

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 22208  
of Catherine T. Golden to Appropriate  
from the Russian River in Mendocino  
County

Decision D 1266

1266

DECISION APPROVING APPLICATION IN PART

Application 22208 of Catherine T. Golden having been filed; protests having been received; a public hearing having been held before the State Water Rights Board on January 25, 1966, conducted by Board Member W. A. 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 22208 is for a permit to appropriate 0.4 cubic foot per second (cfs) by direct diversion from April 15 to November 15 of each year for irrigation purposes from the Russian River in Mendocino County. The point of diversion is to be located within the SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of projected Section 21, T15N, R12W, MDB&M.

2. Upon completion of clearing and land leveling, the applicant plans to irrigate 27 acres of a 33-acre parcel of land bordering the main stem of the Russian River from offset wells. The land is within the service area of the

Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereinafter referred to as Mendocino District), lying approximately four miles southeast of the City of Ukiah. Throughout the hearing on Application 22208, 22 of the 27 acres to be irrigated were referred to as a portion of the Levaggi Ranch, and the remaining five acres were referred to as a portion of the Hopper Ranch. These contiguous parcels will be referred to in the same manner in this decision.

3. Protestant Sonoma County Flood Control and Water Conservation District (hereinafter referred to as Sonoma District) and 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 the 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 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 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. These months constitute the major portion of the applicant's diversion season. During the remainder of the applicant's diversion season, there is sufficient water in most years to supply the applicant and holders of prior rights.

5. Approval or denial of Application 22208 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, and the protest of the Sonoma District is directed to this issue.

6. The Levaggi Ranch was planted in hops and irrigated from the Russian River commencing about the year 1918, until the hops were taken out in 1956 (RT 30, 49). Although it is not clear whether the hops were irrigated every year, and the quantity of water used has not been established, a sufficient showing has been made by the applicant of use of water from the river on the ranch during that period (RT 28). However, after the hops were taken out, during a period when a Mrs. Paul owned the ranch, there was no use of water until a tenant drilled a well in 1961, a period of over three years (RT 39). There has not been a continuous use of the water from the Russian River on the Levaggi Ranch since prior to 1949 in accordance with the standard established by the Board in its Decision D 1247, official notice of which is hereby taken.

7. The Hopper Ranch was planted to hops from about the year 1927 until the year 1950 when it went into alfalfa and permanent pasture (RT 49). The ranch was sold in 1960 to Alex Thomas, who planted five acres in garden and used the land for that purpose until he sold it to the applicant in 1965 (RT 49, 50, 57). The land has been irrigated from a well located in gravels approximately 1500 feet from the Russian River, which draws upon the underflow of the river. There has been a continuous use of water from the Russian River since prior to the year 1949 on the 5-acre portion of applicant's place of use referred to as the Hopper Ranch.

8. The quantity of water used annually on the Hopper Ranch since prior to 1949 and the maximum rate of diversion during this period has not been shown. A reasonable amount of water for the irrigation of five acres in the locality is .063 cfs, and any permit issued on Application 22208 should authorize a diversion of this amount during the portion of the diversion season that is authorized by virtue of use established prior to the year 1949.

The applicant should be allowed to use .063 cfs of water anywhere within the 33 acres designated as the place of use by Application 22208. The land is situated so that the return flow from irrigation would be approximately the same wherever the water is used within this area, and no harm would result to the protestant or any lawful user of water by such a

provision. Also, as any water covered by any permit issued on Application 22208 would be commingled with water the applicant is entitled to use on other parts of her ranch, it would be unreasonable to require her to do otherwise.

9. Unappropriated water is available 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 the water.

10. The intended use is beneficial.

11. Protestant Department of Fish and Game entered into a stipulation with the applicant at the time of the hearing for the withdrawal of its protest provided any permit issued to the applicant contain a term prohibiting the applicant from diverting when the flow at the confluence of the Russian River and East Fork Russian River is 150 cfs or less. The maintenance of this flow has been found to be in the public interest and necessary for the maintenance of fishlife in the river and for the use of the river for recreational purposes by the Board's Decision D 1030, and there has been no change in circumstances justifying a different conclusion at this time. However, as to water that has been used continuously on the applicant's place of use since prior to the year 1949, the Sonoma District has the obligation to continue to make this water available to the applicant as well as to maintain a flow of 150 cfs at the confluence of the Russian River and the East Fork. The suggested permit term without

qualification may lead to confusion as to the Sonoma District's responsibility in the matter. The proposed term should apply only when the permittee is diverting more than .063 cfs as authorized by the permit.

12. The applicant claims a riparian right to the use of the water from the Russian River on the land designated as the place of use in Application 22208. The permit issued on Application 22208 should contain a term stating that upon a judicial determination that the place of use under the permit or a portion thereof is entitled to the use of the water by riparian right, the right so determined and the right acquired under the 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.

From the foregoing findings, the Board concludes that Application 22208 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 22208 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

0.4 cubic foot per second (cfs) by direct diversion to be diverted from about April 15 to about June 30 and from about November 1 to about November 15 of each year and .063 cfs to be diverted from about July 1 to about October 31 of each year. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time if there be no interference with vested rights.

2. During the periods from April 15 to June 30 and from November 1 to November 15, diversion in excess of .063 cfs may be made only when the flow of the Russian River, measured at the confluence of the Russian River and East Fork Russian River, is greater than 150 cfs.

3. The maximum quantity herein stated may be reduced in the license if investigation warrants.

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

5. 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.

6. 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.

7. 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.

8. 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.

Dated: FEB 15 1967

/s/ Kent Silverthorne  
Kent Silverthorne, Chairman

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

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