

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 12947B,)
Issued on Application 12919A,)
MENDOCINO COUNTY RUSSIAN RIVER)
FLOOD CONTROL AND WATER CONSERVATION)
IMPROVEMENT DISTRICT,)
Permittee,)
SONOMA COUNTY WATER AGENCY, ET AL.,)
Protestants.)

ORDER: WR 79-15
COUNTY: Mendocino
SOURCE: Russian River

ORDER APPROVING CHANGE IN PLACE OF USE

BY BOARD MEMBER MITCHELL:

Mendocino County Russian River Flood Control and Water Conservation Improvement District (Mendocino District) having petitioned the State Water Resources Control Board for a change in place of use under Permit 12947B; protests having been received; a public hearing having been held before the Board on February 26, 1979, permittee and Protestant Sonoma County Water Agency (Sonoma Agency) having appeared and presented evidence; the evidence received at the hearing having been considered, the Board finds as follow:

PAST PROCEEDINGS

1. Permit 12947B is a water right entitlement held by the Mendocino District. An understanding of certain background factors is necessary to dispose of the change petition. The nature of the entitlement will appear as this background is developed.

2. Permit 12947B has its origin in Application 12919 and 12920 filed on January 28, 1949, by the State of California,

pursuant to Water Code Section 10500. Like all so-called "state filings" the purpose of these applications was to use California's water right system of priority by date of application to guide water resources development in a manner consistent with a coordinated statewide plan. A portion of each of these applications (which portions were eventually designated 12919A and 12920A) underwent assignment and reassignment, pursuant to the law governing state filings. The applications were amended and completed in 1958 and held jointly by the predecessor of the Sonoma Agency and by the Mendocino District.

3. The applications, as finally amended and completed, both proposed appropriation of 335 cubic feet per second (cfs) by direct diversion from various points on the Russian River system and 122,500 acre-feet per annum (afa) by storage-at Coyote Dam (Lake Mendocino) on East Fork Russian River. One application was for municipal, industrial, domestic, and recreational uses. The other was for irrigation and domestic uses. Both applications covered the same water; their only significant difference was in the uses proposed.

4. The completed applications, together with other applications to appropriate from the Russian River system, were considered at a consolidated hearing, which led to Decision 1030 adopted August 17, 1961. Decision 1030 approved the applications and ordered issuance of permits (Permits 12947 and 12948), subject to certain conditions.

5. By its Order WR 74-30, adopted October 17, 1974, the Board took the following actions relevant here:

(a) Since Permits 12947 and 12948 covered the same project and the same water, the Board in effect consolidated all permitted uses into Permit 12947, and revoked Permit 12948;

(b) The Board then split Permit 12947 into "A" and "B" permits to reflect the separate entitlements of the Sonoma Agency (Permit 12947A) and the Mendocino District (Permit 12947B).

6. Relevant permit details are the following:

(a) The existing place of use specified in the Mendocino District's "B" permit, which is the subject of the instant petition, is within the District's boundaries. All of the area is within Mendocino County. The permit allows direct diversion of 53 cfs and shared storage of 122,500 afa; however, combined direct diversion and rediversion of stored water is limited to 8,000 afa,

(b) Protestant Sonoma Agency, holder of the "A" permit, is authorized direct diversion of 92 cfs and shared storage of 122,500 afa. The Sonoma Agency's permit contemplates and authorizes use of project water both within the Russian River Valley in Sonoma County and -- unlike the Mendocino District's permit -- export of water from that Valley. However, Sonoma Agency's right to export is subject to 8,000 afa depletion by consumptive use within the Mendocino District, under that District's "B" permit, for uses initiated after January 28, 1949.

OBJECTIVE OF THE PETITION

7, The Mendocino District seeks to change its presently authorized place of use by adding the area within the Redwood

Valley County Water District (Redwood Valley District). The Redwood Valley District lies generally north of the Mendocino District. A small portion of the southernmost lands of the Redwood Valley District is within the boundaries of the Mendocino District; most of such lands are outside the Mendocino District's boundaries.

