STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

IN THE MATTER OF PERMIT 15358 (Application 22377)

The Sea Ranch Water Company

ORDER CORRECTING POINTS OF DIVERSION, APPROVING CHANGE IN PLACE OF USE, AND ISSUING A LICENSE

SOURCE: South Fork Gualala River (Underflow)

COUNTIES: Sonoma

BY THE DEPUTY DIRECTOR FOR WATER RIGHTS:

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 15358 authorizing diversion from the South Fork Gualala River to The Sea Ranch Gas and Water Company on April 7, 1967 pursuant to Application 22377. The permit was later assigned to The Sea Ranch Water Company (Permittee).

2. Permit 15358 was issued with a complete use date of December 1, 1970. A Division inspection conducted on January 7, 1971 resulted in a Division staff recommendation for an extension of time. Permittee subsequently petitioned for an extension of time. An Order Approving a New Development Schedule was issued on April 2, 1971, extending the complete construction and use date to December 1, 1975.

3. Permittee filed a petition for a second extension of time to complete use on November 20, 1975. Order WR 77-12, adopted on October 20, 1977 approved the extension to December 1, 1980. A Division inspection conducted on July 15, 1981 resulted in a recommendation for a third extension of time to complete use.

4. Permittee subsequently filed a petition for extension of time. An Order Approving a New Development Schedule and Amending the Permit was issued on July 7, 1982, extending the complete construction and use date to December 1, 1985. The Order also added Standard Permit Term 29B – Water Conservation Program.

5. Permittee filed a petition for a fourth extension of time to complete use on February 26, 1986. An Order Approving a New Development Schedule was issued on July 1, 1986 extending the complete use date to December 1, 1996.

6. Order WR 90-15, adopted on October 18, 1990, recognized that the permitted source is the Underflow of the South Fork Gualala River. The Order modified the streamflow bypass requirements term and reduced diversion under the permit to 1.29 cubic foot per second (cfs) and 613 acre-feet (af) per calendar year.

7. A water rights complaint (no. 49-46-01) by J. Lucey was filed on November 3, 2006 against the Permittee alleging misuse of water at The Sea Ranch Golf Links. An investigation resulted in a recommendation that a new term be added as a condition of diversion under the permit. The complaint was closed when Permittee agreed to comply with the new term. The term remains in effect.

8. A third licensing inspection was conducted by the Division on June 30, 2009. Documented in the inspection report are staff findings that:

   a. The point of diversion for Permit 15358 is inaccurately described due to a mapping error in the application. The point of diversion is approximately 160 feet from the actual well location(s).

   b. Permittee constructed and now uses two offset wells to divert subterranean flow of the South Fork Gualala River.

   c. In the past, wells located close together were described in permits and licenses as a single point of diversion. The Division now identifies each well as a separate point of diversion. In this case, the change of description does not constitute a new point of diversion.

   d. The description of the location and number of points of diversion may be corrected administratively.

   e. A petition for a fifth extension of time to complete use filed on December 18, 2008 has been withdrawn by Permittee.

   The report also found that the project is substantially complete and recommended that a license be issued with the following limitations:

   f. The rate of diversion is reduced from 1.29 cfs to 0.72 cfs. Adding Term 27, which is standard for direct-diversion municipal licenses, effectively makes this a 30-day average rate of diversion.

   g. Annual diversion and use is reduced from 613 af per calendar year to 310 af per annum.

   h. The authorized use is municipal.

   i. Order WR 90-15 language pertaining to fish bypass requirements should be replaced with standard License Term 204.

9. Permittee serves The Sea Ranch community. Within the authorized place of use, the community is 1,113 acres less than the 5,300 acres originally envisioned when the permit was issued. Permittee serves three additional parcels that total 32 acres which are outside the permitted place of use. On June 8, 2010, Permittee filed a petition to change the place of use. Petitioner proposes to:

   a. Expand the place of use by 32 acres in projected Section 21, Township 10 North, Range 14 West, MDB&M, and

   b. Reduce the place of use by 1,113 acres in portions of
      i. Projected Sections 35 and 36, T11N, R15W,
      ii. Projected Sections 1, 2 and 12, T10N, R15W, and
      iii. Projected Sections 6 and 7, T10N, R14W, MDB&M.

   The existing place of use was determined by a registered engineer (State certificate no. 29146) to be 4,219 acres as shown on map no. 1006 dated September 9, 2010 filed with the State Water Board.

10. Pursuant to Title 23, California Code of Regulations, section 795, Permittee provided a copy of its petition to the California Department of Fish and Game's office in Napa, California. Also pursuant to section 795, the Division has determined that public notice of the petition is not required because the proposed changes do not have the potential to impair the water supply of other legal users or instream beneficial uses.

11. On September 18, 2007, the State Water Board adopted Resolution 2007-0057, delegating to the Deputy Director for Water Rights the authority to act on petitions for change if the State Water Board does not hold a hearing. The Deputy Director has re-delegated this authority to the Assistant Deputy Director. This Order is adopted pursuant to the delegation authority in sections 4.2.4, 4.2.11 and 4.10 of Resolution 2007-0057.

CONCLUSIONS

The State Water Board has adequate information in its files to make the evaluation required by Water Code section 1702 and I find that:

1. The proposed change does not constitute initiation of a new right and will not injure any legal user of the water.

2. The proposed change will not unreasonably affect fish, wildlife or other instream beneficial uses.

3. Approval of the change is exempt from the California Environmental Quality Act under Title 14, California Code of Regulations, section 15301 (existing facilities). This project involves negligible or no expansion of an existing use. Approval of the changes is also exempt under section §15061(b)(3) (no possibility that the activity may have a significant effect on the environment). No change in volume, rate, timing or location of diversions or return flow will occur under these proposed changes. No new or changed facilities are needed or proposed, and no direct or indirect effect on the environment will occur.

4. In addition to any obligation the State Water Board may have under CEQA, the State Water Board has an independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (***National Audubon Society v. Superior Court*** (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346].) There is no evidence that approval of the change petition will have any adverse impacts on public trust resources.

NOW, THEREFORE, IT IS ORDERED that the petition filed for change in place of use under Permit 15358 is approved. It is further ordered that a license be issued pursuant to Permit 15358, subject to the following conditions:

1. The source is South Fork Gualala River Underflow in Sonoma County.

2. The purpose of use is municipal.

3. The amount of water authorized for diversion under the license shall not exceed 0.72 cfs to be diverted from January 1 to December 31 of each year. The maximum amount diverted under the license shall not exceed 310 af per annum.

4. The points of diversion are:

   (1) Well A: By California Coordinate System of 1983, Zone 2, North 2,022,450 feet and East 6,155,530 feet, being within the SW¼ of SE¼ of Section 16, T10N, R14W, MDB&M.

   (2) Well B: By California Coordinate System of 1983, Zone 2, North 2,022,450 feet and East 6,155,610 feet, being within the SW¼ of SE¼ of Section 16, T10N, R14W, MDB&M.

5. A description of the lands or the place where such water is put to beneficial use is:

   4,219 acres within The Sea Ranch Water Company service area located within:

   Projected Sections 27, 34 and 35, T11N, R15W, MDB&M, Projected Sections 1, 2, 3, 11, and 12, T10N, R15W, MDB&M, and Projected Sections 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34, T10N, R14W, MDB&M, as shown on map no. 1006 dated September 9, 2010 filed with the State Water Board.

6. The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time provided there is no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)

7. Licensee shall implement all cost-effective measures identified in the Water Conservation Program, supplemented by any actions required by the State Water Board, in accordance with the schedule for implementation.

