



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

---

**State Water Resources Control Board**

**AUG 27 2015**

In Reply Refer  
To: A032255

Mark Hodgetts  
P.O. Box 1727  
Hayfork CA, 96041

Certified Mail No: 7003 1680 0000 2965 9992

Dear Mark Hodgetts:

**A032255-ADMINISTRATIVE CIVIL LIABILITY COMPLAINT REGARDING UNAUTHORIZED DIVERSION OF WATER WITHIN THE TRINITY RIVER WATERSHED IN TRINITY COUNTY**

Enclosed is an Administrative Civil Liability (ACL) Complaint. This letter serves as notice of the intent of the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to proceed with formal enforcement against you. Specifically, the Division intends to impose the Administrative Civil Liability proposed in the ACL Complaint.

You have 20 days from receipt of this notice to act or face additional liability. Therefore, this matter requires your immediate attention.

The ACL Complaint alleges the following: Hodgetts owns Trinity County Assessor Parcel Numbers (Parcel/s) 014-370-21-00 and 014-370-29-00. Both Parcels are riparian to Hayfork Creek in Trinity County. Parcel 014-370-21-00 includes a surface water diversion facility that Hodgetts uses to fill water trucks for bulk water delivery and sale. On March 21, 2014 Hodgetts stated to Division staff that he purchased the property with the existing diversion piping works and structure in 2007. Hodgetts stated that he has been operating his diversion facility since 2008 which includes filling water trucks for dust control and fire protection for use at various locations in the surrounding area. According to Hodgetts, the existing diversion works consisted of a 4-inch pipe that was used to divert water for a saw mill operation which existed years ago. Since purchasing the property, Hodgetts built an overhead fill station for water trucks. This overhead fill station can draw water from a point of diversion on Hayfork Creek or from municipal supply provided by Trinity County Waterworks District 1 (District). Division enforcement staff investigated numerous complaints alleging bulk water sales from Hogetts' property of water diverted from Hayfork Creek. As described in the ACL Complaint, staff determined that unauthorized diversion and use of water from Hayfork Creek have occurred.

On July 16, 2015 the Division issued a Draft Cease and Desist Order (CDO) to Hodgetts via email and certified mail, the certified mail copy was received on August 3, 2015. Hodgetts submitted a request for hearing on the proposed CDO on July 31, 2015. The hearing on the CDO is currently scheduled to commence on October 5, 2015.

Based on these findings, I signed the enclosed ACL Complaint against Mark Hodgetts proposing a liability of **\$35,000** to be imposed for unauthorized diversion and use of water for the last three years.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

AUG 27 2015

Mark Hodgetts

- 2 -

Pursuant to the enclosed ACL Complaint, the \$35,000 is due and payable within 20 days of receipt of the ACL Complaint unless you request a hearing before the State Water Board in accordance with California Water Code section 1055, subdivision (b). To request a hearing, a **written** request for a hearing on the ACL Complaint must be delivered to or received by mail by the State Water Board within 20 days after receipt of the ACL Complaint. At any hearing, the State Water Board may reexamine and adjust the proposed ACL Complaint amount higher or lower, not to exceed the maximum allowed by statute.

A request for an ACL hearing **must be made in writing** and may be made by mailing the request to the State Water Resources Control Board at the following address:

Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

A written request for hearing may also be hand delivered to:

Division of Water Rights  
Records Unit  
1001 I Street, 2<sup>nd</sup> Floor  
Sacramento, CA 95814

**In summary, you should take immediate action to remit payment of the ACL Complaint, or submit a written request for a hearing with regard to the ACL Complaint.**

Based on the fact that a hearing has already been requested in response to the CDO, the Prosecution Team will request that a joint hearing concerning the CDO and the enclosed ACL Complaint be scheduled for the previously noticed October 5-6, 2015. Prior to the hearing, you will be required to submit any written testimony and other evidence you would like the State Water Board to consider.

Failure to respond to this letter and the issuance of the enclosed ACL Complaint in the time period provided will result in the State Water Board issuing a final ACL Order. Furthermore, the State Water Board may consider additional enforcement of those Orders without further notice.

