioners refer to figures cited by the court, asserting that holders of riparian, pueblo and pre-1914 appropriative water rights account for 38 percent of the water subject to water rights, and that Reclamation holds 22 percent of the water subject to water rights. The court concluded that without any evidence to show the allocation of actual costs of Division services to those collectively representing 60 percent of water diverted, the Board was not justified in imposing annual fees on the license and permit holders who represent the remaining 40 percent.

The appellate court's factual statements, however, were erroneous. The court derived its figures from a simple pie chart presented to stakeholders during the development of the initial fee regulations, which showed the amount of water claimed to be held pursuant to certain types of water rights. But the pie chart did not purport to represent the State Water Board resources spent to regulate those rights. In fact, all but a small fraction of the regulatory program is directed to the regulation of permittees and licensees. Moreover, the fact that some of the state's water is subject to other types of water rights does not mean that the Board has no regulatory authority over those rights.



Similarly, it is not true that section 1066 mandates the collection of annual fees from holders of water right permits and licenses that account for only 40 percent of the water held under water rights. Under the regulatory allocation considered by the appellate court, the State Water Board assessed annual fees on about 60 percent of all water rights, including all but a *de minimis* percentage of the water rights regulated by the Board, because the regulations pass through the fees of water right holders claiming sovereign immunity (§ 1073).

At its core, the State Water Board's water right program regulates state water right permit and license holders, with less regulatory authority over other types of water right holders.<sup>11</sup>

Approximately 60 percent of the rights to the use of water in the state are held under permits or licenses. The annual permit and license fees are imposed on the group of water right holders that account for the bulk of the Board's regulatory efforts. The Board previously has estimated that it spends a *de minimis* amount (approximately only 5 percent) of the Board's water right program resources regulating other rights that are not subject to the annual permit and license fees. Most of the time (approximately 95 percent) is spent regulating permit and license holders. Accordingly, section 1066 establishes a reasonable manner of apportioning the majority of the water right program's costs to permittees and licensees because they account for all but a *de minimis* amount of the burden on the regulatory program.

### **6.3.2 The Fees Passed Through to Central Valley Project Contractors are Reasonable Because the Water Rights for the Central Valley Project are Held to Support Deliveries to the Contractors.**

Petitioners also note that the appellate court invalidated the formula in the pass-through fee regulation (section 1073). As is the case for all permittees and licensees, the water supply contractors' annual fees are calculated based on the face value of Reclamation's permits and licenses for the projects providing contract deliveries. The court concluded that the State Water Board had the authority to impose a fee on federal contractors, but only to the extent of the contractors' contractual interest in Reclamation's water rights, i.e., only 6.6 million acre-feet of the nearly 116 million acre-feet of water held under Reclamation's water rights. The court, however, incorrectly assumed that the amount of water contracted for delivery to a contractor is the equivalent of the water right needed to support the delivery of that amount.

---

<sup>11</sup> Some of these water users may be subject to other fees paid into the Water Rights Fund, including fees for claims filed in statutory adjudications and fees for water quality certification of hydroelectric power licenses.

To the contrary, the high face value of Reclamation's water right permits and licenses is necessary to satisfy the demand of the water supply contractors.<sup>12</sup> The contractors would not be able to take delivery of the 6.6 million acre-feet of project supply water under their contracts if it were not for the water rights held by Reclamation for its projects. Numerous factors can result in the face value of Reclamation's permits vastly exceeding the amount that can be delivered (e.g., multiple permits and licenses for multiple diversion and re-diversion of the same water before it is delivered to its ultimate destination, limits on availability of water that prevent diversion of full face value at any given time, bypass requirements, and other conditions). These factors are similar for other permittees and licensees statewide for whom the face value of their water rights vastly exceeds the amount of water actually used.

For example, in wet years, the large direct diversion rates and storage capacities authorized by Reclamation's water rights allow the direct diversion of river flows for immediate use by the contractors and the collection of excess flows to storage in the reservoirs. Often, there are insufficient natural flows to allow direct diversion at the full amount authorized by Reclamation's water rights, and in drier years there may not be sufficient flows to allow storage at the full amount authorized under the rights. In dry years, the storage supplies are withdrawn to meet the contractors' demand when river flows cannot. Therefore, the large face values, albeit not used all of the time, are required to supply a smaller annual demand from water supply contractors. The large amounts authorized for direct diversion and the large storage amounts authorized under Reclamation's water rights provide flexibility to make use of available flows and are necessary to provide a firm annual yield and a dependable water supply for the contractors. Consequently, in addition to the water directly consumed under their contracts, the contractors benefit from water held in storage at the various facilities to meet their demands in dry years and to satisfy other operational environmental restrictions.

Moreover, the water right fees are based on the regulation of water rights. Each and every permit and license held by Reclamation for the Central Valley Project (CVP) is held to support contract deliveries.<sup>13</sup> The contractors contract with Reclamation for the operation and

---

<sup>12</sup> A more detailed analysis of the State Water Board's allocation of Reclamation's annual water right fees to federal water supply contractors is contained in the Memorandum to File dated January 7, 2008 from Victoria A. Whitney, Chief, Division of Water Rights, entitled "Water Right and Water Quality Certification Fee Schedule for Fiscal Year 2007-08."