(0000029B)

8. For the protection of fish and wildlife, and other instream and public trust uses, the Licensee shall bypass the total streamflow, at all points of diversion, whenever the flow in the South Fork Gualala River is equal to or less than: (a) 5 cubic feet per second from June 1 to November 30, (b) 25 cubic feet per second from December 1 to March 31, and c) 10 cubic feet per second from April 1 to May 31, as measured at USGS Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, California.

   No diversion shall take place under this license if the streamflow in South Fork Gualala River is, or would be reduced by the diversion, below the designated rate(s).

   In the event that said gage is no longer available for streamflow measurements, Licensee (or successors-in-interest) is responsible for installing and maintaining an equivalent gage in accordance with a plan, including timelines, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the United States Geological Survey Stream Gage No. 11467510 - South Fork Gualala River. A plan must be submitted within 15 days of the existing gage becoming non-operable. In the absence of timely installation of such an equivalent gage, all diversions must cease. These requirements shall remain in force as long as water is being diverted by Licensee (or successors-in-interest) under this license.

(0140204)

9. Licensee shall provide notice via telephone and FAX to the Deputy Director for Water Rights prior to the delivery of any water diverted pursuant to this license to The Sea Ranch Golf Links in lieu of treated wastewater produced by the Gualala Community Services District, Sonoma County Service Area # 6, or their successors. This telephone contact and FAX shall clearly identify that this notification is being made pursuant to the requirements of this license, and shall also include a detailed explanation of why fresh water is being used instead of treated wastewater.

(9999999)

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy, Deputy Director
Divison of Water Rights

Dated: MAR 24 2011

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 22377 PERMIT 15358 LICENSE **13830**

THIS IS TO CERTIFY, That

The Sea Ranch Water Company
P.O. Box 16
The Sea Ranch, CA 95497

has made proof as of **June 30, 2009** (the date of inspection) to the satisfaction of the State Water Resources Control Board (State Water Board) of a right to the use of the waters of **(1)(2) South Fork Gualala River Underflow** in **Sonoma County**

tributary to **Gualala River thence Pacific Ocean**

for the purpose of **Municipal use**

under Permit **15358** of the State Water Board; that the right to the use of this water has been perfected in accordance with the laws of California, the Regulations of the State Water Board, and the permit terms; that the priority of this right dates from **January 31, 1966**; and that the amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **seventy-two hundredths (0.72) cubic foot per second to be diverted from January 1 to December 31 of each year. The maximum amount diverted under this license shall not exceed 310 acre-feet per year.**

The equivalent of such continuous flow allowance for any 30-day period may be diverted in a shorter time provided there is no interference with other rights and instream beneficial uses and provided further that all terms or conditions protecting instream beneficial uses are observed.

(0000027)

THE POINTS OF DIVERSION OF SUCH WATER ARE LOCATED:

(1) Well A: By California Coordinate System of 1983, Zone 2, North 2,022,450 feet and East 6,155,530 feet, being within SW¼ of SE¼ of Section 16, T10N, R14W, MDB&M.

(2) Well B: By California Coordinate System of 1983, Zone 2, North 2,022,450 feet and East 6,155,610 feet, being within SW¼ of SE¼ of Section 16, T10N, R14W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Four thousand two hundred nineteen (4,219) acres within The Sea Ranch Water Company service area located within projected Sections 27, 34 and 35, T11N, R15W, MDB&M; projected Sections 1, 2, 3, 11, and 12, T10N, R15W, MDB&M; and projected Sections 7, 8, 16, 17, 18, 20, 21, 27, 28, 29, 33, and 34, T10N, R14W, MDB&M, as shown on map drawing no. 1006 dated September 9, 2010, filed with the State Water Board.

Licensee shall implement all cost-effective measures identified in the Water Conservation Program, supplemented by any actions required by the State Water Board, in accordance with the schedule for implementation.

(0000029B)

For the protection of fish and wildlife, and other instream and public trust uses, the licensee shall bypass the total streamflow, at all points of diversion, whenever the flow in the South Fork Gualala River is equal to or less than: (a) 5 cubic feet per second from June 1 to November 30; (b) 25 cubic feet per second from December 1 to March 31 of the following year; and c) 10 cubic feet per second from April 1 to May 31, as measured at USGS Gage No. 11467510 – South Fork Gualala River near The Sea Ranch, CA.

No diversion shall take place under this license if the streamflow in South Fork Gualala River is, or would be reduced by the diversion, below the designated rate(s).

In the event that said gage is no longer available for streamflow measurements, licensee (or successors-in-interest) is responsible for installing and maintaining an equivalent gage in accordance with a plan, including timelines, satisfactory to the Deputy Director for Water Rights, as near as practicable to the present location of the United States Geological Survey Stream Gage No. 11467510 - South Fork Gualala River. A plan must be submitted within 15 days of the existing gage becoming non-operable. In the absence of timely installation of such an equivalent gage, all diversions must cease. These requirements shall remain in force as long as water is being diverted by licensee (or successors-in-interest) under this license.

(0140204)

Licensee shall provide notice via telephone and FAX to the Deputy Director for Water Rights prior to the delivery of any water diverted pursuant to this license to The Sea Ranch Golf Links in lieu of treated wastewater produced by the Gualala Community Services District, Sonoma County Service Area # 6, or their successors. This telephone contact and FAX shall clearly identify that this notification is being made pursuant to the requirements of this license, and shall also include a detailed explanation of why fresh water is being used instead of treated wastewater.

(9999999)

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water 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.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water 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 State Water 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.

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the State Water Board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY
JAMES W. KASSEL FOR:

Barbara Evoy, Deputy Director
Division of Water Rights

Dated: MAR 24 2011

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

In the Matter of Permit 15358 (Application 22377)	)	ORDER: WR 90-15
CALIFORNIA TROUT, INC.; JEROME P. LUCEY; AND UNITED ANGLERS OF CALIFORNIA;	)	SOURCE: South Fork Gualala River Underflow
Complainants,	)	COUNTY: Sonoma
SEA RANCH WATER COMPANY,	)	
Permittee.	)	

ORDER SETTING TERMS AND CONDITIONS FOR FISHERY PROTECTION AND SETTING A DATE CERTAIN FOR OBTAINING AN ADDITIONAL SUPPLY OF WATER

BY THE BOARD:

1.0 INTRODUCTION

California Trout, Inc. (Cal Trout); Jerome P. Lucey (Lucey); and United Anglers of California (United Anglers) having filed complaints against the Sea Ranch Water Company's (Company) use of water under Permit 15358 (Application 22377); a hearing having been held on January 29, 1990 by the State Water Resources Control Board (Board); complainants, interested parties, and the permittee having appeared and presented testimony and exhibits at the hearing; the evidence having been duly considered; the Board finds as follows:

2.0 BACKGROUND

2.1 Fishery Bypass Term and Order WR 77-12

Prior to the issuance of Permit 15358 in 1967, the Department of Fish and Game (DFG) filed a protest against the Company's proposed diversion. In its protest, DFG sought to preserve flows necessary to protect fish and wildlife in the South Fork of the Gualala River. As a result of this protest, a fisheries bypass term was negotiated and agreed upon by the Company and DFG and was included in Permit 15358 (Term 14).

