

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

*2/20/71*  
*Amount of*  
*Decision 1378*  
*yearly*

In the Matter of Applications 23416, )  
23417, 23418 and 23419 of Bank of )  
America, N.T.&S.A., as Co-Trustee )  
of the Pension Trust Fund for )  
Operating Engineers, to Appropriate )  
from Cosumnes River and Unnamed )  
Streams in Sacramento County )

Decision 1378

DECISION APPROVING APPLICATIONS

Bank of America, N.T.&S.A., as Co-Trustee of the Pension Trust Fund for Operating Engineers, having filed Applications 23416, 23417, 23418 and 23419 for permits to appropriate unappropriated water; protests having been received; a public hearing having been held before the State Water Resources Control Board on September 10, 1970; applicant and protestant Department of Fish and Game having appeared and presented evidence; the evidence received at the hearing having been duly considered, the Board finds as follows:

Substance of the Applications

1(a). Application 23416 is for a permit to appropriate (1) six cubic feet per second by direct diversion not to exceed 2,860 acre-feet annually (afa) and 3,900 afa by offstream storage,

(2) 50 afa by storage, and (3) 100 afa by storage, from November 1 of each year to May 31 of the succeeding year, for irrigation, municipal and recreational purposes from (1) Cosumnes River, (2) an unnamed stream, and (3) another unnamed stream all in Sacramento County.

The points of diversion are to be located (1) within the SW $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 35, (2) within the NW $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 35, and (3) within the SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of Section 34, all in T8N, R8E, MDB&M.

(b). Applications 23417, 23418 and 23419 are for permits to appropriate 130 afa, 130 afa, and 1,240 afa, by storage, respectively, to be collected from November 1 of each year to May 31 of the succeeding year, for recreational and stockwatering purposes from unnamed streams in Sacramento County. The points of diversion are to be located within the SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 33, SE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 33, and NE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 35, respectively, all in T8N, R8E, MDB&M.

#### Petition to Change Points of Diversion

2. Since the hearing the applicant has filed a petition to amend Application 23416 to include points of rediversion at the dams creating proposed Laguna Joaquin, Peralla, and Clementia reservoirs and at existing Bass, Black Bass, and Calero reservoirs where water from the Cosumnes River will be used to replace evaporation and seepage losses. The proposed changes will neither in effect constitute the initiation of a new right nor operate to the injury of any other appropriator or lawful user of water. The petition should be granted.

### Applicant's Project

3. Applicant proposes to use the water covered by these applications on a 3,500-acre real estate development known as Rancho Murieta. The project contains six units and will be developed in stages. Upon full development of the project, which will take place in 18 to 22 years, there will be a community of approximately 25,000 people (RT 36). The water requirements at such time will be an estimated 6,368 afa (Applicant's Exh. 8). Water will be used to furnish a municipal water supply, for irrigation of a golf course, and to maintain water levels in existing and proposed recreational reservoirs.

The capacity of the applicant's pumping plant will be 46 cubic feet per second which would be the maximum rate of diversion authorized by any permit issued pursuant to Application 23416.

### Protests

4. Protests were filed by ten lower users of water from the Cosumnes River claiming riparian, appropriative, and overlying landowners' rights. Protests were also filed by the Omochumne-Hartnell Water District on behalf of its members, the United States Bureau of Reclamation (hereinafter referred to as "Bureau") and the Department of Fish and Game.

### Disposition of Protests

5. Applicant and the Omochumne-Hartnell Water District entered into a stipulation dated August 10, 1970, which provides

for the withdrawal of the district's protest under certain terms including the elimination of the month of October from the applicant's diversion season. The stipulated terms, as they relate to matters within this Board's jurisdiction and as they are pertinent to the particular permit should be included in any permits issued pursuant to Applications 23416, 23417, 23418 and 23419. The ten protesting lower users have withdrawn their protests in reliance upon the stipulation between the applicant and the district.

The reduction in the diversion season agreed to by the applicant has satisfied the Bureau's protest.

The Department of Fish and Game entered into an agreement with the applicant dated October 2, 1970, providing for the withdrawal of the department's protest. The terms of the agreement, subject to a minor change of which the parties have been advised, should be included in any permits issued on Applications 23416, 23417, 23418 and 23419. Any permits should also contain a term stating that the provisions relating to the protection of fish life are based upon a bilateral agreement between the permittee and the department and shall not be construed as a finding by the Board that the amount of water is either adequate or required for such purposes.

