STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 17624 of Herman W. Nelson to Appropriate from Russian River (Underflow) in Mendocino County

Decision D 1142

ADOPTED AUG 26 1963

DECISION APPROVING APPLICATION IN PART

Herman W. Nelson having filed Application 17624 for a permit to appropriate unappropriated water; a protest having been received; the applicant and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Rights Board pursuant to said stipulation; the Board, having considered all available information and now being fully advised in the premises, finds as follows:

1. Application 17624 is for a permit to appropriate 3.0 cubic feet per second (cfs) by direct diversion from May 1 to October 30 of each year for irrigation purposes from the Russian River (underflow) in Mendocino County. The point of diversion is to be located within the SE¼ of NE¼ of Section 23, T14N, R12W, MDB&M.

2. The applicant proposes to drill a well adjacent to the Russian River at a point approximately 10 miles below the junction of the east and west branches of the Russian River,

known as "the Forks," to irrigate 174 acres of orchard and vineyard, 30 acres of alfalfa and 36 acres of pasture. Water from the well will also be used to sustain grass and legume crops on 480 acres of rolling land.

3. A protest was filed by the Department of Fish and Game claiming that approval of the application will result in the destruction of trout and other fish existing in the Russian River and its tributaries. It states that the protest may be disregarded if the applicant is restricted from diverting during periods when the flow of the river is less than 150 cfs at his point of diversion.

4. The Russian River is one of the more important recreational areas of the State, and the maintenance of existing fishing and recreational facilities is a matter of widespread concern. An important established economy is dependent upon continuation of those facilities.

5. Board Decision D 1030 approved Application 12919A and others of Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District covering appropriation of Russian River water for the Coyote Valley Project. This decision required that permits issued pursuant to the applications be subject to a stipulation between the Sonoma County Flood Control and Water Conservation District and the Department of Fish and Game dated August 21, 1959, which provides for maintenance of certain flows in the Russian River for the protection of fishlife and for recreational use, including a flow of 150 cfs at the Forks

and 125 cfs at Guerneville. The Board determined that these flows were necessary for the preservation of fishlife in the Russian River and for recreational purposes and that use of water for these purposes would be a reasonable and beneficial use and in the public interest. In most years the maintenance of these flows will not only require all the supply that would be available without the Coyote Valley Project during the months of July, August, September and October, but will also require release of project water from storage.

6. In view of the need for all nonproject water during the months of July through October in most years to maintain fishlife and for recreational purposes, approval of the application for that period of the year would not best conserve the public interest.

7. There is unappropriated water available from about May 1 to about July 1 of each year to supply the applicant, and subject to suitable conditions, such water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

8. The permit should contain a special term subjecting it to a flow of 150 cubic feet per second, or the entire flow of the stream whenever it is less than 150 cubic feet per second, for the preservation of fishlife and for recreational purposes.

9. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 17624 should be approved in part and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

The records, documents, and other data relied upon in determining the matter are: Application 17624 and all relevant information on file therewith, particularly the report of the field investigation made June 27, 1962; the files of Applications 12919A et al. considered in Decision D 1030, with particular reference to information on water supply presented during the Russian River hearings in connection with the Coyote Valley Project of the Sonoma County Flood Control and Water Conservation District and Mendocino County Russian River Flood Control and Water Conservation Improvement District; Application 17232, and Decision D 1110 issued pursuant thereto of Willow County Water District with particular reference to water supply; U. S. Geological Survey Water Supply Papers with particular reference to streamflow records of the Russian River watershed and U. S. Geological Survey "Elledge Peak" 7.5-minute quadrangle, dated 1958.

ORDER

IT IS HEREBY ORDERED that Application 17624 be, and the same is, approved in part, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 3.0 cubic feet per second by direct diversion to be diverted from about May 1 to about July 1 of each year. The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Actual construction work shall begin on or before June 1, 1964, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Construction work shall be completed on or before December 1, 1966.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1967.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights 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 Rights 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. Permittee shall allow representatives of the State Water Rights 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. To maintain fishlife and to provide for recreation requirements, permittee shall discontinue diversion under this permit during such time as the flow of the Russian River adjacent to his point of diversion is less than 150 cubic feet per second.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1963.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member