In 1977, DFG filed a complaint with the Board alleging that the Company was diverting water in violation of Term 14. The Board held a hearing on this complaint and adopted Order WR 77-12 on October 20, 1977. In Order WR 77-12, the Board found that there was no violation of Term 14. The Board also found the term to be unenforceable as written and modified Term 14 to read:

> "1. For the preservation of fishlife, the permittee shall not divert water at the point of diversion when the flow is equal to or less than the following:
>
> a. 5 cfs from June 1 to November 30,
>
> b. 25 cfs from December 1 to March 31,

c. 10 cfs from April 1 to May 31,

provided this modification shall not become effective until an approved alternative supply is secured by permittee."

Order WR 77-12 also required the following:

"2. Permittee shall decide on its preferred alternative source of supply within six months of the date of this order and shall thereafter develop said supply pursuant to a time schedule approved by the Board.

"3. Permittee shall install device(s), satisfactory to the Board, which are capable of measuring the flows required by the conditions of this permit."

As of this date, an alternative source of supply has not been developed and Term 14 is not in effect, and flow measuring devices have not been installed.

2.2 Pursuit of Alternate Water Supply

In accordance with Order WR 77-12, the Company filed Application 26146 in December 1979 to appropriate by direct diversion 2.0 cubic feet per second (cfs) from the Gualala River underflow via offset wells adjacent to the Gualala River estuary. Three protests were filed against this application.

A Draft Environmental Impact Report (DEIR) was issued on this proposed project in February 1987. The DEIR

found that the proposed project would cause significant impacts to the fisheries and estuary of the Gualala River which cannot be mitigated.

On November 16, 1987, the Board re-noticed Application 26146 because of the length of time that had elapsed since the application was first noticed (Title 23, California Code of Regulations Section 684(b)). Numerous protests were received on the re-noticed application and numerous letters of opposition were received during the DEIR review period. The basis of the protests and letters of opposition was that the proposed project would cause significant adverse impacts to the fisheries and estuary of the Gualala River.

On February 19, 1988, the applicant requested an extension of time of one year to revise the DEIR and respond to all protests. On March 11, 1988, the extension of time was granted. As of this date, none of the protests has been addressed nor has any additional work been done on the DEIR.

On April 7, 1989, the Company filed Application 29466 to divert up to 300 acre-feet per annum (afa) to offstream storage from the South Fork Gualala River. Although the application has not been publicly noticed

by the Board pursuant to Title 23, California Code of Regulations Section 684(a), the Board has received numerous letters of opposition to the proposed project. The letters allege that the location of the proposed project could present a threat to public safety, and could result in the removal of riparian vegetation and adverse impacts to several sensitive plant species.

In January 1990, the Company entered into a contract for the preparation of an EIR to consider the environmental impacts of thirteen alternatives (including the "no project" alternative required by the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.)) for an additional water supply. The EIR analysis should identify one or more feasible alternatives for an additional water supply. Upon completion of the draft EIR, the Company should file an application to appropriate unappropriated water for a project(s) identified as a feasible additional water supply, unless the project selected is described in an application already on file with the Board. The tentative completion date for the DEIR is October 23, 1990.

3.0 COMPLAINTS

3.1 Cal Trout

On July 11, 1988, Cal Trout filed a complaint alleging that Permit 15358, in effect, contains no terms or conditions for protection of the Gualala River steelhead fishery. Cal Trout requests "immediate relief"; however, no description of the measures which might provide such relief is identified in the complaint.

3.2 Lucey

On August 23, 1988, Mr. Lucey filed a complaint against Permit 15358 of the Company alleging that water needed for fishery habitat is being diverted from the Gualala River for irrigation of the Sea Ranch Golf Links and that no flow measuring device is in place pursuant to Order WR 77-12. Lucey requests that the Board enforce Order WR 77-12 requiring the installation of a measuring device.

3.3 United Anglers

On November 18, 1988, United Anglers filed a complaint against Permit 15358 alleging that the Company has taken too long to develop an alternate supply of water and that minimum flow standards should be established to protect the fishery.

4.0 AUTHORITY OF THE BOARD

Pursuant to Water Code Section 1253, the Board may subject appropriations to such terms and conditions as it finds are necessary to best develop, conserve, and utilize the water in the public interest. The Board has authority to enforce these terms and conditions. The Board also has continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, Title 23, California Code of Regulations Section 780(a), and the public trust doctrine to amend existing water right permits and licences to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water and to protect public trust uses of water. United States v. State Water Resources Control Board (1986) 182 Cal.App.3d 82, 227 Cal.Rptr. 161; National Audubon Society v. Superior Court (1983) 33 Cal.3d 419, 189 Cal.Rptr. 346. The Board is exercising these authorities in this order.

5.0 HEARING ISSUES

On January 17, 1990, the Board held a hearing to consider the following issues:

"1. Should a specific time schedule for securing an additional water supply be established in Permit 15358, and if so, what should be the length of the schedule?

2. Has the permittee acted in good faith to comply with the terms of Permit 15358?

3. Should Permit 15358 be modified to include a date making the fishery bypass requirements of Term No. 14 effective regardless of the permittee securing an alternative water supply?

4. Should the permittee be required to immediately install devices in the South Fork Gualala River which are capable of measuring the flows required by the conditions of Permit 15358?

5. Is the use of water pursuant to Permit 15358 reasonable, and if not, should water diversions be limited under Permit 15358?"

6.0 DISCUSSION OF HEARING ISSUES

6.1 Time Schedule for Securing Additional Water Supply

The Board addressed the necessity of expeditiously developing an additional water supply for The Sea Ranch in Order WR 77-12 as follows:

> "13. All parties indicated their agreement that the solution to problems associated with permitting diversions during low flow periods lies in developing alternate supplies such as winter storage. Such a solution appears logical when the average yearly runoff from the River of approximately 300,000 af is contrasted to

> the permit limitation on total annual diversion of 1330 af. We feel that such a solution must be attained. To this end the time extension shall be conditioned on expeditious development of an alternate source. This will necessitate an analysis of all feasible alternatives as suggested by permittee. A six-month time period to complete this analysis is reasonable. Then, based on a time schedule approved by the Board, permittee shall be required to develop the alternate supply."

As noted in Paragraph 2.1, the Board ordered the Company to decide on its preferred alternative source of supply within six months of the date of Order WR 77-12 and to develop the supply pursuant to a time schedule approved by the Board. A review of the record shows that a time schedule for development of the additional supply was never established or approved by the Board.

Prior to the January 29, 1990 hearing, a proposed time schedule for the implementation of the additional water supply was developed by Division of Water Rights (Division) staff and Company representatives (Company, Exhibit 3M, page 1). Neither the Company nor the Board staff agreed to this schedule. The Company included numerous caveats which would extend the schedule indefinitely if contingencies occurred causing interim dates to be missed (Company, Exhibit 3M, page 2). For example, there might be a judicial challenge to the

final EIR or the Board's water right decision which would delay the issuance of a water right permit. Another example is if the selected alternative requires a permit from the U.S. Army Corps of Engineers pursuant to Section 404 of the federal Clean Water Act, or a Streambed Alteration Agreement from DFG pursuant to Fish and Game Code Sections 1601 and 1603, or some other permit must be obtained, then more time may be required during the design phase of the project. The Company's unstated argument is that events may occur for which time should be allotted in the schedule or that in order to accommodate such events the deadlines should not be firm.

Expeditious development of an additional supply is necessary to protect the fishery as well as to provide a reliable supply for The Sea Ranch. Amending Permit 15358 to include a time schedule with the caveats described on page 2 of the Company's Exhibit 3M would not promote expeditious development of the additional supply nor would it afford a date certain for implementation of Term 14. A time schedule which included the caveats would be more illusory than real because few, if any, of the completion dates would be certain. Continuing to delay implementation of Term 14 for an indefinite period of time is unreasonable because of ongoing unquantified impacts to the fishery.