If you have any questions concerning this matter or there are facts or circumstances that you would like to discuss, then please contact one of the following: Kathy Mrowka, Manager of the Enforcement Section, at (961) 341-5363 or via e-mail at [kmrowka@waterboards.ca.gov](mailto:kmrowka@waterboards.ca.gov); or Yvonne West, Senior Staff Counsel, Office of Enforcement, at (916) 322-3626 or via e-mail at [ywest@waterboards.ca.gov](mailto:ywest@waterboards.ca.gov).

Sincerely,



John O'Hagen, Assistant Deputy Director  
Division of Water Rights

Enclosures: ACL Complaint

ec: Andy Sawyer, Assistant Chief Counsel  
State Water Resources Control Board  
Office of Chief Counsel  
(with enclosures)

Yvonne West, Staff Counsel  
State Water Resources Control Board  
Office of Enforcement  
(with enclosures)

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

DIVISION OF WATER RIGHTS

---

**ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

In the Matter of Unauthorized Diversion and  
Failure to File a Statement of Water Diversion and Use by

**MARK HODGETTS**

---

SOURCE: Hayfork Creek Tributary to Trinity River

COUNTY: Trinity

---

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Mark Hodgetts (Hodgetts) is alleged to have diverted and used water in violation of California Water Code section 1052, subdivision (a) which states:

*The diversion or use of water subject to [division 2 of the Water Code (commencing with section 1000)] other than as authorized in [division 2] is a trespass.*

2. Water Code section 1052, subdivision (c), provides that any person or entity committing a trespass during a period for which the Governor has issued a proclamation of a state of drought emergency may be liable in an amount not to exceed the sum of one thousand dollars (\$1,000) for each day the trespass occurs plus two thousand five hundred dollars (\$2,500) for each acre-foot of water diverted or used in excess of that diverter's rights. Water Code section 1052, subdivision (d)(2), provides that civil liability may be imposed administratively by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1055.
3. Water Code sections 5100-5107 establish a program requiring persons who divert water from a surface stream to file a Statement of Water Diversion and Use (Statement). Water Code section 5101 states, in part:

*Each person who, after December 31, 1965, diverts water shall file with the board, prior to July 1 of the succeeding year, a statement of his or her diversion and use.*

4. Failure to file a Statement for each diversion that occurred after January 1, 2009 is a violation subject to civil liabilities. California Water Code section 5107, subdivision (c)(1) provides that the State Water Board may administratively impose civil liability for failure to file a Statement in an amount not to exceed \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person.
5. Water Code section 1055, subdivision (a), provides that the Executive Director of the Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. On June 5, 2012, the Executive Director delegated this authority to the Deputy Director for Water Rights. State Water Board Resolution 2012-0029 authorizes the Deputy Director for Water Rights to issue an order imposing an ACL when a complaint has been issued and no hearing has been requested within 20 days of receipt of the complaint. The Deputy Director for Water Rights has redelegated this authority to the Assistant Deputy Director for Water Rights pursuant to State Water Board Resolution 2012-0029.

**ALLEGATIONS****Hodgetts Water Rights**

6. Hodgetts owns Trinity County Assessor Parcel Numbers (Parcel/s) 014-370-21-00 and 014 370 29-00. Both Parcels are riparian to Hayfork Creek in Trinity County.
7. Parcel 014-370-21-00 includes a surface water diversion facility that Hodgetts uses to fill water trucks for bulk water delivery and sale. On March 21, 2014 Hodgetts stated to Division staff that he purchased the property with the existing diversion piping works and structure in 2007. Hodgetts stated that he has been operating his diversion facility since 2008 which includes filling water trucks for dust control and fire protection for use at various locations in the surrounding area. According to Hodgetts, the existing diversion works consisted of a 4-inch pipe that was used to divert water for a saw mill operation which existed years ago. Since purchasing the property, Hodgetts built an overhead fill station for water trucks. This overhead fill station can draw water from a point of diversion on Hayfork Creek or from municipal supply provided by Trinity County Waterworks District 1 (District).
8. Hodgetts is not licensed with the California Department of Public Health to deliver potable water.
9. Hodgetts does not have a Statement of Water Diversion and Use (Statement) on file with the Division for past diversions from Hayfork Creek, nor a permit or license authorizing the diversion of water from Hayfork Creek for use and transport off of Parcel 014-370-21-00. Under a riparian claim of right, any water that is diverted from Hayfork Creek under a riparian right must be put to direct use on property that is riparian to Hayfork Creek.
10. The municipal supply provided to Hodgetts fill station by the District is diverted from Big Creek and Hayfork Creek under the District's License 7756 and/or Permits 5437, 20624 and 20625. The District diverts and provides water for municipal use within the District's place of use (POU) as identified in License 7756 and/or Permits 15437, 20624 and 20625.
11. On January 6, 2014, Hodgetts applied for a California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (LSAA) for his point of diversion in Hayfork Creek.
12. On January 31, 2014 CDFW deemed Hodgetts' LSAA application incomplete for missing or insufficient information. The letter informed Hodgetts of the following:

The State Water Resources Control Board's (State Water Board) Electronic Water Rights Information Management System does not indicate that you have a basis of right on file with the State Water Board. You must obtain a water right from the State Water Board to divert water that is transported for use off riparian land. A riparian water right is a right to use the natural flow of water on riparian land. Riparian land is land that touches a lake, river, stream, or creek. Furthermore, we cannot authorize a diversion through the Streambed Alteration Agreement process that may substantially alter the creek by taking a significant amount of water, especially in low flows, without the appropriate water right.
13. Hodgetts claimed on his LSAA application to have a contract with CalFire and U.S. Forest Service for fire protection, which is inconsistent with statements made by Mr. Andy Reiling, Calfire Battalion Chief to Division staff via email on February 24, 2014. Mr. Reiling indicates in his email to Division staff that Calfire does not have an agreement with Hodgetts to supply water and that in the past untreated water for fighting fires was obtained from the District through a metered hydrant on the fairgrounds.
14. On March 21, 2014, Hodgetts contacted the Division to inquire about California Water Code laws and regulations that identify where he can use water that he diverts from Hayfork Creek to Parcel 014-370-21-00. Hodgetts stated to Division staff that he applied for a LSAA with CDFW to divert water from Hayfork Creek for dust control and fire protection, and that he has been operating the water diversion facility and overhead fill station since 2008. Division staff informed Hodgetts that

he could not divert water from Hayfork Creek under a riparian claim of right to sell, transport and use on property not riparian to the source. Division staff also informed Hodgetts that the diversion activities that he described is not allowed under a riparian claim of right and constitutes an unauthorized place of use. Division staff stated to Hodgetts that he would need to submit an application to appropriate water and provided Hodgetts the contact information for the Division's Permitting and Licensing Section.

15. On April 11, 2014, Hodgetts submitted an Application to Appropriate Water (Application) to the Division. The Application seeks to appropriate 4,000 gallons per day from Hayfork Creek during the months of March 1 to October 31 for dust control, compaction, domestic and fire suppression purposes. The application identifies Hodgetts' Parcel 014-370-21-00 as the place of use, and again claims that he has existing agreements to provide water for U.S. Forest Service and Calfire, which is inconsistent with statements made by Andy Reiling, Calfire Battalion Chief to Division staff via email on February 24, 2014. Hodgetts also identifies that his Hayfork Creek diversion rate is 300 gallons per minute via an electric pump. The designation of the place of use was solely identified as and limited to Parcel 014-370-21-00. Hodgetts place of use designation is inconsistent with prior statement by Hodgetts to Division staff and made on his LSAA application submitted to CDFW, which indicates that water is being transported off the parcel for bulk water sales.

#### **Drought Declarations**

16. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014, declaring a State of Emergency to exist in California due to severe drought conditions.
17. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions.
18. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The Executive Order finds that the on-going severe drought conditions present urgent challenges across the state including water shortages for municipal use and for agricultural production, increased wildfire activity, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions persist. The Executive Order confirms that the orders and provisions in the Governor's previous drought proclamations and orders, the January 17, 2014, Proclamation, April 25, 2014, Proclamation, and Executive Orders B-26-14 and B-28-14, remain in full force and effect. On April 2, 2015, the State Water Board issued another notice warning that notices of unavailability of water were likely to be issued soon.