#### Availability of Water to Supply Applicant

6. Applications 23417, 23418 and 23419 are to appropriate water from small unnamed streams for storage in proposed Laguna Joaquin, Peralta and Clementia reservoirs, respectively. Local

runoff is available in these streams at times during the storage season (RT 66). Under the applicant's proposed operation water from the Cosumnes River will be diverted into these reservoirs and little water will be stored from the runoff of the local watersheds.

7. Application 23416 covers an appropriation from the Cosumnes River from November 1 of each year to May 31 of the succeeding year. The Board's Decision 1348, adopted November 6, 1969, found unappropriated water available in the Cosumnes River during the period from November 1 of each year to May 1 of the succeeding year, the entire season requested in the application. On March 15, 1962, the Board adopted Decision D 1077 which found unappropriated water available in the Cosumnes River during the month of May. No evidence was presented during the hearing on Applications 23416, 23417, 23418 and 23419, nor is there information available to the Board, which would justify a different conclusion at this time.

#### Effect of Nashville Project on Applicant's Project

8. The applications which the Bureau holds for its Nashville Project, which is located approximately ten miles above the applicant's project, have priority over the subject applications. The applicant is aware that with the Nashville Project in operation there will be practically no water available for use at Rancho Murieta (RT 99). To insure a firm supply of water the applicant should enter into negotiations with the Bureau for water from the Nashville Project when the project is authorized by

Congress. Any permits issued on Applications 23416, 23417, 23418 and 23419 should contain a term requiring the permittee to do so and report annually to the Board on its progress in the negotiations.

Unappropriated Water is Available to the Applicant

9. Unappropriated water is available to supply applicant and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

10. The intended use is beneficial.

Public Access

11. The applicant's master plan for Rancho Murieta contemplates setting aside 175 acres for dedication to the Sacramento County Parks and Recreation Department for the preservation of the natural features of lands bordering the Cosumnes River (RT 15; Applicant's Exh. 6). Under the plan there will be strips from 40 to 50 feet wide bordering the river which will be open to the public.

[ Public access to all the reservoirs is planned (RT 37). ]

The Cosumnes River will become more important as a fishery resource when the Nashville Project is completed as the increased flows available will make it possible to establish trout and steel-head fisheries and further develop warm water game fish such as bass, sunfish and catfish. The topography of the area is such that lands within the applicant's project afford the most convenient access to the approximately 16-mile reach of the Cosumnes River between Sloughhouse and Nashville. A proposed public easement of

approximately 50 feet bordering the river is recommended by the U. S. Fish and Wildlife Service (Staff Exh. 8, p. 57).

In view of the foregoing, terms providing for public access to 50-foot strips on both sides of the Cosumnes River within the applicant's project area [and public access to the applicant's reservoirs, subject to a reasonable charge for any services or facilities furnished by the permittee,] should be included in any permits issued pursuant to Applications 23416, 23417, 23418 and 23419. Such a term will preserve the integrity of the applicant's exemplary master plan in the event the permits are assigned or otherwise transferred. Further, the term will be in the public interest as it will serve to compensate the public for diminished recreational value of the Cosumnes River resulting from lower flows in the river due to diversions to the applicant's reservoirs for recreational use on private land.

#### Reservation of Jurisdiction

12. With the Nashville Project in operation the flows in the Cosumnes River for the enhancement of fish life will be greater than the flows the applicant has agreed to by-pass in its agreement with the Department of Fish and Game. The Board should retain jurisdiction over any permits issued pursuant to Applications 23416, 23417, 23418 and 23419 to conform them with the Board's decision on pending applications by the Bureau for its Nashville Project. The applicant and the department have requested the Board to retain jurisdiction for such purpose (agreement between Dept. of Fish and Game and applicant dated October 2, 1970).

From the foregoing findings, the Board concludes that Applications 23416, 23417, 23418 and 23419 should be approved and that permits should be issued to the applicant subject to the limitations and conditions set forth in the order following:

ORDER

IT IS HEREBY ORDERED that the applicant's petition to add to the existing points of diversion and rediversion under Application 23416 additional points of rediversion at Laguna Joaquin (Application 23417), Peralta (Application 23418), Clementia (Application 23419, Bass (Application 16142), Black Bass (Application 16143), and Calero (Application 19477) reservoirs be, and it is, granted.

IT IS FURTHER ORDERED that Applications 23416, 23417, 23418 and 23419 be, and they are, approved, and that permits be issued to the applicant subject to vested rights and to the following limitations and conditions:

1(a). The water appropriated pursuant to Application 23416 shall be limited to the quantity which can be beneficially used and shall not exceed six cubic feet per second (cfs) by direct diversion and 3,900 acre-feet per annum (afa) by storage from the Cosumnes River, 50 afa by storage from an unnamed stream and 100 afa from an unnamed stream, from November 1 of each year to May 31 of the succeeding year. The maximum rate of diversion from the Cosumnes River to offstream storage shall not exceed 46 cfs. The equivalent of the continuous flow allowance by direct



diversion for any seven-day period may be diverted in a shorter time if there be no interference with vested rights. The total amount of water to be taken from the source shall not exceed 6,368 afa per water year of October 1 to September 30.