The Board recognizes the problem associated with placing a multi-task time schedule spanning four years in a water right permit: if a milestone or deadline is missed, the permittee may be found to be in violation of its permit which might result in enforcement action by the Board. The Board also recognizes that although one deadline may be missed, the Company could make up time in another phase of the project and the project could still be completed in a timely manner.

Except for the six-month period to resolve protests or hold a hearing and the three-month period to approve a water right decision, the time schedule described on page one of Exhibit 3M appears reasonable; however, unforseen delays may occur. Therefore, a period of five months should be added to the proposed schedule to accommodate delays beyond the Company's control. Accordingly, the completion date for the additional water supply is January 1, 1995. Further, the completion date for resolving protests or holding a hearing should be changed from October 1991 to July 1991. Instead of requiring the Company to meet all of the dates in the proposed schedule, under the facts and circumstances of this case we believe it is reasonable to use these dates as guidelines to monitor the Company's progress toward providing an additional water supply by January 1, 1995. Those guidelines are:

ACTIVITY	COMPLETION DATE
Prepare and circulate DEIR.	October 1990
File new water right application if needed.	December 1990
Public comment on DEIR.	December 1990
Public notice for new application and receive protests.	April 1991
Resolve protests or hold hearing.	July 1991
Approve water right decision.	January 1992
Issue water right permit.	February 1992
Preliminary design of project.	August 1992
Obtain other required permits.	November 1992
Final plans and specifications.	January 1993
Advertise, bid, and award construction contract.	March 1993
Complete construction of project.	May 1994
Testing and startup.	July 1994
Extra five months.	January 1995

6.2 Good Faith

It is unnecessary to decide whether the Company acted in good faith to comply with the terms of its Permit 15358 as amended by Order WR 77-12. By this order, the Board is setting a deadline for the development of the additional supply. The Company and

others involved in the process of doing so should now concentrate on diligently pursuing an additional supply project.

6.3 Date Certain for Implementation of Term 14

Term 14 prohibits the Company from diverting between June 1 and November 30 when flows in the river are less than or equal to 5 cfs. DFG demands that the Company be required to immediately comply with this condition. Existing consumptive uses at The Sea Ranch are dependent upon the Company's summer diversions from the river. Insufficient flows are present in the South Fork Gualala River to supply summer diversions and to meet Term 14 bypass flows. The immediate imposition of Term 14 would result in severe hardship to the Company's customers. We believe it is reasonable to require implementation of Term 14 on January 1, 1995 because the additional water supply should be in place by that time. By providing a date certain for implementation of Term 14, the fishery will receive long overdue protection without causing unreasonable hardship to those persons dependent upon the existing water supply. If an additional supply is developed before January 1, 1995, then Term 14 should be implemented at that time.

The Board recognizes that unforeseen circumstances may justify modification of the date for implementation of Term 14. Therefore, it is appropriate to reserve jurisdiction regarding the date certain for implementing Term 14. The date certain may be reviewed and altered, if appropriate, upon the Board's own motion or the motion of any party. Title 23, California Code of Regulations, Section 842 authorizes requests for extension of time to commence or complete construction work or apply the water to full beneficial use. The Code of Regulations does not specifically authorize extensions of time for compliance with permit terms setting bypass flows or similar requirements, not requiring construction, to avoid or reduce the impacts of an existing diversion. Delay in implementing terms setting bypass flows or similar requirements may pose substantially greater risk of injury to third parties or public trust resources than extensions of time to complete construction or apply water to full beneficial use. Circumstances which would justify an extension of time in a permit for development of an alternative water supply may not necessarily justify a change in the date for implementation of bypass flows.

During the summer months since the late 1960's, the Sea Ranch Association (Association) has constructed a dam across the Gualala River immediately downstream from

the Company's point of diversion. This dam has been constructed for recreational purposes. The Association plans to continue this practice (Transcript, 139:14-16).

Although the effects of the Association's summer dam have not been studied, testimony by DFG indicates that it is likely that the dam has an adverse impact on the fishery by (1) reducing or eliminating flows downstream of the dam and (2) reducing the quality of the habitat upstream of the dam. The habitat is changed from a flowing stream with a series of pools and riffles to a large pool area upstream of the dam. (Transcript, 116:21-117:12.) Although the DFG testimony indicates that the summer dam may create adverse effects on the fishery, DFG issues an annual permit for its construction which does not contain any requirements to assure that any flow in the river will be bypassed at the dam.

Pursuant to its authority under Fish and Game Code Sections 1603 and 5937, DFG has the ability to protect the fishery by requiring bypass flows as a condition of approval of the dam. Each year, DFG has approved the summer dam without requiring any bypass flows. We find it illogical and inconsistent that DFG is demanding the immediate implementation of Term 14 when the bypass

flows may have no beneficial effect when the summer dam is in place. We urge DFG to resolve its inconsistent approach to its treatment of the summer dam.

6.4 Installation of Measuring Devices

To determine compliance with Term 14, flow measurements are necessary upstream of the Company's point of diversion. In addition, streamflow data are necessary for a fishery study to determine whether Term 14 is adequate to protect the fishery and to evaluate the effects of the Company's diversion on the fishery (see Paragraph 7 of this order). Therefore, the Company should commence a daily streamflow measurement program within two months of the date of this order.

In order to provide useful data regarding the effects of the Company's diversion of water on the fishery, a minimum of two streamflow measurement stations are needed; one upstream and one downstream of the Company's point of diversion. The Company may present an alternative measurement program to the Board which would become effective upon the approval of the Chief of the Division of Water Rights. The Company should present its proposal regarding location of the measuring stations and the methodology to be used to the Chief of the Division of Water Rights for approval before implementing the program.

6.5 Limits to Diversions Under Permit 15358

6.5.1 Maximum Diversion at Full Buildout

At the time Permit 15358 was approved, the projected buildout at The Sea Ranch was 5,200 units. The maximum rate of diversion of 2.8 cfs and the maximum quantity of 1330 afa, authorized by Permit 15358, are based on that projection and include an allowance for commercial development and system losses. The Company also assumed that the golf course irrigation requirements would be satisfied entirely by reclaimed water when 2,500 units were completed (Staff, Exhibit 3 [Exhibit 7]).

After Permit 15358 was issued, the California Coastal Commission limited the maximum buildout at The Sea Ranch to 2329 units. There are an additional 100 units that have been set aside for the California Coastal Conservancy which could be developed, as well as approximately 70 commercial and public entities which are served by the Company. Accordingly, the total number of possible connections is approximately 2,500.

Since the maximum number of connections will be less than half of the permitted amount, it is reasonable to reduce the amount of water which can be diverted and used under Permit 15358. Accordingly, the amount of water diverted and used under Permit 15358 should be

reduced to 1.29 cfs and 613 afa. These figures assume that there will be a maximum of 2500 connections, an average of four persons per connection, an allotment of 75 gallons per person per day, and a 10% system loss. Further, it is assumed that the Sea Ranch Golf Links will rely solely on reclaimed water when such water becomes available. A representative of the Sea Ranch Golf Links estimates that reclaimed water will become available in approximately 18 months to three years from the date of the hearing (Transcript, 147:22).

