UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

October 1, 2015

Division of Water Rights
State Water Resources Control Board
Attention: Paul Murphy
P.O. Box 2000
Sacramento, California 95812

Re: Cease and Desist Order (CDO) and Administrative Civil Liability (ACL) for unauthorized diversion and use of water from Hayfork Creek, tributary to South Fork Trinity River

This policy statement transmits the position of NOAA's National Marine Fisheries Service (NMFS) in the matter of the State Water Resources Control Board's (Board) proposed Cease and Desist Order (CDO) and Administrative Civil Liability (ACL) for the unauthorized diversion and use of water from Hayfork Creek, tributary to South Fork Trinity River by Mr. Mark Hodgetts. NMFS is the federal agency responsible for implementing the Endangered Species Act for marine and anadromous species, including threatened Southern Oregon/Northern California Coast (SONCC) coho salmon (*Oncorhynchus kisutch*) that inhabit the South Fork Trinity River. It is the position of our agency that water diversion and use by Mr. Hodgetts exacerbates the existing condition of low summer streamflow and water quality problems in Hayfork Creek. This activity is inconsistent with the survival and recovery of coho salmon within the upper South Fork Trinity River watershed.

NMFS has recently completed a detailed recovery plan for SONCC coho salmon that discusses the various threats and corresponding recovery actions necessary throughout the range of the species (NMFS 2014). As documented within the recovery plan, low summer flow, caused primarily by direct surface water diversions and the pumping of hydrologically connected groundwater, is a serious threat to the survival and recovery of coho salmon within the upper South Fork Trinity River watershed, particularly within the Hayfork Creek valley.

NMFS (2014) details the water quality and quantity problems within the Hayfork Creek watershed as follows:

> "Flows are naturally low during the summer due to the low elevations in the basin, the bedrock geology and the low water holding capacity. The summers are hot and dry for several months and there is often little water flowing in most creeks during the summer (USFS 1996c). Exacerbating this issue is the substantial water utilization in the South Fork Trinity River, especially Hayfork Creek and its

tributaries (PWA 1994), and Rattlesnake Creek (Wiseman, E., pers. comm. 2011) which has caused reductions in the amount of habitat available to rearing juvenile salmon in the summer and restricted access to spawning grounds in the fall. Hayfork Creek below the East Fork has been designated as a critical water shortage area (PWA 1994)".

The South Fork Trinity River is a critical watershed for the survival and future recovery of SONCC coho salmon, especially the high Intrinsic Potential habitat[1] within the Hayfork Creek valley. The current lack of SONCC coho salmon presence within Hayfork Creek is likely the result of recent habitat degredation (including excessive diversion of streamflow, high sediment loads from upslope erosion, and lost riparian habitat) and not an accurate indication of the value or importance of the stream for coho salmon recovery efforts. For future recovery and reintroduction efforts to produce meaningful results, adequate summer baseflows must be re-established in Hayfork Creek, the South Fork Trinity watershed, and throughout much of the SONCC coho salmon ESU. Stopping and preventing illegal or unauthorized diversions are a necessary step toward that goal, and therefore NMFS supports the proposed CDO and ACL before the Board.

NMFS appreciates the opportunity to comment on proposed Board actions, and we look forward to continued opportunities for our agencies to cooperate in the conservation of threatened and endangered species under NMFS' jurisdiction. Should you have any questions or comments regarding this policy statement, please contact Mr. Seth Naman at 707-825-5180 or seth.naman@noaa.gov.

Sincerely,

Harry Acevedo

for Alecia Van Atta
Acting Assistant Regional Administrator
California Coastal Office

Literature Cited

National Marine Fisheries Service. 2014. Southern Oregon Northern California Coast Coho Salmon Recovery Plan. September 25, 2014. A copy can be found at: http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/southern_oregon_northern_california_coast/SONCC_recovery_plan.html.

[1] The intrinsic potential habitat index (IP) reflects suitability of stream reaches for salmon spawning and rearing. For further info, see Agrawal *et al.* 2005 and Burnett *et al.* 2007.