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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permits 12947,
12948, 12949, and 12950
(Applications 12919A, 12920A,
15736, and 15737), and
Application 19351,

SONOMA COUNTY WATER AGENCY AND
MENDOCINO COUNTY RUSSIAN RIVER
FLOOD CONTROL AND WATER CONSERVA-
TION IMPROVEMENT DISTRICT.

Permittees.

Order: WR 74-30

Source: East Fork Russian
River, Russian
River, and Dry
Creek

Counties: Sonoma and
Mendocino

ORDER ISSUING SEPARATE PERMITS,
AMENDING PERMITS, AND REVOKING PERMITS

BY VICE CHAIRMAN ROBBIE:

On October 24, 1961, pursuant to State's Water Rights Board Decision 1030, Permits 12947 and 12948 were issued to the Sonoma County Flood Control and Water Conservation District, now the Sonoma County Water Agency (hereinafter referred to as "Sonoma") and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereinafter referred to as "Mendocino") and Permits 12949 and 12950 were issued to Sonoma. Permits 12947 and 12948 cover the same project and the same water, the only material difference being that Permit 12947 is for municipal, industrial, domestic and recreational use and Permit 12948 is for irrigation and domestic use. At the time Decision 1030 was adopted the location of points of diversion for local use below Coyote Valley Dam could not be

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determined and, consequently, were not described in the decision or in the permits. However, the decision and permits prohibit diversion for such use until a description of the location of the points of diversion and a statement of the quantities of water to be diverted at each point are filed with the Board. The permittees having failed to comply with this condition, a hearing was held on September 18, 1973, pursuant to Board's Order WR 73-15, to afford the permittees an opportunity to explain their failure to comply. Also before the Board was whether the direct diversion feature of Application 19351, upon which action was withheld by Decision 1416, should be approved. Permittees Sonoma and Mendocino and certain interested parties having appeared at the hearing and presented evidence, the evidence having been duly considered, the Board finds as follows:

1. Mendocino is now ready and willing to report its use of water and has proposed a plan for compliance with Decision 1030 in that respect (Resolution of Mendocino's Board of Trustees adopted April 24, 1974). Sonoma is not prepared to make such an accounting of use of water (letter of May 14, 1974, to Board from Sonoma's Chief Engineer). Therefore, Sonoma's and Mendocino's respective rights under Permits 12947 and 12948 should be divided into separate permits (12947A and 12947B, respectively). The new permits should contain the same conditions as Permits 12947 and 12948 to the extent they are applicable. The character of use under these new permits should include

irrigation. This will make Permit 12948 unnecessary and it should be revoked.

2. Permit 12947A should allow direct diversion of only 92 cubic feet per second (cfs), which is the quantity allowed in the present permits for diversion at Wohler, Mirabel Park, Monte Rio, and Healdsburg diversion works, and storage of 122,500 acre-feet per annum (afa). However, the points of diversion should be limited to Wohler and Mirabel Park, the works which are now installed, since Sonoma has no current plans to construct diversion facilities at Monte Rio or Healdsburg.

Permit 12947B should allow direct diversion of 53 cfs, the quantity provided in Decision 1030 for direct diversion for use on land adjacent to the river within the Russian River Valley in Mendocino County, and storage of 122,500 afa.

3. Permits 12947A and 12947B should contain a term setting forth the annual acre-foot limit on the diversion from the river in accordance with annual requirements described in Decision 1030.

4. Permit 12947 provides that the right to export water from the Russian River Valley is subject to depletion by consumptive use of 8,000 afa of project water in the service area of Mendocino and to depletion by diversion of project water not to exceed 10,000 afa for beneficial use within the Russian River Valley in Sonoma County provided that agreements for the use of said project water are entered into with Sonoma prior to August 1, 1971. A similar condition should be included in Permit 12947A

except that the reference to agreements entered into prior to August 1, 1971, should be omitted since Sonoma has declined to enter into such agreements with water users in the Russian River Valley but instead has adopted a policy of paying for Sonoma's share of project costs by means of ad valorem property taxes. Since Permit 12947A will limit Sonoma to diversions at Wohler and Mirabel Park, rights to beneficial use of the 10,000 afa of project water in Russian River Valley in Sonoma County shall be acquired by filing with the Board of applications by the users to appropriate water.

5. Permits 12947 and 12948 provide that they are subject to an agreement between Sonoma and the California Department of Fish and Game (Department) which was filed of record as Sonoma Exhibit No. 23 at the hearing of Applications 12919A and others, to the extent the provisions of said agreement relate to matters within the jurisdiction of the Board.