8. Lands of the Redwood Valley District are within the drainage of West Fork Russian River, and within Mendocino County. West Fork and East Fork Russian River have their confluence within Mendocino County a few miles south of the Redwood Valley District's southern boundary.

9. Lands of the Mendocino District are within the drainage of East Fork Russian River and of the Russian River system below the confluence of the West Fork and the East Fork. The main stem of the Russian River flows in a generally southerly direction below that confluence, crosses the Mendocino County-Sonoma County line near Preston, turns westerly below Healdsburg, and flows to the Ocean near Jenner.

10. The Mendocino District thus encompasses most of the Russian River drainage lying within Mendocino County. However, as we have seen, its boundaries do not include the West Fork drainage.

11. The Mendocino District's petition does not involve annexation of the Redwood Valley District's lands, that is, lands within the West Fork drainage. It proposes to supply water to the Redwood Valley District by contract. Under the terms of the contract, the Redwood Valley District would be supplied up to 4,000 afa of permit water, to the extent such water is surplus to the needs of the Mendocino District. (Mendocino District

Exhibit 4.) In other words, the Mendocino District proposes to divert the unused portion of its 8,000 afa depletion allowance to the Redwood Valley District, whose lands are drained by the West Fork Russian River, until such time as it is needed within the original Mendocino District place of use. Average use by the Mendocino District during a normal year has been about 4,000 afa, leaving a like quantity available for Redwood.

12. The purpose of the proposed change and uses that would be made of the water are as follows:

(a) The purpose of the change is to provide a firm interim supply for the Redwood Valley District, That district has recently been issued a permit on Application 24955, which allows direct diversion and storage of water from Lake Mendocino when the Corps of Engineers is making flood control releases, usually January through April, Alternate surface supplies have been explored and found unfeasible. The groundwater supply is also inadequate. The Redwood Valley District has entered into an agreement with the Mendocino District concerning a pooling agreement for the Warm Springs Project for the long-term firm supply.

(RT 46, Mendocino Exhibits 3 and 4.)

(b) The water will be used for domestic and irrigation purposes. Domestic use is estimated to be approximately 600 afa and irrigation would use the remainder, Irrigation water would be available to some 2,000 acres initially and 3,500 acres ultimately. The prevalent crop is grapes which, for the most part, have been dry farmed in the past, Development for full use of the water is estimated to be seven years, when the conduit system is completed and the whole 3,500 acres could be served,

THE PROTESTS

13. Five protests were accepted against the petition for change; three were resolved prior to the hearing.

(a) The three resolved protests were from users within the Mendocino District, namely, Millview County Water District, Parducci Winery and Hugo and Beatrice Oswald. They all expressed concern that they would not be able to purchase additional portions of the 8,000 afa reservation in the future. They also protested on grounds that the change would be contrary to law, be Adverse to the public interest and have adverse environmental impacts. These protests were withdrawn through stipulations whereby the Mendocino District agreed to the inclusion in any order approving the change in the following condition:

"Water to be utilized in this additional place of **use** shall be available only until the same is necessary to supply water for any existing or future use of water within the Mendocino County Russian River Flood Control and Water Conservation Improvement District. Neither the Redwood Valley County Water District nor any user **within** that district will acquire a vested right to water available under Permit 12947B as a result of this change in place of beneficial use."

(b) An unresolved protest was submitted by Sonoma County Tomorrow. The basis of its protest was that the change would have adverse environmental effects and would not be in the public **interest**. Sonoma County Tomorrow did not appear at the hearing nor did it make a showing of good cause within the five-day period following the hearing. In accordance with Section 731, Title 23, California Administrative Code, protestant's failure to **appear**, or to show good cause for its nonappearance, is interpreted as an abandonment of interest in the subject matter of the petition.

14. The remaining unresolved protest was submitted by the Sonoma Agency, holder of Permit 129478. The Sonoma Agency also holds several other filings on the Russian River, including two permits authorizing export diversion from the Russian River Valley.

