

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

CENTRAL DELTA WATER AGENCY et al.,

Plaintiffs and Appellants,

v.

STATE WATER RESOURCES CONTROL BOARD et
al.,

Defendants and Respondents.

DELTA WETLANDS PROPERTIES et al.,

Real Parties in Interest and
Respondents.

C041749

(Super. Ct. Nos.
01CS00345 & 01CS00824)

MODIFICATION OF
OPINION AND DENIAL OF
PETITION FOR REHEARING

BY THE COURT:

The opinion of this court filed November 19, 2004, in the
above entitled case is modified as follows:

1. On page 24, delete footnote 19.

2. On page 18, delete the sentence beginning with "Although" on line 17, including the original footnote 15. In its place, insert the following:

"Although the Board may employ personnel to assist it (§ 186), it may not delegate the authority to determine the merits of an application for a permit to appropriate water, except as provided by statute. With one exception the statutory authority to issue a permit for the appropriation of water is conferred on the Board. (§§ 179, 1250, 1350; see *Bank of America v. State Water Resources Control Board*, *supra*, 42 Cal.App.3d at pp. 206-207.)¹ As noted, section 1375 requires, as a "prerequisite to the issuance of a permit," that specified facts "must exist," including "the matter and information prescribed by this division" By contrast, the Water Code provides that the Division of Water Rights may make determinations on the merits of "minor protested applications." (§§ 1345, 1347.)² A minor application is one that "does not involve direct diversions in excess of three cubic-feet per second or storage in excess of 200 acre-feet per year." (§ 1348.)"

¹ Nothing we say here concerns the authority of the Board to delegate to its staff matters relating to procedure. (§§ 7, 186.)

² Consistent with these provisions, SWRCB Resolution No. 99-031 (1999) [WL33512257] delegation no. 3.2 delegates the authority of the Board to the Chief, Division of Water Rights, to issue new permits, "when no protests are outstanding" (Del. No. 3.2.12) and "after Board decision or order" (Del. No. 3.2.17).

3. On page 34, delete the third full paragraph starting with "To the extent."

This modification will necessitate renumbering of the footnotes.

As modified, the petition for rehearing is denied. This modification does not effect the judgment.

FOR THE COURT:

BLEASE, Acting P. J.

MORRISON, J.

HULL, J.