The agreement is eight pages in length and contains a number of interrelated provisions and stipulations of some complexity. A preliminary recital expresses the intent that minimum flows of suitable quality shall be "maintained in the channel of the East Fork of the Russian River and the Russian River from Coyote Dam to the mouth of the Russian River, for the protection, preservation and enhancement of the fish, wildlife, and recreational resources existing in and around said River" (emphasis added). Among other things, the agreement provides that Sonoma shall, subject to various conditions, either release a quantity of water sufficient to maintain a minimum continuous flow of 150 cfs at the junction between the east and west forks of the Russian

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said dam, whichever is less. Sonoma also agreed to release sufficient quantities of water to maintain a minimum continuous flow of 125 cfs in the channel of the Russian River throughout Zone 5. Zone 5 includes the river channel from about the Wohler Intake, below Dry Creek, to the Pacific Ocean. Condition A of the agreement gives the Board continuing authority to modify releases for minimum flows of water therein provided to prevent waste or unreasonable or inequitable use or method of use or method of diversion of water.

After the hearing on September 18, 1973, the Department addressed a memorandum to the Board in which it expressed concern that a strict interpretation of the permit terms could result in dewatering of portions of the Russian River above Dry Creek after the Warm Springs project is in operation. This result could occur if Sonoma were to supply the required flow of 125 cfs from the Warm Springs project on Dry Creek instead of from the Coyote project. The Department's memorandum contends that the intent of the agreement and of the permit terms was to provide a minimum flow of 150 cfs in the Russian River from the forks to the Wohler Intake. The Department expressed the hope that the Board and Sonoma would concur in its understanding of the agreement and "the terms can be amended to close this loophole".

Sonoma, by letter to the Department dated March 5, 1974, expressed the opinion that any modification of the existing agreement is unnecessary because "normal operation of Coyote Dam can

and has maintained the flow quantities cited in your letter and will continue to maintain such flows provided there is no change in the rate and quantity of Eel River water diversions into the Russian River basin".

Release of sufficient water from Coyote Dam to maintain a minimum flow at the forks without also causing that flow to be maintained in the channel downstream to Zone 5 would defeat the purpose of the agreement and would be contrary to the expressed intent of the parties. However, the concern expressed by the Department appears to be premature and is not warranted by the record before the Board which contains no evidence that Sonoma intends to violate the intent of the agreement as expressed therein. If Sonoma were to indicate an intention to operate the Coyote project in coordination with the Warm Springs project so as to allow the flow in any portion of the Russian River between the forks and Dry Creek to fall below the minimum amount required at the forks, the Board would consider exercising either its reserved jurisdiction pursuant to Condition A of the agreement between Sonoma and the Department or its unexercised jurisdiction pursuant to Decision 1416 to require Sonoma to maintain a suitable flow in that reach of the river. The present record does not sustain the exercise of such jurisdiction at this time.

6. Due to the unsettled status of the proposed Warm Springs project to be constructed by the U. S. Corps of

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Engineers on Dry Creek which would augment the supply of water available to the permittees, no further action on the direct diversion feature of Application 19351 should be taken at this time.

From the foregoing findings, the Board concludes that Permits 12949 and 12950 should be amended, Permits 12947 and 12948 should be revoked and separate permits, 12947A and 12947B, should be issued to Sonoma and Mendocino, respectively.

ORDER

IT IS HEREBY ORDERED that Permits 12947A and 12947B be issued to Sonoma County Water Agency and Mendocino County Russian River Flood Control and Water Conservation Improvement District, respectively, subject to vested rights and the following limitations and conditions:

1a. The water appropriated pursuant to Permit 12947A shall be limited to water of the East Fork Russian River which can be beneficially used for municipal, industrial, irrigation, domestic, and recreational purposes and shall not exceed a total of 92 cubic feet per second by direct diversion and 122,500 acre-feet per annum (afa) by storage from January 1 to December 31 of each year. The total amount stored in Lake Mendocino under this permit and Permit 12947B shall not exceed 122,500 afa. The water shall be used only at Lake Mendocino and within service areas of the Sonoma County Water Agency, the North Marin County Water District, and the Marin Municipal Water District.

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lb. The water appropriated pursuant to Permit 12947B shall be limited to water of the East Fork Russian River which can be beneficially used for municipal, industrial, irrigation, domestic and recreational purposes within the place of use authorized by Permits 12947 and 12948, in Mendocino County, and shall not exceed 53 cubic feet per second by direct diversion and 122,500 acre-feet per annum (afa) by storage from January 1 to December 31.

The total amount stored in Lake Mendocino under Permit 12947B and Permit 12947A shall not exceed 122,500 afa. The combined direct diversion and rediversion of stored water under Permit 12947B shall not exceed 8,000 afa.

There shall be neither direct diversion nor rediversion of stored water pursuant to Permit 12947B until a description of the location of each point of diversion and a statement of the quantity of water to be diverted at each point is filed with the State Water Resources Control Board.

2. Combined direct diversion and rediversion of stored water under Permits 12947A, 12949 and 12950 shall be limited to the Wohler and Mirabel Park pumping facilities, and shall not exceed 92 cubic feet per second or a maximum amount of 37,544 acre-feet per water year of October 1 to September 30.

