

see D-1598

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Application 25727)	
)	ORDER: WR 84- 10
NATOMAS CENTRAL MUTUAL WATER COMPANY,)	
)	SOURCES: Sacramento River;
Applicant,)	Natomas Cross Canal;
)	Reclamation
CONTRA COSTA WATER DISTRICT,)	District 1000 Main
ET AL.,)	Drain, East Drain and
)	West Drain
Protestants.)	
_____)		COUNTIES: Sutter and Sacramento

ORDER AMENDING AND AFFIRMING DECISION 1598

1.0 BY THE BOARD:

The Board having adopted Decision 1598 on Application 25727 on May 17, 1984; the Board having received a timely petition for reconsideration from Contra Costa Water District; the Board having duly considered the petition for reconsideration, the Board finds as follows:

2.0 SUPERIOR COURT JUDGMENT

On June 7, 1984 the Superior Court, City and County of San Francisco, entered a judgment and order against the Board in the Delta Water Cases, Judicial Council Coordination Proceeding No. 548, implementing its Statement of Decision filed April 13, 1984. Subsequently, appeals have been taken from the Superior Court's judgment and writ. These appeals have stayed the enforcement of the judgment and writ.

Among the water right permits reviewed by the decision and judgment are permits of the United States Bureau of Reclamation (hereinafter referred to as "Bureau") issued pursuant to Applications 9366, 9367 and 22316 authorizing diversion of water from the Sacramento-San Joaquin Delta (Delta) at Rock Slough for delivery to the service area of the Contra Costa Water District (hereinafter referred to as "Contra Costa").

2.1 Priorities

The Bureau's permits contain conditions under which the diversion of water for use in places outside of the Delta is made subject to subsequent appropriative water rights for use within the Delta and the watershed of the Sacramento River. Since much of Contra Costa's service area is outside of the Delta, the effect of these conditions is to make the permit on Application 25727 senior in priority to the permits of the Bureau, to the extent that the Bureau's permits authorize diversion for use in parts of Contra Costa's service area outside of the Delta.

2.2 Priority as Related to Service Area

The decision of the Superior Court in the Delta Water Cases provides that the use of water within the parts of Contra Costa's service area now supplied by the Contra Costa Canal are in an "area immediately adjacent [to the Sacramento River watershed] which can conveniently be supplied with water therefrom." Consequently, the Superior Court held that the service area of the Contra Costa Canal has priority over recipients of project exports to receive water originating in the Sacramento River watershed. Under this decision, the appropriative rights of the Bureau, to the extent that they authorize diversion of water to the Contra Costa

Canal service area, are not, by operation of law, junior to the new permit granted on Application 25727. Instead, being based on earlier appropriations, they are senior to the permit on Application 25727.

2.3 Effect of Court Order

Unless the Superior Court's decision on this point is overturned by an appellate court, it will determine the priority of the portions of the Bureau's permits under which water is delivered to the service area of the Contra Costa Canal outside of the Delta and outside of the Sacramento River watershed. The Board does not intend to seek appellate review of this portion of the Superior Court's decision.

2.4 Amendment

Since the permit issued on Water Right Decision 1598 will be subject to prior rights, it is unnecessary to add a permit term restating the relative rights of the Bureau and the applicant under their respective appropriative rights to divert water to the service area of the Contra Costa Canal and to the service area of the applicant. However, we will amend Water Right Decision 1598 to reserve jurisdiction to amend the permit issued on Application 25727 in the event that the Superior Court's decision is reversed or modified by further court decisions in the Delta Water Cases litigation.

ORDER

NOW, THEREFORE, IT IS ORDERED that the order contained in Decision 1598 is amended to add Condition 11 as follows:

"The State Water Resources Control Board reserves jurisdiction to conform this permit to any final court decision after appellate review resulting from the Delta Water Cases litigation in Judicial Council Coordination Proceeding No. 548. Action by the Board will be taken only after notice to interested parties and opportunity for hearing."

CERTIFICATION

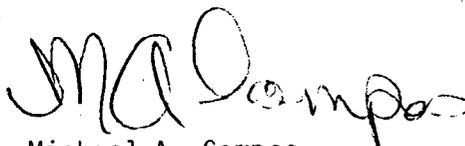
The undersigned, Executive Director of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 16, 1984.

AYE: Carole Onorato
Warren D. Noteware
Kenneth W. Willis
Darlene E. Ruiz

NO:

ABSENT:

ABSTAIN:



Michael A. Campos
Executive Director