(b). The water appropriated pursuant to Applications 23417, 23418, and 23419 shall be limited to the quantity which can be beneficially used and shall not exceed 130 afa, 130 afa and 1,240 afa by storage, respectively, from about November 1 of each year to about May 31 of the succeeding year.

2. This permit does not authorize collection of water to storage outside the specified season to offset evaporation and seepage losses or for any purposes.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

4. Construction work shall be completed on or before December 1, 1980.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1990.

6. Progress reports shall be filed promptly by permittee when requested by the State Water Resources Control Board until license is issued.

7. All rights and privileges under this permit, including method of diversion, method of use and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use,

unreasonable method of use or unreasonable method of diversion of said water.

8. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

9. Permittee shall allow representatives of the State Water Resources Control Board, employees of Omochumne-Hartnell Water District, and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

10. No water shall be appropriated under this permit until a public district or some other organization capable, to the satisfaction of the Board, of supplying the place of use on a continuous permanent basis, has been established.

11. The reservoir(s) shall be kept open to the public for recreational use subject to a reasonable charge for any

services or facilities that are provided by permittee; provided, however, that this condition shall not apply to reservoirs used solely for domestic and municipal water supplies authorized by the permit issued pursuant to Application 23416.

12. Permittee shall install and maintain an outlet pipe of adequate capacity in his dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Resources Control Board, in order that water entering the reservoir or collected in the reservoir during and after the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights.

13. The permits issued pursuant to Applications 23416 and 23419 shall contain a term stating that the construction of the storage dam shall not be commenced until the Department of Water Resources has approved plans and specifications for the dam.

14. The permits issued pursuant to Applications 23417 and 23418 shall contain a term stating that if the storage dam will be of such size as to be within the jurisdiction of the Department of Water Resources as to safety, construction shall not be commenced until the department has approved the plans and specifications.

15. In accordance with the requirements of Water Code Section 1393 permittee shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

16. Permits issued pursuant to Applications 23417, 23418 and 23419 shall contain a term stating that after the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoir full by replacing water lost by evaporation and seepage, and to refill if emptied for necessary maintenance or repair.

17. The permit issued pursuant to Application 23416 shall contain a term stating that for the protection and preservation of fish life, diversions under this permit shall be subject to the following terms and conditions:

a. No water shall be diverted when the flow is less than 70 cubic feet per second (cfs).

b. Only up to six (6) cfs shall be diverted when the flow is between 70 and 175 cfs (but such diversion shall not reduce the flow below 70 cfs).

c. Only those flows in excess of 175 cfs shall be diverted at all other times, except in dry years, as follows:

(1) If on February 1, the total amount that could have been diverted under this permit under the foregoing schedule is less than 400 acre-feet, then permittee may, during February, divert the flows in excess of 70 cfs, up to a maximum of 46 cfs.

(2) If on March 1, the total amount that could have been diverted under the foregoing schedule is less than 2,000 acre-feet, then permittee may, during March, divert the flows in excess of 70 cfs up to a maximum of 46 cfs.

(3) If on April 1, the total amount that could have been diverted under the foregoing schedule is less than 4,400 acre-feet, then permittee may, during the remainder of the diversion season (April 1 to May 31), divert the flows in excess of 70 cfs up to a maximum of 46 cfs.

d. For the purpose of providing maximum continuous downstream fish migration flows as early as possible in the spring months during years when one of the schedules as set forth in paragraphs 17c(1), 17c(2), or 17c(3) above is commenced, the applicant shall continue such diversion schedule (set forth under 17c(1), 17c(2), or 17c(3) respectively) in order to completely fill its storage reservoirs (Guadalupe and Chesbro) as soon as possible, and shall not revert to the diversion schedule under 17b and 17c above, except for direct diversion to supply its direct diversion requirements during the remainder of the diversion season not to exceed six cfs. The total seasonal diversion shall not exceed 6,368 acre-feet.

c. All measurements of flows shall be determined at the U. S. Geological Survey Gaging Station "Cosumnes River at Michigan Bar."

f. The provisions of this paragraph are based upon a bilateral agreement between permittee and the Department of Fish and Game and shall not be construed as a finding by the State Water Resources Control Board that the amount of water named herein is either adequate or required for the maintenance of fish life.

