

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 22005 )  
of Albert Laukkari to Appropriate )  
from Russian River (underflow) in )  
Mendocino County )

Decision D 1258

ADOPTED AUG 31 1966

DECISION APPROVING APPLICATION IN PART

Application 22005 of Albert Laukkari having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on January 26, 1966, conducted by Board Member William Alexander; applicant and protestants having appeared and presented evidence; the evidence received at the hearing having been duly considered; the Board finds as follows:

1. Application 22005 is for a permit to appropriate 0.225 cubic foot per second (cfs) by direct diversion from April 15 to October 15 of each year for irrigation purposes from Russian River (underflow) in Mendocino County. The point of diversion is to be located within the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of projected Section 5, T15N, R12W, MDB&M.

2. The applicant is presently irrigating 17 acres of vineyard within the 18 acres designated as the place of use under Application 22005 by pumping from the underflow of the Russian

River into a sprinkler system. He plans to plant the remaining approximately one acre to vineyard and irrigate it in the same manner. The usual irrigation season is from June through September and water is used during the month of April in substantially the same amounts for frost protection purposes. The applicant claims a riparian right to use water from the Russian River on the place of use.

3. Protestant Sonoma County Flood Control and Water Conservation District (hereinafter referred to as Sonoma District) and Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereinafter referred to as Mendocino District) hold Permits 12947 and 12948 (Applications 12919A and 12920A) to appropriate water from the East Fork of the Russian River and the Russian River for their Coyote Valley Project. These permits, in accordance with Board's Decision D 1030, contain the following term:

"These permits are subject to rights acquired or to be acquired pursuant to applications by others 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 D 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)."

4. Official notice is taken of Board Decisions D 1110 and D 1142 adopted subsequent to Decision D 1030, which

found that there is no water in the Russian River in addition to the water covered by the permits held by the Sonoma and Mendocino Districts during the months of July through October.

5. The approval or denial of Application 22005 for the months of July through October depends on whether the quantity of water applied for has been continuously used during these months since prior to January 28, 1949.

The applicant's property is divided by Redemeyer Road. The applicant makes no claim of continuous use of water from the Russian River since prior to January 28, 1949, on the 7 acres lying east of the road or on 3.66 acres of the 11 acres lying west of the road. However, he requests that use of water on that land be approved for the months during which it is available. A supplemental supply of water will have to be obtained and purchase of water from the Mendocino District is a possibility (RT 45). As to the remaining 7.34 acres in the 11 acres lying west of Redemeyer Road, the applicant claims continuous use of water from the Russian River since prior to January 28, 1949.

6. In the year 1949 when the applicant took over this ranch, which had been owned by his parents for over forty years, the 7.34 acres for which he claims continuous use of water from the river since prior to January 28, 1949, had been used for a number of years for the growing of alfalfa, permanent pasture, and vineyard. Water for the irrigation of these crops was pumped

from the underflow of the Russian River at a well since abandoned because of floods. The pump had a capacity of 150 gallons per minute and was operated 10 hours a day during the irrigation season except for weekends. Since 1949, although the land has been almost entirely in vineyard and irrigation has been by different works, substantially the same amount of water (0.14 cfs) has been used. The applicant has continuously used 0.14 cfs of water from the Russian River during the proposed diversion season on 7.34 acres within the 11 acres located west of Redemeyer Road since prior to January 28, 1949.

7. Protestant City of Ukiah has no objection to the approval of Application 22005 provided that the rights obtained pursuant to the application are made subject to the City's prior rights under Permit 12952. This will result by operation of law. The City has also requested that any permit issued on Application 22005 contain a special term to that effect. There has been no showing that the usual term placed in a permit subjecting it to vested rights would not adequately protect this protestant.

8. There is unappropriated water to supply the 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.

9. The intended use is beneficial.

10. The applicant requests that he be allowed to use any water which he is entitled to use on the 7.34 acres by virtue of continuous use since prior to year 1949 anywhere within the 18 acres of his place of use. This is opposed by the Sonoma District on the ground that the Board, in providing for recognition of pre-1949 uses, was concerned with the protection of uses on specific parcels of land as being part of an established economy.

The main consideration in acting on this request is whether its approval will result in the possibility of a greater use of water by the applicant than that to which he is entitled by virtue of his past use. As the land is so situated that the return flow from its irrigation will be substantially the same wherever the water is used within the 18 acres, and 0.14 cfs represents a reasonable duty of water for the irrigation of 7.34 acres of vineyard, the approval of the request will not result in any greater use of water and harm to the protestant. Also, to hold otherwise would impose an unreasonable burden on the applicant, as the water used on the 7.34 acres would normally be commingled with water obtained from other sources which he is entitled to use on his other acreage.

From the foregoing findings, the Board concludes that Application 22005 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.

ORDER

IT IS HEREBY ORDERED that Application 22005 be, and it 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 water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 0.225 cubic foot per second by direct diversion to be diverted from about April 15 to June 30 of each year and 0.14 cubic foot per second from July 1 to about October 15 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 quantity herein stated may be reduced in the license if investigation warrants.

3. Complete application of the water to the proposed use shall be made on or before December 1, 1970.

4. 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.

5. 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.

6. 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.

7. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights.

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                      , 1966.

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

/s/ Ralph J. McGill  
Ralph J. McGill, Member

/s/ W. A. Alexander  
W. A. Alexander, Member