#### **Investigation**

19. On December 2, 2013, the Division received a complaint from Trinity County alleging that Hodgetts is providing bulk water deliveries of water diverted from Parcel 014-370-21-00 on Hayfork Creek to cannabis cultivation sites.
20. On May 23, 2014, the Division received a report from Trinity County that Tule Creek Road was wet and the trail of water originated from Hodgetts property (Parcel 014-370-21-00) and continued South on Highway 3.
21. On July 18, 2014, the Division received a complaint from a Hayfork Creek resident who observed a large green water truck leaving Hodgetts property (Parcel 014-370-21-00) and dripping water along Tule Creek Road.
22. On August 13, 2014 Division received a complaint alleging that Hodgetts is drafting and selling water that has been diverted from Hayfork Creek.
23. On July 29, 2014 CDFW asked Hodgetts to clarify a discrepancy in his POU identified in his State Water Board Application. The CDFW letter stated the following:

On June 23, 2014, you provided a copy of your Application from the State Water Board, in the amount of 4,000 gallons/day from March 1-October 30. The place of use is described as Parcel 014-37-21-00 in Hayfork. This differs from information you provided earlier stating that water tenders go throughout Hayfork Creek watershed for dust abatement and soil compaction purposes. Please clarify this discrepancy.

- 24. Hodgetts has not amended his Application or made any other attempt to change the place of use as described in the Application pending with the Water Board.
- 25. On August 21, 2014 Division staff conduct a site inspection on Hodgetts Parcel 014-370-21-00. Division staff observed a bulk water hauling truck actively being filled at an overhead water filling station. Division staff approached the driver of the water truck and informed him that Division staff was there to inspect Hodgetts' Diversion Facility. Mr. John Parson (Parsons), driver of the water truck, stated to Division staff that he works for Hodgetts and that he makes water deliveries for Hodgetts. Division staff observed Parson's filling a 3,800 gallon water truck. Parsons stated that the source of water filling his truck is water purchased from District. According to Parsons, Hodgetts owns three water trucks with an approximate volume of 3,800 gallons each. The water truck that Parsons was driving was owned by Hodgetts. Parsons stated that he will normally do 4 to 5 water delivers per day to various locations in the communities of Trinity Pines, Summit Creek, and other rural locations. Parson explained to staff that the overflow station can use both Hayfork Creek water and District water to fill water trucks.
- 26. During the August 21, 2014 site inspection Division staff observed that the flow of Hayfork Creek at Hodgetts POD was a slight trickle. Division staff believes based on their observations during the inspection that Hayfork Creek became so low in August that Hodgetts could no longer divert from that source. Staff obtained and reviewed billing records from the District for Hodgetts Parcel from January 2014 through October 2014 (Records in Table 1 below). The billing records, summarized below, demonstrate a large spike in the amount of water purchased from the District at the time when Hayfork Creek water likely became unavailable.

| Billing Period | Units (cubic feet) | Gallons |
|----------------|--------------------|---------|
| January 2014   | 60                 | 449     |
| February 2014  | 30                 | 224     |
| March 2014     | 55                 | 411     |
| April 2014     | 45                 | 337     |
| May 2014       | 4,230              | 31,640  |
| June 2014      | 1,700              | 12,716  |
| July 2014      | 2,960              | 22,140  |
| August 2014    | 54,894             | 410,607 |
| September 2014 | 96,076             | 718,648 |
| October 2014   | 45,390             | 339,517 |

- 27. On October 8, 2014, Division permitting staff issued an Application (Acceptance Letter) for Hodgetts's Application. In the letter Hodgetts was required to take the following steps:
  - 1) Pay annual fees;
  - 2) Prepare an environmental evaluation and preparation of California Environmental Quality Act documentation;
  - 3) Prepare a Water Availability Analysis;
  - 4) Immediately submit a Statement to the Division; and
  - 5) Restrict the place of use for water diverted from Hayfork Creek solely to Parcel 014-370-21-00.
- 28. Bulk water sales from the fill station located on Parcel 014-37-21-00 have continued since the October 8, 2014 Application (Acceptance Letter) was issued, and Hodgetts has not filed a Statement.

