

STATE OF CALIFORNIA

STATE WATER RESOURCES CONTROL BOARD

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|---------------------------------|--------------------|
| In the Matter of Permit 15358) | |
| (Application 22377)) | ORDER: WR 90-15 |
| CALIFORNIA TROUT, INC.;) | |
| JEROME P. LUCEY; AND) | SOURCE: South Fork |
| UNITED ANGLERS OF CALIFORNIA;) | 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, unforeseen 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:

| <u>ACTIVITY</u> | <u>COMPLETION DATE</u> |
|--|------------------------|
| 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)

| <u>Year</u> | <u>June 16-Aug. 15</u> | <u>Aug. 16-Oct. 15</u> |
|-------------|------------------------|------------------------|
| 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:

| <u>Year</u> | <u>Number of connections</u> |
|-------------|------------------------------|
| 1990 | 1121 |
| 1991 | 1191 |
| 1992 | 1261 |
| 1993 | 1331 |
| 1994 | 1401 |

(Company, Exhibit 3"0");

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)

| <u>Year</u> | <u>June 16-Aug. 15</u> | <u>Aug. 16-Oct. 15</u> |
|-------------|------------------------|------------------------|
| 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 Permittee.

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)

| <u>Year</u> | <u>June 16-Aug. 15</u> | <u>Aug. 16-Oct. 15</u> |
|-------------|------------------------|------------------------|
| 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.

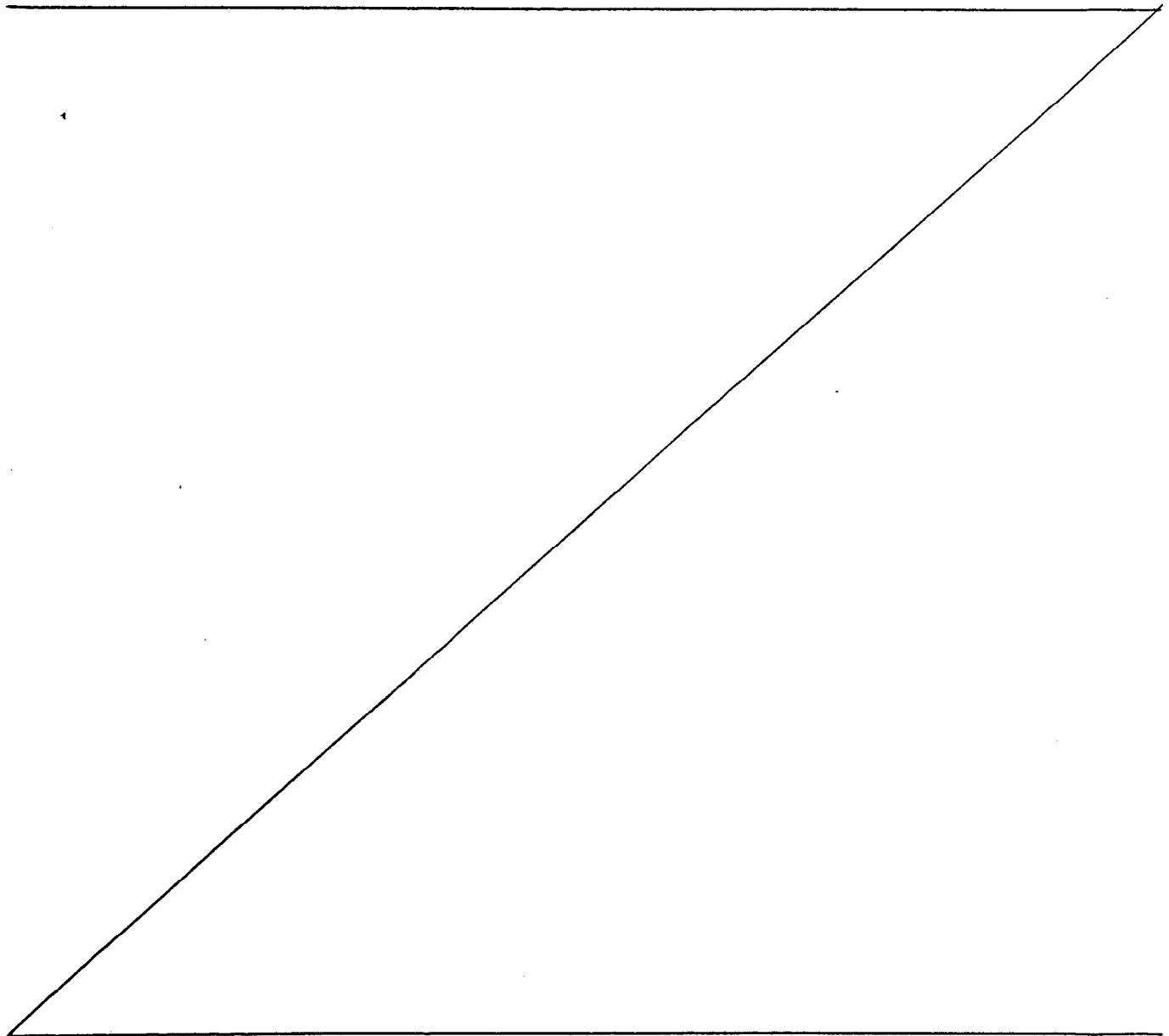
10. Add a condition to read:

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 jurisdiction over this permit to review and alter, if appropriate, the date certain for implementation of Term 14.

CERTIFICATION

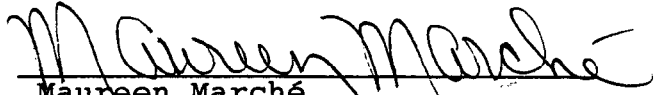
The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 18, 1990.

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