6.5.2 Maximum Diversions During the Period 1990-1994

The Board has a duty of continuing supervision over the taking and use of appropriated water, and has the authority to reconsider water allocation decisions pursuant to the public trust doctrine in addition to Article X, Section 2 of the California Constitution and Sections 100 and 275 of the Water Code. The public trust doctrine is restrained by reasonableness, however. The diversion of water by the Company should not be reduced to a quantity which creates an unreasonable hardship on the domestic users; however, the diversions should be reduced to the amount necessary for reasonable domestic use.

Since full buildout of The Sea Ranch (at the reduced level) has not occurred, further limitations should be

placed on the maximum diversion of water by the Company prior to the implementation of Term 14. Further, between 1987 and 1989, 60% of the annual water use by the Sea Ranch Golf Links occurred during the period June 16 to October 15, the period most critical to the survival of juvenile steelhead and salmon. The water used by the Golf Links during this time accounted for approximately one-third of the total production of the Company (Company, Exhibit 3H).

A representative of the Golf Links testified that they could "live with" a 10% reduction in the amount of water they receive from the Company (Transcript, 151:20). He further testified that a 25% reduction would cause a browning of the fairways (Transcript, 151:23-152:18).

In addition to relying solely on reclaimed water when it becomes available, the Golf Links is investigating the use of fairway grasses which require less water than the existing grass (Transcript, 156:20-157:1). We strongly encourage these water conservation efforts.

In light of the above discussion, we believe it is reasonable to restrict the average rate of diversions for any 30-day period under Permit 15358 during the years 1990 through 1994 as follows:

Average Monthly Rate of Diversion (cfs)

Year	June 16-Aug. 15	Aug. 16-Oct. 15
1990	0.59	0.53
1991	0.60	0.55
1992	0.62	0.57
1993	0.63	0.58
1994	0.65	0.60

The following assumptions were used to compute these limits:

1. number of service connections for each year:

Year	Number of connections
1990	1121
1991	1191
1992	1261
1993	1331
1994	1401

(Company, Exhibit 3"O");

2. an average of three persons per connection;
3. an allotment of 65 gallons per person per day;
4. 20 percent system loss;
5. 10 percent reduction per year in the amount of water supplied to the Golf Links.

In order to monitor compliance with these limitations on the maximum amount of water which may be diverted between June 16 and October 15 in the years 1990 through 1994, the Company should submit monthly reports

of daily meter readings of total water diversions during this period to the Chief of the Division of Water Rights.

6.5.3 Water Conservation Program

In 1984, the Company filed a water conservation action plan with the Board. This plan was approved by the Office of Water Conservation of the Department of Water Resources. The plan consists of the following elements:

1. landscape water conservation;
2. installation of water saving devices;
3. establishment of a wastewater task force;
4. monitoring of monthly water usage;
5. establishment of a leak detection program;
6. recycling of waste water;
7. establishment of a computerized recording program.

In 1985, the Division of Water Rights approved the plan and required the Company to submit an annual progress report on program implementation to the Board. The Division suggested that the progress report be included with the annual Progress Report of Permittee. The files show that the Company submitted a water conservation progress report with its 1985 Progress Report of Permittee. The report stated that water

conservation kits were provided to customers without charge. No further water conservation progress reports were filed by the Company.

It is reasonable to require the Company to implement all appropriate water conservation measures as soon as possible in accordance with the water conservation plan previously approved by the Division, but no later than January 1, 1992. In order for the Board to monitor compliance with the water conservation plan, the Company should submit water conservation progress reports with its annual Progress Report of Permittee.

The Board should reserve jurisdiction over this permit to review the timely implementation of existing water conservation measures or to require additional measures. If existing or additional water conservation measures are not implemented in a timely manner, a time schedule for implementation of specific measures or a reduction in the amount of water authorized to be diverted under Permit 15358, may be required.

7.0 ADEQUACY OF TERM 14 AND EFFECTS OF DIVERSIONS UNDER PERMIT 15358 ON THE FISHERY

A water right permit is a conditional right to take and use water subject to the Board's continuing authority to ensure that the water be put to reasonable beneficial use consistent with Article X, Section 2 of

the California Constitution, the public trust doctrine, and the public interest. The South Fork Gualala River supports runs of both steelhead trout and coho salmon. No quantitative data or study exists which can be used to determine whether the diversions under Permit 15358 are causing adverse impacts on the fishery. Term 14 provides that the Company shall not divert water when the flow is equal to or less than 5 cfs from June 1 to November 30, 25 cfs from December 1 to March 31, and 10 cfs from April 1 to May 31. Term 14 was adopted in 1967 for the protection of fish but is still years from implementation. The Company has continued to benefit from its water right permit conditioned upon the bypass flows which have been deferred for thirteen years (since Order WR 77-12) and which may be deferred for another five years under the terms of this order. Given the delay in securing an additional supply, the years that the diversion has occurred without any bypass flows, and the lack of any study to determine whether the diversion is causing an adverse impact to the fishery, the Company should conduct a study which would assist the Board in making a determination whether the diversion is adversely affecting the fishery and whether Term 14 affords adequate protection of the fishery. The study should also evaluate the cumulative effects of the Company's diversion and the

summer dam on the fishery unless the dam is not constructed or the dam is constructed with appropriate bypass flows.

Accordingly, the Company should conduct a fishery study in consultation with the Board. The study should be completed by October 1, 1993. If the study shows that Term 14 is inadequate to protect the fishery, the study should include an evaluation of the flows which would be adequate to protect the fishery. If the study shows that the Company's diversion of water under Permit 15358 causes adverse impacts on the fishery, the study should include an evaluation of the measures which would be necessary to mitigate those impacts. The Board should reserve jurisdiction over this permit to impose conditions to conform Permit 15358 to the recommendations contained in the fishery study regarding adequate levels of flow in the South Fork Gualala River and appropriate mitigation measures.

8.0 CEQA COMPLIANCE

This order constitutes an action to enforce the terms of Permit 15358 as well as to enforce the requirements of Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the public trust doctrine. Therefore, under Title 14, California Code of Regulations Section 15321(a)(2), this action is

categorically exempt from the provisions of CEQA. Because this action is also an action that includes procedures for protection of the environment and is being taken to assure the maintenance of a natural resource (the fishery), it is also categorically exempt under Title 14, California Code of Regulations Sections 15307 and 15308.

9.0 CONCLUSIONS

Based on the foregoing findings and analysis, we conclude as follows:

1. A specific time schedule for securing an additional water supply should not be established in Permit 15358. Rather, a date certain for completion of the additional supply and implementation of Term 14 should be established. The additional supply should be completed by January 1, 1995. Term 14 should be amended so that it becomes effective at the time an approved alternative water supply is secured by the Company or on January 1, 1995, whichever occurs first.

2. Diversions under Permit 15358 should be limited to 1.29 cfs and 613 afa.

3. Diversions under Permit 15358 should be limited prior to the implementation of Term 14 as follows:

Average Monthly Rate of Diversion (cfs)

Year	June 16-Aug. 15	Aug. 16-Oct. 15
1990	0.59	0.53
1991	0.60	0.55
1992	0.62	0.57
1993	0.63	0.58
1994	0.65	0.60

4. The Company should be required to conduct a fishery study to determine whether its diversion under Permit 15358 is causing adverse impacts on the fishery and to determine whether Term 14 is adequate to protect the fishery. The study should include an evaluation of the flows which would be adequate to protect the fishery and the measures which would adequately mitigate any adverse impacts caused by the Company's diversion. The study should also evaluate the cumulative effects of the Company's diversion and a summer dam on the South Fork Gualala River in the vicinity of the Company's point of diversion unless the dam is not constructed or the dam is constructed with appropriate bypass flows.