29. During the course of the investigation, Division Staff conducted photo surveillance of Parcel 014 370-21-00 during the following time periods:
- a. August 6, 2014 – August 8, 2014
  - b. August 20, 2014 – September 4, 2014
  - c. May 14, 2015 – June 6, 2015
  - d. April 21, 2015 – May 2, 2015
  - e. May 14, 2015 – June 6, 2015
30. On April 24, 2015 division staff received a complaint from Trinity County alleging that numerous water trucks are being filled with Hayfork Creek Water.
31. On July 14, 2015 Division staff conducted a second site visit on Hodgetts Parcel 014-370-21-00 as a result of a complaint alleging bulk water hauling activities are continuing. During the inspection, staff informed Hodgetts that the Division has continued to receive complaints that allege he is filling water trucks from Hayfork Creek. Hodgetts told staff that he has continued to deliver water, but the water he is delivering is water he has purchased from the District. During the inspection, Division staff was shown how the overhead fill station can draw water from a point of diversion on Hayfork Creek and/or from the District municipal supply.
32. Division staff reviewed surveillance footage with the understanding of how diversions from Hayfork Creek and the District are controlled and operated based off the July 14, 2015 inspection of Hodgetts' Parcel. Surveillance on Hodgetts Parcel was continuous throughout the District's May - June 2015 billing period. During that time period, the Division documented approximately 656.35 minutes of water trucks being filled on Hodgetts Parcel from the overhead fill station. During that same period, Hodgetts purchased 30,129.4 gallons of water from the District according to the meter for the overhead fill structure. It would only take approximately 153.3 minutes to divert the amount of water that Hodgetts purchased from the District in the May-June 2015 billing period at the diversion rate of approximately 196.55 gpm. This diversion rate was determined by using the most conservative recorded time duration (i.e. the longest) of approximately 19.33 minutes that presumably filled a 3,800 gallon tanker truck, which would require a volumetric flow rate of approximately 196.55 gpm. Additionally, information provided by Hodgetts during the July 14, 2015, inspection confirmed the accuracy of these calculations when he reported that it took roughly 20 minutes to fill a 3,800 gallon water truck to capacity. Subtracting the time it would take to divert the amount of water from the overhead fill station that Hodgetts purchased from the District from total amount of time that water hauling trucks were actively filling during this period leaves approximately 503.02 minutes of water diversion from the overhead fill structure into water hauling trucks. The only other source available for the remaining approximate 503.02 minutes of water truck filling is the Hayfork Creek diversion at a calculated rate of approximately 360 gpm.
33. On July 16, 2015 the Division issued a Draft Cease and Desist Order (CDO) to Hodgetts via email and certified mail, the certified mail copy was received on August 3, 2015. The proposed CDO orders Hodgetts to take the following steps:
- (1) Immediately cease and desist diversion from Hayfork Creek;
  - (2) Prohibited from selling and/or transporting water from Hayfork Creek Parcel 014 370 21 00 for use on non-riparian property. Hodgetts shall immediately disconnect the overhead fill station from the Hayfork Creek diversion works and render it incapable of providing Hayfork Creek water for bulk water sales;
  - (3) Within 30-days file a Statement of Water Diversion and Use for past diversion from Hayfork Creek;
  - (4) Install a measuring device to measure the volume of water diverted from Hayfork Creek. All water diverted from Hayfork Creek must be for direct diversion and use on Parcels 014-370-21-00 and 014-370-29-00 only, unless Hodgetts obtained necessary appropriate water rights for other uses;

- (5) Provide to the Division written authorization from the District to conduct bulk water hauling operations within the District's place of use (POU) as identified in License 7756 and/or Permit 15437, 20624 and 20625;
  - (6) Maintain, and provide to the Division upon request, records of: (1) all surface water diversion from Hayfork Creek on Parcel 014-370-21-00; (2) the source, quantity, and deliver location of all water sold and delivered from the diversion facilities; and (3) retain copies of monthly billing statements received from the District; and
  - (7) Submit a summary and photographic evidence of all actions taken to prevent any future unauthorized diversion and use of water.
34. On July 31, 2015, Hodgetts submitted a timely request for hearing on the CDO. The State Water Board Hearing Team has scheduled a hearing on the CDO for October 5-6, 2015.