<sup>13</sup> The State Water Board does not issue permits or licenses for exclusively flood control or navigation purposes (which are project purposes identified in the federal authorization for the CVP). Although these activities provide benefits to California in general, projects built solely for such uses do not create any administrative or regulatory burden on the Board's water right program. No fees were charged for these purposes of the CVP.

maintenance of the CVP, not just the water they receive.<sup>14</sup> All of the regulatory costs represented by the annual water right fees associated with the water supply contractor's water deliveries can be attributed to the contractor's water supply use.

Where water is diverted under permits or licenses for use by the contractor, the need for and benefits of the regulatory program may be reasonably attributed to either the water right holder or the contractor. The contractors' demand for water is the primary purpose of Reclamation's water supply projects. Accordingly, it is reasonable to hold Reclamation's water supply contractors accountable for all of Reclamation's water right fees because of the cost of regulation of the permits and licenses held to support the water projects providing their contract deliveries. To assess the contractors a fee based only on the amount of water authorized by a contract would ignore the benefits to, and burdens on, the regulatory program that are unique to the contractors. It is reasonable to assess the annual fees for Reclamation's water rights to the water supply contractors as set forth in section 1073 of the fee regulations.

### **6.3.3 Petitioners' Claims Regarding Water Quality Certification Fees Have No Merit**

Water Code section 13160.1 authorizes the State Water Board to recover costs incurred in connection with applications for water quality certification requested pursuant to section 401 of the Clean Water Act by applicants for a federal permit or license. The Board assesses annual fees for projects under review for water quality certification for Federal Energy Regulatory Commission (FERC) licensing and FERC-licensed projects for which water quality certification has been issued. (§ 3833.1.) Fees associated with water quality certification for FERC licensing are deposited in the Water Rights Fund. (Wat. Code, § 1551, subd. (c).)

South Feather Water and Power Agency (Application ID No. FERC 2088) and the Nevada Irrigation District (NID) (Application ID No. FERC 2266) contest the FERC fees, arguing that for "the same or similar reasons described in [the] Farm Bureau [decision]," the FERC fees assessed to them are unlawful and invalid. The appellate court did not consider the annual

---

<sup>14</sup> Moreover, like many other water right projects, in order to protect instream beneficial uses and water quality objectives, the CVP's impacts from diversion, storage and use of water must be mitigated. The operations of the CVP authorized under Reclamation's water rights are conditioned to protect the Bay-Delta and other waters from the impacts of the project. Thus, the environmental protection measures are directly related to the impacts of the water supply project. Without these environmental conditions and restrictions, the water right authorizing consumptive use of the water might not have been issued. These environmental requirements do not convert the CVP—a water supply project—into an environmental enhancement project.

FERC fees in its decision and Petitioners do not provide specific allegations supporting their contentions. The specific issues addressed in Sections 6.3.1 and 6.3.2 have no bearing on the FERC fees.<sup>15</sup> If Petitioners intended to rely on other grounds, then their challenge is deficient because they failed to specify those grounds and to include points and authorities in support of the legal issues raised. (§ 769, subd. (c).)

NID further contends that it was charged an incorrect amount for its FERC fee, claiming that it is entitled to a refund of \$132. Pursuant to section 3833.1, subdivision (b)(4) of the fee regulations, the annual fee for a FERC-licensed hydroelectric project is \$1,000 plus \$0.220 per kilowatt, based on the authorized or proposed installed generating capacity of the hydroelectric facility. The State Water Board assessed NID a fee of \$18,582.40, based on the authorized installed generating capacity of 79,920 kilowatts. NID claims that the Board should have used the installed generating capacity of 79,320 kilowatts, as identified in NID's Notice of Intent. Based on this amount capacity, NID's fee would be \$18,450.40. Section 3833.1, subdivision (b)(4)(A), however, provides that "[i]n the case of an application for an original, new or subsequent license . . . the annual fee shall be based on the installed generating capacity of the facility as proposed in the notification of intent, application for FERC license, application for certification, or existing license that is proposed for takeover or relicensing, whichever is greatest." NID has applied for relicensing of a FERC licensed project; accordingly, the Board correctly based the annual fee on the installed generating capacity of the facility in the existing license that is proposed for relicensing. The fee was correctly assessed. There is no cause for reconsideration.

#### **6.3.4 Paradise Irrigation District's Claims Regarding Annual Petition Fees Have No Merit**

The State Water Board has adopted regulations assessing annual petition or request fees for certain projects that require continuing staff oversight. (§ 1065.) Paradise Irrigation District (Paradise) (Application ID Nos. 000476P071228, 22061P071228) contests the fees, arguing that for "the same or similar reasons described in [the] Farm Bureau [decision]," the fees are unlawful and invalid. The appellate court did not consider the annual petition fees in its decision and Petitioner does not provide specific allegations supporting its contentions. To the extent

---

<sup>15</sup> In contrast to the water right permitting and licensing program, water quality certification applies to diversions under all bases of right, including riparian and pre-1914 rights, and the FERC fees apply without regard to the type of water right involved. Because the federally authorized projects are not subject to FERC licensing, the FERC fees do not raise any issue involving pass-through fees.

that Paradise's challenge to these fees is based on the same contentions as it makes concerning the annual permit and license fees, those contentions are addressed in this order.<sup>16</sup> If Petitioner intended to rely on other grounds, then its challenge is deficient because it failed to specify those grounds and to include points and authorities in support of the legal issues raised. (§ 769, subd. (c).)