5. Jurisdiction should be reserved to impose conditions to conform Permit 15358 to the recommendations contained in the fishery study.

6. Within two months, the Company should commence daily flow measurements of the South Fork Gualala River at a minimum of two locations, one upstream and one downstream of the point of diversion. The Company should continue making these measurements until sufficient data are collected for a valid fishery study. When sufficient data have been collected for the fishery study, the number of stations and the frequency of measuring flows may be adjusted. The Company should submit its measurement program, including the location of the measurement stations and the methodology to be used, to the Chief of the Division of Water Rights for approval before implementing the measurement program.

7. The Company should submit annual progress reports on the implementation of its water conservation program to the Chief of the Division of Water Rights with the annual Progress Report of Permitee.

8. Jurisdiction should be reserved to impose further conditions regarding the implementation of water conservation measures.

9. The Company should implement all of the measures specified in the approved water conservation plan by January 1, 1992.

10. Prior to the implementation of Term 14, the Company should submit reports of daily meter readings of total water production for each month during the period from June 16 to October 15 of each year within 30 days following each monthly period to the Chief of the Division of Water Rights.

11. It is unnecessary to decide whether the Company acted in good faith to comply with the terms of Permit 15358.

12. Jurisdiction should be reserved to review and alter, if appropriate, the date certain for implementation of Term 14.

ORDER

IT IS HEREBY ORDERED that Permit 15358 of the Sea Ranch Water Company be amended as follows:

1. Term 14 shall be modified to read:

For the preservation of fish life, the permittee shall not divert water at the point of diversion when the flow is equal to or less than the following:

a. 5 cfs from June 1 to November 30,

b. 25 cfs from December 1 to March 31,

c. 10 cfs from April 1 to May 31.

This term shall become effective at the time an approved alternative water supply is secured by permittee or on January 1, 1995, whichever occurs first.

2. Add a condition to read:

The additional water supply required by Order WR 77-12 shall be completed no later than January 1, 1995.

3. Term 5 shall be modified to read:

The water appropriated shall be limited to the quantity which can be used and shall not exceed

1.29 cubic feet per second to be diverted from January 1 through December 31 of each year. The maximum amount diverted under this permit shall not exceed 613 acre-feet per calendar year.

4. Add a condition to read:

The water appropriated prior to implementation of Term 14 shall not exceed the following amounts:

Average Monthly Rate of Diversion (cfs)

Year	June 16-Aug. 15	Aug. 16-Oct. 15
1990	0.59	0.53
1991	0.60	0.55
1992	0.62	0.57
1993	0.63	0.58
1994	0.65	0.60

5. Add a condition to read:

Permittee shall conduct a fishery study in consultation with the Board to determine whether the permittee's diversion is causing any adverse impacts on the fishery resources of the Gualala River and to determine whether Term 14 is adequate to protect the fishery. If the study shows that Term 14 is inadequate to protect the fishery, the study shall evaluate the flows which

would be adequate to protect the fishery. If the study shows that the permittee's diversion of water under this permit causes adverse impacts on the fishery, the study shall evaluate the measures which would be necessary to mitigate the impacts. The study shall also evaluate the cumulative effects of the Company's diversion and a summer dam on the South Fork Gualala River in the vicinity of the point of diversion authorized under this permit unless the dam is not constructed or the dam is constructed with appropriate bypass flows. This study shall be completed by October 1, 1993.

6. Add a condition to read:

The Board reserves jurisdiction over this permit to impose conditions to conform this permit to the recommendations of the fishery study regarding the adequacy of Term 14 and mitigation of adverse impacts. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

7. Add a condition to read:

No later than two months after the date of this order, permittee shall commence daily flow measurements of the South Fork Gualala River at locations satisfactory to the Board. A minimum of two measurement stations are required: one upstream and one downstream of the point of diversion. Daily flow measurements at these stations shall be made for a two-year period for the fishery study or until an alternative monitoring schedule is approved by the Chief of the Division of Water Rights. When sufficient data have been collected for the fishery study, the number of stations and the frequency of measuring flows may be adjusted upon the approval of the Chief of the Division of Water Rights. No later than one month after the date of this order, permittee shall submit a flow measurement program to the Chief of the Division of Water Rights for approval before implementing the program. The program shall specify the locations and methodology for measuring the flows required by this term.

8. Add a condition to read:

Permittee shall submit annual progress reports on the implementation of its water conservation program to the Chief of the Division of Water Rights with its Annual Progress Report of Permittee.

9. Add a condition to read:

Implementation of the measures specified in the water conservation plan shall be completed by January 1, 1992.

10. Add a condition to read:

The Board reserves jurisdiction over this permit to impose further conditions regarding the implementation of water conservation measures. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.

11. Add a condition to read:

Prior to implementation of Term 14, permittee shall submit reports of daily meter readings of

total water production for each month during the period from June 16 to October 15 of each year within 30 days following each monthly period to the Chief of the Division of Water Rights. For the purpose of this term, a monthly period shall be defined as beginning on the 16th day of the first month and continuing through the 15th day of the following month.

12. Add a condition to read:

The Board reserves juridiction over this permit to review and alter, if appropriate, the date certain for implementation of Term 14.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 18, 1990.

AYE: W. Don Maughan
Darlene E. Ruiz
Edwin H. Finster
Eliseo M. Samaniego
John Caffrey

NO: None

ABSENT: None

ABSTAIN: None

Maureen Marché
Administrative Assistant to the Board

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 22377 PERMIT 15358 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE, AND AMENDING THE PERMIT

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.

2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 8 of the permit is amended to read as follows:

   CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE December 1, 1995

2. Paragraph 9 of the permit is amended to read as follows:

   COMPLETE APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE MADE ON OR BEFORE December 1, 1996

3. Paragraph 11 of this permit is deleted. A new paragraph 11 is added as follows:

   Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, 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 protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

   The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) 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.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated: JULY 1 1986

Lloy Johnson

Lloy Johnson, Interim Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 22377 PERMIT 15358 LICENSE

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND AMENDING THE PERMIT

WHEREAS:

1. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.

2. The permittee has proceeded with diligence and good cause has been shown for extension of time.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Paragraph 8 of the permit is amended to read as follows:

   CONSTRUCTION WORK SHALL BE
   COMPLETED ON OR BEFORE December 1, 1985

2. Paragraph 9 of the permit is amended to read as follows:

   COMPLETE APPLICATION OF THE
   WATER TO THE AUTHORIZED USE
   SHALL BE MADE ON OR BEFORE December 1, 1985

3. The total amount of water under appropriated this permit, together with that appropriated under the right initiated by Application 26146, shall not exceed 1,330 acre-feet per annum.

4. Paragraph 11 of this permit is deleted. A new Paragraph 11 is added as follows:

   Pursuant to California Water Code Sections 100 and 275, all rights and privilege 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.

The 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) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) 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.

