

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Complaint of )  
Alleged Permit Violations and the )  
Matter of Extension of Permit 15358 )  
THE SEA RANCH GAS AND WATER COMPANY, )  
Permittee, )  
DEPARTMENT OF FISH AND GAME, )  
Protestant. )

Order : WR 77-12  
Source: So. Fork Gualala River  
County: Sonoma

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 satisfied 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 ambiguity, 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."

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.

Dated: October 20, 1977

WE CONCUR:

  
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W. W. ADAMS, Member

  
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JOHN E. BRYSON, Chairman

  
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W. DON MAUGHAN, Vice Chairman