3. The amount authorized for appropriation may be reduced in the license if investigation warrants.

4. Construction work shall be completed on or before December 1, 1975.

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5. Complete application of the water to the proposed use shall be made on or before December 1, 1985.

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

7. All rights and privileges under this permit and under any license issued pursuant thereto, 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.

This continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (3) suppressing evaporation losses from water surfaces; (4) controlling phreatophytic growth; and (5) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to

determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

8. Permittee shall allow representatives of the State Water Resources Control Board 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.

9. In compliance with Fish and Game Code Section 5943, permittee shall accord to the public, for the purpose of fishing, reasonable right of access to the waters impounded by Lake Mendocino during the open season for the taking of fish, subject to the regulations of the Fish and Game Commission.

10. 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.

11. This permit is subject to rights acquired or to be acquired pursuant to applications by others whether heretofore or hereafter filed for use of water within the service area of Mendocino County Russian River Flood Control and Water Conservation Improvement District and within the Russian River Valley in Sonoma County, as said valley is defined in Decision 1030 of the State Water Rights Board at page 9, to the extent that water has been beneficially used continuously on the place of use described in said applications since prior to January 28, 1949 (the date of filing Applications 12919 and 12920).

12. The right to export water from the Russian River Valley under Permit 12947A is subject to depletion by consumptive use of project water in the amount of 8,000 acre-feet per annum (afa) appropriated under Permit 12947B and depletion by diversion of project water not to exceed 10,000 afa appropriated under other permits which may be issued for agricultural and domestic purposes within the Russian River Valley in Sonoma County for uses commencing after January 28, 1949.

13. This permit is subject to the stipulation between permittee and Potter Valley Irrigation District dated August 18, 1959, and filed of record as Sonoma District Exhibit 13 at the hearing of Application 12919A and others.

14. This permit is subject to beneficial use in Potter Valley whether under prior or subsequent rights and to any and all rights of any county in which the water appropriated hereunder originates to the extent that any such water may be necessary for the development of lands in such county lying in the watershed above Lake Mendocino.

15. The State Water Resources Control Board retains continuing jurisdiction for the purpose of conforming this permit to any agreement between Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District whereby the Mendocino District will have an opportunity to acquire a greater portion of the Coyote Valley Project and/or a share of any additional water above the minimum safe yield thereof, or upon failure to reach said agreement, as may be ordered by a court of competent jurisdiction.

16. This permit is subject to the Stipulation and Agreement between Sonoma County Flood Control and Water Conservation District and the California Department of Fish and Game, dated August 21, 1959, filed of record as Sonoma

Exhibit No. 23 at the hearing of Application 12919A and others, to the extent the provisions of said Stipulation and Agreement relate to matters within the jurisdiction of the State Water Resources Control Board.

17. Before making any change in the project determined by the State Water Resources Control Board to be substantial, permittee shall submit such change to the Board for its approval in compliance with Water Code Section 10504.5(a).

18. Permittee (Permit 12947A) shall release water from storage as required to meet the demands of junior appropriators not to exceed 10,000 acre-feet per annum, in Russian River Valley in Sonoma County, except to the extent that retention of stored water is necessary to insure satisfaction of the minimum streamflows required by this permit.

19. Permittee (Permit 12947B) shall report to the State Water Resources Control Board not later than 90 days following the date of this order, the quantities of water diverted under this permit during the 1973 irrigation season at each diversion point identified as required in Condition lb. In succeeding years this information shall be submitted with the annual progress report.

IT IS FURTHER ORDERED that Permit 12949 and Permit 12950 be amended as follows:

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1. Amend Term 1 in Permit 12949 to read:

"The amount of water to be appropriated shall be limited to the amount that can be beneficially used and shall not exceed a total of 20 cfs to be diverted at the Wohler intake and the Mirabel Park intake between January 1 and December 31 of each year."

2. Amend Term 1 in Permit 12950 to read:

"The amount of water to be appropriated shall be limited to the amount that can be beneficially used and shall not exceed a total of 60 cfs to be diverted at the Wohler intake and the Mirabel Park intake between April 1 and September 30 of each year."

3. Delete Term 2 from both permits.

4. Amend Term 4 in both permits to read:

"The total amount of water diverted under this permit, Permit 12950 (or Permit 12949) and Permit 12947A shall not exceed 92 cfs. The total annual diversion under the three permits shall not exceed 37,544 acre-feet per water year of October 1 to September 30."

IT IS FURTHER ORDERED that Permits 12947 and 12948 are hereby revoked and all rights thereunder are terminated forthwith.

Dated: October 17, 1974

We Concur:

~~ABSENT~~

RONALD B. ROBIE
Ronald B. Robie
Vice Chairman

W. W. Adams, 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