#### STATUTORY MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

35. The basis of this complaint is for the unauthorized diversion and/or use of water from the Hayfork Creek and for failure to file a Statement of the POD. The circumstances described above indicate that Hodgetts likely diverted water unlawfully since 2008 when the overhead fill station was constructed for the purpose of bulk water hauling. Between May 18, 2015 through June 15, 2015 (Violation Period), Hodgetts was documented filling water trucks for approximately 656.35 minutes. During this period 76% of the documented filling of water trucks was of water diverted from Hayfork Creek, meaning for every three water trucks filled from Hayfork Creek, 1 water truck is filled with District purchased water. Hodgetts has likely diverted water from Hayfork Creek since 2008 at a 3 to 1 ratio as observed during the Surveillance. The diversion and use of water subject to State Water Board authority other than as authorized constitutes a trespass pursuant to the California Water Code section 1052(a). California Water Code section 5101 requires that a person who diverts surface water since 2009 in the absence of a permit, license, or registration must file a Statement with the State Water Board.
36. Unauthorized Diversion: The maximum civil liability that can be imposed by the State Water Board in this matter for the unauthorized diversion and/or use of water from Hayfork Creek is \$1,000 for each day in which trespass occurred plus \$2,500 for each acre-foot of water diverted or used in excess of that diverter's rights. Division staff deployed a time elapse camera to document bulk water hauling activities on Hodgetts' Parcel 014-370-21-00 during the Violation Period. Based on District billing records, surveillance footage, and Division staff knowledge and understanding of the Hayfork Creek Point of Diversion (POD), Hodgetts diverted and transported approximately 177,649 gallons (0.5 acre-feet) of water from Hayfork Creek over 18 days between May 18 and June 15, 2015. Therefore, a maximum civil liability of **\$19,250** (18 X \$1,000 per day + \$1,250 for gallons unauthorized diversion) could be considered for the unauthorized diversion and/or use of water from the Hayfork Creek on Parcel 014-370-21-00.
37. Failure to File a Statement: Hodgetts failed to file a Statement for the Hayfork Creek POD on Parcel 014-370-21-000. Water Code section 5107(c)(1) provides that the State Water Board may administratively impose civil liability pursuant to section 1055 in an amount not to exceed \$1,000, plus \$500 per day for each additional day on which the violation continues if the person fails to file a Statement within 30 days after the State Water Board has called the violation to the attention of that person. Here, the October 8, 2014 Application (acceptance letter) put Hodgetts on notice of the failure to file a Statement and notified him that a Statement must be filed immediately. Allowing 10 days for postal delivery and 30 days to file, Hodgetts had until November 18, 2014 to file a Statement without incurring liability. As of August 20, 2015, Hodgetts has failed to file a statement for 275 days since being put on notice of the violation. The maximum civil liability that can be considered at this time for failure to file for the Hayfork Creek Diversion is **\$138,500** (\$1,000 + (275 x \$500)).
38. The combined maximum civil liability that can be considered for the unauthorized diversion and failure to file a Statement for the POD on Hayfork Creek is **\$157,750**.

**PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

39. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
40. Extent of Harm Caused by Unauthorized Diversion and Use: Hodgetts unauthorized diversions have reduced the amount of water available for the Chinook salmon and Steelhead fishery and other riparian habitat. While adverse impacts of unauthorized water diversions on the Chinook salmon and Steelhead fishery have not been quantified for this case, unauthorized diversions of water have been shown to contribute to the cumulative impact of reducing habitat for Chinook salmon and Steelhead. Both the Upper Klamath Trinity River Chinook salmon and the Klamath Mountain Province Steelhead are considered by the CDFW to be species of special concern.
41. Nature and Persistence of Unauthorized Diversion and Use: On April 24, 2014 Division staff informed Hodgetts that under a riparian claim of right Hodgetts does not have the authorization to take water under his riparian right and use it off of the parcel that is riparian to Hayfork Creek. Division staff explained to Mr. Hodgetts that he would need an appropriative water right to divert water for water delivery and sale. Hodgetts was informed again in the October 8, 2014 Application (Acceptance Letter) that he does not have a right to divert and haul water of his property while his water right application is being processed. Evidence demonstrates that during the Violation Period, Hodgetts diverted approximately 177,649 gallons of water from Hayfork Creek over 18 days.
42. Nature and Persistence of Failure to File a Statement: Hodgetts received notice of the need to file a Statement in the October 8, 2014 Application (Acceptance Letter) and has failed to file a Statement. The CDO also provided notice of requirement to file a Statement and that the State Water Board may impose civil liability for failure to file a Statement. Hodgetts has not yet filed a Statement.
43. Length of Violation: The Violation Period of unauthorized diversion and use considered here is only 29 days. Evidence suggests, however, that Hodgetts diverted water from Hayfork Creek for use off of his riparian property over a much longer period of time, including the summer of 2014, for example, as shown by the drastic increase in District water consumed once Hayfork Creek became unavailable in August of 2014.
44. Corrective Action Taken by the Diverter: Hodgetts filed an application for an appropriate right with the State Water Board. However, Hodgetts chose to continue diverting from Hayfork Creek even after being put on notice multiple times that he did not have a right to divert and transport Hayfork Creek water off of his riparian parcel.
45. Economic Benefit: During the July 14, 2015 inspection, Division staff was informed by Hodgetts that he charges \$200.00 for the delivery of water to the Summit Creek area, \$300.00 for deliveries to Trinity Pines and \$600.00 for deliveries in the Mad River area. Hodgetts gained economic benefit from diverting at least 48 truckloads of water from Hayfork Creek, that benefit is estimated at anywhere from \$9,600 to \$28,800 depending on the location of those deliveries.
46. Costs of Enforcement: Additionally, the Division estimates that the staff cost to investigate the alleged violation and pursue formal enforcement to gain compliance to be \$19,360. If this matter goes to hearing, it is estimated that the additional staff cost to prosecute this case would be approximately \$10,000.
47. Deterrence Considerations: Appropriate administrative civil liabilities and other enforcement mechanisms provide assurance of equity between those entities who choose to comply with the Division's regulations and those who do not comply by eliminating any unfair competitive advantage obtained from noncompliance. Appropriate administrative civil liabilities also deter the specific person(s) or entity who is the subject of an enforcement action from committing future

violations and may take into account any of the foregoing considerations or any other factors that may deter the specific person(s) or entity or any similarly situated persons or entities in the regulated community from committing the same or similar violations. Here the economic benefit of bulk water hauling in an area where demand for such service is high, the difficulty of proving unauthorized diversions, and the low probability of being the subject of enforcement is a strong economic incentive to violate Water Code section 1052 by illegally diverting surface flow. Therefore, for enforcement to be effective the liability imposed must be significant.

48. Having taken into consideration the factors described above, the Assistant Deputy Director for Water Rights recommends an ACL in the amount of **\$35,000**. This liability is the minimum liability recommended by the Division Prosecution Team should the matter go to hearing.
49. Should this matter go to hearing, the State Water Board may consider a different liability based on the evidence received, including additional staff costs incurred, up to the maximum amount provided by law. It is estimated that if this matter goes to hearing, additional staff costs incurred for Division Prosecution Team would be at least \$10,000.

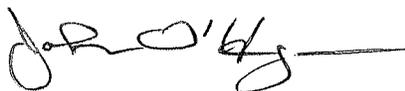
#### RIGHT TO HEARING

50. Hodgetts may request a hearing on this matter before the State Water Board. Any such request for hearing must be received or postmarked within 20 days of the date this notice is received. (California Water Code, sec. 1055, subd. (b).)
51. If Hodgetts requests a hearing, Hodgetts will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, a separate notice setting the time and place for the hearing will be mailed no later than 10 days before the hearing date.
52. If Hodgetts requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code and its responsibilities under the public trust doctrine. Any State Water Board Order imposing an ACL shall be final and effective upon issuance.
53. If Hodgetts does not wish to request a hearing, within 20 days of the date of this complaint Hodgetts shall file a Statement, an application to appropriate water, waive his rights to a hearing and reconsideration of this matter, and remit a cashier's check or money order for the amount of the ACL set forth in paragraph 48 above, to:

State Water Resources Control Board  
Division of Water Rights  
Enforcement Section  
P.O. Box 2000  
Sacramento, CA 95812-2000

54. If Hodgetts does not request a hearing and does not remit the ACL, the State Water Board will issue a final ACL Order and seek recovery of the full ACL amount as authorized by Water Code section 1055.4.

STATE WATER RESOURCES CONTROL BOARD



*John O'Hagan, Assistant Deputy Director  
Division of Water Rights*

Dated: **AUG 27 2015**