

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

DIVISION OF WATER RIGHTS

ORDER WR 2015-0XXX-DWR

CEASE AND DESIST ORDER

In the Matter of Unauthorized Diversion by

MARK HODGETTS

SOURCE: Hayfork Creek

COUNTY: Trinity

The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code (Water Code) section 1831 to issue a Cease and Desist Order (CDO) requiring Mark Hodgetts (referred to herein as Hodgetts) to cease and/or abate an ongoing, or a threatened, violation of Water Code section 1052.

Hodgetts is alleged to have violated or is threatening to violate Water Code section 1052. Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate the prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to this division [Water Code division 2, commencing with section 1000].

On July 14, 2015, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against Hodgetts for the violation and/or threatened violation of the prohibition against unauthorized diversion and use of water. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of cease and desist, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831, et seq. State Water Board Resolution 2012-0029 also authorizes re-delegation of this authority from the Deputy Director for Water Rights to the Assistant Deputy Director for Water Rights (Assistant Deputy Director). This authority has been re-delegated.

FACTUAL BASIS FOR ISSUING THE CDO

The facts and information upon which this CDO is based are as follows:

1. According to Trinity County Assessor Parcel information 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.
2. Parcel 014-370-21-00 includes a surface water diversion facility that Hodgetts uses and/or has the ability to use 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 a pump house and overhead fill structure for water trucks. This overhead fill structure can draw water from a point of diversion on Hayfork Creek and/or from municipal supply provided by Trinity County Water Works.

3. Hodgetts does not have a Statement of Water Diversion and Use (Statement) on file with the Division, nor a permit or license authorizing the diversion of water for use and transport off of Parcel 014-370-21-00. Under a riparian claim of right, water that is diverted under said claim must be put to direct use on the parcel that is riparian to the source.
4. Trinity County Water District (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.
5. On December 2, 2013, the Division received a complaint alleging that Hodgetts is providing water diverted from Hayfork Creek to bulk water haulers by providing access to his Parcel 014-370-21-00.
6. 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.
7. 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.

8. Hodgetts claimed on his LSAA application to have a contract with CalFire and U.S. Forest Service for fire protection. On February 24, 2014, however, Andy Reiling, Calfire Battalion Chief communicated via email to Division staff that Hodgetts does not have a water tender agreement with Calfire and that Calfire instead uses a fire hydrant at the Hayfork fairgrounds as a water source to fight fires.
9. 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 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 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. Division staff provided Hodgetts the contact information for the Division's Permitting and Licensing Section.
10. 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 capacity is 300 gallons per minute via an electric pump. The designation of the place of use as limited to Parcel 014-370-21-00 is also inconsistent with prior statement by Hodgetts and the LSAA

application, which indicate that water is being transported off the parcel for bulk water sales.

11. On May 23, 2014, the Division received a report from a Trinity County employee that Tule Creek Road was wet and the trail of water originated from Hodgetts property and continued to Highway 3.
12. On July 18, 2014, the Division received a complaint from a Hayfork Creek resident who observed a large green water truck leaving the Hodgetts property and dripping water along Tule Creek Road.
13. From December 2, 2013 through July 18, 2014, the Division received three complaints alleging Hodgetts was diverting water from Hayfork Creek to fill water trucks that were trucking water off Parcel 014-370-21-00.
14. On July 29, 2014 CDFW asked Hodgetts to clarify a discrepancy in his place of use (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.

15. On August 21, 2014 Division staff conduct a site inspection on Hodgetts Parcel 014-370-21-00. A copy of the report of investigation from that inspection is attached.
16. On October 8, 2014, the Division issued an acceptance letter for Hodgetts's Application. In the letter Hodgetts was required to take the following steps prior to the Division processing the water right application:
 - a. Pay annual fees;
 - b. Prepare an environmental evaluation and preparation of California Environmental Quality Act documentation;
 - c. Prepare a Water Availability Analysis;
 - d. Immediately submit a Statement to the Division; and
 - e. Restrict the place of use for water diverted from Hayfork Creek solely to Parcel 014-370-21-00.

Bulk water sales from the fill structure located on Parcel 014-37-21-00 have continued since the October 8, 2014 inspection.

17. Hodgetts' is in violation of, or is threatening to violate, Water Code section 1052's prohibition against the unauthorized diversion or use of water by diverting and/or having the ability to divert water from Hayfork Creek for the purpose of bulk water sales for use on property not riparian to the source. Hodgetts' point of diversion located in Hayfork Creek is connected to an overhead fill structure that has continuously been used to fill water truck transporting water to non-riparian parcels and therefore presents a threat of future unauthorized diversion and use of water in violation of Water Code section 1052.

IT IS HEREBY ORDERED, pursuant to sections 1831 through 1836 of the California Water Code, that:

1. Hodgetts shall immediately cease and desist any unauthorized diversion and use of water from Hayfork Creek.
2. Hodgetts is 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. The overhead fill station shall remain disconnected from Hayfork Creek until such time as the necessary appropriative water rights permit is issued by the Division.
3. Within 30 days of the date of this Order, Hodgetts shall file a Statement of Water Diversion and Use for past diversion from Hayfork Creek. California Water Code section 5101 requires, with minor exceptions, that a person who diverts water since 2009 from a stream in the absence of a permit, license, or registration must file a Statement with the State Water Board. Because Hodgetts has diverted water since 2008, Hodgetts is required to report his diversion and use to the State Water Board by filing a Statement unless that diversion falls within one of the limited exceptions provided for in California Water Code section 5101. If Hodgetts has multiple diversion locations (e.g., directly diverting from a stream as well as impound water at a dam), a separate Statement is required for each diversion.
 4. Within 60 days of the date of adoption of this CDO, Hodgetts shall install a measuring device (e.g., in-line flow meter) 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 you obtain necessary appropriative water rights for other uses.
 5. Prior to continuing any bulk water sales of municipal water supplied by the District, Hodgetts must obtain and 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. Hodgetts shall not transport water purchased from the District outside of the District's place of use and must maintain sufficient records to demonstrate compliance with the POU restrictions.
 6. Hodgetts shall 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.
 7. Within 60 days of the date of adoption of this CDO, Hodgetts shall submit a summary and photographic evidence of all actions taken to prevent any future unauthorized diversion and use of water.

Consequences of Non-Compliance

In the event Hodgetts fails to comply with the requirements of this Order, he shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO issued during a period for which the Governor has issued a proclamation of state of emergency based on drought conditions is subject to the imposition of administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occurs, or referral to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a).

Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.

Reservation of Enforcement Authority and Discretion

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against Hodgetts for unauthorized diversion or use of water in violation of Water Code section 1052.

Regulatory Changes

Nothing in this Order shall excuse Hodgetts from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

Compliance with Other Regulatory Requirements

Nothing in this Order shall excuse Hodgetts from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken by Hodgetts to comply with this Order.

Exemption from CEQA

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD

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

Dated:

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