THE ISSUE

15. Protestant Sonoma Agency concedes that the proposed interim use of water in the Redwood Valley District under Permit 12947B is in the public interest (RT 48); and the record amply supports the finding that such use is in the public interest.

16. The Sonoma Agency's protest is best summarized by the condition on approval of the petition proposed by protestant at hearing.

(a) The proposed condition is that, first, any use within the Redwood Valley District be subordinated to uses under Permit 12947B within the Mendocino District. This part of the proposed condition has been agreed to by petitioner by stipulation with other protestants. (See Finding 13, above.)

(b) The second part of the condition is that any use within the Redwood Valley District be further subordinated to the Sonoma Agency's appropriation under Permit 12947A. It is this proposal which presents the issue which must be decided.

17. Water Code Section 1702 provides the statutory standard for Board action on the proposed change. Under that section, the Board must find that such change will not operate to the injury of any legal user of the water involved. Past Board decisions have concluded that "any legal user" includes junior as well as senior rightful users. Accordingly, the relative priorities of Petitioner and Protestant are not in issue. The question is whether approval of the proposed change -- without the condition proposed -- would operate to the injury of the Sonoma Agency, a lawful user of the water involved.

18. Protestant Sonoma Agency draws our attention to the fact that the 8,000 afa and 10,000 afa reserved by Decision 1030 for future use in Mendocino and Sonoma Counties, respectively, were for uses within the Russian River Valley and that Decision 1030 specially defined "Russian River Valley" in a manner that would exclude West Fork Russian River, in the drainage of which lie most of the lands of the Redwood Valley District. (Decision 1030, p. 9.) Therefore, according to the protestant, the Mendocino District's petition proposes an export of water from the Russian River Valley, as that term is defined. Thus, reasons the protestant, water service by the Mendocino District to the Redwood Valley District should be junior to use under the appropriation authorized by the Sonoma Agency's Permit 12947A. In support of this conclusion, the Sonoma Agency, while recognizing that the two permits are of the same priority, suggests application by analogy of the "first in time, first in right" principle. The Sonoma Agency's position is reflected

in the second part of its proposed dismissal term (see Finding 16(b) above), subordinating water use in Redwood Valley under Permit 12947B to protestant's use under Permit 12947A.

19. We do not find it necessary to condition our approval of the requested change in the manner proposed by the Sonoma Agency. The West Fork Russian River drainage is hydrologically a part of the Russian River basin; and its confluence with the East Fork is above the County line. Therefore, from the Sonoma Agency's perspective, it should make no difference whether water available under Mendocino's 8,000 afa reservation is used wholly within the Russian River Valley (as specifically defined) in Mendocino County or is used partially within the Russian River Valley and partially within Redwood Valley in the West Fork drainage in Mendocino County -- so long as total use within Mendocino County does not exceed the permitted 8,000 afa depletion.

20. We recognize that approval of the proposed change, given the contractual relationships between the Mendocino District and the Redwood Valley District, will encourage full use of the 8,000 afa reservation for Mendocino County under Permit 12947B faster than if the change were not approved. However, so long as Mendocino's use, including use in Redwood Valley, does not exceed the permitted 8,000 afa depletion, we conclude that reaching full authorized use ahead of the time at which full use would otherwise occur does not, in and of itself, operate to the injury of other users of the water involved, within the meaning of Water Code Section 1702.

21. The change in place of use proposed by the Mendocino, District's petition is found not to be a substantial project change, within the meaning of Water Code Section 10504.5.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

22. The Redwood Valley District has prepared a final environmental impact report in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) and the State Guidelines.

23. The project as approved by the Redwood Valley District will have the following significant effect on the environment:

- (a) Reduction of vegetation and wildlife habitat;
- (b) Changes in water quality;
- (c) Changes in land use and population growth.

24. The following economic, social or other conditions make it infeasible to mitigate or avoid one or more significant effects of a project on the environment:

(a) Significant impacts relating to removal of vegetation will be partially mitigated by replanting areas disturbed by pipeline construction. About 10 acres of grassland type vegetation will be lost to the storage reservoir, treatment plant and corporation yard and an unknown amount of vegetation will be converted to intensive agriculture and urban. No mitigation measures are available for vegetation lost to development. There will probably be some enhancement of riparian vegetation along the Russian River and tributary streams because of increased agricultural return flow.