18. The permit issued pursuant to Application 23416 shall contain a term stating that the Board retains jurisdiction

over this permit for the purpose of modifying the minimum fisheries flow requirements to conform to future Board determinations and fisheries flow requirements of permits issued pursuant to Applications 5645B, 5645, 5647A, 19266, and 21835.

19. Permittee shall, upon authorization by the U. S. Congress of the Nashville Unit of the Cosumnes River Division of the Federal Central Valley Project, report annually to the Board on the status of negotiations for a firm water supply for the place of use under this permit, to the extent such supply is not available under prior vested rights of permittee.

20. The permit issued pursuant to Application 23416 shall contain a term stating that the permittee shall divert no water during the period November 1 to June 1 of each season except during such time as there is a continuous visible surface flow in the bed of Cosumnes River from permittee's point of diversion to the gaging station at Highway 99 known as "Cosumnes River at McConnell."

21. The permit issued pursuant to Application 23416 shall contain a term stating that the permittee shall install and maintain measuring devices acceptable to the State Water Resources Control Board to measure accurately the quantity of water diverted from Cosumnes River.

22. No water shall be used under this permit until the permittee has, through either grant of easement or dedication, provided for access by the general public to Cosumnes River throughout the proposed place of use, such access to be a minimum of 50 feet wide on each bank of the river.

23. No water shall be used under this permit until waste discharge requirements have been established by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board, unless requirements are waived pursuant to Water Code Section 13269.

24. In order to prevent degradation of the quality of water during construction of the project, permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Adopted as the decision and order of the State Water Resources Control Board at a meeting duly called and held at Sacramento, California.

Dated: August 5, 1971

KERRY W. MULLIGAN  
Kerry W. Mulligan, Chairman

E. F. DIBBLE  
E. F. Dibble, Vice Chairman

NORMAN B. HUME  
Norman B. Hume, Member

RONALD B. ROBIE  
Ronald B. Robie, Member

**ABSENT**  
W. W. Adams, Member

Hail

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23416,  
23417, 23418, and 23419 of Bank of  
America, N.T.&S.A., as Co-Trustee of  
the Pension Trust Fund for Operating  
Engineers, to Appropriate from Cosumnes  
River and Unnamed Streams in Sacramento  
County.

Order 75-2

ORDER AMENDING "ORDER AMENDING  
DECISION 1378 AND IN OTHER RESPECTS  
DENYING PETITION FOR RECONSIDERATION"

BY THE BOARD:

On September 18, 1974, the California Court of Appeal,  
Third District, on the petition of Bank of America N.T.&S.A.,  
filed a decision ordering issuance of a peremptory writ of mandate  
commanding the Board to delete Condition 11 from Decision 1378,  
dated August 5, 1971, and from the Order Amending Decision 1378,  
dated September 16, 1971, and remanding the matter to the Board  
for reconsideration of its approval of the applications upon the  
present record.

IT IS HEREBY ORDERED that the first full paragraph com-  
mencing on Page 2 of the Order Amending Decision 1378 and in  
Other Respects Denying Petition for Reconsideration be revised as  
follows:

"Condition 11

The record does not contain substantial evidence to  
support findings that public access to all the reservoirs is



planned by petitioner or that the public interest requires inclusion of a term, in any permits issued pursuant to Applications 23416, 23417, 23418 and 23419, providing for public access to the applicant's reservoirs. Accordingly, the petition to delete Condition 11 of the Order is granted and Condition 11 is deleted from the Order, on pages 10-11 of the decision; the following sentence is deleted from the first paragraph of finding 11, on page 6 of the decision: 'Public access to all the reservoirs is planned (RT37).'; and the following clause is deleted from the third paragraph of finding 11, on page 7 of the decision: 'and public access to the applicant's reservoirs, subject to a reasonable charge for any services or facilities furnished by the permittee,' together with the reference to Applications 23417, 23418 and 23419 in said paragraph."

IT IS FURTHER ORDERED that the second paragraph commencing on page 2 of the Order Amending Decision 1378 and in Other Respects Denying Petition for Reconsideration be deleted.

IT IS FURTHER ORDERED that in all other respects the Order Amending Decision 1378 and in Other Respects Denying Petition for Reconsideration be affirmed.