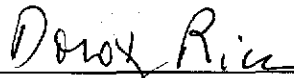
## 7.0 CONCLUSION

For the reasons discussed above, the State Water Board finds that its decision to impose water right fees was appropriate and proper. The petitions for reconsideration are denied.

### ORDER

IT IS HEREBY ORDERED THAT the petitions for reconsideration are denied.

Dated: FEB 05 2009

  
\_\_\_\_\_  
Dorothy Rice  
Executive Director

Attachment

<sup>16</sup> Because the annual petition fees assessed to Paradise do not involve the pass-through of fees attributable to petitions filed by Reclamation, the specific issues addressed in Section 6.3.2 are not relevant.

**In the matter of the Petitions for Reconsideration of  
Cordua Irrigation District, et al.**

Attachment 1: Petitioners for Reconsideration (FY 2008-2009)

<b>Name</b>	<b>State Water Board ID</b>
CORDUA IRRIGATION DISTRICT	A012371
CORDUA IRRIGATION DISTRICT	A009927
EXETER IRRIGATION DISTRICT	USBR1291
EXETER IRRIGATION DISTRICT	USBR1292
IVANHOE IRRIGATION DISTRICT	USBR1284
IVANHOE IRRIGATION DISTRICT	USBR1285
KAWEAH RIVER POWER AUTHORITY	A026607
LINDSAY-STRATHMORE IRRIGATION DISTRICT	USBR1280
LOMO COLD STORAGE	USBR1235
LOMO COLD STORAGE	A001074A
LOMO COLD STORAGE	A006486
LOMO COLD STORAGE	A004699
LOMO COLD STORAGE	A004613
M & T, INC.	USBR1241
MCPHERRIN LAND CO	A014546
MCPHERRIN LAND CO	A015710
NEVADA IRRIGATION DISTRICT	A002372
NEVADA IRRIGATION DISTRICT	A006701
NEVADA IRRIGATION DISTRICT	A005193
NEVADA IRRIGATION DISTRICT	A006229
NEVADA IRRIGATION DISTRICT	A004310
NEVADA IRRIGATION DISTRICT	A004309
NEVADA IRRIGATION DISTRICT	FERC2266
NEVADA IRRIGATION DISTRICT	A002652A
NEVADA IRRIGATION DISTRICT	A002276
NEVADA IRRIGATION DISTRICT	A002275
NEVADA IRRIGATION DISTRICT	A001615
NEVADA IRRIGATION DISTRICT	A001614
NEVADA IRRIGATION DISTRICT	A001270
NEVADA IRRIGATION DISTRICT	A002652B
NEVADA IRRIGATION DISTRICT	A020017
NEVADA IRRIGATION DISTRICT	A027132
NEVADA IRRIGATION DISTRICT	A026866
NEVADA IRRIGATION DISTRICT	A024983
NEVADA IRRIGATION DISTRICT	A006529
NEVADA IRRIGATION DISTRICT	A006702
NEVADA IRRIGATION DISTRICT	A021152
NEVADA IRRIGATION DISTRICT	A027559
NEVADA IRRIGATION DISTRICT	A020072
NEVADA IRRIGATION DISTRICT	A015525
NEVADA IRRIGATION DISTRICT	A008180
NEVADA IRRIGATION DISTRICT	A008179
NEVADA IRRIGATION DISTRICT	A008178
NEVADA IRRIGATION DISTRICT	A008177
NEVADA IRRIGATION DISTRICT	A021151
ORANGE COVE IRRIGATION DISTRICT	A028691

<b>Name</b>	<b>State Water Board ID</b>
ORANGE COVE IRRIGATION DISTRICT	USBR1283
ORANGE COVE IRRIGATION DISTRICT	A028552
PARADISE IRRIGATION DISTRICT	A022061
PARADISE IRRIGATION DISTRICT	A000476
PARADISE IRRIGATION DISTRICT	000476P071228
PARADISE IRRIGATION DISTRICT	22061P071228
SOLANO IRRIGATION DISTRICT	A025176
SOUTH FEATHER WATER & POWER	FERC2088
SOUTH FEATHER WATER & POWER	A002142
SOUTH FEATHER WATER & POWER	A002778
SOUTH FEATHER WATER & POWER	A002979
SOUTH FEATHER WATER & POWER	A014112
SOUTH FEATHER WATER & POWER	A013956
SOUTH FEATHER WATER & POWER	A013676
SOUTH FEATHER WATER & POWER	A001651
TERRA BELLA IRRIGATION DISTRICT	USBR1288