(b) Water quality in the Russian River may be degraded by increased agricultural return water; however, there is a

trade-off between obtaining extra flow and potential degradation. No mitigation measures are available.

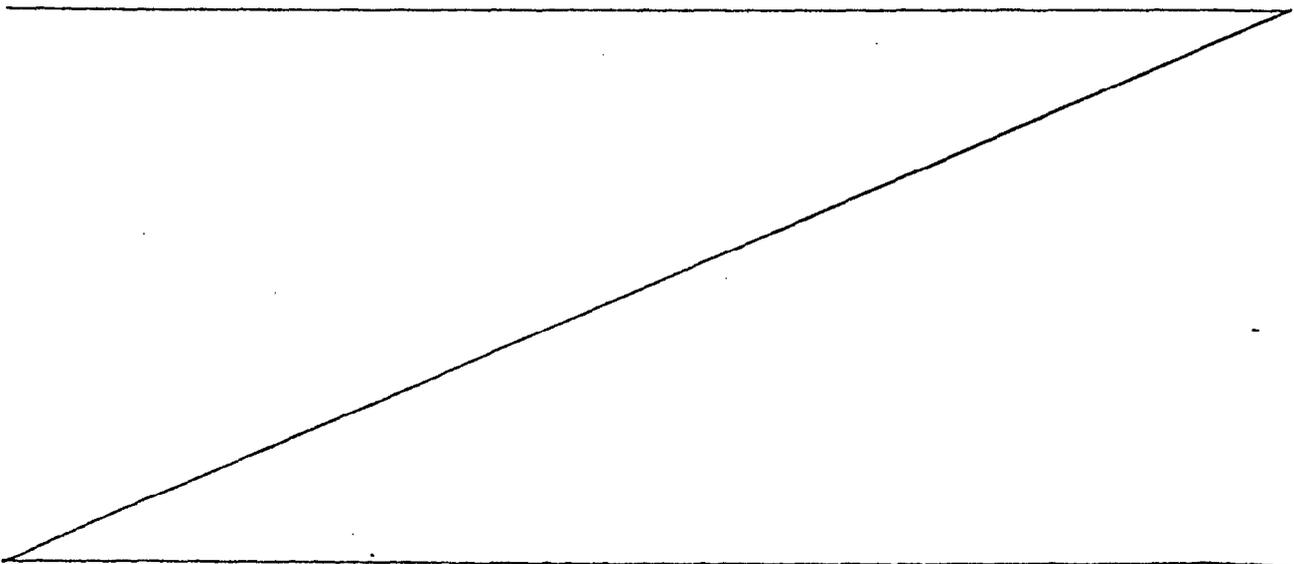
(c) Improving the water supply will result in increased urban and industrial growth which will result in secondary impacts at some later date when the growth is realized. Water quality degradation, increased vehicular traffic, air pollution, and solid waste disposal will result with increased growth. At the present time, these impacts are problematical and mitigation can only be accomplished when specific projects are proposed.

25. The State Board has reviewed and considered the information contained in the EIR prior to the approval of the project.

DETERMINATION OF ISSUES

26. The proposed change is in the public interest.

27. The proposed change will not operate to the injury of any legal user of the water involved.



ORDER

IT IS HEREBY ORDERED that:

1. The protest of Sonoma County Tomorrow is dismissed.
2. The change proposed by the Mendocino District is

approved.

3. Approval is conditioned upon the stipulated condition set forth in Finding 13.

Dated: JUNE 21, 1979

/S/ L. L. MITCHELL
L. L. Mitchell, Member

/S/ W. DON MAUGHAN
W. Don Maughan, Chairman

/S/ WILLIAM J. MILLER
William J. Miller, Member

/S/ CARLA M. BARD
Carla M. Bard, Member