Dated: January 16, 1975

W. W. ADAMS  
W. W. Adams, Chairman

RONALD B. ROBIE  
Ronald B. Robie, Vice Chairman

ROY E. DODSON  
Roy E. Dodson, Member

MRS. CARL H. (JEAN) AUER  
Mrs. Carl H. (Jean) Auer, Member

W. DON MAUGHAN  
W. Don Maughan, Member

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Applications 23416,  
23417, 23418, and 23419 of Bank of  
America, N.T.&S.A., as Co-Trustee  
of the Pension Trust Fund for  
Operating Engineers, to Appropriate  
From Cosumnes River and Unnamed  
Streams in Sacramento County

*See order 75-2  
amending Order amending  
Dec 1378 preceding*

ORDER AMENDING DECISION 1378  
AND IN OTHER RESPECTS  
DENYING PETITION FOR RECONSIDERATION

On September 3, 1971, the applicant, Bank of America, N.T.&S.A., filed a "Petition for Partial Reconsideration of Decision 1378". The petition requests that the State Water Resources Control Board reconsider its Decision 1378 to the extent of deleting Conditions 11, 19, and 22 from the Order. Condition 11 requires public access to offstream reservoirs, Condition 19 provides that upon authorization by Congress of the Nashville Unit of the Central Valley Project the permittee shall report annually to the Board on the status of negotiations for a firm water supply for the place of use to the extent that such supply is not available under prior vested rights of permittee, and Condition 22 provides that before water is diverted under the permits to be issued pursuant to Decision 1378 either a grant of easement or dedication, providing for

access by the general public to the Cosumnes River throughout the place of use, shall be given by the permittee.

Condition 11

The record is conflicting as to the petitioner's intent with regard to public access to the project reservoirs and the petition correctly reflects this fact. Nevertheless, this condition was not included because of testimony of the petitioner's witness but for the following reason. The Board's Order will allow the petitioner to reduce the flow of the Cosumnes River up to 46 cfs for diversion to offstream storage, part of which will be to provide some 650 acre-feet annually for reservoir evaporation and seepage to maintain the level for recreational purposes. It is difficult to evaluate the effect that this reduction of flow in the river may have on the fishery, but the "trade-off" will be more nearly equal if the benefits of the diversion for recreation are made public. Accordingly, the petition to delete Condition 11 of the Order is denied and the following sentence is deleted from paragraph 11, page 6 of the decision: "Public access to all of the reservoirs is planned (RT 37)."

The petitioner requests clarification of whether use of water at Chesbro and Guadalupe Reservoirs for golf course irrigation and replenishment of water to the other reservoirs of their evaporation and seepage losses is interpreted as being "municipal" use which would be excluded from the provisions of paragraph 11. The exclusions allowed in paragraph 11

are intended to relate only to those uses of water in which public access may pose a threat to public health. Obviously, the proposed uses of these two reservoirs are not of this nature.

Condition 19

The petitioner argues that because of the length of time the applications of the U.S. Bureau of Reclamation covering the Nashville Project has been pending there is a question of diligence within the meaning of the applicable Water Code sections and the Board's regulations and therefore the permits of the petitioner should not be subordinate to the Bureau applications. By Order dated March 6, 1969, the Board found that good cause existed and allowed the Bureau to January 1, 1974, or such further time as the Board may approve, within which to obtain congressional authorization for the Nashville Project. In the meantime, the priority of the Bureau applications remains intact. The Board having thus acted, the matter of diligence is not open to a redetermination at this time. This issue should be raised at the time the present extension expires. The petitioner has a request before us to be heard on that matter at the appropriate time and will given that opportunity. The petition to delete Condition 19 of the Order is denied.

Condition 22

The petition alleges that as the County of Sacramento is pursuing a park development program for the County which will include a Cosumnes River Parkway, Condition 22 should be deleted and the matter of establishment of the parkway be left solely within the County's jurisdiction. We concur to the extent that the condition should allow for flexibility so long as the objective of the condition is not altered. Accordingly, Condition 22 of the Order of Decision 1378 is revised to read as follows:

"No water shall be used under this permit until the permittee has, through grant of easement or dedication or other means satisfactory to the County of Sacramento, provided for access by the general public to Cosumnes River through the proposed place of use. Such access shall be a minimum of 50 feet wide on each bank of the river, or such width as may be in conformity with the parkway plan of the County of Sacramento; provided, however, that reasonable public access along the river is maintained.

Adopted as the order of the State Water Resources  
Control Board at a meeting duly called and held at Los Angeles,  
California.

Dated: September 16, 1971

**KERRY W. MULLIGAN**

Kerry W. Mulligan, Chairman

**ABSENT**

E. F. Dibble, Vice Chairman

**NORMAN B. HUME**

Norman B. Hume, Member

**RONALD B. ROBIE**

Ronald B. Robie, Member

**W. W. ADAMS**

W. W. Adams, Member