5. Paragraph 15 is added to this permit as follows:

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. (0000013)

6. Paragraph 16 is added to this permit as follows:

Permittee shall consult with the Division of Water Rights and the Department of Water Resources and develop and implement a water conservation program or actions. A progress report on development of the program shall be submitted to the Board within 6 months. The program or proposed actions shall be presented to the Board for approval within one year from the date of this order or such further time as may, for good cause shown, be allowed by the Board. (0000293)

Dated: JULY 7 1982

L. D. Johnson
for Raymond Walsh, Chief
Division of Water Rights

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

P 15358

In the Matter of Complaint of Alleged Permit Violations and the Matter of Extension of Permit 15358	)	Order : WR 77-12
THE SEA RANCH GAS AND WATER COMPANY, Permittee,	)	Source: So. Fork Gualala River County: Sonoma
DEPARTMENT OF FISH AND GAME, Protestant.	)	

ORDER REGARDING REQUESTED
TIME EXTENSION AND ALLEGED PERMIT VIOLATION

BY BOARD MEMBER ADAMS:

On June 6 and August 29, 1977, the State Water Resources Control Board (hereinafter the Board) held a public hearing regarding the two issues listed in the caption. The hearing record was left open until September 10, 1977, for submission of briefs by parties. The permittee, complainants, and interested parties having appeared and presented evidence; the evidence at the hearing and thereafter having been duly considered; the Board finds as follows:

Jurisdiction

1. This matter came before the Board both through a request from permittee for an extension of time to complete the beneficial use of water under its water right Permit 15358 and from a complaint from the State Department of Fish and Game (hereinafter DFG) alleging violation of Term 14 of the permit.

The request and complaint have collectively raised the following two issues over which the Board has jurisdiction, which prompted a consolidated hearing.

(a) Should the date specified for completing the beneficial use of water under the permit be extended?

(b) Has permittee violated Term 14 of the permit?

The Board's authority to act in this matter is not limited to the questions brought before it by the parties (see SWRCB Decision 1356), and review of these issues has also caused the Board to invoke its continuing jurisdiction to modify permits (Water Code Section 1253; Section 761, Title 23, California Administrative Code).

Substance of the Extension Request and Complaints

2. On January 31, 1966, permittee filed Application 22377 with the State Water Rights Board (this Board's predecessor) for a permit to appropriate 2.8 cubic feet per second (cfs) by year-round direct diversion for municipal purposes. The diversion is accomplished by pumping from a well adjacent to the South Fork of the Gualala River. Permit 15358 was issued on April 7, 1967, and specified December 1, 1970, as the date for completing application of the water to the proposed use. This completion date was extended five years to December 1, 1975, by the Board at the request of the permittee. The 2.8 cfs

maximum allowable rate of diversion was limited to a maximum allowable annual diversion of 1,330 acre-feet (af) when that extension was granted. The petition for extension at issue in this hearing was filed November 18, 1975, and asked for a second five-year extension of time to complete beneficial use of water.

3. The Board received a complaint from the DFG on March 31, 1977, alleging violation by the permittee of Term 14 of the permit. Permit Term 14 reads as follows:

> "For the preservation of fishlife, the permittee shall not divert water and consequently reduce surface flow, at the point of diversion, below:
>
> a. 5 cfs or the natural flow, whichever is less, from June 1 to November 30.
>
> b. 25 cfs or the natural flow, whichever is less, from December 1 to March 31.
>
> c. 10 cfs or the natural flow, whichever is less, from April 1 to May 31."

The issue of whether this condition was being complied with was initially raised by a letter received by the Board on January 24, 1975, from the North Central Coast Regional Conservation Commission.

Findings Regarding Time Extension Request

4. Article 19 of Title 23, California Administrative Code, contains provisions regarding requests for extensions of time within which to apply water to full beneficial use.

Extensions must be supported by a showing that due diligence has been exercised, that failure to comply with previous time requirements has been occasioned by obstacles which could not reasonably be avoided, and that satisfactory progress will be made if an extension of time is granted. (Section 779, Title 23, California Administrative Code.)

5. The only evidence presented on this question was by permittee. It is uncontroverted. The hearing brief submitted by the Attorney General's office, representative of DFG, argues that the extension should not be given and that no permit should issue until permittee can satisfy the Board that Term 14 will be complied with. These arguments can be answered quickly. First, a permit has already been issued. On the other hand, the Board retains continuing jurisdiction to modify or revoke permits so that the issue of compliance with Term 14 can be dealt with separately and apart from the question of the time extension. (Section 761, Title 23, California Administrative Code; Term 11 of Permit 15358.)

6. Based on the record, permittee is entitled to an extension of time. Use of water has shown a reasonable increase during the past extension. Further increases can be expected, notwithstanding the fact that passage of the Coastal Commission Act has slowed development. For example, Sea Ranch's development plans and building permits must be approved by the Coastal

Commission. While it appears that the anticipated total number of residential units to be served at the Sea Ranch will be less than the original forecast, we agree with permittee that any reduction at this time in the maximum amount of water now allowed by the permit would be based on speculation. Any license issued will be limited to the actual amount of water placed to beneficial use.

Findings Regarding Permit Term 14

7. Based on the evidence presented to us, we conclude that, although permittee and protestant agreed to the inclusion of Term 14 in the permit, there was no meeting of the minds between protestant DFG and the permittee as to what this term means. That is to say, these parties attached different meanings as to the scope and effect of the term.

Permittee filed its application for year-round direct diversion on January 26, 1966. On May 25, 1966, the DFG filed a protest with this Board's predecessor. By that protest the DFG stated that the proposed appropriation could, during certain periods of the year, reduce the existing flow of the river below minimum flows essential to fishlife. The DFG initially wanted the applicant to resubmit an application based upon utilization of winter surplus water through use of storage facilities. Otherwise, maintained DFG at first, it would be necessary to establish minimum flow recommendations which in essence would prevent any diversion by applicant during portions of the year. The DFG met with the applicant in an attempt to resolve the protest

and Permit Term 14 was the outcome. Both parties agreed to this language and the protest was resolved.

The permittee maintains that its present position is the same as that represented to DFG in 1966. That is, that permittee's present supplies are derived from a groundwater basin and that the basin is recharged by subterranean flows as well as surface flows; that present usage has a de minimus effect on surface flows; but that in the future increased pumping will result in a reduction of surface flows.

DFG, on the other hand, feels that at best it was misled to believe that there was no hydraulic continuity between the surface flows and the groundwater source since the two were separated by a clay cap. Based on this purported representation and the corollary that diversions would never have appreciable affect on surface flows, a condition allowing no pumping during low flows where such pumping would further reduce flows became acceptable to DFG. Although this language begs the key issue of when such effects might take place, DFG apparently concluded that such language was satisfactory based on what it understood permittee's representations to be.

Permittee, on the other hand, was apparently satisfed with the language since it felt it could physically make substantial diversions without affecting surface flows.

8. Having determined that Term 14 meant different things to the parties, we now turn to the question of whether it

was violated. In doing so, we feel that a causal relationship between diversions and stream flow reductions must be established to support a finding of violation. Notwithstanding the fact that the different interpretations placed on the term created an ambiquity, our review of the language of Term 14 leads us to conclude that permittee's interpretation is correct. This being the case, we will approach the question of whether the permittee violated the term based on its reasonable interpretation.

9. We conclude that the evidence does not support a finding that the term has been violated:

a. Only one test was conducted to determine whether diversions caused a consequent reduction in surface flows. While we are satisfied with the test's conclusion that hydraulic continuity existed between the groundwater being pumped and a summer reservoir in-place at the point of diversion, we do not feel that this leads to a conclusion that Term 14 was violated. When the test was conducted, there was a summer recreation reservoir in place at the point where the river flowed past the point of diversion. The DFG had approved the construction of this facility. The reservoir caused surface flows much closer to the well than would have been the case had the reservoir not been there. Being closer, there is a greater likelihood that the cone of depression caused by the pumping would reach the reservoir. Thus, the

test measured the impact of the diversion on the reservoir rather than the flowing stream. That being the case, we cannot conclude that an effect on the reservoir would equate with effect on surface flows in their natural condition. A reservoir is not in place now and permittee represents that it does not intend to build one again.

b. Because of the reservoir, stream flow measurements could not be taken at the point of diversion -- which are the measuring points under Term 14 -- during the time the test was conducted. This factor, when combined with the fact that the natural flow of the river fluctuates widely over very short distances, also negates a conclusion that a violation has occurred since it cannot be established whether flows at the specified points were below the specified limit in the term at the time of the test. Such factors as upstream diversions and weather-related fluctuations in stream flows were also not taken into account during the test.

10. While we cannot conclude that Term 14 has been violated, the record developed at the hearing leads us to conclude that Term 14 should be modified under our continuing authority. (Term 11, Permit 15358.)

a. Practical enforcement of the present condition is a near impossibility. Many of the arguments raised by parties in maintaining that the term has not been violated support this point. Attempting to establish a

pumping rate at which the surface flows are not affected may not be possible. The variables involved -- such as the pumping rates and duration, stream flow fluctuations (both as to time and location), percolation rates and patterns, and stream channel characteristics -- would be tremendous. For example, stream flow fluctuations are not only affected by the geology of the area but are also influenced by upstream diversions and weather-induced flow changes. Even if such rates could be established, the extensive monitoring required to enforce the term may not be feasible.

b. Term 14 focuses on reduction of surface flows at the exact point of diversion. However, even if certain pumping patterns may produce no measurable effects at this point, there could well be effects downstream. Thus a situation could exist where pumping would not affect surface flows at the point of diversion, but would affect surface flows at some point downstream. Since the purpose of Term 14 is to protect fish and wildlife, we should not be limited to looking at effects at this one point.

c. The fact that there does not appear to have been a uniform meaning placed on the term by the permittee and the protestant, as discussed, supra.

11. Based on the foregoing, we deem it in the public interest to modify Term 14 to preclude diversions from the well during periods of low flow. We will also require the installation of a

measuring device so that accurate flow measurements are available at a point agreed to by permittee and the Board.

12. Based on such factors as permittee's reliance on its interpretation of Term 14, the fact that domestic use of water is the highest use of water in the State (Water Code Section 1254), and the fact that no alternative source of water is presently available, permittee will be permitted to continue to divert for its needs until such time as an alternative supply can be developed as specified below. We realize this is unusual, but feel it appropriate based on the realities of the permittee's reliance on its present supplies.

13. All parties indicated their agreement that the solution to problems associated with permitting diversions during low flow periods lies in developing alternate supplies such as winter storage. Such a solution appears logical when the average yearly runoff from the River of approximately 300,000 af is contrasted to the permit limitation on total annual diversion of 1,330 af. We feel that such a solution must be attained. To this end the time extension shall be conditioned on expeditious development of an alternate source. This will necessitate an analysis of all feasible alternatives as suggested by permittee. A six-month time period to complete this analysis is reasonable. Then, based on a time scheduled approved by the Board, permittee shall be required to develop the alternate supply.

DETERMINATION OF ISSUES

1. Good cause appears for granting permittee's time extension request.

2. Evidence does not support a conclusion that Permit Term 14 has been violated.

3. Present Permit Term 14 is practically unenforceable and should be modified.

ORDER

It is hereby ordered that the time extension requested by permittee be granted subject to the following limitations and conditions:

1. Term 14 of Permit 15358 is modified to read as follows:

> "For the preservation of fishlife, the permittee shall not divert water at the point of diversion when the flow is equal to or less than the following:
>
> a. 5 cfs from June 1 to November 30,
>
> b. 25 cfs from December 1 to March 1,
>
> c. 10 cfs from April 1 to May 31,
>
> provided this modification shall not become effective until an approved alternative supply is secured by permittee."

(0140060)

2. Permittee shall decide on its preferred alternative source of supply within six months of the date

of this order and shall thereafter develop said supply pursuant to a time schedule approved by the Board.

3. Permittee shall install device(s), satisfactory to the Board, which are capable of measuring the flows required by the conditions of this permit. (0060062)

Dated: October 20, 1977

WE CONCUR:

W. W. ADAMS, Member

JOHN E. BRYSON, Chairman

W. DON MAUGHAN, Vice Chairman

STATE OF CALIFORNIA—THE RESOURCES AGENCY

RONALD REAGAN, Governor

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
ROOM 1140, RESOURCES BUILDING
1416 NINTH STREET • SACRAMENTO 95814

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND LIMITING TOTAL ANNUAL DIVERSION

PERMIT 15358 APPLICATION 22377

THE STATE WATER RESOURCES CONTROL BOARD HAVING DETERMINED THAT GOOD CAUSE HAS BEEN SHOWN FOR EXTENSION OF TIME WITHIN WHICH TO DEVELOP THE PROJECT PROPOSED UNDER PERMIT 15358; AND HAVING DIRECTED THAT THIS ORDER BE ISSUED;

NOW THEREFORE IT IS ORDERED THAT A NEW DEVELOPMENT SCHEDULE BE AND THE SAME IS HEREBY APPROVED AS FOLLOWS:

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1975

APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1975

IT IS FURTHER ORDERED THAT THE TOTAL ANNUAL DIVERSION ALLOWED UNDER SAID PERMIT 15358 BE AND THE SAME IS HEREBY LIMITED TO 1,330 ACRE-FEET.

DATED: APR 2 1971

K. L. Woodward
K. L. WOODWARD, CHIEF
DIVISION OF WATER RIGHTS

22

STATE OF CALIFORNIA

THE RESOURCES AGENCY

STATE WATER RIGHTS BOARD

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT NO. 15358

Application 22377 of The Sea Ranch Gas and Water Company (a public utility)

P. O. Box 3, The Sea Ranch, Gualala, California

filed on January 31, 1966, has been approved by the State Water Rights Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Name of source(s):	Tributary to:
(a) South Fork of Gualala River	(a) Gualala River thence
(b)	(b) Pacific Ocean
(c)	(c)
(d)	(d)
(e)	(e)

2. Location of point(s) of diversion:

Bearing and distance or coordinate distances from section corner or quarter-section corner	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
(a) N 382,200 and E 1,594,300 coordinates of Zone 2 of California Coordinate system	NW¼ of NE ¼ projected	21	10N	14W	MD
(b)	¼ of ¼				
(c)	¼ of ¼				
(d)	¼ of ¼				
(e)	¼ of ¼				

County of Sonoma

3. Place of use: Municipal use at the Sea Ranch and other portions of Oceanic Property, Incorporated's 5,300 acre tract lying along the Pacific Ocean, generally between the ocean and ridge westerly of the Gualala River and extending 10½ miles southerly thereof, as shown on map filed with the State Water Rights Board.

4. Purpose(s) of use: Municipal

23

5. The water appropriated shall be limited to the quantity which can be beneficially used, and shall not exceed 2.8 cubic feet per second by direct diversion to be diverted from January 1 to December 31 of each year.

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

7. Actual construction work shall begin on or before December 1, 1967, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

8. Said construction work shall be completed on or before December 1, 1969.

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

10. 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.

11. 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.

12. 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.

13. 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.

14. For the preservation of fishlife, the permittee shall not divert water and consequently reduce surface flow, at the point of diversion, below:

(a) 5 cfs or the natural flow, whichever is less, from June 1 to November 30.
(b) 25 cfs or the natural flow, whichever is less, from December 1 to March 31.
(c) 10 cfs or the natural flow, whichever is less, from April 1 to May 31.

(0140060)
amended 10-20-77

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: APR 7 1967

STATE WATER RIGHTS BOARD

L. K. Hill

L. K. Hill
Executive Officer

81089-957 10-66 3M ① OSP